

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

Employee

against

Employer

under

**CASE NO.**

MN70/08

RP76/08

UD88/08

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. B. Kealy  
Mr J. Maher

heard this claim at Dublin on 15<sup>th</sup> May, 2008 and 22<sup>nd</sup> October, 2008

Representation:

Claimant : Cllr. Paul P. Bell, 109 Ballsgrove, Drogheda, Co. Louth

Respondent : Ms Sinead Mullins, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

**The determination of the Tribunal was as follows:**

At the outset the claimant's representative indicated that the claimant did not wish to pursue her claim under the Redundancy Payments Acts, 1967 to 2003.

Respondent's Case:

The Human Resources Manager (hereinafter HR) gave evidence to the Tribunal. The claimant worked for the respondent in a catering capacity on a site in Drogheda. The claimant had become an employee of the respondent's as a result of a transfer of undertakings in 2003. The normal retirement age for the respondent's employees is 65. All employees know this. Some employees apply for an extension of the normal retirement age and some employees in the past were granted this extension and worked beyond the age of 65. The Account Manager for the Drogheda site informed HR that the claimant had applied for an extension by letter dated the 1<sup>st</sup> May 2007. HR enquired from the Account Manager if there were any exceptional circumstances and he confirmed there were not. The claimant's request to work past 65 was considered but the request could not be facilitated. The claimant was informed of this decision by letter dated the 4<sup>th</sup> May 2007. The respondent was requested to reconsider its decision in a letter received from a representative for the claimant. However, the original decision was upheld

and this was communicated to the claimant through a letter to her representative dated the 14<sup>th</sup> June 2007. In considering the claimant's request HR also spoke to the claimant's former employer and was informed that the normal retirement age for their employees was also 65. The claimant was given six months notice of her retirement. HR had no further contact from the claimant between June 2007 and December 2007, when the claimant retired. A letter dated the 13<sup>th</sup> December 2007 was sent to the claimant informing her that her retirement date was the 26<sup>th</sup> December 2007. Another employee returning from maternity leave in January 2008 carried out the claimant's work after her retirement.

There were a number of impending redundancies on site. However, the respondent first became aware of this in September 2007. The respondent as a result has reduced staff numbers. When the claimant was employed there were 15 employees, now there are five.

During cross-examination HR stated that the following factors are considered; business needs, exceptional circumstances and difficulty for the respondent in recruiting, when considering an extension of the retirement age. The grounds offered by the claimant were not reason enough for an extension.

HR confirmed that the claimant's position was made redundant in January 2008. In total there were eleven people made redundant. The respondent used a competency assessment in selecting employees for redundancy.

The Account Manager (hereinafter AM) gave evidence to the Tribunal. AM received an application from the claimant for an extension on her retirement date. AM spoke with HR in order to consider the application. In considering the claimant's application they discussed the company's policy, the normal retirement age for employees and any exceptional circumstances. The claimant's application was refused, as there was no business need for the extension of her retirement age. The decision was communicated to the claimant.

AM confirmed it was in September 2007 that he became aware of impending redundancies at the Drogheda site.

During cross-examination AM confirmed that several times the respondent requested the signed contracts for the employees as part of the transfer of undertakings. However, only a generic contract was received.

### Claimant's Case:

The claimant confirmed in her evidence that she had worked at the Drogheda site for approximately eight years. The claimant was unaware of the retirement age, as it was not stated in her contract, which she received from her first employer before the transfer of undertakings. The claimant became aware that she must make an application for an extension of her retirement age if she wished to continue in her employment past the age of 65.

The claimant applied but her request was refused. The claimant received a letter from the Area Manager on the 21<sup>st</sup> December 2007 stating that she would be retiring on the 26<sup>th</sup> December 2007. The claimant has found it difficult to manage financially as a result. The claimant gave evidence of her loss.

During cross-examination the claimant stated that she had not signed a contract with the respondent.

In reply to questions from the Tribunal, the claimant confirmed that her daughter wrote a letter dated the 1<sup>st</sup> May 2007 on her behalf.

**Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The respondent discharged the onus of proof and satisfied the Tribunal that the claimant's employment terminated by virtue of the claimant having reached the normal retirement age of 65. The respondent could have facilitated the claimant with an extension however the respondent was under no obligation to do so. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claim under the Redundancy Payments Acts, 1967 to 2003, was withdrawn on the first day of hearing.

No evidence was adduced at the hearing regarding the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, and this claim also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)