



### **Deduction –v- Reduction \***

In the case of 58 employees and Green Isle Foods Limited PW47-PW105/2013 the case involved a situation where the employer imposed a 5% cut in pay on all the employees from August 2011.

The employees did not agree to the 5% pay cut.

The employees contended that imposing a 5% pay cut without each person's prior authorisation in writing was an illegal deduction from pay and a breach of the payment of Wages Act 1991.

The employer contended it wasn't a deduction from pay as defined in the Payment of Wages Act. The EAT considered the decision of Edward J in the High Court case of Michael McKenzie and Others –v – The Attorney general and the Minister for Defence record number 2009.551JR. They referred in particular to paragraph 5.8 thereof. On that basis they held that it wasn't a deduction but was a reduction and therefor the employees could not succeed and that the decision of the Rights Commissioner would be overturned.

Clause 5.8 of the Decision of Mr. Justice Edwards as regards this particular paragraph of his decision is consistently raised. However, that section of the Decision has to be read in light of the entire decision. In our view that paragraph is being taken out of context.

In addition the decision of Mr. Justice Edwards did not deal with a case of a deduction or a reduction of pay. That case dealt with an allowance. There is no provision under the Payment of Wages Act to bring a claim for an allowance. At some stage this determination relating to the McKenzie case is going to go an appeal to the High Court. The McKenzie case, in our view, is being quoted out of context. In many cases before Rights Commissioners, clause 5.8 of that Decision only is produced. When the entire decision is produced and clause 5.8 is read in conjunction with the entire decision it is clear, in our view, the learned High Court Judge was referring to allowances which is different than wages.



For the purposes of assisting colleagues who may have such claims we are including in a detailed submission which we have used in other cases relating to this issue. We hope colleagues will find this of use.

### **Our Legal Submission**

#### **Reduction/Deduction of Wages under Payment of Wages Act**

An argument is currently being made in relation to the issue of wages where there is a deduction.

The argument being made is that the Decision of Edwards and J in the High Court in the 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

“5.8 Finally, the Court agrees with the Respondents’ submission that the Payment of Wages Act, 1991 has no application in the circumstances of this case. First, as has been pointed out, correctly in the Court’s view, the reduction in the PDF allowance is not a “deduction” from wages payable. It is a reduction of the allowance payable. The Act has no application to reductions as distinct from “deductions”. Secondly, even if that were so, any alleged breach of the Payment of Wages Act, is not justiciable controversy before the High Court in circumstances where the Act sets up specific enforcement mechanisms to be availed of elsewhere in such circumstances”.



The Court in making its determination was referring to paragraphs 4.27 and 4.28. In those Sections it was stated

“4.27 In response to the argument based under S.5 of the Payment of Wages Act 1991 the Respondents submitted that the reduction in the PDF allowance is not a “deduction” from wages payable. It is the reduction of the allowance payable. The Act has no application to reductions (as distinct from “deductions”).

“4.28 The Respondents further submit that the issue raised of non-compliance with Section 5 of the Payment of Wages Act is not properly justiciable by the High Court....”

The McKenzie case dealt with a reduction of allowances. The Payment of Wages Act specifically excludes allowances from the Terms of the Act as the definition of wages specifically excludes allowances. We would refer to the case of Sean Senan Histon and Shannon Foynes Port Company 2006 IEHC 292. In that case, being a judgement of Mr. Finlay Geoghegan he stated

“the purpose of S.5 is to preclude an employer from making deductions from the wages of an employee unless certain specified conditions are met. Section 5(2) is expressly directed to a prohibition against an employer making any deduction from wages in respect of “any act or omission of the employee unless certain specified conditions are met”.

He went on to say

“It does not appear to me arguable that a failure to pay to the Plaintiff any part of his salary is not a deduction from his salary within the meaning of S.5 of the Act of 1991”.



We respectfully contend that the McKenzie case referred to previously relates to a reduction of an allowance. An allowance is not covered by the Payment of Wages Act. The Senan Histon & Shannon Foynes Port Company case deals with deductions. The provisions of Section 5 of the Act is absolutely specific and no deduction can be made without the consent of the employee and that consent must be prior written consent.

**Dated the** \_\_\_\_\_ **Day of** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Before acting or refraining from acting on anything in this update legal advice from a Solicitor should be obtained.**

**In contentious cases a Solicitor may not charge fees or expenses as a percentage of any award or settlement.**