

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

Employee

CASE NO.

UD300/2007

MN196/2007

Against

Employer

under

## **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Kearney B L

Members: Mr T. Gill  
Mr . T. Kennelly

heard this claim at Galway on 28th February 2008, 10<sup>th</sup> September 2008 and 11<sup>th</sup> September 2008.

### **Representation:**

Claimant : Mr. Bryan C. Brophy, Sandys & Brophy, Solicitors, 6 Sea Road, Galway

Respondent : Mr Don Culliton, Local Government Management Services Board  
Cumberland House, 2nd Floor, Fenian Street, Dublin 2

The determination of the Tribunal was as follows:

The respondent in this case raised as a preliminary issue section 2(B) of the Unfair Dismissals Act, 1977. The claimant had been employed as a retained firefighter. It was the respondent's contention that the claimant had by March 2007 when his application for redress under the Unfair Dismissals Acts, 1977 to 2003 had been submitted, that he had reached and gone beyond the normal retirement age for employees in his category. The former employer therefore maintained that the Tribunal had no jurisdiction to hear this case. The respondent also highlighted a booklet titled Retained Fire Fighters, Review of Retirement Age, Report of Export Group, April 2003 and stated that this report applied directly to the claimant.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn during the course of the hearing.

## Respondent's Case

An administrative officer working in the human resource department acknowledged sending a letter to the claimant, dated 5 August 2003 in relation to his employment with the respondent. The claimant's fifty-fifth birthday was on 2 October 1948 and that letter contained a copy of the above report on retained firefighters. Also enclosed was an application form for an extension to his employment beyond that age. The witness had no recall of receiving the claimant's written reply, dated 12 October 2007.

The personnel officer referred to a letter received by the respondent on 21 May 2003 from the local government management services board in relation to retained firefighters. Since she was aware of the claimant's age and circumstances the contents of that letter applied to him. The witness quoted part (4) of that letter:

*Any member of the service aged over 58 unless there is specific provision in their **written contract** of employment to remain in the service over the age of 58 should be advised that they will be now required to retire from the service with immediate effect. This should be issued as soon as possible but in any event they should not remain within the retained fire service beyond the 1<sup>st</sup> of December 2003.*

The witness who had no input into that report attempted to implement it. She recalled receiving a letter from the claimant in October 2003 where he expressed dismay at the news that he was facing a retirement situation. She agreed that the claimant had not been issued with a contract of employment and later stated that all promoted staff signed a contract. The claimant was promoted to the position of a station officer in the late 1970s. In a response to the claimant's letter of dismay the witness agreed with him that the respondent was bound by the terms of that report and added that he was not precluded from applying to an extension of his employment. Since she had no reply to that letter she again wrote to the claimant on 24 November on this issue. However, and unknown to the witness who was head of human resources the claimant had signed a form seeking an extension of his employment on 23 November. As the claimant had passed a medical examination his employment was extended by twelve months.

Further correspondence from the witness to the claimant from May 2004 to September 2006 was submitted in evidence. The claimant's employment was extended up to 2 October 2006 when he reached his fifty-eight birthday. The claimant had again expressed his displeasure at signing his extension of employment forms. Despite his objections the claimant accepted and cashed his retirement gratuity cheque. Even though the respondent received the claimant's extension of employment forms late he was still allowed to extend his employment up to the maximum time allowable under that report. Full time firefighters were allowed to stay in employment in that capacity up to age sixty-five. From the time of that report the respondent has not employed retained firefighters beyond age fifty-eight.

The next witness gave evidence that he was a former County Manager of South Tipperary Co. Council. During that time he had a long involvement dealing with trade unions in negotiating pay and other working conditions for firefighters on a national basis.

In 2002 the Labour Court requested that an expert group be formed to review the retirement gratuity and retirement age for members of the retained fire service. An expert group was formed and the witness was appointed as a member of that group. In April 2003 this expert group published its report and findings. Included amongst its findings was a recommendation that the retirement age

for retained firefighters be 55 years. These firefighters should have an extended optional period to the age of 58 years subject to a compulsory medical assessment.

Under cross examination the witness confirmed that he was not aware of any firefighters working in Galway that were not members of a trade union. He was also unaware of any employees who had remained working until the age of 65.

The next witness gave evidence that he was Chief Fire Officer in Galway in March 2003 and was the claimants supervisor. He was familiar with correspondence that had been issued by Galway Co. Council to the claimant in relation to an extension of time to the claimants contract after he had reached the age of 55. He had called to the claimant's residence to explain to him that he would have to sign the necessary application form in order to be granted an extension to his contract until he reached 58 years of age. He confirmed that the claimant was a very good officer but there was no mechanism in place to offer the claimant alternative employment after he had reached 58 years of age.

In reply to questioning he confirmed that the retirement age for full time firefighters in Galway is 55 years of age. Under cross examination he agreed that prior to the publication of the 2003 report firefighters had remained in employment beyond the age of 58.

### **Claimants Case**

The claimant gave direct evidence that he started working as a retained firefighter in 1969. He worked as station officer for approximately 25 years and was not given a written contract of employment. He was aware of work colleagues who had retired at 65 years of age but did not know of any that had retired at 65 after 2003. He was never a member of a trade union and considered himself to be serving the community as a fire officer. He was aware of the experts group findings in 2003 but did not believe that they applied to him. He reached his 55<sup>th</sup> birthday on the 2 October 2003. On the 27 September 2003 he signed an application form seeking an extension to remain in the fire service beyond the age of 55. He signed this form under protest as he had an expectation that he would be retiring at 65 years of age.

Under cross examination he agreed that he had never negotiated his rate of pay or annual leave conditions with his employer. He assumed these negotiations were done through the union. He accepted any pay increases given to him and accepted any changes that were introduced by headquarters. He confirmed that he was aware that there would be a gratuity payment paid to him on his retirement and was aware that there had been increases in this gratuity during his working years. He received his gratuity cheque when he retired and cashed the cheque. He felt after 38 years service that he was entitled to the gratuity payment. He stated that the recommendations of the expert group did not suit him and took issue with the retirement age recommendations in that report.

### **Determination**

The Tribunal having heard all the evidence tendered in this matter, have come to the majority determination (Mr. Tony Kennelly dissenting) as follows;

That the claim before it fails, as the Tribunal determine that the collective agreement , and terms of the expert group report of the 16 April 2003 applied to the claimant. It was the clear intention that the retirement age of 55 would be incorporated into each individual firefighters contract, save for

firefighters with written contracts specifying a retirement age of beyond 55. No evidence was tendered to the Tribunal by either side to show there was an exemption agreed that the said agreement did not apply to the claimant, or that the claimant negotiated a different position for himself.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

