Neutral Citation Number: [2013] IEHC 620

THE HIGH COURT

[2008 No. 379 S]

BETWEEN

MICHAEL BROWNE

PLAINTIFF

AND

IARNRÓD ÉIREANN – IRISH RAIL

DEFENDANTS

JUDGMENT of Mr. Justice Hogan delivered on 11th December, 2013

PART I

1. In these proceedings the plaintiff contends that he accepted an offer of voluntary redundancy proffered by the defendant, Iarnród Éireann, in 2006 and that that offer was binding on the parties. The question as to whether there was such an acceptance of an offer so as to bring into being a binding contract between the parties is central to the resolution of these proceedings.

2. In early June, 2006 Iarnród Éireann circulated a notice inviting expressions of interest for voluntary severance. On 12th June, 2006, the plaintiff, Mr. Browne, expressed an interest in availing of the offer and to this end sent an email along these lines to Ms. Ann Long, the then acting Human Resources Manager. An estimate of the voluntary severance package was then prepared on 9th August, 2006, which was then given to Mr. Browne.

3. The document enclosing these figures was headed:

> "Voluntary Severance Estimate
>
> Please note: These figures are an estimate only and are subject to final verification.
>
> The provision of these figures is not a guarantee or promise that the Company will, in fact, grant voluntary severance."

4. The plaintiff was happy to proceed further and the next document which the plaintiff received was headed "Voluntary Severance Offer". This document was otherwise similar to the earlier document, save that, critically, the document was now described as an "offer" rather than an "estimate" and the reference to the fact that no guarantee could be given was now deleted. Mr. Browne then executed the document, the acceptance terms of which read as follows:

> "I wish to confirm acceptance of early retirement from Iarnród Éireann with effect from [29 September 2006] under the terms of Voluntary Severance outlined above.
>
> I understand and accept that my ex-gratia payment is inclusive of both my entitlements under the Minimum Notice and Terms of Employment Act 1973 and payment in lieu of annual leave due to me which will not be taken prior to my retirement."

5. The document was then signed by Mr. Browne on 11th September, 2006. It was witnessed on that date by Ms. Margaret O'Connor, an employee of the defendant. Mr. Browne added in the words in square brackets in hand, *i.e.,* the date of 29th September, 2006. Before considering the question of whether a binding contract thereby came into existence, it is first necessary to consider the evidence.

PART II

The Evidence of the Plaintiff

6. Mr. Browne gave evidence that he joined Iarnród Éireann on 12th October, 1961, and commenced as a plate layer on the track and in that capacity he worked at Thurles, Limerick Junction and Ballybrophy. Mr. Browne seems to have been a very accomplished employee because he was rapidly promoted. By 2006 – which is the central date for the purposes of this litigation - he was the depot superintendent in the rail depot in Portlaoise. His post involved overseeing all the making of concrete sleepers and the welding and relaying all over the State. At that stage Mr. Browne's line manager was a Mr. Tom Ruane. Mr. Browne reported in turn to a Mr.Brian Garvey.

7. In June, 2006 Iarnród Éireann sent out a circular letter to its employees looking for expressions of interest in relation to voluntary severance. Mr. Browne responded to the letter expressing an interest in the scheme and then in early September, 2006 he received what he contends was a voluntary severance offer.

8. Mr. Browne knew Ms. Margaret O'Connor who worked in the personnel department of Iarnród Éireann in Inchicore in Dublin, but who commuted by train daily from Portlaoise to Dublin. Mr. Browne arranged to sign the voluntary severance offer and it was countersigned by her. Ms. O'Connor duly brought the document back with her to her office in Inchicore. Mr. Browne received a copy of that signed correspondence in the post a few days later. That letter was worded as follows:-

> "I wish to confirm my acceptance of early retirement from Iarnród Éireann with effect from 29th September, 2006, under the terms of the voluntary severance outlined above. I understand and accept that my ex gratia payment is

> inclusive of both my entitlements under the Minimum Notice and Terms of Employment Act 1973, and payment in lieu of annual leave due to me which will not be taken prior to my retirement."

9. At this point Mr. Browne understood that he was due to cease work on 29th September and that he would receive payment in accordance with the voluntary severance offer. In September, 2006 Mr. Browne was taking annual leave and he had so organised his affairs that he did not think that he would be actually returning to work with Iarnród Éireann at all. His daughter was getting married on 22nd September and on that day Mr. Browne received a phone call from Mr. Ruane which came as something of a surprise to him. In the telephone conversation Mr. Ruane informed Mr. Browne that his voluntary severance package had not, in fact, been approved and that he was obliged to return to work. This news was as disappointing as it was unexpected. Mr. Browne then received an email from Mr. Ruane which stated:-

> "Please note that to date I have not been informed that you have been granted voluntary severance. Therefore you should report for duty as normal on your return from annual leave."

