

## EMPLOYMENT APPEALS TRIBUNAL

| CLAIM(S) OF: | CASE NO.   |
|--------------|------------|
| EMPLOYEE     | MN398/2009 |
| EMPLOYEE     | MN411/2009 |
| EMPLOYEE     | MN412/2009 |

### *Claimants*

Against

EMPLOYER

EMPLOYER

### *Respondents*

under

### **MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL  
Members: Mr J O'Neill  
Ms E Brezina

heard this claim at Dublin on 21<sup>st</sup> September 2009

Representation:

Claimants(s): In person

Respondent(s): Mr Norris Power, Actons, Solicitors,  
Newmount House, 22-24 Mount Street Lower, Dublin 2

The decision of the Tribunal was as follows: -

### **Respondents' Case**

All parties agreed that the claimants had been employed by the first named respondent and subsequently by the second named respondent.

The respondents alleged that there had been a transfer of undertaking from the second named respondent to a third company on 8<sup>th</sup> May 2008 and that all three claimants continued in

employment with the third company. There had been no break of service and no loss of pay or reduction in the terms and conditions of their employment.

### **Claimants' Case**

All three claimants alleged that there had been a transfer of undertaking and that they had continued in employment with a third company.

The claimants stated that they took issue with not being consulted in advance of this transfer of undertaking and were seeking redress on this matter.

The Chairperson advised the claimants that the alleged failure to be consulted in advance of a transfer of undertaking was not an issue within the jurisdiction of the Tribunal at first instance but that it may be a matter for a Rights Commissioner and directed the attention of the claimants to Article 8 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 S.I. 131/2003.

### **Determination**

The first named respondent consented to the amendment of its name as set forth above. The Tribunal notes that the registered address of the second named respondent has been changed since the date of the hearing and the Tribunal amends the address accordingly.

The Tribunal notes that the third company had not been joined as a notice party and further the Tribunal notes that complaints concerning the provision of information shall in the first instance be dealt with by a Rights Commissioner and therefore the Tribunal does not intend to determine any matter which ought to be dealt with first by the Rights Commissioner or which ought to be resolved while on notice to the third company.

All parties had agreed that there had been a continuation in employment without a break in service at the material time. The Tribunal dismisses the claim under Minimum Notice and Terms of Employment Act 1973 as all the claimants were asserting that the continuity of their employment had not been broken and therefore they were not alleging any termination of employment in respect of which notice was due.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)