

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD1297/2010  
RP1754/2010

against  
EMPLOYER

*-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Kearney BL

Members: Mr. W. O'Carroll  
Ms H. Henry

heard this claim at Galway on 13th December 2011

#### Representation:

Claimant: Ms Kate Kennedy BL instructed by Ian J Foley &  
Company, Solicitors, 18 Sandyfort Business Centre, Bohermore, Galway

Respondent: Mr. Ronnie Lawless, Ibec, West Regional Office,  
Ross House, Victoria Place, Galway

#### Background:

The claimant contends that he commenced employment with the respondent on 12<sup>th</sup> May 1975 and worked there continuously until his employment was terminated on 01<sup>st</sup> December 2009. He was advised that he was under an obligation to retire from his employment. He had a reasonable expectation under his existing terms and conditions of employment that he would continue to be in employment past the age of 65. The respondent tried to change his terms and conditions of employment in 2008, which he did not accept. As there are other employees in the company who were allowed to continue in employment past the age of 65 he had a reasonable expectation that he would not be forcibly retired from his employment. He was told that he would have to finish work but that he would be re-employed in February / March 2010. He was told that his position was not redundant but that he had to leave his employment and the company paid an ex-gratia payment to him which the company referred to as "a golden handshake" however he feels that they did not want to pay him his full redundancy.

The respondent contends that the claimant was not unfairly dismissed. The claimant had reached the normal retirement age.

## **Respondent' case:**

The Tribunal heard evidence from the respondent HR manager (GB). He was employed in 2007. Part of his duty was to standardise the relationship between the employees and employer. He issued contracts to the employees. He did not change any terms and conditions of employment. There were 320 employees across six different locations. He went through every line of contracts and out of 320 employees 75% signed and returned the contracts to him. He left a contract with the claimant and when he returned to the claimant two weeks later the claimant refused to sign. He left it for two weeks and reverted to the claimant and the claimant refused to sign.

The witness was asked if the claimant's contract prior to that one was the same and he replied "yes". The witness agreed when put to him that the claimant did not raise comments regarding the contract he simply said nothing.

A letter dated 17<sup>th</sup> September 2009 which was sent to the claimant was opened to the Tribunal:

"I wish to take this opportunity to confirm the contents of our conversation yesterday, the 16<sup>th</sup> September 2009.

At the meeting we confirmed that you would be 65 years of age on the 18<sup>th</sup> November 2009 and that this date was a significant milestone in that it was the date you are due to retire on. I informed you that the purpose of our meeting was to confirm your retirement date as being the 18<sup>th</sup> of November 2009 and that you would be retiring on that date.

As part of the discussion I informed you that the company would help in any way that it could to ensure a smooth transition from working life to retirement.

Please do not hesitate to contact me at any time if I can be of further assistance."

He had a meeting with the claimant and explained that he was not being made redundant that it was a retirement. He offered him a payment of €25,000.00 as an ex-gratia payment. The claimant duly accepted and cashed the cheque. The claimant finished work on 18<sup>th</sup> November 2009. He called back to work on 23<sup>rd</sup> November and that is when they offered him €25,000.00.

They had contact with the pension company as requested by the claimant's representative. He was involved in a group retirement plan which mentioned the retirement age of 65 years in documentation. The claimant signed the documentation and was therefore aware of the retirement age.

There were some people who previously had worked beyond 65 years of age but he could not at that stage do anything about that situation. Every year people arrive at 65 years of age and that is the normal retirement age.

Throughout the period prior to the claimant leaving he never mentioned that he wished to remain in his employment (after retirement age). The first the respondent knew of this issue was when they received a solicitor letter in April 2010.

The witness was extensively cross-examined.

The witness was asked by the Tribunal to clarify if there are three people working for the respondent who are over 65 years and he confirmed that there were. He was asked why they were still allowed to work there and he explained that his understanding was that they could remain in the employment until they decided to leave. He agreed that he had to “ring fence” the other employees who were over 65 years, “I realised I would have to treat them differently”.

### **Claimant’s case:**

The Tribunal heard evidence from the claimant. He explained that before the HR manager (GB) arrived there were no written contracts. GB read out the contract to him and asked him to sign it. He told him that he would like to take the contract with him and read it, which he did.

He said to GB that there were changes in the contract and GB told him that there were no changes. The claimant explained that GB spoke to people to “pressurise” them to sign contracts. He spoke to the MD who was the owner “and that did not happen” (he did not sign contract). The claimant was asked if he started working with the owner since the “beginning” and he replied “yes 1985” (1975).

Towards the end of 2009 GB called to the work site. He met with GB. GB told him that he had reached 65 years and would be retiring. He told GB that he had no intention of retiring. GB told him that he would have to retire. He received a letter from GB to that effect.

The claimant was in the owner’s house and spoke to him about this and the owner said he wanted to see the letter and that he would not be retiring. The claimant took it that he had no need to contact anybody as he had spoken to the owner; He had told GB that he would speak to the owner.

He then had meeting with the owner and GB, the owner told him that he would have to draw down his pension as the company budget was impending and that they would have to lay him off for three or four months. The owner told him that he would be back to work and he would phone him. He was told to keep the company van and phone as he would need them. He had a meeting with the owner who told him that he would get €25,000.00 and that it was to “keep you going until you come back”.

The claimant was asked about the other workers over 65 years and he explained that he was told that they “just slipped through the net”.

He met the owner around Christmas time and told him he had been asked to return the company van. The owner told him to keep it as he would be returning to work in the new year.

### **Determination:**

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn at the outset.

The Tribunal have carefully considered the evidence adduced. The claimant was offered a

“golden handshake” which he accepted.

The claimant had reached retirement age of 65 years. The Tribunal notes that the evidence of the HR manager regarding the pension scheme and mention of retirement of 65 years. The pension monies were paid to claimant from the policy that he would retire at 65 years and the claimant signed the document. The Tribunal accepts that the normal retirement age in the respondent company is 65 years.

Accordingly, the Tribunal determines that the dismissal was fair and that the claim under the Unfair Dismissals Acts, 1977 To 2007 must fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)