

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

PW372/2011

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

under

### **PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Mr. D. Hegarty

Mr. O. Wills

heard this appeal at Cork on 16th May 2013

Representation:

Appellant:

Ms Paula O'Hanlon, IBEC, Mid-West Regional Office,  
Gardner House, Bank Place, Charlotte Quay, Limerick

Respondent:

Mr Noel Murphy, Independent Workers Union, 55 North Main Street, Cork

### **Background**

This case came to the Tribunal by way of an appeal by the employer against a decision of the Rights Commissioner r-079127-pw-09/JOC.

It was common case that there is a sick pay scheme in operation by the employer and that the employee is entitled to be paid his wages when on certified sick leave. On the 19<sup>th</sup> October 2008 the employee had volunteered to work extra shifts on 25<sup>th</sup> And 26<sup>th</sup> October but before this date arrived he went out sick and remained on sick leave for two weeks. There was a difference in opinion as to what exactly the employee was entitled to when he was absent from work due to illness for those two weeks.

The employer paid the employee for 41 hours for each of the two weeks he was absent and told the Tribunal that this was in accordance with the agreed sick leave policy in place at that time. According to the employer this agreement had become policy in the early part of 2008 and prior to that there was a Labour Court recommendation in 2005 that the Sick leave policy of the H.S.E. was applicable to this employment. The 2008 agreed policy is more or less the same as the H.S.E. policy and the payment made to the employee was also in accordance with that policy.

A document entitled "Sick Leave Policy 2008" was submitted by the employee to the Tribunal and he claimed that this document was the policy document in place at the time of his sick leave absence in October 2008 and that according to that policy he ought to have been paid for the extra shifts he had volunteered for before being absent due to illness. However the employertold the Tribunal that this document was a draft proposal which issued during the discussionsthat led to the final agreement. The final draft agreement was somewhat different from this draftproposal and under the final agreement there is no payment for extra shifts while on sick leave.

**Determination**

The Tribunal carefully considered the evidence adduced at the hearing and is satisfied that the employee was paid in accordance with the agreed sick leave policy in place at the time of his absence on sick leave in October 2008. The document which the employee purported to be the agreed policy in place at that time was merely a discussion document or a work in progress and as such did not dictate what ought to be paid to employees on sick leave.

Therefore the Tribunal overturns the decision of the Rights Commissioner r-079127-pw-09/JOC and finds that the employee is not entitled to any compensation under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)