

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYER *-appellant*

CASE NO.  
PW454/2011

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

EMPLOYEE *-respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms M. Levey

Members: Mr J. Goulding  
Mr S. O'Donnell

heard this appeal at Dublin on 29<sup>th</sup> April 2013

#### **Representation:**

\_\_\_\_\_

Appellant:

Respondent: In Person

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Decision **ref: 106288-pw-11/TB** under the Payment of Wages Act, 1991. As this is an employer appeal, the appellant will be referred to as the employer and the respondent, the employee.

The Rights Commissioner Decision found that *'the employer contravened Sec 5 of the Act'* and ordered the employer to repay the employee the amount of €440.00 which had been deducted from his wages and *'restore his wages from that date'*. That date being the 16<sup>th</sup> of March 2011, the date the employee referred his complaint to the Rights Commissioner Service.

The employer is not appealing or disputing the amount of €440.00, but the jurisdiction of the Rights Commissioner to order the employee's wages to be restored. Due to the financial difficulty the company found itself in, the wages of all the staff were reduced by 10%.

#### **Determination**

The employer is not disputing their liability to pay the employee the €440.00 as awarded by the Rights Commissioner. Sec 6 (2) of the Payment of Wages Act, 1991 clearly states that,

*‘Where a rights commissioner decides, as respects a complaint under this section in relation to a deduction made by an employer from the wages of an employee or the receipt from an employee by an employer of a payment, that the complaint is well-founded in regard to the whole or a part of the deduction or payment, the commissioner shall order the employer to pay to the employee compensation of such amount (if any) as he thinks reasonable in the circumstances’*

Sec 3(a) further states that,

*‘A rights commissioner shall not give a decision under this section in relation to a deduction or payment referred to in subsection (2) at any time after the commencement of the hearing of proceedings in a court brought by the employee concerned in respect of the deduction or payment’*

Consequently the Tribunal varies the Rights Commissioner Decision **ref: 106288-pw-11/TB**, awarding the employee the amount of €440.00 and finding that the Rights Commissioner does not have jurisdiction to make the order to *‘restore his wages from that date’*.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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