Reduction or Deduction of Wages*

In the case of Earagail Eisc Teoranta and Ann Marie Doherty and others the issue of a Reduction/Deduction came before the President of the High Court Mr Justice Kearns under Citation [2015] IEHC 347.

In this case there are two interesting aspects.

The first is that the High Court has referred the matter back to the EAT on the basis that the EAT failed to provide adequate reasons for a number of findings.

The decision of the High Court is extremely useful in confirming that Section 5 of the Payment of Wages Act 1991 as regards to Subsection 1 (a), (b), and (c) are not to be taken conjunctively. The President pointed out that the word "or" is expressly used in the provisions and it is clear that each subsection concerns separate instances, which might give rise to an exception to the rule that an employer shall not make a deduction from the wages of an employee. He held that Subsection (b) stated that the deductions are allowable where they are authorised by virtue of an employee's Contract of Employment and this is something the Tribunal should have considered independently of subsection (c).

The President held that the Court was satisfied that the Tribunal failed to provide adequate reasons for a number of other findings. The President held that it is established that the duty to give reasons does not require extensive analysis of every aspect of a complaint and that the "gist" of the basis for a decision is sufficient. The President held that it is not clear how the Tribunal arrived at the determination it did and there is not as much as a fleeting reference to the vital matters such as the reduction or deduction argument or why in this particular case a particular Section of the company handbook was not applicable.

In many Payment of Wages cases the McKenzie decision has been relied upon by the EAT to refuse compensation.

This case is interesting in that in this case the wages of the employees were subject to a reduction or deduction, whichever phrase you may wish to utilise. The relevant element of the decision of the President which is important states:

"The Court is also satisfied that the decision in McKenzie is distinguishable from the facts of the present case in a number of respects. The Court accepts the submission of the Respondents that the remarks of Edwards J in relation to 'Reduction v Deduction' issue were obiter. Furthermore, McKenzie related to the reduction in an allowance payable in respect of Motor Travel and Subsistence. The definition of 'Wages' in the 1991 Act expressly excludes any payment in respect of expenses incurred by the Employee in carrying out his employment and so the findings of Edwards J. that the "RDF allowance" did not come within the scope of a deduction under the Act relates to an entirely different situation to the present case where employees salaries were reduced.

I am satisfied therefore that the Tribunal was entitled to proceed to consider the complaints on the basis that the reduction to the employees wages in the present case may have constituted a deduction in breach of the 1991 Act".

This element of the Decision is extremely helpful in clarifying an issue where there has been quite a lot of dispute in the past as to what the Mckenzie Judgement related to. The McKenzie Judgement related to allowances. The provisions of the Payment of Wages Act specifically exclude allowances from the jurisdiction of the EAT under the Payment of Wages Act.

There have been a number of appeals that went onto the High Court relating to deductions of wages, where it has been held by the EAT that it was a reduction and that the McKenzie Judgment meant that no award of wages could be made. A number of those were overturned in the High Court but there was no written Judgement. It is important to note that this issue in relation to the McKenzie Judgement has now been clarified by the High Court.

In relation to a finding of fact by a Tribunal or the Labour Court the President of the High Court also mentioned a case of Dunnes Stores v. Doyle [2014] 25E.L.R.184 where Mr. Justice Bermingham held:

"Identifying the contractual entitlements of an employee of course involves legal determinations. Where such legal determinations are made by a tribunal then there is the option of having the conclusion reviewed in the High Court, through the appeal on a point of law route. When that occurs and the High Court is asked to consider whether the Tribunal correctly applied the law there is no scope for the doctrine of curial deference".

This confirms that even when there is finding of fact, if that finding of fact involves a legal determination, then that issue itself is open to an appeal on a point of law and there will be no curial deference.

This Decision of the President of the High Court is an extremely important Decision and it is one that any and all employment solicitors and barristers will be reviewing. It is a very important Decision and for those interested in Employment Law I would recommend that it is a decision which is read. Copies are available on the Courts website courts.ie

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