

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE *-appellant*

CASE NO.  
PW547/2011

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

EMPLOYER *-respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O'Leary B L

Members: Mr E. Handley  
Mr J. Jordan

heard this appeal at Dublin on 15th April 2013

#### **Representation:**

Appellant: In Person

Respondent: A director of the company.

#### **Background:**

This appeal came before the Tribunal by way of an employee (the appellant) appealing against a Rights Commissioner's Decision (reference: 109781-pw-11/TB).

The dispute between the parties arose in relation to the calculation of the appellant's annual leave and public holiday entitlements. The appellant was employed by the respondent company from August 2009 to November 2010. It was the company's case that the appellant received holiday pay as evidenced by the appellant's payslips. It was conceded that the appellant is entitled to an outstanding payment in lieu of three public holidays and four days annual leave.

It was the appellant's case that the company incorrectly calculated her holiday pay by basing the calculation on 5.6 hours per shift when her normal shift comprised of eight hours. The appellant also relied on the payslips in support of her case. The appellant submitted that her outstanding entitlement was more than the three public holidays and four days annual leave advanced by the director of the respondent company and she provided details of her claim to the Tribunal.

**Determination:**

The Tribunal note the terms set out under S.1 of the Payment of Wages Act, 1991-

*“wages” in relation to an employee, means any sum payable to the employee by the employer in connection with his employment, including-*

*(a) any fee, bonus or commission, or any holiday, sick or maternity pay, or any other emolument, referable to his employment, whether payable under his contract of employment or otherwise,*

The Tribunal therefore have the authority to make an order for holidays and can invoke the terms of the Organisation of Working Time Act, 1997 and therefore have calculated on the evidence and in agreement with the parties the following order:

The appellant is entitled to the sum of €800 in relation to ten days public holidays and the sum of €936 in relation to outstanding holiday pay. Thus by making a total award of €1,736 the Tribunal varies the Rights Commissioner Decision under the Payment of Wages Act, 1991(reference: 109781-pw-11/TB).

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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