

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE –**Appellant**

RP530/2011

against

MN405/2011

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: Mr P. Wallace

Members: Mr G. Andrews
Ms S. Kelly

heard these appeals at Castleconnell on 13 September 2012

Representation:

Appellants:

Mr Ger Kennedy, SIPTU, 4 Church Street,
St. John's Square, Limerick

Respondent:

Ms Jennifer O'Sullivan, Ronan Daly Jermyn Solicitors,
12 South Mall, Cork

The determination of the Tribunal was as follows:

The respondent, a subsidiary of a company based in the UK, provides maintenance services to large industrial plants around the country with around 180 employees across seven permanent sites and various small projects. The appellant was employed as an advanced scaffolder from April 2005.

The contract of employment provides that “the normal retirement age applicable to your employment is on the date of your 65th birthday. In certain circumstances consideration may be given to fresh employment being offered to you after retirement. Such offers will be totally at the discretion of the managing director.”

The appellant's 65th birthday fell on 26 June 2010. He was the first employee of the respondent to whom this contractual term applied. On 23 June 2010 the human resource advisor (HR) wrote to the appellant apologising for the short notice of his retirement date and offering the opportunity to request to extend his employment. On 25 June 2010 the appellant submitted a request to extend

his employment for a period of twelve months. The same day HR wrote to the appellant offering an extension of his employment for three months until 24 September 2010 conditional on the appellant obtaining, before 2 July 2010, a letter from his GP stating that he was fit to carry out his duties as an advanced scaffolder. The appellant duly obtained such letter and continued in employment. While the appellant's position was that the respondent's site manager (SM) told him that he was good for a year he accepted that he never communicated this to HR. On 14 September 2010 HR wrote to the appellant to inform him that it had been decided not to extend his employment beyond 24 September 2010. He was advised of his right to appeal this decision.

On 15 September 2010 (SM) issued a redundancy consultation notice to all the respondent's employees on the site. The claimant was retired on 24 September 2010 and the following week two scaffolders were transferred to another site for one week prior to their return. While there were no redundancies amongst the respondent's scaffolders at the site some painters were let go in November 2011.

HR met the claimant and his union representative on 8 November 2010 to discuss the appellant's retirement. As a result of this meeting the appellant was offered an ex-gratia payment which he declined to accept.

Determination:

It is clear to the Tribunal that the reason the claimant was granted an extension of his employment beyond his normal retirement date was because of the error whereby the appellant only received notice of his retirement three days before it was due to take effect. In those circumstances the respondent granted the appellant a three month extension of his employment. The confirmation of new retirement date dated 25 June 2010, which the appellant confirmed acceptance of by countersigning it on 28 June 2010, giving a new retirement date of 24 September 2010 must be construed as notice to the appellant that he was to retire on that date. In such circumstances it is clear that the employment ended by reason of retirement and claims under both the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 do not arise.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)