

Case C-4/01

Serene Martin and Others

v

South Bank University

(Reference for a preliminary ruling from the Employment Tribunal,
Croydon (United Kingdom))

(Directive 77/187/EEC — Safeguarding of employees' rights in the event of
transfers of undertakings, businesses or parts of businesses —
Early retirement and associated benefits)

Opinion of Advocate General Alber delivered on 17 June 2003 I- 12863

Judgment of the Court (Sixth Chamber), 6 November 2003 I- 12886

Summary of the Judgment

1. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Rights and obligations within the*

meaning of Article 3 — Rights contingent upon dismissal or the grant of early retirement by agreement with the employer — Included

(Council Directive 77/187, Art. 3(1))

2. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Exceptions — Supplementary company or inter-company pension schemes — Old-age benefits — Definition — Early retirement benefits and benefits intended to enhance the conditions of such retirement — Excluded*
(Council Directive 77/187, Art. 3(3))
3. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Transfer of obligations applicable in the event of the dismissal of an employee — Conditions and limitations — Obligations deriving from or implemented by statutory instruments — Not relevant*
(Council Directive 77/187, Art. 3)
4. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Less favourable early retirement terms — Acceptance by employees — Excluded — Exception — More favourable terms arising from a collective agreement which is no longer binding*
(Council Directive 77/187, Art. 3)
5. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Less favourable early retirement terms offered in breach of the public policy obligations imposed by Article 3 — Transferee's obligation to make good*
(Council Directive 77/187, Art. 3)

1. Rights contingent upon dismissal or the grant of early retirement by agreement with the employer fall within the rights and obligations referred to in Article 3(1) of Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the

event of transfers of undertakings, businesses or parts of businesses.

(see para. 30, operative part 1)

2. Early retirement benefits and benefits intended to enhance the conditions of such retirement, paid in the event of early retirement arising by agreement between the employer and the employee to employees who have reached a certain age, are not old-age, invalidity or survivors' benefits under supplementary company or inter-company pension schemes within the meaning of Article 3(3) of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

(see para. 35, operative part 2)

3. Article 3 of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is to be interpreted as meaning that obligations arising upon the grant of such early retirement, arising from a contract of employment, an employment relationship or a collective agreement binding the transferor as regards the employees concerned, are transferred to the transferee subject to the conditions and limitations laid down by that article, regardless of the fact that those obligations derive from statutory instruments or are imple-

mented by such instruments and regardless of the practical arrangements adopted for such implementation.

(see para. 35, operative part 2)

4. Article 3 of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses precludes the transferee from offering the employees of a transferred entity terms less favourable than those offered to them by the transferor in respect of early retirement, and those employees from accepting those terms, where those terms are merely brought into line with the terms offered to the transferee's other employees at the time of the transfer, unless the more favourable terms previously offered by the transferor arose from a collective agreement which is no longer legally binding on the employees of the entity transferred, having regard to the conditions set out in Article 3(2).

(see para. 48, operative part 3)

5. Where, in breach of the public policy obligations imposed by Article 3 of Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the transferee offered employees of the entity transferred early retirement less favourable than that to which they were entitled under their employment relationship
- with the transferor and those employees accepted such early retirement, it is for the transferee to ensure that those employees are accorded early retirement on the terms to which they were entitled under their employment relationship with the transferor.
- (see para. 54, operative part 4)