



Luxembourg, 25 March 2013

PRESS RELEASE 4/2013

Judgment in Case E-10/12 *Yngvi Harðarson v Askar Capital hf.*

AMENDMENTS TO AN EMPLOYMENT CONTRACT MAY BE EFFECTIVE REGARDLESS OF THE EMPLOYER'S OBLIGATION TO NOTIFY THEM UNDER DIRECTIVE 91/533

In a judgment delivered today, the EFTA Court gave an Advisory Opinion on a question referred to it by Héraðsdómur Reykjavíkur (Reykjavík District Court) regarding the interpretation of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship ("the Directive").

The case before the national court concerns a dispute between Yngvi Harðarson ("the plaintiff"), and his former employer Askar Capital hf., a financial undertaking in winding-up proceedings ("the defendant").

In December 2006, the plaintiff and the defendant concluded a written contract of employment. According to the contract, the plaintiff's monthly remuneration was fixed at EUR 15 000. From April 2009, the monthly pay of EUR 15 000 was reduced to ISK 1 500 000 (equivalent to some EUR 9 000). This reduction was based on negotiations which were conducted orally and via email. In July 2010, the defendant was put into winding-up proceedings. The plaintiff lodged a claim with the defendant's winding-up committee, which was based on a monthly wage of EUR 15 000 as provided in the employment contract. The winding-up committee rejected the plaintiff's full claim on the basis that, as of April 2009, the calculation of his claim should have been based on a monthly remuneration of ISK 1 500 000.

In its question to the Court, Reykjavík District Court essentially asked whether and, if so, to what extent it affects the calculation of the compensation due to an employee, if amendments to the written contract of employment relevant to the calculation of the compensation have not been notified to the employee by means of a written document, as required by Article 5 of the Directive.

The Court noted that Article 5 of the Directive provides that any amendments to an essential aspect of the contract or the employment relationship, which includes the remuneration to which the employee is entitled, must be the subject of a written document given by the employer to the employee at the earliest opportunity and not later than one month after the date of entry into effect of the amendments in question.

However, as regards the consequences of a notification not being made, the Court found that the Directive has no bearing on the material content of the contract of employment. It is a matter for the courts of the EEA States to apply national rules of evidence as to the existence and content of contracts or employment relationships.

Consequently, the Court held that the Directive does not require any amendments to an essential aspect of the contract or employment relationship that has not been mentioned in a written document delivered to the employee, or has not been mentioned therein with sufficient precision, to be regarded as ineffective. This applies also in the context of bankruptcy proceedings or a comparable division of a limited liability company.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.