

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER

,

CASE NO.  
PW86-W87/2011

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

EMPLOYEE,

and

EMPLOYEE

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty  
Ms. H. Kelleher

heard this appeal in Cork on 14 December 2012

Representation:

\_\_\_\_\_

Appellant(s):

Respondent(s):

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employer's appeal against a Rights Commissioner's Decision under the Payment of Wages Act, 1991, in respect of two employees (reference numbers r-094699-pw-10/EH and r-094701-pw-10/EH).

### Summary of Evidence

The two employees/participants (hereafter referred to as the employees or EA and EY) had been working on a job initiative scheme sponsored by the employer/appellant (hereafter referred to as BSS since the late 1990s. EA retired on 8 September 2010. The employees' case was that BSS acted in breach of the Payment of Wages in cutting their pay despite the fact that

they had not consented to it. The cuts in pay had been in the sum of €25.40 each per week. The employees' contracts of employment were silent on pay.

BSS's case was that FAS had set up the job initiative scheme and determined the scheme's terms and conditions, including employees' pay. Employees' rates of pay increased in line with Social Welfare increases in the national annual budget. BSS consistently applied wage-rates as decided by FAS. It was only when FAS gave the requisite instruction to BSS and the grant that employees' pay has ever been increased. Pay had never been a matter for negotiation. After the budgets, FAS sent a directive to BSS to increase employees' rate of pay to a stated level. The two employees had been awarded and accepted these increases in their pay.

In the December 2009, budget cuts were announced to Social Welfare payments resulting in cuts to the FAS grant and the employees' wages. On 16 December 2010 FAS instructed BSS that following the budget the job initiative grant per place had been reduced from €519.80 to €490.90 per week. The reduction in the employees' pay took effect in early January 2010.

The employees' position was that they had never connected their past increases in pay to budgets or SW rates. They contended that BSS could and should explore other options rather than reducing their pay when faced with a funding decrease from FAS. It was contended that it was open to BSS to shave a bit off from other funding to make up the deficiency in the employees' pay. EA questioned how BSS could employ builders for some two years if its money was being cut. However, he did not address the possibility that money for building work might come from a capital grant.

#### **Determination:**

The employees' contracts of employment were silent on pay. They contended that in reducing their pay in January 2010, without their prior written consent, the employer was in breach of section 5 (1) (c) of the Payment of Wages Act, 1991.

The Tribunal accepts that FAS makes a grant payment to sponsors, in this case BSS, who are then responsible for making salary payments to participants in line with national agreements that are based on SW payment rates.

Without analysing all the legal submissions made to it, the Tribunal, accepting the respondent's submission, relies on the dicta of Edwards J. in *Michael McKenzie and Another v. Minister for Finance and Others* [2010] IEHC 461, where he distinguished between deductions from wages and a reduction in wages and stated that the Act has no application to reductions in wages.

Accordingly, the Tribunal allows the employer's appeal and overturns the Rights Commissioner's decision under the Payment of Wages Act, 1991, in respect of the two employees (r-094699-pw-10/EH and r-094701-pw-10/EH.)

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

