

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
PW323/2011

against the recommendation of the Rights Commissioner in the case of:
EMPLOYER

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. D. Hegarty
Mr. J. Flavin

heard this appeal in Cork on 25 February 2013

Representation:

Appellant(s):

Mr. Barry Sheehan, Barry Sheehan, Solicitor,
26 Marlboro Street, Cork

Respondent(s):

Mr Patrick Mullins, Mullins Lynch Byrne, Solicitors,
Melbourne House, Model Farm Road, Cork

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal against Rights Commissioner Decision r-098700-pw-10/DI under the Payment of Wages Act, 1991.

The background to this case was that the employee (hereafter referred to as the appellant) had begun employment with the employer hotel (hereafter referred to as the respondent) in May 2006. Her contract provided that she would work a forty-hour week over a five-day period. However, in late 2010 she was informed that her hours were being reduced from forty hours per week to twenty-four hours per week. She took maternity leave at the end of 2010 and sought compensation for the non-payment of a portion of her wages after the reduction in her hours.

Having fully considered detailed submissions, the Rights Commissioner decided that it had not been established that there had been a breach by the respondent of the Payment of Wages Act, 1991, in respect of the employee in question.

An appeal was lodged with the Tribunal on the grounds that the Rights Commissioner had erred in law and fact in not upholding the employee's complaint under the Payment of Wages Act, 1991. It was stated that in late October 2010 the appellant was informed by the respondent's HR manager that it intended to reduce her weekly working hours from forty to about twenty-four with effect from November 2010. Notwithstanding that the appellant objected to the proposed amendment to her terms of employment, the respondent nevertheless proceeded to unilaterally impose the said reduction of hours and thereby caused an unlawful deduction to her wages contrary to Section 5 of the Payment of Wages Act, 1991.

Furthermore, as the appellant's wages had now been substantially reduced, she, as a then pregnant employee, was extremely concerned that the respondent might also be attempting to frustrate her right, under the provisions of Section 26 of the Maternity Protection Act, 1994, to return to work as a receptionist under terms and conditions which would be no less favourable than those which were applicable to her under her contract of employment.

On behalf of the respondent, it was acknowledged that the appellant had been employed from May 2006, that she had been retained on a full-time basis and that the respondent had approached the appellant (and others) for the purpose of effecting a reduction in the amount of her working hours due to a significant reduction in business.

It was asserted that the contract of employment specifically stated:-

"The company reserves the right to lay you off from work or reduce your working hours where, through circumstances beyond its control, it is unable to maintain you in employment or maintain you in full-time employment."

It was submitted that it was abundantly clear that the respondent was entitled to reduce the appellant's hours in circumstances where it was not possible for the respondent to retain full-time hours. The hotel industry had taken a severe hit as a result of the recession and the declining number of tourists visiting Ireland. One of the inevitable impacts of the recession was a reduction in discretionary spending which had affected leisure centres throughout the country.

The respondent had approached the appellant and others working in the respondent's leisure centre by way of consultation. This was confirmed by letter in late October 2010.

It was contended that it was completely untrue that the appellant's consent in writing was needed to amend her contract of employment. She had already furnished her consent to the changes to her hours by virtue of signing up to terms and conditions of employment in May 2006.

The Tribunal heard sworn testimony from the respondent's HR manager. The appellant did not give sworn evidence. It was not established that the respondent had breached the appellant's contract by putting her on reduced hours that were equivalent to a three-day week.

The appellant was paid for the hours she worked and she had not been subject to an illegal deduction within the meaning of the payment of wages legislation.

Unanimously upholding Rights Commissioner Decision r-098700-pw-10/DI, the Tribunal finds that the appeal against the said decision under the Payment of Wages Act, 1991, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)