

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD998/2006

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr J. Le Cumbre

heard this claim at Carrick-On-Shannon on 8th January 2008

Representation:

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Claimant(s): Mr. Jim Mullery, (Branch Secretary), SIPTU 3/4 Old Cross Square, Monaghan

Respondent(s): Mr Don Culleton, Local Government Management, Services Board, 35/39 Ushers Quay, Dublin 8

The determination of the Tribunal was as follows:-

### **Respondent's Case**

A senior executive officer since 2001 MQ told the Tribunal that she was responsible for HR. She knew the claimant and he was an employee of the respondent. It was her understanding that an Expert Group report in April/May 2003 applied to all fire fighters including the claimant who had a specific retirement age. Retirement age was fixed at fifty-five and there was provision to apply for an extension to fifty-eight subject to undergoing a medical examination. Some fire fighters had their contracts extended beyond fifty-five subject to a medical, which was notified to the employer, and it extended to all categories. The claimant had to apply for a medical examination in 2003, 2004 and 2005. The claimant's employment with the respondent ceased when he was fifty-eight. The claimant did not have a contract giving a retirement age beyond age fifty-five. On receipt of the report they tried to establish what fire fighters were affected by the agreement. Seven fire fighters were affected and two were required to obtain extensions, one of whom was the claimant and the other five fire fighters' employment terminated. All fire fighters were given a copy of a report in May 2003. The claimant completed forms for an extension of his employment, he underwent the medical and his employment was extended for one year. The claimant submitted the application for an extension of employment to HR in 2003. The claimant was free to remain for one year subject

to a medical report for further application by the claimant in 2004. The claimant applied for two extensions.

In cross-examination she stated that prior to the expert group report, fire fighters retired at age sixty-five. It was the practice that people retired at sixty-five. Retirement age was discussed with management and the union. She received a copy of the expert group report in 2003, which dealt with retirement age. Fire fighters did not have written contracts of employment and the matter was pursued at national level, it was advised that the report should be implemented. Asked in relation to the agreement that was in place in June 2003 and if implementation of the report would not have been known she responded implementation was established by the respondent, who were aware of the implementation of the agreement. The respondent was advised that the report of the expert group was to be implemented by 12 March. In May 2003 the report of the expert group was forwarded to each individual fire fighter by the chief fire officer and subsequent to that she went to the fire fighters concerned on an individual basis. In the claimant's case he was sent notification of an extension and correspondence regarding a medical. She was of the understanding that the claimant felt that the deal did not apply to him and that his retirement age was sixty-five. When the claimant's contract was issued along with the terms of engagement the claimant declined to sign these. The claimant's application was received on 4 May. The claimant signed the application for an extension.

In answer to questions from the Tribunal she stated that there were no written contracts of employment for fire fighters. Terms of re-engagement were issued in the early 1980's but the claimant did not accept these. Asked if there were written terms of employment issued to the claimant she responded it was on his personnel file. The claimant expected to remain with the respondent until he was sixty-five. In similar cases before the Circuit Court it was found that the report of the expert group applied to all parties.

### **Claimant's Case**

The claimant told the Tribunal that he joined the respondent in 1977. His father was a member of the fire brigade for thirty years. The fire officer at the time sent him the application forms, he was called for a medical and he commenced working as a driver. There was never an official agreement with a contract. In 2005 he received a contract and over the course of two years he received six contracts, which he did not sign. He expected to be employed with the respondent until he was sixty-five. He was a member of a union.

The union was seeking to obtain a retirement age for fire fighters who had written contracts so as to enable them to remain in employment longer. The claimant did not have a written contract and he did not see how he would be pushed out. He felt that the new contracts were of no concern to him and it related to new recruits only. Regarding applications for an extension of employment he submitted a note and he brought it to the unions attention. He had an expectation that he would remain with the respondent until he was sixty-five. His employment ended in 15 August 2006 when he was fifty-eight and he received a cheque from the respondent in the amount of €48,000 which he returned. All his fellow workers remained in employment until age sixty-five. He felt that he was too young to leave and he passed both medical examinations in the years prior to his employment ceasing.

In cross-examination he responded that he joined the respondent in 1977 and he was a member of

the union and terms and conditions of employment were negotiated. When he joined the gratuity was €100 per year. His terms and conditions of employment changed and his union was involved in the negotiations. He made a handwritten application to extend his employment on 12 August 2003 but he did not keep a copy. The copy was not on file. Asked if his union was authorised to negotiate on his behalf he replied that the union agreed it for all members. Asked if a number of his colleagues had to retire before age sixty-five and that the report of the expert group applied to them he replied that he did not accept this. Asked that he accepted that there was no extension beyond fifty-eight he replied that he sent a note seeking it.

The second witness on behalf of the claimant CF told the Tribunal that he was a member of the retained fire services in Donegal and he held that position since March 2000. He was involved in national discussions on behalf of the retained fire fighters. The retirement age of fire fighters was to be increased to sixty, discussions took place with management and he was not present at the discussions. A full hearing took place in the Labour Relations Commission in June/July 2003. At the meeting the terms of reference were established. In 2000 he felt that the issue was recruitment and retention of fire fighters and also that young fire fighters were leaving. Fire fighters were let go at fifty-five and could give valuable service to local authorities. After 1983 fire fighters had a contract which stated that retirement age was fifty-five. When the recommendation was agreed it was put to firefighters in the country and a secret ballot was undertaken. A meeting was held in Dublin to resolve the issue and the terms of reference were established. At all times the deal with fire fighters were contracts until fifty-five. Fire fighters who expected sixty five to be their retirement age were not told that they had to retire at fifty-eight, and they felt that was not what they looked for at the start. JH chairman of the expert group at the time was asked to intervene to resolve the issue. The fire fighters had valuable service to give and it was felt that all fire fighters could do the same.

In cross-examination when asked who else apart from TOC and JH were on the expert group he responded NOC and a medical advisor. TOC was Chairman of the retained fire fighters committee and he was very vocal. TOC looked to have the meeting reconvened. When asked in relation to a very specific clause he responded it was in the Labour Court submissions. If management had an issue with the terms of reference it should have put it on the table.

## **Determination**

The determination of the Tribunal is as follows:

The tribunal were conscious of submissions which referred to the judgment of His Honour Judge Fullam in three similar cases,

Leitrim Co.Co. –v- S. Kavanagh – 373/06

Leitrim Co.Co. –v- T. McCormack –374/06

Leitrim Co.Co. – v- G. McIntyre –375/06.

In those cases the claimants had joined the fire service under oral contracts entered into in the 1960's and asserted that their oral contracts included a retirement age of sixty-five.

The Employment Appeals Tribunal after a full hearing determined that all three claimants were unfairly dismissed as they were not bound by the terms of the binding collective agreement based

on the expert group report.

The Circuit Court overturned these determinations on Appeal, ruling that the claimants in those three cases were bound by a binding Collective Agreement entered into between the fire service employers and the union representing fire-fighters, and this binding collective agreement applied to all fire-fighters excepting only those who had a written contracts with a retirement age of over 58 years.

The Tribunal, while agreeing with the reasoning of the Employment Appeals Tribunal determinations in the above cases, is bound by the Judgement of the Circuit Court and as the claimant did not have a written contract giving him a retirement age of over fifty eight years the claimant's claim must fail and is hereby dismissed.

However the claimant is of course entitled to the full amount of his retirement gratuity under the collective agreement.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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