

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD2570/2009
RP3028/2009

against
EMPLOYER -*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Browne
Mr. F. Dorgan

heard this claim at Waterford on 1st March 2011

Representation:

Claimant: Mr Sean Kelly, Unite, First Floor, 39 O'Connell Street,
Dungarvan, Co Waterford

Respondent: Financial Controller and Group Human Resources Manager

The determination of the Tribunal was as follows:

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset of the hearing.

The parties came before the Tribunal on an Unfair Dismissals claim by the Claimant, arising out of the termination of his employment with the Respondent on the 30th of January 2009. The Respondent's position is that termination was by way of redundancy.

Preliminary Issue:

On the preliminary issue as to whether the Tribunal should extend time to enable the Claimant to pursue his claim, the Tribunal heard evidence of the brokering of a voluntary redundancy package by the Claimant's union and the Respondent Company through the intervention of the Labour Relations Commission.

The Claimant referred issues pertaining to the redundancy scheme and termination of his employment to BG of the Labour Relations Commission who oversaw the conciliation process that

ultimately led to the details of the redundancy scheme being agreed, believing that the Respondent Company would engage in this process. It was October 2009 before the Claimant concluded that the Respondent Company was not going to engage and he then filed a Form T1-A with the Employment Appeals Tribunal claiming Unfair Dismissal.

Determination on Preliminary Issue:

On the Preliminary issue as to whether the Tribunal should extend time in respect of the Unfair Dismissal Claim, the Tribunal noted that the parties put the issue of the redundancy package negotiation into the hands of BG of the Labour Relations Commission. The Claimant was not happy with aspects of the scheme and the application of same and sought to bring the matter back before the Labour Relations Commission. The Tribunal was of the view that, under the Company Grievance Procedure, this was the “appropriate” forum in all of the circumstances.

Clearly the Labour Relations Commission considered itself the appropriate forum, this was clear from its letter to the Respondent Company of the 6th October 2009, which invited the Company to engage.

The Tribunal accepted that, as soon as the Claimant was satisfied that the Company would not engage, he initiated proceedings before the Employment Appeals Tribunal. The Tribunal extended time on this occasion as it accepted the circumstances to be exceptional.

Substantive Issue:

Central to the substantive issue is whether the Claimant was obliged to retire at age 60 or whether the Respondent Company’s insistence on this being the position and the consequent application by the Claimant under the voluntary redundancy scheme introduced in late 2008 and his subsequent redundancy was, in fact, an Unfair Dismissal. The Claimant’s case is that he relied on the Company’s position that he had to retire at age 60 and would not have availed of the redundancy package had he been entitled to continue working beyond age 60. At the time of the termination of his employment the Claimant was 59.

The Claimant’s case is essentially that the Company was not entitled to insist on retirement at the age of 60 and that there were individuals in the Company who worked beyond age 60.

The Tribunal heard evidence of a 1997 Works Agreement between the Respondent Company and the union representing its workers, including the Claimant. WC who represented the union at the negotiations in 1997 was also the union representative in the negotiation of the redundancy scheme in 2008. The 1997 Works Agreement offered in evidence to the Tribunal indicates a retirement age of 60 years for employees of the respondent Company save for a small number of employees enumerated at Appendix 1 of the Agreement who were allowed to work until age 65. The latter were already over age 60 at the time of the 1997 Agreement and their exclusion from the general retirement age (60) was in order to ensure protection of their pension entitlements. The Agreement was signed by WC on behalf of the Claimant’s union and the Claimant also signed to denote his acceptance of the terms.

On behalf of the Claimant it was submitted to the Tribunal that the Company did not enforce the retirement age of 60 after 1997 and simply sought to re-introduce same into the negotiations of the redundancy scheme. It was suggested to the Tribunal that in accepting the terms of the voluntary redundancy package the union was reserving an entitlement to subsequently challenge the adherence by the Company to the age 60 ‘retirement age’ on the basis that a post 1997 practice

established an older retirement age. The Respondent Company disputed this and the Tribunal did not hear any evidence to support the Claimant's contention in this regard.

Further, the Tribunal did not hear any convincing evidence that the Company had essentially waived the retirement age of 60 after the 1997 Works Agreement leading to a defacto retirement age of 65 or possibly beyond. The Company denies that employees (save one) who were under 60 at the date of the 1997 Works Agreement were allowed to continue working beyond age 60 and there was no substantive evidence before the Tribunal on behalf of the Claimant to contradict this contention.

There was an isolated incident of one employee around whom there was an issue as to whether he accepted and signed the terms of the 1997 Works Agreement and the latter remained with the Company beyond the age of 60 leading to a dispute that was resolved on a basis that saw him leave the Company. He had left the Company by the time the Redundancy Scheme was negotiated.

A number of the excepted individuals mentioned in Appendix 1 of the 1997 Agreement as being entitled to work to 65, worked beyond that date due to what the Company claims to be an administrative oversight. The Claimant's case is that this is evidence that the Company did not adhere strictly to the retirement age provisions of the 1997 Agreement. The Tribunal finds that, whether this could be said to be the situation or not, the terms of the redundancy package negotiated with the Claimant's union and accepted by it are clear in linking the provisions to a retirement age of 60. There was no evidence before the Tribunal to suggest that the Claimant's union understood the retirement age to be other than 60 for the purposes of the Scheme. Indeed, JOB, a union representative involved in the negotiations and called as a witness by the Claimant, acknowledged age 60 to be the 'retirement age' discussed at the time when the terms of the redundancy scheme were agreed suggesting, however, that there was a feeling that it might subsequently be challenged. On balance the Tribunal feels that, were the age of retirement an issue at the time, this would have been a fundamental point of negotiation and agreement before final agreement of the scheme's terms.

Determination:

The Tribunal heard uncontested evidence that employees were invited to partake in the voluntary redundancy scheme by letter from the Respondent Company dated 10th October 2008 exhibiting the terms of the scheme and that, having checked his financial entitlement which was calculated (per the scheme) at the statutory sum only with no ex-gratia aspect, the Claimant applied for inclusion in the scheme and received this payment.

The Tribunal finds that the Claimant was not unfairly dismissed. He availed of a redundancy scheme within the Respondent Company and received his full entitlement in accordance with the terms of the scheme. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)