Mr. Browne responded by email stating:-

> "Tom, I am surprised at your email of 29th September, 2006, and, in particular, that you have been informed that I was not being granted voluntary severance. I enclose for your attention the voluntary severance offer that was signed by me and witnessed and returned on 11th September, 2006, granting me voluntary severance from 12th October, 1961 to 30th September, 2006."

10. In the light of these developments Mr. Browne felt that he had no option but to return to work once his annual leave had ended. Yet he never concealed his dismay and disappointment in respect of these developments. He immediately contacted his trade union upon his return and a few weeks later he and his union representative, Mr. Willy Noone, saw the Head of Human Resources, Mr. John Keenan, on 24th October 2006. According to Mr. Browne, Mr. Keenan maintained that everything turned on the attitude of Mr. Garvey who he (Mr. Keenan) was due to meet on the following day. Mr. Browne did not, however, believe that the two men had ever met to discuss his case.

11. His trade union did have the matter referred to a Rights Commissioner who ultimately recommended in April 2007 that Iarnród Éireann should accept the offer which had been made.

12. Over a year later a document arrived in the internal post which contained a voluntary severance agreement which was dated the 12th September, 2009, and it was signed by a Ms. Ann Long of personnel and by Mr. Brian Garvey. The document appeared to have been sent to Mr. Browne anonymously and he had no other knowledge of its provenance. Mr. Browne continued in employment until he retired in 2009 at the age of 65 in the usual way. While Mr. Browne accepted in evidence that a voluntary severance package was conditional on a proper business case having been advanced, he stated that he had no reason to believe that the redundancy offer which had been made to him had not been made otherwise than on the basis that the appropriate business case had been advanced and accepted by the company.

Mr. Brian Garvey
13. Mr. Brian Garvey gave evidence that in 2006 he was the Chief Engineer Infrastructure of Iarnród Éireann, although he retired in March 2007. He was familiar with the rationale for the voluntary redundancy scheme, namely, to ensure that employments numbers were reduced in a cost efficient manner. Mr. Garvey was also familiar with the numbers employed at the Portlaoise deport. As far as he was concerned, if Mr. Browne left, the remaining staff moved up a grade and there were savings at the lowest grade. This meant that as far as he was concerned there was a financial rationale for the redundancy, although he never had a meeting with Mr. Keenan to discuss the position of Mr. Browne.

14. Mr. Garvey did accept, however, in cross-examination that the ultimate decision on the business case rested with the Chief Financial Officer and the Director of Human Resources.

Mr. Tom Ruane
15. Mr. Tom Ruane gave evidence that in 2006 he was the production manager of the company and Mr. Browne's line manager. In the summer of 2006 he was made aware that Mr. Browne intended to apply for voluntary redundancy, a step to which Mr. Ruane was not opposed. Mr. Ruane considered that a business case could be made for such a proposal, given that the Portlaoise depot had a surplus of foremen. While Mr. Ruane was favourably disposed to the application, it was clear that the ultimate decision did not rest with him.

16. Towards the end of September Mr. Ruane realised that the offer of redundancy was not now likely to materialise and that it was necessary urgently to contact Mr. Browne. He accordingly rang him on 22nd September, 2006, which happened to be the day of his daughter's wedding. Mr. Browne was surprised to learn that, after all, he was required to come back to work for the company.

Ms. Denise Coyne
17. Ms. Denise Coyne gave evidence that she is currently an executive officer in the human resources department of the company. In that capacity she said that she handled all voluntary severance applications since 1999. She stated that the company would never make such an offer without a business case, namely, a document signed by the Chief Financial Officer and the Director of Human Resources. The application had to be supported by the relevant section within the company (in this case, the infrastructure department). Ms. Coyne noted that the financial calculations would normally have been prepared by Ms. Margaret O'Connor.

18. Ms. Coyne stated further that in her experience only about one third of those who apply for severance ultimately go on to accept a voluntary severance package. She considered that in this instance Mr. Browne had signed the acceptance prior to any approval being given in relation to the business case. While she could offer no views as to the extent to which there was an awareness in respect of the business case requirement in the case of the company at large, she confirmed that at management level "it was well known that a business case was absolutely essential for someone exiting on voluntary severance." In a case such as that of Mr. Browne, acceptance of any offer was, however, always subject - at least so far as management were concerned – to the acceptance of a business case.

19. Ms. Coyne made it clear that she was there to give evidence of the system, because she had no actual dealings with Mr. Browne's own case, as she had gone on maternity leave from early September.

