

Richard Grogan: Adjudication Officer right to admit award is beyond their competence

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Employment law solicitor **Richard Grogan of Richard Grogan & Associates** writes on the competence of the Adjudication Officer to determine certain sums.

In case ADJ10415, the Adjudication Officer (AO) admitted that it was beyond the legal competence of the AO to determine the amount to be awarded to the employee.

This case is interesting in that the award under the *Payment of Wages Act* for a six month period of time amounted to €39,000.

The AO correctly held, in our view, that the legislation provides that the AO awards the sum net of tax. The AO has stated that it is beyond the legal competence of the AO to make that determination and therefore awarded the gross sum less any lawful deductions.

We must commend the AO on their honesty in relation to this matter.

However, it does raise a significant legal issue. The obligation is to award the net sum, not a gross sum subject to lawful deductions.

There is an anomaly between the *Payment of Wages Act* and the *Taxes Acts*.

Under the *Payment of Wages Act*, there is a requirement to make any award net. Under the *Taxes Acts*, this sum is treated as a gross sum and is then taxed further. This may appear unfair, but that is the way the legislation works.

It would be our view, and it is only our view, that the net sum would be equivalent to the net sum which the employee would normally take home as take-home pay.

By this, we mean that if the rate of pay for the employee was, for example, €4,000 per month gross and their normal net pay per month was €3,000, then that is their net pay and that is the amount which must be awarded – not the €4,000 (in a case where the claim related to one month's pay).

In cases of this kind, there does need to be appropriate backup services for the AO, within the Workplace Relations Commission (WRC) for this calculation to be done on their behalf. If a case like this was in front of the courts then any judge in any of the courts can require a solicitor, regardless as to whether it impacts on their client or not, to advise the court as to what the law on a particular issue is and by implication what the calculation of the net wages would be.

While we commend the AO for their honesty in relation to this issue, the law on the issue is clear. The issue of gross and net loss of earnings is one which causes difficulties in the WRC and some legislation is gross and some is net. Appropriate resources can be provided in the WRC to assist AOs in dealing with such cases.



Richard Grogan

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