

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE
(The appellant)

UD574/2010

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

EMPLOYER
(The respondent)

And

EMPLOYER
(The appellant)

UD575/2010
PW78/2010

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

EMPLOYEE
(The respondent)

under

**PAYMENT OF WAGES ACT, 1991
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.
Members: Mr. T. O'Sullivan
Mr. P. Trehy

heard this appeal at Dublin on 19th October 2011 and 23rd January 2012

Representation:

Appellant: McEvoy Partners, Connaught House, Burlington Road, Dublin 4

Respondent: Hayes, Solicitors, Lavery House, Earlsfort Terrace, Dublin 2

These cases came before the Tribunal by way of appeals by both the employer and the employee against the recommendation of the Rights Commissioner Ref: r-083809-ud-09/RG. The employee was seeking to have the recommendation varied and the employer was seeking to have it upset.

There was also an appeal by the employer against the decision of the Rights Commissioner Ref: r-083804-pw-09/RG. The employer was seeking to have this decision upset.

Respondent's case

KK the Managing Director since 1996 outlined the nature of the business which operates as a promotional marketing and public relations company. The claimant became employed by the respondent when another company was taken over. He told the Tribunal that when the claimant was commencing maternity leave he decided that she would be paid a bonus of €8400 and would receive a further bonus payment of €8,400 on returning to work. However, a letter dated 18th April 2009 issued to the claimant stating that she was to receive two bonus payments, one of €8,400.00 and another of €16,800 and the respondent stated that this was an error on behalf of the author and that in fact it should have read two payments of €8,400 each being €16,800 in total. She returned to work in April 2009 and was told of the company cut backs and loss. She was returned to her role as Account Director but with more emphasis on new business. The company needed to focus on new business at that time. At a meeting in May 2009 with the other company director/shareholder they decided to put money into the company to fund the business. A decision was taken to make a number of cuts including outsourcing the finance department and seeking a reduction in rents. There were a number of redundancies and he himself stopped taking a salary. He said he took the decision to make AW redundant and she was not replaced as BB picked up her work. Having already given four weeks notice, a proposal to pay €500 for any new business meetings set up was put to him. As there were no funds €100 was offered for the remaining period of employment. This was offered to others within the company also. In cross examination KK could not recall offering AW €9,000. KK stated that options other than redundancy were never discussed with AW as it just wasn't an option for the company. Asking the claimant to take a pay cut was not considered an option as KK presumed that she would not accept this. He confirmed that no voluntary redundancies were sought. He also confirmed that BB and AC covered AW's maternity leave.

BB who was then PR Director of the respondent met informally with the claimant while she was on maternity leave and informed her that there had been a 10% cut in wages.

Claimant's case

The claimant commenced employment with the respondent on 1st February 2005 and after one year she was promoted to Account Director. She went on maternity leave from 4th July 2008 and returned to work on 16th April 2009. During her maternity leave a pay cut of 10% had been imposed on all staff. However, the claimant never consented to this cut in pay but her wages were reduced by 10% from 16th April to 12th June 2009 at which time she was made redundant.

Prior to going on maternity leave the claimant had met with KK who agreed to pay her a bonus of 50% of her pay, had she not been on maternity leave. This payment was to be made in two instalments, the first of €8,400 at the start of maternity leave and the second of €16,800 on her return to work. However, she only received two payments of €8,400 each and was therefore claiming the additional €8,400 as unpaid wages under the Payment of Wages Act, 1991.

The claimant argued that on her return to work, after maternity leave, she was given a new role insofar as she was now responsible for drumming up new business. However, this was a most difficult task as there was a huge decline in the amount of business available within the PR sector. Therefore when it came to redundancy it seemed that her position was a logical choice for selection. However, the claimant felt that she should not have been selected above others

who were junior to her. She could have taken over the work of junior staff and would have accepted a pay cut, if it meant keeping her job.

Determination

Having carefully considered the evidence adduced in relation to the appeal by the employer against the decision of the Rights Commissioner r-083804-pw-09/RG under the Payment of Wages Act, 1991 the Tribunal is satisfied that the employer unlawfully deducted 10% from the employee's wages from 16th April 2009 to 12th June 2009. Accordingly the Tribunal awards the employee €940.00 under the Payment of Wages Act, 1991.

The Tribunal considered the claim by the employee that she was due an extra €8,400.00 in relation to pay while on maternity leave and believes that it is disingenuous of the employee to suggest that the letter of 18th April 2008 was anything more than a drafting error. Therefore the Tribunal makes no award in respect of this claim.

It was common case that the employee was paid her full statutory minimum notice and therefore the Tribunal makes no award in relation to this claim.

The Tribunal hereby varies the decision of the Rights Commissioner r-083804-pw-09/RG and awards the respondent €940.00 under the Payment of Wages Act, 1991

The Tribunal also carefully considered the evidence adduced in relation to the appeal by both the employer and the employee against the decision of the Rights Commissioner r-083809-ud-09/RG under the Unfair Dismissals Acts, 1977 to 2007 and makes the following determination.

On her return from maternity leave the employee was not allowed to resume her previous role and was redirected into a role which was made redundant 22 working days later. The redundancy arose as a result of her being on maternity leave immediately before redundancy and not being returned to her previous clients but instead being assigned to seeking new work at a time when it was accepted that there was a shortfall in new business. She was then identified as the person with the least clients and selected for redundancy on this basis.

The evidence indicates that the employee worked for a short period of time from October 2009 and earned €5,500.00. She was also paid a redundancy lump sum of €5,832.00. There was also a considerable period of time during which the employee was unavailable for work while studying a course unrelated to her core employment. The employee then gained employment elsewhere on a part-time basis from February 2010.

Therefore, in all the circumstances the Tribunal varies the recommendation of the Rights Commissioner r-083809-ud-09/RG under the Unfair Dismissals Acts, 1977 to 2007 and awards the employee €21,840.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)