

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee UD645/2007, MN907/2007

CASE NO.

Against

Employer

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mahon B L

Members: Mr J. Goulding
Ms M. Maher

heard this claim at Dublin on 3rd January 2008

Representation:

Claimant : John Waters, Solicitor, 6 Exchequer Street, Dublin 2

Respondent : Company Representative

The determination of the Tribunal was as follows:

Respondent's Case

A current director and former managing director of the respondent described the claimant as a loyal and competent worker. However, the witness also stated that the claimant was not "pulling his weight" in the period running up to his proposed retirement. The director indicated that the respondent generally allowed that situation to prevail in the expectation that the claimant was to retire on the occasion of his sixty-fifth birthday. That anticipated retirement was due to take place around 11 February 2007 and in that light the witness approached the claimant on 8 January 2007 and informed him he was required to retire by that date. The witness accepted that this notice was not fully in accordance with the respondent's statutory obligations.

References were made to contemporary and historical companies closely linked to the respondent. It emerged that two named employees of those companies had continued to be employees beyond their sixty-fifth birthdays. The witness, however, said that those employees did not work alongside the claimant and those companies positively responded to the employees requests to continue on in their employment beyond their sixty-fifth birthdays. The claimant did not make such a request. The respondent considered itself part of the construction industry and assumed that since their pension

payments commenced at age sixty-five that this was the appropriate retirement age. The claimant was a contributor to that pension scheme.

While stating that contracts of employment have been issued to some staff in recent years the witness conceded that such a contract has never been issued to the claimant. In addition the witness was unable to confirm whether specific retirement ages were stated in those contracts.

Claimant's Case

The claimant's primary duties consisted of delivering the respondent's orders to its various customers. That entailed extensive driving around Dublin and throughout the country. His last day of employment, 9 February 2007, was spent on an early return trip from Dublin to Galway where he delivered company product to a client. The claimant rejected the contention that he was incapable of performing his duties and added that he always "pulled his weight". He was never asked by his employer to undergo a medical examination to determine his ability to undertake his work. However he underwent an eye test around a year prior to his cessation of employment.

The claimant was surprised to hear from the respondent on 8 January 2007 that he was going to lose his job the following month by way of retirement. He felt he could have remained on as an employee for another year. The witness confirmed he was never issued with a contract of employment.

Determination

There is no single fixed retirement age for many employees in Ireland. Certain employees through the nature of their work and statutory regulations do have a mandatory retirement age. The Employment Equality Act, 1998 as amended by the Equality Act, 2004 prohibits discrimination on the grounds of age. However, employers can set retirement ages for their staff in contracts of employment in accordance with the legislation.

The claimant in this case was not furnished with a contract of employment at any time. No evidence was adduced to show he was statutorily obliged to retire at sixty-five. The commencement of a pension payment is not necessarily synonymous with a contributor's compulsory retirement.

The Tribunal finds that the claimant was unfairly dismissed under the Unfair Dismissals Acts, 1977 to 2001 and awards him €15,000.00 compensation for loss under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is also allowed and the appellant is awarded €1580.94 compensation in lieu of three weeks' outstanding notice entitlement.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

