

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE  
*-claimant*  
against

CASE NO.  
UD1386/2009

EMPLOYER  
*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr. W. O'Carroll  
Ms S. Kelly

heard this claim at Limerick on 8th September 2010

#### Representation:

Claimant: Mr. Ger Kennedy Siptu, Connolly Hall  
Churchwell Tipperary Town Co. Tipperary

Respondent: Mr. Don Culliton, Local Government  
Management Services Board, Local Government  
House, 35-39 Ushers Quay, Dublin 8

#### **Preliminary Determination:**

The claimant in this case is a retained fire fighter. The respondent is a local county council.

The respondent representative submitted that retained fire fighters (RFF) had to retire at 55yrs or on application at 58yrs. The claimant representative submitted that the claimant contract provides for 65yrs retirement age so the burden of proof is on the employer. The representative for the respondent contended that the claimant could give evidence to prove that was the case and if it was the case then the burden of proof would shift to the respondent.

**The Tribunal determine that the case would be one of a preliminary determination:**

#### **Claimant's case:**

The Tribunal heard evidence from the claimant. The claimant opened a document to the Tribunal and explained that he understood the document to be his contract of employment / a type of

contract. Further on during the hearing he was asked why he felt that his retirement age was 65yrs and he replied that it was as he had not signed a contract, (to say a retirement other than at 65yrs) He understood that he was to be a RFF up until 65yrs of age. In 1985 the conditions of retirement age was 55yrs, however he himself signed conditions in 1972 and he was totally different to the rest of the RFF. His signature was on the document and he did not receive an alternative contract of employment. He was promoted to station officer in 1985

In cross-examination it was put to him that he was retained as a fitter mechanic. The claimant representative accepted this, however he also stated that the claimant held two contracts/ two roles.

The claimant explained to the Tribunal that he signed on in 1972 and had a legitimate expectation that 65yrs was the retirement age.

### **Determination:**

The Tribunal heard evidence of the claimant that he joined as a fire station officer on 03<sup>rd</sup> January 1985. He had another contract as fitter mechanic signed on 20<sup>th</sup> November 1986, which did specify a retirement age of 65yrs. In evidence to the Tribunal the claimant admitted that he was aware that RFF were subject to a retirement age of 55 yrs extendable to 58 yrs.

The claimant made his submission against the background of a letter from the claimant to the county council dated 03<sup>rd</sup> April 2009 where the claimant refers to retirement from the “Brigade Mechanics job when I am 65yrs”. The claimant in that letter also stated that it was his understanding that RFFs who joined the service after 1983 must retire at 55yrs extendable to 58yrs,

The claimant joined the service in 1972 as per form T1A. It is to be stressed that the claimant signed a contract as station officer in January 1985, which stated that conditions of service shall be as conditions of fireman with stated additional conditions, none of which touched on retirement age. Section 2 (1) of the Act provides:-

**2.** —(1) This Act shall not apply in relation to any of the following persons:

- [GA] (a) an employee (other than a person referred to in [section 4](#) of this Act) who is dismissed, who, at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him and whose dismissal does not result wholly or mainly from the matters referred to in [section 6 \(2\) \(f\)](#) of this Act,
- [GA] (b) an employee who is 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 or who on that date was a person to whom by reason of his age the Redundancy Payments Acts, 1967 to 1973, did not apply,

The Tribunal is of the view that as per the preliminary matter question raised by the respondent's representative the claim fails for lack of jurisdiction.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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