

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE  
MN393/2010

UD426/2010

Against

1. EMPLOYER

2. EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. E. Murray  
Members: Ms. M. Sweeney  
Ms. H. Kelleher

heard this claim at Cork on 1st March 2011

Representation:

Claimant:

Ms Carol A Hickey, Hickey Dorney, Solicitors, The Square, Passage West, Co Cork

Respondents:

The Society Of The Irish Motor Industry, 5 Upper Pembroke Street, Dublin 2

The Claimant gave evidence on his own behalf and he told the Tribunal that he commenced employment with the Second Named Respondent in November 2006. The nature of the work was that he moved motorcars in a compound where cars were being shipped to and transported from.

On the 30<sup>th</sup> of October 2009 he was laid off because there was insufficient work for him.

During the course of his employment with the Second Named Respondent he had always been under the supervision of Mr. C . to whom he had always reported to.

In December 2009 Mr. C. advised him that the First Named Respondent were taking over the contract from the Second Named Respondent but that there would be work for him doing the exact same job under Mr. C.'s supervision, but that if he took the job he would be employed by the First Named Respondent. He said that what little work there was in the yard was now transferred to the First Named Respondent.

On the 19<sup>th</sup> of December 2009 when moving a car, he skidded on ice and caused damage to the vehicle. This was not an unusual occurrence in the yard where vehicles were constantly being moved. He offered to pay for the damage to the vehicle and was ultimately furnished with a bill in the sum of €1959.79.

He did not realise that the damage was this extensive and he was not in a position to pay this sum as it represented several weeks earnings.

The Claimant advised the Second Named Respondent that he would not be able to pay the bill and on the 20<sup>th</sup> of January 2010 he was dismissed from his employment.

Mr. C. gave evidence that he knew the Claimant and got on well with him. He said it was not unusual for cars to be damaged from time to time in the yard while being moved around. He said that he did not consider causing damage to the vehicle in the course of employment a dismissal offence where it happened only once. He personally had nothing to do with the dismissal of the Claimant.

It was submitted on behalf of the Claimant that the situation that pertained in this employment was covered by Council Directive 77/187/EEC relation to transfer of undertakings.

There was no denial on the part of the First Named Respondent that the Claimant had been dismissed because of his inability to pay the cost of repairs of damage that had been caused to the vehicle.

### **Determination**

Having considered the evidence the Tribunal is of the view that this situation is covered by the transfer of undertaking Directive. The Claimant's service with the Second Named Respondent is reckonable for the purposes of the Unfair Dismissal Act and the Tribunal is satisfied that the Claimant was summarily dismissed and that the offence for which he was dismissed did not merit dismissal. Consequently he was unfairly dismissed.

The Tribunal finds that compensation is the most appropriate remedy and makes an award in the sum of €7000.00 in favour of the Claimant.

There was no evidence adduced in respect of the claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 and therefore no award is made under those acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

