

EMPLOYMENT APPEALS TRIBUNAL

EMPLOYEE

UD1233/2010

- *appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A Courell B.L.

Members: Mr. D. Morrison
Ms. Rosabel Kerrigan

heard this appeal in Letterkenny on January 9th 2012
and July 10th 2012

Representation:

Appellant : Mr Cathal McGreal BL instructed by;
Shanley Glennon & Co. Solicitors, 1st Floor, 1, New Street, Longford Town,
Co. Longford

Respondent : Ms. Caoimhe Scollard, IBEC, Confederation House,
84/86, Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Preliminary Issue:

Background:

The respondent hired the appellant on February 19th 1999. The respondent terminated her employment on November 13th 2008. The respondent states it was because she had come to the retirement age of 65 years of age.

On June 23rd 2009 the appellant lodged a claim to the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007. This is 7 months after she was dismissed. The Unfair Dismissals Acts, 1977 to 2007 states that a claim against a former employer must be lodged with the Rights Commissioner or the Employment Appeals Tribunal within six months of the day of the dismissal. This time limit can be extended to twelve months if exceptional circumstances are found.

A hearing was held before the Rights Commissioner who found that there were no exceptional circumstances to extend the time limit for lodging a claim outside the six-month time limit. The appellant's representative stated that the appellant was so shocked about her sudden retirement that it led to her being in a depressive state for some time, preventing her from lodging the claim within time.

Appellant's Case:

The appellant was approached by a colleague (SH) in or about August 2008 who informed her that they would soon need to discuss the appellant's retirement. SH asked if the appellant had made plans for retirement and suggested a pre-retirement course. However the appellant informed SH that her retirement was not imminent and no further discussion took place at that time.

The appellant went on holidays in late September 2008 and on her return to work on 13th October 2008 she was again approached by SH who informed her that she must retire on her 65th Birthday which was 13th November 2008. This came as a shock to the appellant and she described how this sent her into a state of depression. The appellant felt that she was unfairly dismissed but due to her depressive state did not have the self-esteem or confidence to do anything about it. She discussed the matter with her daughter at Halloween and again at Christmas 2009 but did not lodge an appeal with the Rights Commissioner at those times because it felt beyond her capabilities due to her state of mind. It was not until she attended the respondent's Annual General Meeting in April that she began to feel confident enough to pursue a claim of unfair dismissal against the respondent. This came about, in part, because of conversations she had with former colleagues. The appellant was still in a depressive state at that time and was attending her G.P. However she was now beginning to emerge from this depression and eventually felt strong enough to lodge a claim with the Rights Commissioner on 23rd June 2009.

The appellant's G.P. gave evidence in relation to his treatment of the appellant. The G.P. knew the appellant for approximately 16 years and stated that between 2003 and 2008 the appellant had only attended his surgery once. However from December 2008 to June 2009 she attended much more frequently. The appellant attended the surgery because of her lack of sleep and poor moods which were making her ill. The G.P. was aware of that the appellant was experiencing a rough time in her life and was aware of her recent retirement. He also stated that the appellant was displaying apathy and a lack of drive. These symptoms began to reduce in June 2009 and the appellant subsequently embarked on counselling sessions.

On the second day of the hearing a very long-term friend of the appellant gave evidence. She stated that she was in regular contact with the claimant and often went on holidays. She, the witness, the appellant and two friends often played bridge.

She told the Tribunal that she had not discussed with the appellant when she would retire, the witness told the Tribunal that in her job it was 65 years old. In November 2008 she found out the claimant had retired. The witness spoke to the appellant who did not want to discuss the matter. The claimant became very low in herself, she was once the life and soul of the party.

The witness explained her background in nursing. Over time she became aware the claimant was

suffering from depression. Her own mother had been diagnosed in the past. However with her mother's reaction on telling her family what happened at the doctor's appointed and the witness telling him she was mad, the witness was reluctant to discuss it with the claimant. Whenever the witness tried to discuss the matter the appellant would change and the question. The appellant did not attend two trips with her friends in December 2008 and March 2009. When asking her again how she was in April 2009 she brushed it off.

