EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: **CASE NO(s).**
EMPLOYER - *appellant*

PW472/2011

against the decision 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. E. Kearney BL
Members: Mr D. Moore
Mr T. Brady

heard this appeal at Tullamore on 3rd April 2013

Representation:

Employee : In Person

Employer : Mr Tom Mallon BL instructed by Mr Seamus Given, Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

This case came before the Tribunal by way of an appeal by the employer ref: (r-112469-pw-11) against the decision of the Rights Commissioners under the Payment of Wages Act, 1991.

For the purposes of this determination the appellant is referred to as the employer and the respondent is referred to as the employee.

Summary of Case

The employee commenced employment in December 1976 and progressed up the promotional ladder to a position of customer team manager on 29 March 2001. From March 2004 the employee had a protracted ongoing dispute with his employer leading to the matter being litigated in the High Court. In relation to those proceedings a settlement agreement was signed by both parties, a copy of which was opened to the Tribunal resulting in the employee being re-graded from customer team manager to the grade of customer team leader. The Tribunal heard evidence that the position of customer team leader is a graded position whereby all employees are employed on collectively negotiated terms and conditions of employment, negotiated through the Joint Conciliation Council (JCC). The position of customer team manager, a position held by the employee for approximately three years from 2001 to 2004 is a non-graded position and as such is not subject to the collectively negotiated terms of the JCC.

The employee submitted that he is not a graded employee as he signed a personal contract with his employer on 29 March 2001 following his appointment as customer team manager. He submitted that this contract takes him outside of the collective bargaining process and furthermore he is not a member of a trade union. Accordingly he should not be bound by any pay cut introduced by his employer. He told the Tribunal that he reverted to the position of customer team leader through coercion and did not do so voluntarily. He accepted that he signed the aforementioned settlement agreement with his employer and has not held the position of customer team manager since 2004. He also accepted that he has received 87 adjustments to his pay as a result of the collective bargaining process during his tenure of employment with his employer.

The employer, as part of a recovery plan introduced a 10% pay reduction together with a 10% consequential reduction in hours as part of a collective agreement agreed at the JCC for all graded employees, including the employee in this case in 2011. The period of reduction lasted for 17 months.

Determination

The employee in this case claims that his contract of employment is outside the scope of any collective agreement negotiated on behalf of employees of the employer company. The employer company employs graded and non graded staff, those graded staff members are employed on collectively negotiated contracts primarily negotiated through the joint conciliation council. In order to reduce costs collective agreement number 611 JCC was negotiated entitled the (EMPLOYER) Recovery Plan. The collective agreement was implemented as and from the 30th May 2011.

It is clear from the evidence heard that at all material times the employee was employed as a graded employee save for three years when he acted as customer team manager prior to March 2004. This position was further confirmed on terms negotiated in the context of High Court proceedings record numbers 2006/6299P, and 2007/864P taken by the employee, that he worked as a graded employee. As a term of settlement achieved in the aforementioned proceedings, inter alia, it was agreed by the employee that he has no entitlement to any position as customer team manager, and is currently employed in the grade of customer team leader, and obliged to carry out the full range of duties as a team member (CTO), further the employee agreed to fully comply with all terms and conditions of employment .

The Tribunal accept the legal position as set out in DS O Cearbhaill & Others v Bord Telecom Eireann,1994 ELR 54 that section 45(2) of the Postal and Telecommunication Services Act 1983 “means that the employees of the new company may have to accept by reason of a collective agreement ….less beneficial conditions of service than they were previously entitled to if the change is brought about by collective agreement”.

The proposition is advanced by the employer that although the Supreme Court were not in O Cearbhaill dealing with pay, there is nothing in its judgment to suggest pay would be dealt with any differently. The Tribunal accept this proposition, and on consideration of this judgement can come to no other determination than, that there is no distinction made or suggested that pay may be treated or dealt with in a different way.

Therefore, the Tribunal finds that, the employee was a graded employee, and therefore subject to collective agreements negotiated by and on his behalf, and that such collective agreements can reflect less favourable terms and conditions in applying the principles of O Cearbhaill the

alteration of the employee's pay cannot be open to challenge.

Accordingly the Tribunal finds that the appeal succeeds and the decision of the Rights Commissioner is set aside.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)