

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE  
- *claimant*

**CASE NO.**  
RP2483/2009  
UD2200/2009

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: Mr. T. Ryan

Members: Mr G. Andrews  
Mr G. Whyte

heard this claim at Dublin on 6th January 2011

Representation:

Claimant: Mr David B Doyle, Doyle Associates, Solicitors, Orchard House, 56 Main Street, Rathfarnham, Dublin 14

Respondent: Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin

The determination of the Tribunal was as follows:

#### **Respondents Case**

A senior contracts manager gave evidence on behalf of the respondent. He manages about 30 contracts involving 250 staff in Dublin. The claimant reported directly to him. The claimant was a security officer based at front of house of their clients building; he normally worked Monday to Friday 8.00 to 18.00 hours. He was a very good employee. In January 2009 HR informed him that the claimant would retire on the 17<sup>th</sup> April 2009. The claimant told him he didn't want to retire, so he contacted HR on the claimant's behalf. HR informed him that the claimant would have to retire as per his contract.

In April 2009, their client approached him as they wished for the claimant to stay on in his position. He contacted HR and HR again confirmed that the claimant would have to retire. On the claimant's retirement, the employer's contract with their client was restructured, as the claimant was directly employed by the client to continue working Monday to Friday 8.00 to 18.00 hours. They now supply security coverage to this client from 18.00 to 8.00 Monday to Friday and 24hour coverage at the weekend. The claimant's employment was terminated by them on the Friday and he

commenced working for their client the following Monday. He had spoken with their client to arrange the new contract. He had discussed this with the claimant before his retirement as he had been in the building sorting out the new billing arrangements with their client.

He is aware of other employees who continued to work after their 65<sup>th</sup> birthday; these individuals had made agreements with HR to carry on. There was no link between the claimant's retirement and the claimant's previous claim to the Labour Court under the Industrial Relations Act 1946 to 2004.

The director of HR gave evidence on behalf of the respondent. He joined the company in October 2007. The company policy on retirement was changed in July 2008 due to the downturn in the economy. Previously they would have automatically extended the retirement age. To implement this change in policy he had to discuss it with the unions, including the claimant's union SIPTU. Their practice now is to write to the employee three months before they are due to retire and then one month beforehand and then the employee has a meeting with his supervisor in the last week of their employment.

On the commencement of his employment the claimant had signed and accepted his terms and conditions of his employment. He referred to a term in this where the claimant agreed to be bound and accept the terms of any agreements and procedures negotiated between SIPTU and the company on his behalf. In the company's handbook it is stated that all employees must retire "not later than their 65<sup>th</sup> birthday". This is part of a written agreement with SIPTU. Extensions of employment may be granted based on hardship or individual circumstances. He had been approached by a shop steward (TP) asking if the claimant's employment could be extended. He informed the shop steward that the claimant could be considered for extension if he made a submission. As he never received a submission from the claimant he assumed that it was because the claimant was going to work directly for their client.

He re-iterated that since July 2008 they have operated on the basis that the retirement age is your 65<sup>th</sup> Birthday; this revised agreement was signed by the union and it may have been communicated to the claimant through them. The restructuring of their client's contract had caused a loss of revenue to the respondent that would have been greater than the cost of continuing to employ the claimant. He was aware of this at the time but he did not consider it as they were holding on to the rest of the contract and he wanted to adhere to their retirement policy.

### **Claimant's Case**

The claimant gave evidence that he commenced employment in 2000. He received a contract of employment where it was stated that the normal retirement age is 65 years, and it was his understanding that this was the end of his 65<sup>th</sup> year. He had received no correspondence changing that. He had been furnished with a handbook and retirement is not mentioned in it. The handbook produced by the respondent in the course of their evidence he had never seen. He had received a letter three months previous to his retirement date notifying him of same. He had informed the respondent's client and they told him that they would look for an extension on his behalf.

His supervisor the contract manager had telephoned him on the Tuesday of the week he was due to retire and informed him he could not get an extension. The respondent client informed him on the Thursday that they had heard nothing from the respondents so they wanted to employ him from the Monday. He gave examples of three people who had worked after their 65<sup>th</sup> birthday. He felt he "was retired" because of the previous action he took against the respondent in the Labour Court. As a result of these Labour Court proceedings he was supposed to be moved back to the site he was on, but the respondent had told him he was just "running the clock down". He maintained it was not pleasant at the time and they had moved him a couple of times for no apparent reason.

He is a member of SIPTU and they had represented him at the Labour Court. He did not question the retirement age at the time of his commencement. He had spoken briefly with the union when he received the letter notifying him of his impending retirement. He informed them that he wished to work on but they had not reverted back to him. The Labour Court decision issued three weeks after he received the letter of his impending retirement. He had not raised a grievance with the respondent on receipt of this letter. He was not privy to the discussion held between the respondent and their client in the restructuring of the contract.

He is still employed by the respondent's client and works the same hours but he is now on €30,000.00, down from €33,183.00.

### **Determination**

By letter dated 9<sup>th</sup> January 2009 the employer wrote to the claimant advising him that as he was approaching his 65<sup>th</sup> birthday he was also approaching the retirement age set out in the employment agreement/contract dated the 16<sup>th</sup> June 2000. The employment agreement clearly states: "Normal retirement age is 65 years". In addition the company's handbook states that all employees must retire "not later than their 65<sup>th</sup> birthday".

Evidence was given that in the past some employees had made individual agreements with HR to work after their 65<sup>th</sup> birthday. The practice of allowing employees work after reaching 65 was discontinued in June 2008 due to a downturn in the economy.

The claimant acknowledged his agreement to the terms and conditions of the employment agreement "I have read and fully understood these terms and conditions of employment and I acknowledge acceptance of employment under the terms and conditions listed above". This obviously committed to retiring at age 65.

The company were entitled to terminate the claimant's employment as he had reached the retirement as per his written employment agreement.

The fact that the employer had allowed employees in the past to work beyond reaching 65 years does not now prevent the employer from enforcing what is clearly stated in the employment agreement.

Accordingly the Tribunal determines that the claimant's appeal under the Unfair Dismissal Acts 1977 to 2007 and the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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