Mr. Richard O'Farrell
20. Mr. Richard O'Farrell gave evidence that he was the Chief Financial Officer of Iarnród Eireann in 2006, having been appointed to that position in 2007. He explained that the business case had first to be approved by the Director of Strategy and Business

Development, John Keenan and then later by himself. The voluntary severance offer which Mr. Browne signed on 11th September 2006 was signed by him in advance of either the formulation of or any acceptance of the business case. It was not correct to suggest that any business case must necessarily have been prepared before an offer letter was sent out to employees who were considering redundancy.

Mr. John Keenan
21. Mr. John Keenan gave evidence that he had been Director of Strategy and Business Development with the company in 2006, so that he was in charge of human resources. He explained that the chief objective of the voluntary severance process was to drive down costs within the company on a permanent basis and this is why the existence of a positive business case was essential to that exercise.

22. Before this exercise could properly be conducted, it would have to be clear that the employee in question had already volunteered to leave. He considered that the procedure was well known and understood by both management and the relevant trade union officials. He pointed out that the Rights Commissioner had been mis-informed when she had stated that Mr. Browne's application for redundancy had been approved. This had never happened, as indeed no business case had ever been put in respect of Mr. Browne.

Part III

Was a binding contract executed between the parties?
23. Counsel for the plaintiff, Mr. Conlon S.C., relied heavily on a decision of the South African Labour Court, *Wiltshere v. University of the North* [2005] ZALC 94, a case with some similarities to the present one. In *Wiltshere* the plaintiffs were all employees of the respondent University who had retired after 2000. In common with the plaintiff in the present case, they all claimed that they had accepted voluntary retirement offers proffered by the University prior to retirement.

24. In August 2000 the University issued a memorandum to the effect had approved an offer of voluntary retirement which was open to all staff over 55 years of age, but which offer had to be accepted within one month.The University staff were urged to carefully consider the implications of accepting the offer and were advised that if they wished to accept the offer they were to complete the form attached to the memorandum which form they were to submit personally to the Human Resources Department.

25. Those members of the University staff who elected to accept the offer were advised that their employment would terminate on 30th September, 2000. Shortly afterwards concern was expressed that the offer was too attractive and that many senior staff whom the University could ill afford to lose were accepting this offer. The University then purported to rescind the earlier circulars. Before this had occurred, however, the three plaintiffs (who were all over 55 years of age at the time) had all purported to accept the offer which was in the following terms:

> "I…….hereby accept the Council's offer of voluntary retrenchment as set out in the Personnel Policy and Procedure Manual (and of retirement if over 55). I have given serious consideration to the implications of this acceptance and will seek financial advice with regard to the utilisation of funds I receive. I further acknowledge that by accepting this offer I have taken an irreversible step and once this acceptance is acknowledged by the University it cannot be reversed unless by mutual agreement."

26. All three plaintiffs were dismayed by the subsequent withdrawal of the offer. They nonetheless kept on working, in part because of loyalty to the University and the uncertainty which had then been created. They were also anxious not to jeopardize their rights as they were close to retirement age and were concerned that if they simply left they would lose their pensions. They all remained in employment up to the date of their scheduled retirements and had been paid in the ordinary fashion.

27. Gush A.J. accepted the evidence given by the plaintiffs to the effect that that had accepted the offer made by the University; that they had communicated their acceptance in accordance with the latter's requirements and that "therefore a valid agreement was entered into." The judge also noted that the University had argued:

> "that there was no agreement between the parties. It avers that the offer and the acceptance of voluntary retrenchment must be interpreted to mean that it was merely an invitation to all University Staff to apply for voluntary retrenchment and early retirement and that the acceptance of the offer was an application to the Respondent's Council which would consider all applications with particular regard to the retention of necessary skills. The respondent's counsel argued that this interpretation based on the evidence of Mr Negota, clearly established that there had not been an acknowledgement of the application, and that as the applications had not been considered and approved, accordingly no agreement was concluded. Unfortunately for the respondent this is not borne out by the contents of the communiqué issued by Mr Negota himself. If, as Mr Negota would have had the Court believe the Golele offer was merely an invitation to apply his communiqué of the 4th September 2000 [rescinding the original offer] would have been unnecessary."

Gush A.J. then went on to hold that the University was bound by the acceptance and that nothing further was required on the part of the staff. He also rejected the argument that by electing to work after the events in question the plaintiffs must be taken to have acquiesced in the actions of the University:

> "The respondent was aware of the fact that the validity of the offer was being challenged, was aware that the applicants had accepted the offer and yet did nothing to address the issue with any of the applicants after the 30th September, save to threaten them with action should they abide their acceptance and leave their employment.
>
> The respondent did not argue that by remaining in the employ of the respondent the applicants abandoned the agreement nor that their subsequent retirement novated the original agreement or that it constituted a waiver of their rights.
>
> The respondent by its own actions actively sought to prevent the applicants from leaving in accordance with the agreement reached by threatening them with disciplinary action.
>
> It is true that a severance benefit is payable in circumstances when as a result of a no fault termination the employee is compensated for the loss of job security and that generally speaking severance benefits do not accrue to employees who retire. The position here is different however. The applicants concluded a valid and binding

> agreement with the respondent. The respondent sought unsuccessfully to escape the agreement. In so doing it continued to employ the applicants. It did so at its own risk and not at the risk of the applicants. Accordingly, when it was finally decided that the agreement was binding the respondent was obliged to perform."

