

Richard Grogan: Do you bring a Payment of Wages Act claim or a breach of contract claim?

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Employment law solicitor **Richard Grogan** of **Richard Grogan & Associates** writes on an anomaly as to whether wages claims should be brought in the Workplace Relations Commission and Labour Court or in the main Irish courts.



Richard Grogan

The issue of where wages claims should be brought came to a head in a case of *Tesco Ireland Limited and Balans PWD191*. The facts of this case are interesting, with an issue arising in relation to the construction of the employee's contract.

The Labour Court noted that it had previously held, in cases PW/18/14 and PW/18/18, that an error in a contract does not mean that the rate of pay set out in the contract is properly payable. In this case, the Court held, quoting section 5(6) of the *Payment of Wages Act 1991*, that the rate of pay set out in the contract arose due to a computational error and was not properly payable.

The issue in relation to this case is that the provisions of section 5(6) of the Act relate to situations where monies are properly payable and the Act specifically excluded deficiency due to an error of computation. The Act does not appear, from our reading, to exclude situations where there is an error in the contract itself.

We mention this because of the case of *Babianskas and First Glass Limited* [2016] IEHC 598, which was in relation to amounts payable under the *Organisation of Working Time Act* for holidays and public holidays.

In that case, which dealt with a situation where the employee was paid less than the amounts specified in his contract, the High Court held that the employee was entitled to be paid what was in his contract and that there was no estoppel because the employee had not raised any issue.

We would certainly agree that, where there is an error of computation, a claim does not arise. However, the Court in this particular case before them, seem to differentiate between what is due under a contract of employment which could be enforced through the courts and what can be enforced under the *Payment of Wages Act*.

This case does raise the issue as to whether the Labour Court has jurisdiction to effectively set aside what may be written in a contract of employment on the basis that it was a mistake, which would be a much more difficult to do if the matter was before the courts.

This also raises the issue that, in certain circumstances, it may well be better for an employee to bring a claim in the District Court or the Circuit Court rather than before the Workplace Relations Commission.

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We would be of the view that the Labour Court is limited in altering or changing a contract other than where it would be by necessity or a clause which would have been effectively on the rules relating to implied contracts being plied into the contract.

This is an interesting case and it certainly has opened up an interesting discussion on issues relating to the jurisdiction of the Labour Court and the interpretation of contracts.

- **Richard Grogan** is the principal solicitor at **Richard Grogan & Associates Solicitors**. You can subscribe to the firm's monthly newsletter at grogansolicitors.ie.

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