

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

3 Employees

UD395/2008

– **First named Claimant**

RP323/2008

MN348/2008

– **Second named Claimant**

UD396/2008

RP324/2008

MN349/2008

- **Third named Claimant**

UD397/2008

RP325/2008

MN350/2008

against

2 Employers

- **First named Respondent**

- **Second named Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. McAveety

Members: Mr. P. Pierson
Mr. P. Clarke

heard this appeal at Longford on 16 February 2009

Representation:

Claimants: Mr. William Noone, Branch Secretary SIPTU,
Liberty Hall, Dublin 1

Respondents: In person

The determination of the Tribunal was as follows:

The claimant's commenced employment as static security guards at a site in Lanesboro on 21 April 2004, 4 May 2004 and 18 June 2005 respectively. By the time the third named claimant commenced employment the contract for the provision of the security service was held by the

second named respondent. In June 2006 the claimants transferred to the first named respondent under a transfer of undertakings when that company won the contract for the provision of the service. The first named respondent lost the contract for the provision of the security service effective from 4-00pm on 5 October 2007. They were informed of this by letter dated 27 September 2007. The claimants were informed of this in a letter of 28 September 2007. It was confirmed by the owners of the site on 3 October 2007 that the second named respondent would continue to use the same security guards as had been used previously. In the event the second named respondent did not take on the claimants.

Determination:

At the relevant time in this case, that is 5 October 2007, for the purposes of the European Communities (Protection Of Employees On Transfer Of Undertakings) Regulations 2003 the first named respondent is the transferor and the second named respondent is the transferee. Regulation 4(1) provides that the transferor's rights and obligations arising from a contract of employment existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee. The Tribunal is satisfied that the claimants were dismissed on foot of this transfer, which was effected on 5 October 2007, when the transferee chose not to employ the claimants to provide the security service. It follows that these dismissals were unfair. Claims under the Unfair Dismissals Acts, 1977 to 2007 and the Redundancy Payments Acts, 1967 to 2007 being mutually exclusive the appeals under the Redundancy Payments Acts must fail. The Tribunal awards the first and second named claimants €25,000-00 each and the third named claimant €9,000-00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal further awards each claimant €828-00, being two weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)