

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYER

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

EMPLOYEE

PW251/2011

EMPLOYEE

PW252/2011

EMPLOYEE

PW253/2011

EMPLOYEE

PW254/2011

EMPLOYEE

PW255/2011

Under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. J. O'Neill
Ms. E. Brezina

heard this appeal at Dublin on 6th December 2012 and 3rd May 2013

Representation:

Appellant:

Ms. Sheila Treacy, IBEC, Confederation House, 84-86 Lower Baggot St, Dublin 2

Respondents:

Mr Edward Mathews, Irish Nurses and Midwives Organisation,
The Whitworth Building, North Brunswick Street, Dublin 7

This case came to the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner Ref: r-096174-pw-10/MMG,

**r-096182-pw-10/MMG, r-096184-pw-10/MMG, r-096185-pw-10/MMG and
r-096186-pw-10/MMG.**

Employees' case

These five respondents (the employees) are all nurses in the employment of the appellant (the employer). It was the employees' contention that there was an 8% deduction from their pay on a weekly basis from February/March 2010 and that this deduction was made without their prior written consent contrary to the provisions of Section 5:1(c) of the Payment of Wages Act, 1991.

All five told the Tribunal that they were not consulted prior to an 8% cut in their wages and did not sign anything agreeing to this cut in wages. Letters were received by all five employees, out-lining the pay cut and seeking their consent to it but none of them signed these letters. The employees sought the assistance of their Trade Union and were told that the employer did not recognise the union and would not negotiate with the Union.

Employer's case

The witness for the employer gave evidence in respect of the financial position of the company and told the Tribunal that the 8% pay cut was necessary in order to save the company and avoid closure and redundancies. There were two general meetings for all staff members before the pay cuts were introduced and presentations were made at these meetings which out-lined the reasons for the pay cut. The witness was satisfied that there were large attendances at these meetings and that all staff were invited to attend. He was surprised that these five employees did not attend the meeting and claimed to have no knowledge of such meetings.

Letters issued to 145 employees asking them to sign to say they agreed to the pay cut and about 30% of these were returned duly signed. However nobody returned these letters saying they did not agree to the pay cut and the witness took this to mean that everyone, except the five employees involved in this hearing, had accepted the pay cut.

The representative for the employer referred to Section 6: 2 of the Payment of Wages Act, 1991 and requested that the Tribunal to consider this section and not make an award to these employees in light of the company's financial situation.

Determination:

The Tribunal considered the evidence given at the hearing and the representations made by the parties and the extensive legal and other submissions made. The Tribunal also note the decision of Edwards J. in the High Court case of Michael McKenzie and others and Ireland and the Attorney General and the Minister for Defence Rec. No. 2009. 551JR and in particular paragraph 5.8 thereof where the learned Judge states that the Payment of Wages Act has

o application to reductions as distinct from “deductions”. Where the High Court has made such a decision on a point of law the Tribunal is bound to follow this and must therefore find that this appeal must succeed and the decision of the Rights Commissioner must be overturned in its entirety.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)