

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD394/2010
RP598/2010
MN366/2010

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Hennessy
Ms. S. Kelly

heard this claim in Kilkenny on 8th September 2011

Representation:

Claimant: Mr. Stephen O’Sullivan BL instructed by Mr. Tony Canny, J A Canny & Co, Solicitors, 44 Friary Street, Kilkenny, Co Kilkenny

Respondent(s): Mr. David Farrell, IR/HR Executive, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent’s Case:

(MF) started working for the respondent as the HR manager in January 2008. In the previous twelve months before (MF) joined the respondent, they did not have a HR manager in place. (MF) drafted 15 new policies including disability and bullying and pulled all of these together into a new company handbook.

The respondent owns and manages car parks and has approximately 180 employees. One of the policies introduced provided for a retirement age of 65. In March 2008, she discussed this with the CEO and discovered that some employees were over 65.

In June 2008 (MF) organised a meeting in Croke Park with the managers. At this meeting they went through all of the draft policies in the handbook. In August 2008 the new finalised handbook was sent to all staff via e-mail and a hard copy was sent to staff that did not have access to e-mail.

On the 6th April 2009, (MF) wrote to the claimant stating that employees who have reached the age of 65 years or over will be expected to retire from the company on the 1st September 2009. A copy of the retirement policy was attached. With hindsight (MF) should have included the extension provision in the actual letter. The board had the final say. In the retirement policy, employees are required to retire on the date of their 65th birthday. The policy allows for an extension of the contract to be reviewed on a yearly basis. The claimant did not make a formal request for an extension.

(MF) came to Kilkenny and met with the claimant and two other employees who were also due to retire. She had a general conversation with the claimant where he asked her if the retirement policy was going to be implemented. On the 25th August 2009, the CEO wrote to the claimant informing him his retirement would take effect from the 1st September 2009. The respondent had a night out for the claimant.

Under cross examination (MF) said she did consider a medical assessment for employees who wished to remain on after the retirement age, but the respondent wanted a generic and definitive contract.

Claimant's Case

The claimant started working for FPSL in October 1999 selling weekly parking tickets. He could not remember who gave him his contract of employment in 2002, but it was likely to have been his manager at that time. There was no reference to retirement age in that contract. The respondent took over the company in 2002 and he continued to work as normal.

When he reached 65 he decided to work part time as he did not want to work nights. He did not receive a new contract of employment when he went part time. In April 2009, he received a copy of the new company handbook.

He received a letter in the post and met with (MF) who told him his retirement was coming up. He was not asked to do a medical. When he had applied for the position (JB) had told him he could work to 70 or over.

The respondent did not offer the claimant a medical and the claimant has not worked since he finished with the respondent.

Determination

The Tribunal was satisfied on the basis of the evidence before it that there was no retirement policy in FPSL, no contractual term that required an employee to retire at age 65 and no custom and practice in that regard within the company.

The Tribunal is satisfied that the claimant when employed was left with a legitimate expectation that he would continue in his employment for as long as he remained fit to undertake his duties.

The respondent company acquired the business of FPSL in 2002 and the Transfer of Undertaking Regulations applied so that the respondent company was obliged to honour the existing terms and conditions of the claimant's employment.

In or about August 2008, the respondent company sought to introduce a new retirement policy which provided for a retirement age of 65 with some transitional provisions.

The respondent company was within its right to introduce this retirement policy for new employees but was not entitled to alter the claimant's contractual position unilaterally. The respondent company's actions in this regard were not justified.

The Tribunal finds that the claimant was unfairly dismissed. In arriving at a figure for compensation, the Tribunal has had regard to the paucity of evidence to support the contention that the claimant sought alternative employment, the Tribunal has also felt bound to have due regard to economic realities and the considerable difficulty that the claimant at age 69 would have had in securing alternative employment.

In all of the circumstances, the Tribunal awards the claimant the sum of €14,500.00 under the Unfair Dismissals Acts, 1977 to 2007 by way of compensation.

Claims under the Unfair Dismissal Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 are mutually exclusive. Therefore the claim under the Redundancy Payments Acts is dismissed.

As no evidence was adduced by the claimant in relation to minimum notice, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)