

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

PW87/2012

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. D. Mac Carthy S C

Members: Mr G. Mc Auliffe  
Mr J. Flannery

heard this appeal at Dublin on 22nd May 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 appeal by an employee against a decision of the Rights Commissioner under the Payment of Wages Act, 1991 r-114878-pw-11/TB.

#### Summary of Evidence

The appellant gave uncontested evidence of a fire occurring at his place of employment on the 25 November 2010. Although the business was not trading on the 26 November the respondent asked him to work that day to secure the premises. For a period of time up to the 14 January 2011 he was employed at other businesses owned by the respondent. The witness received no pay for the week of the 22 November 2010 to the 27 November 2010 a period which he had worked thirty five hours. He took no holidays in 2010 and had accrued twelve days for which he did not get paid. On several occasions he asked the respondent for his outstanding pay and was told that once the insurance claim came through on the premises which had the fire he would receive his wages. He accepted that the insurance claim may take some time to process in full and for that reason trusted the employer would pay him when the money became available.

The Tribunal noted that the respondent did not attend the hearing. The respondent failed to submit the form T2B but was legally represented at the hearing.

**Determination**

Having carefully considered the evidence of the appellant the Tribunal are of the opinion that it was reasonable for him to believe that the insurance claim was delaying the respondent paying the outstanding wages. The appellant was informed on several occasions by the respondent that he would be paid once the insurance claim was received. Unusual factors outside the control of the appellant lead to the delay in submitting the claim within the statutory time limit. The Tribunal therefore accept that exceptional circumstances existed in this case and extend the time limit for submitting the claim.

The Tribunal also considered the documentary evidence provided by the appellant including payslips which supported the claim that he did not receive pay for the period in question. The Tribunal overturn the decision of the Rights Commissioner and the appeal succeeds. The Tribunal award the appellant €1260 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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