

Act	Complaint Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under section 24 of the National Minimum Wage Act, 2000	CA-00019796-001	15/06/2018

Date of Adjudication Hearing: 24/08/2018 Workplace Relations Commission Adjudication Officer: Pat Brady Procedure:

In accordance with Section 41 of the Workplace Relations Act, 2015 following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint.

#### Background:

The complainant commenced employment with the respondent on March 23rd 2016. The employment relationship ended on January 16th, 2018.

#### Summary of Complainant's Case:

The complainant originally worked on a part-time basis but was put on full time hours in October 2016. She says she was 'forced' to work eight hours per day.

However, she says that she continued to be paid on the basis of her part-time hours only. This meant that aggregating her total hours and dividing by the wages she received for the part-time hours she ended up with a rate that was lower than the national minimum wage. She estimates this to be €5.55 per hour.

The complainant says also that she was paid on a lower rate because she was a part-time worker.

In relation to the delay in submitting the complaint she says that she had consulted her solicitor in March and left matters with him.

#### Summary of Respondent's Case:

By way of a preliminary issue the respondent submits that the complainant last worked for the respondent on October 25th 2017 and therefore there has been no breach of the Act in the six months prior to the submission of the complaint. She was suspended on that date and did not work any hours since then.

Neither has she requested a written statement from the respondent to set out the average hourly pay for a pay reference period as required by the National Minimum Wage Act, 2000.

She was dismissed for gross misconduct on January 16th 2018.

The respondent says that the complainant initially worked twenty-two hours per week.

She requested to be put on full time hours but it was she who asked that only the initial part-time hours should be treated as formal wages and that the balance should be paid 'into the hand'. The respondent acknowledges that this was an error but it complied to assist the complainant.

The complainant was suspended on October 25th, 2017 arising from a disciplinary issue and she was paid until January 2018.

She has not worked since.

In relation to any disparities in levels of wages paid the respondent says that these reflect differences in qualifications only and are not discriminatory in any other way.

The complaint is frivolous and vexatious and represents an act of retaliation for her dismissal.

#### Findings and Conclusions:

This complaint will be decided on the basis of whether it is within jurisdictional time limits, as argued by the respondent.

The complainant's evidence was, in general, completely incredible.

While the arrangement entered into by the respondent for the additional hours was not tax compliant it says it was done to accommodate the complainant's continuing eligibility for social welfare benefits. The complainant flatly denied she got any payment.

She also claimed to have been 'forced' to enter into the arrangement for which no evidence was offered. Her denial that she was paid for the hours in question on any basis was likewise not credible. The respondent insisted she was paid and I accept that evidence.

It appears that the first mention of wages being due came in an email of January 1st 2018, the day after the complainant had been formally dismissed. In the course of this she alleged that she was owed €12,000.00 in unpaid wages and threatening to report the matter to the WRC and, for some reason, the Revenue Commissioners.

On the basis of the complainant rate of €9.50 per hour (which was the applicable rate until just before her termination) this represents a staggering 1,263 unpaid hours, or around 250 working days (based on the extra five hours she claims she worked). There was no evidence of the complainant ever having sought payment for these hours until January 2018 which again, renders her claim incredible.

In any event, no breach of the Act was made out within the time frame of the statutory six month limit. Her explanation for her failure to lodge the complaint within time comes nowhere near the requirements of the various authorities that it both 'explain and excuse' the delay. In her case it did neither.

In relation to the test applied in extension of time applications under the Acts, the most commonly cited dicta are those of the Labour Court in *Department of Finance v IMPACT*. [2005] E.L.R. 6.

In considering the criterion to be applied as to whether reasonable cause exists, the Labour Court said it was for the applicant to show that there were reasons which both explain the delay and which afford an excuse for it. This imports a clear objective standard into the test

#### Decision:

Section 41 of the Workplace Relations Act 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under Schedule 6 of that Act.

For the reasons set out above I do not uphold complaint CA-00019796-001 and it is dismissed

Dated: 12/12/2018 Workplace Relations Commission Adjudication Officer: Pat Brady