

## **Unfair Dismissal – Naming the Right Employer – Who is an Employer for an Unfair Dismissal Case\***

This issue arose in UDD2112 being a case involving AA Euro Recruitment Ireland Limited and Cotter

A preliminary issue was raised as to whether the correct employer was named.

The court helpfully referred to the case of Eleanor O’Higgins and University College Dublin and the Labour Court 2013 21MCA where Mr Justice Hogan held

*“Even if the wrong party was, in fact, so named, no prejudice whatever was caused by reason of that error (if, indeed error it be)... In these circumstances, for this court to hold that an appeal was rendered void by reason of such a technical error will amount to a grossly disproportionate response and deprive the appellant of the substance of her constitutional right to access to the courts”*

The Court in this case said having considered the issues raised and as this was a De Novo hearing the defect in incorrectly citing the Respondent in the Adjudication Officers decision could be adequately cured by determination of the Labour Court.

Now this was a case where proceedings were issued where there was two companies involved one being AA Euro Recruitment Group Limited while the other was AA Euro Recruitment Ireland Limited. It appeared that this was an issue which was a very minor one as regards the correct name. It is not that it was a completely different entity in a different location.

The issue in this case also dealt with the issue of agency workers and the argument was that the employee was an agency worker.

The Court set out the provisions of Section 13 of the Unfair Dismissal (Amendment) Act 1993 which has the effect that in any proceedings under the Unfair Dismissal Acts an agency worker is deemed to be an employee of the hirer as opposed to an employment agency. The fact that the employee may be paid by the employment agency is irrelevant. It is the hirer of the agency worker who is the employer for the purposes of the Act of 1993.

The Court pointed out that the Protection of Employment (Temporary Agency Work) Act 2012 does not amend that provision.

The Court pointed out that despite the fact that the employment agency is deemed to be the employer for the purposes of the 2012 Act it remains the case that where an agency worker's assignment is terminated his or her remedy for Unfair Dismissal (if any) will be against the hirer, not the employment agency.

In this case the Labour Court held that the employee was not an agency worker and therefore the claim could proceed.

It is entirely unsatisfactory in our view, and we will point out that the Labour Court made no comment in relation to this that you will have an individual who is deemed to be an employee under one piece of legislation of a particular company or entity and an entirely different company or entity for a different piece of legislation.

For example, an employee who is employed as an agency worker who is hired out to the end user as it is sometimes referred to will have a situation that claims for wages under the Payment of Wages Act or under the Terms of Employment (Information) Act or under the Organisation of Working Time Act 1997 will all be against the recruitment company. However, an Unfair Dismissal claim will be against the company to whom the agency worker is hired to.

The regularly causes problems and it is one that really needs to be addressed by the Government.

It is a reason why employees particularly need legal representation at times. It is difficult to comprehend how an unrepresented individual would understand that their claim in those circumstances for Unfair Dismissal goes against the hirer and not the entity who pays their salary or wage.

**\*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 proportion or percentage of any award or settlement.**