

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

RP931/2010

MN635/2010

against

EMPLOYER– *respondent*

under

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: Dr. A.M. Courell BL.

Members: Mr. D. Morrison

Mr. M.McGarry

heard this appeal in Castlebar on 2nd June 2011 and 19th October 2011

Representation:

Appellant: Ms. Martina Weir, Siptu, Moneen Road, Castlebar, Co Mayo

Respondent: Mr. John Brennan, IBEC,
West Regional Office, Ross House, Victoria Place, Galway

Respondent's Case

The first witness for the respondent told the Tribunal he was the HR manager. He looked after a number of sites and had 950 staff. The business was a meat processing plant and they have their own rearing farms. They buy from their own farms as well as private farms. The normal retirement age was 65, and there was never a dispute. SIPTU represent 98% of the employees and since the 1980's hundreds have retired.

Every member of the pension scheme gets an annual pension benefit statement. The original scheme was a defined benefit scheme.

He allowed the appellant to work the extra 12 months because it was better to work it out with a good long term employee. There was no redundancy programme and the appellant was replaced a week later.

The second witness N.M is the pension fund manager. As good practice, he issues an annual benefit statement to every employee every May/June. This shows the retirement age.

The third witness T.T is the site manager. The farm has hundreds of animals. He and three

employees are working on the farm.

In March 2008, he approached the appellant and said to him you will be retiring this year. The claimant said "yes they won't let me stay". T.T told the claimant, he would check with HR.

He asked J.B about the appellant and if it was written in stone that they had to retire at 65. He told J.B that the appellant was a good employee and it was agreed that he could work an extra 12 months.

At the end of the 12 months he said to the appellant, you're finishing up this evening. The appellant said I know, I have been treated very badly.

A new employee replaced the appellant and is doing the work the appellant did more or less.

On cross examination T.T said the first time he spoke to the appellant about retirement was March 2008, in one of the sheds. He didn't know the ages of the staff so his manager must have told him about the appellant. The appellant said the company wouldn't let him stay on.

He spoke with J.B between March and July about monthly accounts and mentioned the appellant. If it suited both parties it would be agreeable. This was the first time he was involved with an employee retiring. I thought a document would have been drawn up but it wasn't.

He met the appellant in the yard and told him as he had reached 66, the company said he had to go.

The fourth witness J.B was the manager for all of the sites. He said T.T is the best site manager he has and in early 2008 he had a discussion with T.T. He told T.T that one of his lads was reaching 65.

He said his own father's retirement was scaring him so he spoke with HR and agreed a twelve month contract. It was a lapse on his part that no written contract was issued.

In December 2009, he went to meet the appellant. He asked T.T to sit in on the meeting. T.T phoned him and said the appellant won't go if I do.

He met the appellant and told him he had given long service to the company, had asked for an extra 12 months and now it must come to an end. The appellant said it was a redundancy issue and that he had received legal advice. In January 2010, he met with the appellant, told him it was not a redundancy and that they would have to agree a finish date. He told the appellant they would write to him.

He said that the appellant had the use of twenty acres of land for grazing his animals and as part of this deal he locked up the farm.

Appellant's case

The appellant commenced employment with the respondent on 21st April 1978 and reached his 65th birthday on 11th October 2008. He was subscribed to a pension scheme while employed and received a pension from his 65th birthday. However he was never told that he had to retire at 65

years of age. Therefore he continued to work and hoped to do so for as long as he was fit enough. The appellant was unaware of any compulsory retirement age applicable to his employment.

In November 2009 the appellant's manager (TT) told him that the company had to make cuts and that he, the appellant, would be finishing up at the end of that year. The appellant was shocked by this assertion and on receiving advise on the matter, told the respondent that he was entitled to a redundancy payment. It was only then that he heard anything about his alleged application to extend his retirement age. The appellant never applied for such an extension.

The appellant was given four weeks notice and his employment ended on 9th February 2010. As he was employed for more than 15 years the appellant was entitled to eight weeks notice and is therefore claiming a further four weeks wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

A Trade Union Official gave evidence that he engaged in discussions with the respondent subsequent to the termination of the appellant's employment. Although these discussions were not in respect of the appellant's dismissal, it transpired that there was a saving for the respondent in respect of him no longer being employed.

Determination

Having considered the oral testimony and documentary evidence adduced it was clear to the Tribunal that there was a conflict of evidence between the parties. Thereafter applying the relevant standard of proof, which is that of the balance of probabilities, the Tribunal finds that the retirement age applicable to the appellant's employment was 65 years of age. The appellant reached his 65th birthday on the 11th of October, 2008 and his employment was extended for a further 12 months. In the circumstances, the appellant was not dismissed by reason of redundancy and his appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

The appellant's employment ended on the 9th February, 2010 and he was given four weeks notice. However, as he was employed for more than 15 years, the appellant was entitled to eight weeks notice and therefore the Tribunal awards the appellant €2,369.12 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)