

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
RP351/2011

EMPLOYEE - *appellant*
against

EMPLOYER - *respondent*
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Ms J. Winters
Mr T. Brady

heard this appeal at Drogheda on 10th October 2012 and 17th January 2013

Representation:

Appellant : Mr Rory O' Neill, Mallon Solicitors, Glencarn Centre, Castleblayney,
Co Monaghan

Respondent : Ms Niamh McGowan B L instructed by
Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The decision of the Tribunal was as follows:

Appellant's Case

The appellant commenced employment with the respondent in October 1979. At that time and accompanying his letter of appointment the appellant signed a security agreement with the company and also agreed to be bound by the terms and conditions contained in an enclosed agreement between his trade union and the company. In order to take up employment with the respondent the appellant had to join that trade union. In 1981 the appellant became subject to a compulsory contributory pension and disability plan. According to the definitions of that plan normal pension date meant the sixty-fifth anniversary of the birth of a member. When he started that plan the appellant had no intention of retiring at sixty-five. There was no reference to a retirement age in the pension plan and the company did not have a mandatory retirement age. There was a provision in that plan for retirement after that normal pension date. Members, however, had to secure the consent of their employer to avail of that aspect of the plan.

While employed in a responsible job and position the appellant sustained injuries due to an accident at work in November 2006. As a result of that incident he was absent from work and became the recipient of regular payments from an income protection scheme. Subsequent to that accident. the appellant did not return to work with the respondent. He remained a member of the pension plan

and continued to receive annual statements detailing his status with that plan. Among those details is normal retirement age and date was always given. These were stated as sixty-five and on his sixty-fifth birthday.

In late October 2009 the appellant received a document from the company stating that following a consultation process production will cease at its plant on 30 September 2010. It added that redundancies would be implemented on a phased basis commencing on 1 April 2010. The appellant told the Tribunal that nobody consulted him and he felt left out of that process. The following month he received another letter together with an enclosure from the respondent. Contained in that enclosure was the information that by the end of that month a preliminary list of the names and categories of persons together with dates of redundancy would be announced.

Not having heard anything further from the respondent the appellant emailed its Human Resource officer on 7 July 2010 seeking an update on redundancies. He received a reply some forty-eight hours later. Part of that response read as follows: *As you are aware, your retirement is effective September 15th 2010. For this reason you have not received any official communication which relates to employees who are being made redundant.* The appellant was shocked to hear he was being retired on his sixty-fifth birthday and sought then an early redundancy date. He was aware that other employees had been facilitated to retire early. The appellant received a letter from the pension administrators in August 2010. That letter stated among other things that his normal retirement date was on 15 September 2010. The appellant felt he was being forced out of employment on that date.

Respondent's Case:

The Human Resources Manager gave evidence on the second day of the hearing. All staff were fully aware that the company was to completely shut down on 30 September 2010, there would be no phased redundancies. A 30 day consultation took place with staff and their unions.

The appellant received a letter from the pension administrators in August 2010. That letter stated among other things that his normal retirement date was on 15 September 2010. The appellant emailed the witness seeking an update regarding the upcoming redundancies on 7 July 2010. She replied stating the retirement age was 65 years and this would occur on 15 September 2010. He did not receive any notification regarding the upcoming redundancies as he would be retiring before the closure of the factory.

On cross-examination she stated that all staff received a written statement concerning their pension entitlements at 65 years of age. When put to her she said that no staff member had received an early redundancy package. The company's pension plan was compulsory and commenced in late 1981/1982.

Determination:

The Tribunal carefully considered the evidence adduced both written and verbal. It is satisfied that the term "normal retiring age" means that a designated date for retirement shall be such in the absence of an agreement to the contrary.

The Tribunal is satisfied and determine:

- (a) That no such agreement was ever reached between the parties in the course of the

appellant's employment.

- (b) That the designated date for the appellant's retirement was his sixty-fifth birthday.
- (c) That the retirement took place on this date and that the appellant's claim for a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 fails and the Tribunal so determines.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)