



### **Problems arising in Employment Law Cases\***

Two recent decisions of the Labour Court highlight issues which are arising which may be of relevance to colleagues.

In UDD1628 being a case of Kylemore Service Group and Michael Loftus. In this case the proceedings issued out of time. The employee submitted that he was homeless and ill and incapable of attending to employment related matters within the statutory time limits. He submitted that he attended to them when he recovered and at the first opportunity to do so.

The employer in this case contended that the employee had commenced a complaint under the Data Protection Act within the statutory time limit and that his personal circumstances did not prevent him from completing proceedings with the assistance of the Citizens Information Centre.

The Court in this case reviewed the law under Section 82 of the Unfair Dismissal Legislation and the issue of exceptional circumstances. The Court took the view as the employee had the capacity to issue instructions under the Data Protection Legislation there was no reason why he could not have had equal capacity to issue instructions to file a complaint under the Unfair Dismissal Legislation. The application to extend time was refused.

This case highlights the importance of issuing proceedings as soon as possible.

In a case of TUD1628 involving Starrus Eco Holdings and John Larkin a Decision from an Adjudication Officer issued against the company using the title set out above. The notice of appeal was in the name of Greenstar and the Appellants written submission referred to Greenstar Limited.

The Court in this case reviewed the case of Sylvia Wach and Travel Lodge Management Limited 2016 27ELR22 when they considered the limited scope of its jurisdiction to amend the name of a party to an appeal before it. That case was quoted and which the Court had said.



“What is the issue in this case. Does not involve a formal or verbal error. Nor does the Complainant’s application refer to a determination issued by the Court. The wrong respondent was impleaded and the Union’s application is to amend the claim by substituting another legal person for the Respondent cited. In the Courts view that goes what was intended by Section 88 of the Act”.

The previous case referred to a case under the Employment Equality Act 1988. The Labour Court reviewed Section 44 of The Act and in particular Subsection 8.

The Court determined that the Notice of Appeal received by the Court did not name the respondent to the appeal in the same form as the title given to the respondent at first incidence by the Adjudication Officer or indeed in accordance of any legal entity registered on the Companies Registration Offices website. The Court contended that it had no option but to decline jurisdiction in the matter.

These two cases highlight the importance of firstly issuing proceedings in time and secondly making sure that the correct name is involved. An interesting issue would arise if an employee issued proceedings against a particular entity and the employer attended at an Adjudication Officer hearing and did not correct for example an incorrect name. Many Adjudication Officers and particularly former Rights Commissioners as a matter of course will ask the employer to confirm the correct name of the parties. We will be of the view that if an employer gives a particular name as being the correct name of the employer and it subsequently transpired that this was incorrect then possibly an application to amend under Section 44 Subsection 8 of the Workplace Relations Act 2015 might well be accepted.

Particular problems are arising in relation the names of employers. This office had made a submission to the Minister when the legislation was going through the Oireachtas that it would be sufficient to name the employer by way of a trade name. This would be particularly relevant when some entities will issue contractual documents and payslips in a trade name. This was rejected.

There are problems in identifying the proper employer. There is no requirement in a P60 to set out the formal legal name of the employer. The Revenue will accept registration by an employer using a trade name. Therefore P21 forms may have a trade name rather than the employers full name. Again if the employer has a lengthy name the



P21 will not set out the full name. Payslips issue in trade names rather than company names. It is now becoming commonplace that employees are having to go to the Revenue to request them to set out whom the Revenue say they are employed by. The Revenue appear to have a difficulty in giving out this information. Therefore employees now are often being advised to bring a request in writing to the revenue seeking their Revenue file.

There is an unfortunate defect in our legislation in that there is no penalty on an employer for failing to notify the employee as to the full correct name of the employer on all documentation furnished particularly P60's and payslips

Because of this recent cases as regards using incorrect names it is vitally important that the employee ascertain the correct name of their employer. It is not what they are told but what they can get in writing setting out a full legal entity. Then it is necessary to undertake a Companies Office search. It is useful with proceedings to attach a copy of the Companies Office search and send it in with the claim form.

The importance of issue proceedings early is often over looked by employees. Because every day lost can impact on a claim it is important that proceedings are issued as soon as possible.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**