

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.

RP1465/2011

against
EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews
Mr F. Dorgan

heard this appeal at Limerick on 27th November 2012

Representation:

Appellant(s) : Mr John Kane, SIPTU, 4 Church Street, St Johns Square,
Limerick

Respondent(s) : Mr Chris O'Donovan, IBEC, Knockrea House, Douglas Road,
Cork

Summary of Evidence

The appellant was employed by the respondent company as a crane driver from February 2006. He was employed in a part-time position on a fixed term contract of one year's duration. The contract did not contain any retirement age. The appellant continued to work for the respondent after the expiration of the fixed term contract and remained in employment beyond the age of 65. The Tribunal heard evidence that the respondent was in negotiations with the crane drivers union which resulted in a collective agreement being reached between the parties in relation to annualised hours.

The appellant gave evidence that he believed that he would retire at 65 but remained working for the respondent until the age of 67. This arrangement facilitated the respondent as the respondent was also in negotiations to buy out the practice of another crane operator. The respondent ultimately bought out this practice which resulted in the respondent gaining another crane driver. This crane driver was retained by the respondent and took over the appellant's position following the appellant's retirement in September 2010. The Tribunal heard evidence that the normal retirement age in the respondent company is 65 years of age and a total of 13

employees have retired at that age. The Tribunal were told that the appellant's position was not made redundant and the appellant accepted that his position was replaced by the respondent company.

Determination

The Tribunal considered the evidence adduced at the hearing and is satisfied that the appellant's position was not made redundant. In particular the Tribunal notes that the appellant accepted that his position was filled by another driver and in those circumstances the Tribunal finds that the claim under the Redundancy Payments Acts 1967 to 2007 fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)