

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1694/2009

against

EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Ms M. Sweeney  
Ms. P. Doyle

heard this claim at Clonakilty on 20th July 2010

#### **Representation:**

Claimant : Mr. John O. Lee, John O. Lee & Co, Solicitors, 30/31 South Mall, Cork

Respondent : Ms Jenifer O'Sullivan, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

The determination of the Tribunal was as follows:

This matter came before the Tribunal by way of a claim for unfair dismissal. At the outset it was agreed that the Claimant commenced her employment with the Respondent in July 1978 and received a dismissal notice on the 28<sup>th</sup> of May 2009 and that her employment ended on the 16<sup>th</sup> of July 2009. It was also common case that the Claimant had been dismissed and the only issue to be determined was whether or not Section 2 (1) b of the Unfair Dismissals Act 1977 applied to the dismissal. The provision in the Act is as follows:

*“this Act shall not apply in relation to any of the following persons;*

*An employee who was dismissed and who on or before the date of his dismissal had reached the normal retiring age for employees of the same employer in similar employment”*

Consequently, the only issue to be determined by the Tribunal in this case is whether or not the Applicant had reached the normal retiring age for employees of the same employer in similar employment.

#### **The Evidence**

It was common case that the Claimant did not have a formal contract of employment. The Respondent however contended that it was well known in the business that sixty five was the normal retiring age and the Claimant who was a member of the pension scheme was well aware of this and that her pension would become payable on her sixty fifth birthday. The retirement age was elucidated in a number of statements from the pension providers but it was also referred to in a number of letters sent by the Claimant to the Respondent with regard to her retirement. The pension fund which the Claimant was due to become entitled to had unfortunately sharply deteriorated and that her pension had a very modest value having regard to her years of service. The Tribunal cannot have any regard to this unfortunate fact in its determination and she has brought an application to the Financial Services Ombudsman with regard to the value of same.

### **Determination**

The Tribunal having heard the evidence of the General Manager of the Respondent Company, a Director with responsibility for pensions in the Respondent Company and the Claimant are unanimously of the view that the normal retirement age for persons in the employ of the Respondent Company is sixty five years. This is manifestly clear from the pension documentation furnished to the Tribunal which documentation was in the possession of the Claimant. Furthermore, it is manifestly clear from the correspondence that passed between the Claimant and the Respondent that the Claimant was well aware of her retirement date and makes reference to it a number of times in that correspondence.

In the circumstances the Claimant's application to the Tribunal is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

