

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - *claimant*

CASE NO.

UD862/2008
RP736/2008

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. Petty
Members: Mr T. Gill
Ms H. Henry

heard this claim at Loughrea on 5th October 2009
and 14th December 2009

Representation:

Claimant(s) : Mr. Alisdair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster
Street, Galway

Respondent(s) : Mr John Brennan, IBEC, West Regional Office, Ross House,
Victoria Place, Galway

The determination of the Tribunal was as follows:-

Preliminary Point

An issue arose at the outset of the hearing as to the date of termination of the claimant's employment. The claimant's representative stated that it was 15 February 2008 and the respondent's representative stated that it was 8 February 2008. If the latter date is accepted as the date of termination the timeframe for lodging the claim had expired. As the representatives could not agree on the date of termination, the Tribunal sought documentary evidence to establish the date of termination. The documentary evidence provided did not conclusively prove the date of termination and in the circumstances the Tribunal proceeded to hear the case.

Claimant's Case

The claimant gave direct sworn evidence that he commenced working for the respondent in 1955 and continued in employment for a total of 52 years. In December 2007 the respondent company told him that he was due to retire. He did not know how to respond when he received this information. Later, following an approach by his union representative to the respondent on his behalf, his proposed retirement date was extended until February 2008. He was 65 years old on 9 December 2006 and the respondent company never held any discussions with him prior to this date concerning his retirement. No such discussions occurred until December 2007. Prior to his retirement in February 2008 a number of employees had worked well beyond the age of 65. Some employees worked until after 70 and they retired of their own volition. When he retired he was not replaced. Three to four months after his retirement approximately 12 of his former work colleagues were made redundant.

Under cross examination he denied that discussions between himself and the respondent occurred prior to December 2007 concerning his retirement. He does not recall meeting with the chief executive and the production manager on 1 December 2006. He reported sick for work on 26 January 2007 and was absent for approximately 8 weeks as he was receiving medical treatment. In March 2007 he met with the production manager and informed him that he wished to return to work on a part-time basis. The production manager agreed to his request and told him to take it easy upon his return to the workplace. The respondent company were very gracious towards him during his illness period. After his return to work he met with the chief executive informally in April 2007 who informed him that any further discussions about his continued participation in the workplace were being postponed.

He does not recall meeting with the respondent company on 16 October 2007 or 13 November 2007. He did not request retirement, he was told he had to retire. He agreed to retire because he did not have a choice. He met with the production manager on 15 January 2008 and agreed that a retirement date of 8 February 2008 was mentioned at that meeting. He accepted that his union did not raise any internal grievance on his behalf. He accepted that redundancies were not announced by the respondent until 3 months after the termination of his employment.

In response to questions from the Tribunal he confirmed that he heard of the redundancies after he lodged his claim with the Tribunal. He confirmed that he was never given a contract of employment by the respondent and very few employees retired at 65.

The next witness gave direct sworn evidence that he was employed by the respondent company as a pre-press supervisor. He worked for the respondent company for 52 years and retired of his own volition when he was nearly 67 years old. He was aware of other colleagues who worked for the respondent when they were over 70 years old. Under cross examination he confirmed that he was 65 years old on 11 September 2002. He continued working for the respondent until 12 July 2004. He worked full time until January 2004 and part time thereafter. It was his decision after January 2004 to work on a part time basis. He ceased his supervisor role in January 2003 and worked on proof reading thereafter.

Respondent's Case

The first witness gave direct sworn evidence that he is the chief executive of the respondent company. The company publishes three local papers and also prints other newspapers. Along with the operations manager of the company he met with the claimant in December 2006 to discuss his

(the claimant's) impending retirement. The normal retirement age in the company was 65 but it was agreed, at the claimant's request to extend his retirement age and the position was to be reviewed in February 2007. Similar extensions had been granted previously to other employees.

In January 2007 the claimant became ill and medical certificates were forwarded to the company confirming his absence due to illness. The witness visited the claimant in hospital and re-assured him that he would be welcome back to work when he was fit and well. The claimant returned to work in March 2007 and was accommodated by the company insofar as that he was not expected to perform any physical tasks. He was also provided with a company vehicle to attend hospital appointments as he was undergoing treatment following his return to work. He encountered medical complications that resulted in him being further absent from work from August 2007 until mid October 2007.

Following the claimant's return to work in October 2007 the witness, together with the operations manager met with the claimant to discuss his retirement. The claimant informed them that he would leave it up to the company to decide his retirement date. This meeting occurred in October 2007 and four weeks later the company put a proposal to the claimant that he retire in December 2007. The claimant requested that his retirement date be postponed until the new year to coincide with the retirement date of a colleague. The claimant's trade union representative made a similar request on behalf of the claimant and the company accepted this request. A final retirement date of the 8 February 2008 was agreed between the parties and the claimant ultimately retired on that date. The claimant's trade union representatives never made any objection to this retirement date and the retirement was entirely amicable between the claimant and the company. The claimant made regular visits to the company following his retirement and never raised any issues about his retirement.

In May 2008 the company entered into discussions with the trade union concerning redundancies. This was the first occasion that the company considered redundancies which was due to the loss of a printing contract that was in addition to the loss of a previous contract. The combined loss of the two contracts constituted approximately 16% of the company's business and resulted in their printing business being no longer viable. In August 2008 the printing business was outsourced and this resulted in 7 employees who had previously worked with the claimant being made redundant. He agreed that by way of a response letter from him to the claimant's solicitor on the 11 August 2008, he had referred to the claimant's retirement date as the 15 February 2008. This was an error on his behalf as he had not checked his records properly.

The next witness gave evidence that he is the accounts manager with the company and has responsibility for the company payroll. He prepared the claimant's P45 and recorded his date of retirement as the 8 February 2008. He forwarded these details to the Revenue Commissioners online on the 8 February 2008.

The next witness gave evidence he is the operations manager with the respondent company. He gave evidence of attending a number of meetings with the claimant towards the end of 2006 and during the course of 2007. During the course of one such meeting in 2007 the claimant informed them that he was very happy to work with what the company decided as his retirement date. Under cross examination he confirmed that no discussions took place about the claimant's retirement until November 2007 when he had recovered from illness. He also accepted that some earlier meetings he had with the claimant were on a casual basis. He confirmed that the outsourcing of the printing business came to a head in May 2008 and a decision to outsource that business was taken in July 2008.

Determination

Having carefully considered all the evidence the Tribunal is satisfied that the evidence supports the facts that the appellant's employment was brought to an end by mutual agreement. The Tribunal is further satisfied that the retirement date was agreed between the parties and there was no question of redundancy or unfair dismissal.

Accordingly the Tribunal finds that the claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

