

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

UD1103/2010, MN1066/2010

EMPLOYEE-Claimant
against

EMPLOYER-Respondent

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr C. Lucey
Mr G. Whyte

heard this claim at Dublin on 11th October 2011

Representation:

Claimant : Hughes & Liddy, Solicitors, 2 Upper Fitzwilliam Street, Dublin 2

Respondent : Mr Terry Cummins, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The managing director of this family run printing business told the Tribunal that in early 2009 the claimant was placed on a three-day working week to coincide with general work demands. When those demands increased in the spring the claimant declined the respondent's offer to return to a full time position. The claimant had by then indicated her intention to retire by the end of the year and sought to continue her shorter working week as a wind down scenario.

The contract of employment signed between the claimant and the respondent in April 2006 made no mention of retirement but did contain a section on grievances. The claimant marked her sixty-fifth birthday in the spring of 2009.

While holidaying abroad in September 2009 the claimant fell ill and was admitted into hospital. The respondent received a telephone call from a daughter of the claimant indicating now that her mother would not be returning to work. A medical certificate declaring the claimant unfit for work until further notice was also received by the respondent around that time. This was the one and only

such certificate received by the company. By early November the claimant called to the respondent's premises and during that visit asked that she be made redundant at least to the extent that she received the "government bit" of that redundancy payment. That situation was not acceptable to the company.

By mid November 2009 the respondent informed its staff members that with immediate effect the retirement age for all employees would be sixty-five. The witness asked the claimant for a letter from her to be dated 31 December 2009 stating she had left her employment by way of retirement. No such letter was received by the respondent. According to the managing director a P45 subsequently issued in error to the claimant. That document gave her date of cessation as 31 December 2009. The witness confirmed that at least on other employee continued to be employed beyond their sixty-fifth birthday.

An employee who looked after the wages and accounts described her workplace as good and friendly. This witness heard the claimant's daughter state on 21 September that her mother would not be back. Neither speaker was explicit on what that meant and the witness did not know whether it referred to back to work at all or not until she was fit to return. This witness had seen a medical certificate dated 18 September referring to the claimant. On the instructions of the managing director this witness issued a P45 to the claimant and she also understood that the claimant was retiring at the end of 2009.

Claimant's Case

The claimant commenced employment with the respondent in early 2005. She worked as a print finisher and liked her job. Since there was a lull in business in early 2009 the claimant along with other colleagues worked a three-day week. She reverted back to a five-day week in March but some time later returned to a three-day week as that work pattern suited her best. Due to an illness while on leave she was unable to recommence duties on 21 September 2009 as planned. By the end of October she called to the premises and while there met the wages/accounts colleague. They discussed a redundancy option and the claimant handed in another medical certificate dated 30 October that stated the claimant was still unfit for work until further notice. Some two weeks later the claimant received letters from the respondent not only rejecting a redundancy option but also informing her that she was to retire at the end of the year on age grounds. The contents of those letters puzzled, shocked and upset her as by that stage she was beyond her sixty-fifth birthday and had no wish to retire. Besides there was at least one other employee still working with the respondent who was over sixty-five. The claimant did not reply to those letters as she felt she was "gone" and received her P45 in January 2010.

A daughter of the claimant confirmed she had a telephone conversation with the wages/accounts person with the respondent. She described the notes written by that person as inaccurate and insisted she never mentioned that her mother was retiring by the end of 2009.

Determination

Having heard all of the evidence the Tribunal considers that the claimant was not unfairly dismissed. There was a lack of communication between the parties as to whether or not the claimant proposed to retire or not following a serious illness in September 2009. The claimant's evidence was that she never expressed a desire to retire but rather was made retire by the respondent as she was approaching the age of 65. The claimant did not engage with the respondent

in any meaningful way and did not respond or address certain correspondence sent to her in relation to her retirement. The Tribunal accepts the evidence of the respondent that they would have facilitated a wind down retirement by offering the claimant reduced hours and that the claimants job was open and available to her even up to the date of the within hearing. Furthermore, the claimant was aware that her job remained open to her should she wish to take it up. In the circumstances the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also falls.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sad.) _____

(CHAIRMAN)

