CORRECTING ORDER

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:		CASE NO.
EMPLOYEE	***-appellant 1***	RP1659/2009 MN1471/2009
EMPLOYEE	***-appellant 2***	RP1660/2009 MN1472/2009

Against

EMPLOYER ***-respondent 1***

EMPLOYER ***-respondent 2***

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr G. Andrews
Ms S. Kelly

heard this appeal at Limerick on 22nd November 2010

Representation:

_____

Appellants:	Mr. Gerard Tobin, Limerick Citizens Information Centre, 54 Catherine Street, Limerick
Respondent 1:	Ms. Mairead Crosby, IR/HR Executive, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2
Respondent 2:	Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

Determination:

This order corrects the original Order dated the 17th of January 2011 and should be read in conjunction with that Order.

The award made to appellant 1 under the Minimum Notice and Terms of Employment Acts 1973 to

2005 should read, the appellant received notice on the 19th of May 2009 that her employment would be terminating with respondent 2 on the 31st of May 2009. The appellant is entitled to six weeks minimum notice, therefore the Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the appellant €570.00 as compensation, being the equivalent to 4 week's notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

EMPLOYMENT APPEALS TRIBUNAL

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EMPLOYEE	***-appellant 1***	RP1659/2009 MN1471/2009
EMPLOYEE	***-appellant 2***	RP1660/2009 MN1472/2009
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EMPLOYER		***-respondent 1***
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Background

Both of the appellant's worked for respondent 2, a contract cleaning company. Respondent 2 lost the contract that both the appellant's were employed on. This contract transferred to Respondent 1. The appellant's hours were reduced when their employment transferred. Respondent 2 does not dispute that a redundancy situation existed but is of the belief that the appellant's employment transferred to Respondent 1. Both the respondents' and the appellants' representatives made extensive submissions on the application of the transfer of undertakings in this case.

Determination

This case is primarily a redundancy claim and did not come before the Tribunal as a claim under the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations.

The Tribunal is persuaded by the argument made by respondent 1, that the applicable and definitive case law is the matter of *Suzen -v- Zehnacker Gebaudereinigung GmbH Krankenhausservice,* and that no transfer took place. The employment of both the appellants was terminated by way of redundancy by respondent 2.

The mere fact that the service provided by respondent 1 is similar does not support the conclusion that an economic entity has been transferred, the Suzen case strongly indicates that loss of a contract to a competitor cannot by itself point to or indicate the existence of a transfer within the meaning of the directive.

The Tribunal does not accept the reasoning put forward by the respondent 2 that goodwill transferred to respondent 1 as no significant flight or movement of commercial assets took place.

The Tribunal would emphasise that the appellants' unchallenged evidence (excepted by both the respondents) was that the appellant's employment was brought to an end by reason of redundancy affected by respondent 2. The responsibility for the redundancy payment lies with respondent 2.

In all the circumstances the Tribunal find that the appellants' positions were made redundant and awards the appellants a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Appellant 1

Date of Birth:	15th June 1970
Date of Commencement:	26th March 1996
Date of Termination:	29th May 2009
Gross Pay:	€142.50

This award is made subject to the appellant having been in insurable employment during the period.

The appellant received notice on the 19th of May 2009 that her employment would be terminating with respondent 2 on the 31st of May 2009. The appellant is entitled to six weeks minimum notice, therefore the Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the appellant €570.00 as compensation, being the equivalent to 2 week's notice.

Appellant 2

Date of Birth:	21st July 1966
Date of Commencement:	31st August 2003
Date of Termination:	29th May 2009
Gross Pay:	€142.50

This award is made subject to the appellant having been in insurable employment during the period.

The appellant received notice on the 19th of May 2009 that her employment would be terminating

with respondent 2 on the 31st of May 2009. The appellant is entitled to four weeks minimum notice, therefore the Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the appellant €285.00 as compensation, being the equivalent to 2 week's notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)