

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER  
- *appellant*

PW286-PW312/2011

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

EMPLOYEE  
– respondent 1

EMPLOYEE  
– respondent 2

EMPLOYEE  
- respondent 3

EMPLOYEE  
– respondent 4

EMPLOYEE  
- respondent 5

EMPLOYEE  
- respondent 6

EMPLOYEE  
– respondent 7

EMPLOYEE  
- respondent 8

EMPLOYEE  
– respondent 9

EMPLOYEE  
– respondent 10

EMPLOYEE  
- respondent 11

EMPLOYEE  
– respondent 12

EMPLOYEE  
- respondent 13

EMPLOYEE  
- respondent 14

EMPLOYEE  
– respondent 15

EMPLOYEE  
– respondent 16

EMPLOYEE  
- respondent 17

EMPLOYEE  
– respondent 18

EMPLOYEE  
– respondent 19

EMPLOYEE  
– respondent 20

EMPLOYEE  
– respondent 21

EMPLOYEE  
– respondent 22

EMPLOYEE  
– respondent 23

EMPLOYEE  
– respondent 24

EMPLOYEE  
– respondent 25

EMPLOYEE  
– respondent 26

EMPLOYEE  
– respondent 27

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr D. Hegarty  
Mr D. McEvoy

heard this appeal at Cork on the 14 February 2013

Representation:

Appellant(s) : In person

Respondent(s) :

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an employer's appeal against the decision of the Rights Commissioner references :

R-100237/40/41/42/43/44/45/46/47/48-PW-10/JOC

R-100249/50/51/52/53/54/55/56/57/59/60-PW-10/JOC

R-100261/62/63/64/65/66-PW-10/JOC

Hereafter the employer is referred to as the employer and the respondent as the employee

### **Determination**

This matter came before the Tribunal on the 14<sup>th</sup> of February 2013. The employees were participants in a Community Employment Scheme (CE Scheme), run by the employer. There are approximately 1100 such schemes nationwide with approximately 23,000 participants. There are 10 such projects in the North Cork area, the area in which the employer scheme operated, which have approximately 300 participants.

The schemes are administered by FÁS who dictate the terms and conditions of employment. FAS in turn are funded by the Department of Social Protection.

The chairman of the employer company who set up the scheme has worked in a voluntary capacity for over 19 years in the community. He told the Tribunal that the remuneration of participants in the CE Schemes was determined by central Government and administered by FÁS. Increases and decreases have traditionally been advised to the schemes by FÁS and the schemes in turn apply to FÁS for payment based on the number of individuals participating at any given time, at the then applicable rate. The rate of remuneration is provided for in the annual national budget. The remuneration is directly related to the rate of Social Welfare payment which the participants might otherwise be entitled to. The employer in this case had no control over the rate of remuneration and was entirely dependent on State funding in order to provide remuneration to the participants.

On behalf of employees it has been strongly argued that a template contract of employment provided by FÁS for the CE Schemes does not provide for any wage change, and that the terms and conditions of employment are at all times dictated by FÁS. It was argued that FÁS however take no legal responsibility for pay or conditions and did not nor do not seek consultation either nationally or locally with Trade Unions or workers in relation to pay changes in the Schemes.

The Tribunal notes that the standard FÁS template contract referred to provides for the payment of an "allowance" in the context of remuneration.

Having considered the representations made by both parties the Tribunal takes the view that there is an anomalous situation arising in the overall employment relationship between the CE Schemes, the workers and FÁS. However this application is an application under the Payment of Wages legislation against the company operating the Community Employment Scheme and the Tribunal takes the view that because of;

- a. the nature of the payments and their relativity and clear connection with the level of the participant's Social Welfare,
- b. the fact that all funding is provided by central government through FÁS,
- c. that all rates of remuneration, described as allowances, are determined by central government,
- d. the employer had no control of any kind over the remuneration payable to the employees;

cannot find for the employees against the employer in this case. Consequently the Tribunal overturns the decision of the Rights Commissioner given on the 13<sup>th</sup> of June 2011 and the appeal under the Payment of Wages Act, 1991 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)