The witness explained that she was a member of the SIPTU Equality Committee and could not understand why the appellant had not come to speak to her. In July 2009 the claimant told her she had been dismissed but had been too ashamed to speak to her about it.

On cross-examination she said that the appellant had attended a regular party she, the witness, held on January 6th but had been constantly looking at her watch waiting to leave. She told the Tribunal that she began to see an improvement in the appellant in August 2009.

A member of staff from the Longford Citizens Information Centre gave evidence. She knew the appellant on a professional basis but had never discussed retirement with her.

A member of staff from the Roscommon Citizens Information Centre gave evidence. He had spoken to the appellant about retirement. She had contacted the witness, as she was upset about being made retired. She told she no contract of employment and was not aware what the retirement age was in her position. He told her to contact the Board to discuss the matter.

One of the appellant's daughters gave evidence. She and her siblings were shocked when they found out at Halloween that her mother was to be retired. Her mother was upset, shocked and worried about the future and money. She was the main breadwinner and had not prepared for retirement.

The witness and her mother were very close and spoke two to three times a week, the witness lived in Jersey. Her mother was now remote and did not want to discuss what was happening with her. A last minute holiday with her mother and father in Tenerife did not go well on two road trips at high altitude her mother had panic attacks. The witness suggested she go to the hospital but her mother declined. The holiday was terrible. Her mother began to come back to herself around the following summer. A holiday in August 2009 showed this.

On cross-examination she told the Tribunal that her parents had taken a trip to September 2008 to America, for her sixty-fifth birthday, and would not have done this if she knew she was retiring.

A former colleague of the claimant gave evidence. She was shocked the claimant had retired. She had overseen staff contracts but was not aware the appellant had one. She had not seen the appellant's personnel file and was unaware if it was stored in another place.

The appellant's youngest daughter, and solicitor for the appellant in this case, gave evidence. She had heard of her mother's pending retirement at Halloween 2008 and was surprised. Her mother was shocked and "reeling" and informed her there was no alternative to her retirement. The witness told her it was unfair and she should speak to her union or a solicitor involved in employment law. She was not at the time.

In October 2009 her mother informed her there was an upcoming claim under the Unfair Dismissals Acts, 1977 to 2007 against the respondent. The witness had changed firms and suggested her firm

represent her. A hearing before the Rights Commissioner was heard in November 2009.

One Christmas the family were invited to the witnesses' new home. The claimant was very subdued. The witness told the Tribunal that she had viewed an email before the Rights Commissioner that the appellant's contract had disappeared.

On cross-examination she stated she had thought the year for her mother's retirement would be 66 years.

Respondent's Case:

A Board Member and former Chairperson of the Board gave evidence. She had known the claimant and had a good working relationship with her. The appellant had been a very good, friendly and professional worker. The appellant had commenced employment with respondent before she had. The appellant had encouraged her to apply for a position.

The witness was informed, but could not quite recall who had informed her the claimant would be 65 years next birthday. It could have been the appellant as she was going to America with her husband on holidays in September. However the witness told the Tribunal that the appellant's impending retirement age had come to light at an earlier Board meeting.

In August 2008 the appellant had attended a pre-retirement course. The witness told the Tribunal that nothing could be done the company policy was staff retired at the age of 65 years of age. She felt the claimant had been angry at her and the Board's decision to let her go.

Preliminary Determination:

The Tribunal has carefully considered the sworn evidence and submissions adduced by both parties in this case.

On the basis of the evidence, and in particular the medical evidence given by the appellant's Doctor, the Tribunal finds that exceptional circumstances existed which justify an extension of the time limit for lodging the appellant's claim.

Accordingly, the Tribunal upsets the Rights Commissioner's recommendation under the Unfair Dismissals Acts, 1977 to 2007. A full appeal of the Rights Commissioners recommendation on behalf of the appellant will be set down for hearing in due course before the Employment Appeals Tribunal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)