

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
UD337/2007
MN224/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr J. Walsh
Mr G. Whyte

heard this claim at Dublin on 19th September 2007

Representation:

Claimant(s) Mr. Stephen O Sullivan BL instructed by Ms. Eimear Sampson P.J. Walsh & Co.,
Solicitors, 12 Upper Fitzwilliam Street, Dublin 2

Respondent(s): Mr. Justin MacCarthy, MacCarthy & Associates, Solicitors,
10 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case

A former secretary of the respondent told the Tribunal that he is now employed as a general manager in another golf club. The respondent had discussions with the trade union regarding terms and conditions of employment. There was never an issue with the union regarding the retirement age. Retirement was compulsory on reaching sixty-five. He sent a letter to the claimant on 11 December 2003 in which he informed him of his revision in pay. The claimant was also informed that the club was unable to issue full terms and conditions of employment at this time but this matter would be addressed in early January 2004 and also the issuing of terms and conditions to the claimant was in line with the club policy for all employees. A retirement age of sixty-five applied to all staff. There was an exception in that the club may ask an employee to remain in employment and that was the club's prerogative.

In cross-examination when asked if the bar revenue was down on 8 December 2005 he responded

that he was not there in December 2005. The respondent had a template of a contract of employment for all members of staff. This was not given to the claimant. When he joined the respondent the claimant had not signed a contract of employment and he was a temporary employee. He did not know if the claimant was aware of his retirement age. Negotiations regarding terms and conditions were agreed with the union and the claimant was a member of a union. CMcD who was an employee represented the claimant at meetings. When asked if SS secretary/manager met with employees he responded that as far as he was aware she did. When asked if he had discussions after the meetings he responded that discussions occurred sometimes after the meeting and sometimes before. It was his understanding that the trade union representative would usually meet with employees and inform them of the outcome. A pension scheme was in place for management and it was not the policy of the club to provide a pension for other staff. When asked if the claimant was given terms and conditions of employment he responded that there was an intention to give the claimant a contract.

The second witness for the respondent SD told the Tribunal that in 2006 he was chairman and captain of the club. He was elected chairman of the management committee for a term of one year. He attended a meeting on 11th September 2006 in the clubhouse. The secretary manager SS who was present at the meeting indicated that the claimant would be sixty-five in October 2006. It was agreed that a letter would be forwarded to him regarding his retirement. The bar manager in the club CC remained in employment for an extra year because he had responsibility for two permanent staff and part time staff. CC was regarded as a tremendous ambassador for the club and on reaching sixty-five the club asked him if he would remain with the respondent for an indefinite period and he stayed for another year. The witness was aware of the circumstances regarding an accident that the claimant had in the club in 2006 but this matter was never discussed. Insurers dealt with the matter and it was not an issue for the club.

In cross examination when asked if the only person the claimant would look to was CC who was sixty six and still working he responded that CC was over sixty five and working. He accepted that the terms and conditions were not issued to the claimant and this was an oversight. The normal management practice was to meet with a staff member who was due to retire. He would think that the claimant's union representative told him about his retirement. He was well aware of discussions regarding contracts and he could not be sure that the claimant was aware of his due retirement age.

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent in a temporary capacity in April 2001. He worked an eight-hour shift five to seven days a week and he did overtime. CC was employed as a bar manager with the club at this time. In June/July 2003 another employee was involved in an accident and the claimant asked to be made permanent. The claimant never received terms and conditions of employment. The bar was less busy and in June/July he had an accident in the club. He went on holidays on 19 September 2006 and while on holidays he received a letter dated 21 September 2006, which stated that his retirement date was the 24th October 2006. Prior to this he had never received anything in writing regarding his retirement age. He saw a contract of employment a couple of months ago when he received it from his solicitor and he could not understand it. Prior to 21 September 2006 there was no discussion regarding his retirement. He was shocked and surprised on receiving the letter and it affected his blood pressure. He sought alternative employment in hotels in his locality and surrounding areas but he was unable to obtain work. When he was made retire he applied for the pension and he was told that there was a three to six month delay in getting his pre retirement pension. He went back to his doctor as he wondered what he was going to live on. He was worried and suffered from stress and he had no

income. He is in receipt of the old age pension since 23 October 2006. He was in receipt of sickness benefit for three to four months. He was not aware that CMcD was his union representative and he expected that RS would attend negotiations on his behalf. He was aware that the secretary manager tried to get bar staff to sign a contract.

In cross-examination he stated that sixty-five was the retirement age in the State. He was not aware of what the retirement age was elsewhere. He was aware that people could retire earlier than sixty-five. From a government point of view most people retire at sixty-five. He attended one union meeting but he could not recall what it was about. He knew EC was a union representative. When asked if he ever raised the matter of a contract with EC a union representative he responded that he knew other employees did not have a contract. When asked why he could not get another job after October 2006 he responded it was due to his age. When asked if there was any other reason why he could not get a job he responded that he was an old age pensioner. He disagreed that sixty-five was the normal retirement age and he had seen elderly staff work in pubs. He believed that CC the bar manager retired around the 7th or 9th October. He could not recall what the union meeting that he attended was about and he did not think that it had anything to do with bar staff. When asked if the club retirement age was sixty-five he responded that he took his lead from CC the bar manager.

Determination

The Tribunal is of the view that the claimant was aware that normal retirement age was sixty-five however, the company failed to provide him with terms and conditions of employment which specifically outlined that fact. Consequently his claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the Tribunal awards him compensation in the amount of €6,500.00

No evidence was adduced in relation to minimum notice therefore no award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