28. In my view, these principles are applicable to this jurisdiction, since it is hard to see the plaintiff's acceptance of the "Voluntary Severance Offer" on 11th September 2006 as anything other than the acceptance of a unilateral offer made by the company which at that point became binding. This is especially so given that the earlier version of the document had expressly warned that this was simply an estimate to which the parties were not necessarily committed, while the second version of the document – which was the one which the plaintiff signed and had witnessed – contained no such stipulation. Viewed objectively, it is equally hard to avoid the view that any person familiar with this documentation at the time would have concluded that Mr. Browne had just accepted a unilateral offer which the company had made to him.

29. The authorities in this jurisdiction also support this conclusion: see generally McDermott, *Contract Law* (Dublin, 2001) at 30-54. Thus, for example, in *Billings v. Arnott & Co.* (1946) 80 I.L.T.R. 50 the defendants, a well known Dublin retail outlet, posted a notice which was circulated to their employees, offering to pay one half of the salary of their employees who joined the Defence Forces. It was held by Maguire J. that the plaintiff had accepted the offer by joining the Defence Forces and that he was accordingly entitled to the premium pay. Maguire J. further stressed ((1946) 80 I.L.T.R. 50, 51) that the offer had been unconditional with:

> "….no reservation to allow a refusal to release any employee. I cannot take the view that it was a mere declaration of intention. It is a clear expression of what the company would do. Acceptance was then completed when the plaintiff joined the Defence Forces and intimated his intention to do so on 16th August 1940. On that view a contract was completed under which the defendants undertook to pay the plaintiff an allowance. There was no provision in the notice published that the managing director had power to decide to whom the allowance was to be paid."

30. Likewise, in *Kelly v. Cruise Catering Ltd*, High Court, 5th July 1994, Blayney J. held that an offer had been accepted once the plaintiff signed a contract of employment which had been sent to him by a Norwegian company based in Oslo and then had posted the signed contract in Dublin.

31. To repeat, therefore, viewed objectively, therefore, there had been an offer and acceptance once Mr. Browne duly dispatched the signed and witnessed form on 11th September 2006 and gave it to Ms. O'Connor for onward transmission within the company. In that respect, therefore, the case is indistinguishable from both *Wiltshere* and, for that matter, *Billings* and *Kelly.*

32. Counsel for the company. Mr. Callinan S.C., argued forcefully, however, that this offer and acceptance must be taken to be subject to an implied term that the offer would only become binding once a business case was actually approved by senior management.

33. It is clear from the evidence of the various witnesses (see, for example, the evidence of Ms. Coyne and Mr. O'Farrell) that the requirement that an approved business case must exist in such circumstances was well known within the company. It is, nevertheless, equally clear that Mr. Browne had no reason to assume or believe that when the formal offer was made sometime in early to mid-August 2006 that the business case had not already been approved by company management. Just as with *Billings,* there was nothing in the second offer which the plaintiff had received in mid-August which suggested that the management had reserved onto themselves the right to decide which offer should be accepted and which should not. The evidence certainly did not bear out the suggestion that any acceptance by Mr. Browne was impliedly subject to the *subsequent* approval of the business case by senior management. This could only have been the case if it were clear that the parties knew – or, at least, ought to have known – that such an assessment had yet to be carried out. There is equally no doubt but that Mr. Browne was surprised – even astonished – to learn on 22nd September 2006 that he was being required to return to work.

34. In these circumstances, I find myself compelled to the conclusion that there was in fact an offer made by the company which, having been accepted by the plaintiff, binds the company. It is true that the plaintiff did, in fact, continue in employment beyond September 2006. This, however, was in circumstances where he had been effectively compelled to do so by the company and, just as in *Wiltshere*, it would have been quite unrealistic for him to have to done otherwise. Given the uncertainty – which, after all, had been created by the company – the plaintiff cannot be faulted for loyally and diligently working until his retirement age as the company required and before commencing these proceedings at a later stage.

Conclusions

35. For all of these reasons I must find that there was an offer which bound the company following the plaintiff's acceptance of that offer. I will invite the parties to make further submissions to me on the specific relief to which the plaintiff is entitled in respect of my conclusion that there has been a breach of contract on the part of the company.