In the High Court of Justice

Business and Property Courts of England and Wales
Chancery Appeals (ChD)

On appeal from a decision of the Deputy Pensions Ombudsman

on 10 September 2019 (ref: PO-19150)

Appeal ref: CH-2020-000043

BETWEEN

████████████████████

Appellant

And

LANCASHIRE COMBINED FIRE AUTHORITY
Respondent

Facts Agreed between the Appellant and Respondent

1. Mr G████ date of birth is 17.12.1943. He turned 55 on 17.12.1998 and 60 on 17.12.2003.

2. He joined the Fire Service on 22.3.65 and retired on 22.7.98 (aged 54) following a road traffic accident when on duty on 5.2.1997, his car being hit from behind when stationary on a roadway while he was driving from an incident to the Fire Station. He suffered a back injury adjudged by the Respondents to be a 'qualifying injury'.

3. This was a compulsory retirement under Rule A15 of the Scheme which reads as follows:-

   (1) *Subject to paragraph (2), a regular firefighter may be required by the fire authority to retire on the date on which the authority determine that he ought to retire on the ground that he is permanently disabled.*

   (2) *A retirement under this rule is void if, on an appeal against the medical opinion on which the fire authority acted in determining that he ought to retire, the medical referee decides that the appellant is not permanently disabled.*

4. Officers at Assistant Divisional Officer rank and above could continue to work until the age of 60. Below that rank, the compulsory retirement age was 55. This was set out in Rule A13 which reads as follows:-

   (1) *This rule applies to every whole-time member of a brigade appointed on terms under which he is or may be required to engage in fire-fighting.*

   (2) *Subject to paragraph (3), a person to whom this rule applies shall retire—*

   (a)if he holds the rank of assistant divisional officer or a higher rank, on attaining the age of 60, or

   (b)if he holds the rank of station officer or a lower rank, on attaining the age of 55.

   (3) In special cases the fire authority may extend the service of a person to whom this rule applies for a further period if they are satisfied that such extension would be in the interests of efficiency.

5. The three attached sheets entitled; "Uniformed Pay Scales 7.11.1997," "Uniformed Pay Scales 7.11.1998," and "Wholetime Pay Scales from 1999 – 2014," show the ranks in the Fire Service at that time and the relevant pay scales.

6. Progression "within" any of the ranks shown, based on length of service in that rank and within the Service as a whole would be automatic. For example progressing from 1st through to 3rd year at Assistant Divisional Officer level would be automatic each year, and the 15 years' service increase was based simply on time in Service. However, progression up through the ranks was not automatic and was dependant on a position becoming available and a successful application. The annual increases in pay were applied automatically.

7. At the time of his retirement on 22.7.98, Mr G███ was an Assistant Divisional Officer 3rd year, 15 years' service. With reference to the 1997 pay scales which were then applicable (the annual increase did not take effect until the 7th of November each year) his pay was £27,420. This was however subject to a 20% flexible duty allowance, so the total was £32,904.

8. Had Mr G███ continued to work until the age 60, the pay scales for 2003 would have been used in the calculation. Assuming he was at the same rank, his pay would either have been i) £41,941.20 (including the flexi duty allowance and Long Service Increment) if he was not responsible for a group of stations, or: ii) £43,053.60 (including the flexi duty allowance and Long Service Increment) if he was responsible for a group of stations.

9. The 1992 Scheme is index linked in accordance with pensions increases legislation, which is likely to have provided an increase in pension similar to any increase in salary that would have accrued had Mr G███ remained in work until the age of 60.

10. The attached sheet entitled "G███ pension calculation" is dated 24.9.98 and shows that calculation used in his case.