

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
PW438/2011

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: Mr R. Maguire, B.L.

Members: Mr T. O'Sullivan
Mr F. Barry

heard this appeal at Trim on 17th January 2013

Representation:

Appellant:

Respondent: In person

Background:

This case came before the Tribunal by way of an appeal by an employee against the decisions of a Rights Commissioner under the Payment of Wages Act, 1991, reference: r-108985-pw-11/EH

Determination:

The Tribunal considered oral evidence and submissions. An opportunity was given to the Respondent to submit written submissions in response to the written submissions of the Appellant on the day of the hearing. The Respondent did not do so.

The issue for determination is whether there was a term in the contract of the Appellant that entitled the Respondent employer to place him on unpaid lay-off.

The submissions of the Respondent were not persuasive in that the Tribunal does not accept that the logic of the decision of the Labour Court in Bryan McCarthy Contractors Limited v. BATU CD-06-978 supports the position of the Appellant: just because there is no term in a contract that requires lay-off in certain circumstances, it does not mean that there can be no term in a contract allowing such lay-off.

On the basis of the evidence given by the Respondent of the belief as to the future prospects of work in the Respondent, the lay-off of the Appellant was reasonable in all of the circumstances.

The Tribunal upholds the finding of the Rights Commissioner that it was notorious in the construction industry at that time that lay-offs were unpaid.

The Tribunal upholds the decision of the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

