

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE,

CASE NO.
PW219/2011

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

EMPLOYEE

-v-

EMPLOYER
under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley
Members: Mr. J. Browne
Ms S. Kelly

heard this appeal at Portlaoise on 17th December 2012

Representation:
Appellant:

Respondent:

Background:

This case is before the Tribunal by way of an employee appealing a Decision of a Rights Commissioner under the Payment Of Wages Act, 1991, ref: r-095477-pw-10/JC. The employee is the appellant and the employer is the respondent.

The appellant's case is that he was not notified, at least one week before, that deductions were going to be made to his wages. He accepted in cross-examination that the policy regarding sick leave pay had been changed.

The respondent witness explained that the provisions in the respondent regarding sick leave are the same as in the civil service. She went on to explain the provisions. The appellant had exhausted his sick leave entitlement. The appellant had been paid for sick leave entitlement and this had to be recouped. The overpayment was deducted from his wages.

Determination:

The Tribunal determines that the appellant was overpaid and the respondent deducted the

overpayment from the appellant and the amount of the deduction did not exceed the overpayment.

Section 5 of the Act provides:

Regulation of certain deductions **5.**—(1) An employer shall not make a deduction from the wages of an employee (or receive any payment from an employee) unless—
employers.

(a) the deduction (or payment) is required or authorised to be made by virtue of any statute or any instrument made under statute,

(b) the deduction (or payment) is required or authorised to be made by virtue of a term of the employee's contract of employment included in the contract before, and in force at the time of, the deduction or payment, or

(c) in the case of a deduction, the employee has given his prior consent in writing to it.

(2) An employer shall not make a deduction from the wages of an employee in respect of—

(a) any act or omission of the employee, or

(b) any goods or services supplied to or provided for the employee by the employer the supply or provision of which is necessary to the employment,

Section 5 (5) (1) of the Act provides that noting in section 5 applies to any overpayment of wage:

(5) Nothing in this section applies to—

(a) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, where—

(i) the purpose of the deduction or payment is the reimbursement of the employer in respect of—

(I) any overpayment of wages, or

(II) any overpayment in respect of expenses incurred by the employee in carrying out his employment,

made (for any reason) by the employer to the employee, and

(ii) the amount of the deduction or payment does not exceed the amount of the overpayment

The Tribunal affirms the Decision of the Rights Commissioner and Determine that the appeal under the Payment Of Wages Act, 1991, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)