EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	CASE NO.
Employee	TE125/2008

against the recommendation of the Rights Commissioner in the case of:

Employer

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. L. Tobin
Ms. A. Moore

heard this appeal in Dublin on 30 January 2009

Representation:

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Appellant(s):
Mr. Richard Grogan, Richard Grogan & Associates,
Solicitors, 16/17 College Green, Dublin 2

Respondent(s):
Mr. Alastair Purdy, Purdy Legal, Solicitors, New Docks, Lough Atalia, Galway

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an appeal against Rights Commissioner Recommendation R-051558-TE-07/RG.

Section 3 (1) of the Terms of Employment (Information) Act, 1994, provides that an employer shall, not later than two months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing containing particulars of the terms of the employee's employment. The first such term was that the contract had to specify the full names of the employer and the employee.

The appellant's representative submitted that the respondent was not in compliance with the above section because the appellant's employer had been a man hereafter referred to as PC but the appellant's contract had stated the employer to be a registered business name hereafter referred to as CB. The representative added that CB was not a legal entity and that the appellant had had to do

a search.

The appellant's representative said that there was a handbook in the name of a limited company (hereafter referred to as NTB) and that this limited company was not the appellant's employer.. It was submitted that an employee (especially the appellant who was a non-national) had had a right to know who his employer was and who to complain against but that he was never told.

The appellant's representative stated that NTB was where the appellant had been working and that PC operated an unregistered employment agency providing staff to NTB. The representative added that the appellant had had no particulars of PC and that, without hearing who his employer was, the appellant had had no chance of claiming. It was submitted that CB was just a registered business name and that s.3 of the Act was a minimum requirement.

When it was put to the appellant's representative that s.3 of the Act referred to "an employer" and not a legal entity, he replied: "Anybody could put in any name they like then." When it was put to him that this left it open for scope he replied that CB was not a legal entity, that a registered business name did not have legal personality and that the named employer had to be a company or some legal entity.

The representative submitted that if the appellant were to claim unfair dismissal against CB the claim could fail because CB was not a legal entity. It was put to him that the Employment Appeals Tribunal had had cases in which it had to go through the whole case to find out who the employer was. The representative replied that a terms of employment claim had been brought to a rights commissioner and that it was "only on the second occasion" that it was revealed who the employer was. It was submitted that, in the absence of a legal name, s.3 had not been complied with.

It was put to the representative that, even if he was technically correct, any defect was cured by the fact that the appellant had found out who his employer was. The representative replied that this had to be provided within two months, that the defect had not been cured in 2008, that the Act set the minimum requirements to be complied with, that there was no provision to extend the two months and that there was an entitlement to the information within the stipulated two months.

Further questioned, the appellant's representative stated that he represented a large number of non-nationals and that the most common problem he had was with the name of the employer. He added that the appellant had had to do a company search to find out who his employer was and that the appellant should not have had to do that. He argued that this was old legislation, that s.3 was a minimum requirement and that an employee must be told who his employer is.

Asked where was the appellant's loss, the representative replied that the appellant had had to get a legal representative to find out his employer was i.e. that it was PC and that it had been necessary to find out who to sue. When it was put to him that this had been known from the first day when PC had signed, he replied that there was a handbook which referred to NTB (the abovementioned company) and that it had been necessary "to use the Revenue Commissioners".

The appellant's representative contended that there was an entitlement to a statement that PC did not comply and that the amount of compensation was in the hands of the Tribunal. He added that, if the Tribunal had this problem every day, there was no excuse for it.

In response, the respondent's representative said that the purpose of the legislation (amending sections 9 and 10 of the Minimum Notice and Terms of Employment Act, 1973,) was to try to get employers to provide minimum terms and conditions of employment.

Attempting to summarise the appellant's case, the respondent's representative said that it had been argued that the respondent was in breach of the legislation if he got anything wrong e.g. if the respondent made a mistake as to an employee's rate of pay and did not correct it within two months, this could give rise to a penalty. The respondent's representative doubted that this had been the purpose of the legislation.

It was further pleaded that the definition of an employer is the person who pays the wage. It was rhetorically asked, if company X was paying wages, if the use of X (Ireland) on the written terms of employment should qualify an employee for compensation.

The respondent's representative submitted that PC had signed documentation for the appellant and that PC was the employer.

The appellant's representative countered that the documentation had said that the employer was CB, that the legislation had been brought in for the protection of workers and that "unfortunately, there is no out". He added that the legislation contained the word "shall", that it was therefore mandatory and that it was a serious issue if this could be diluted in any way. He summarised by saying that an employer should be obliged to do what an employer is obliged to do.

Asked if he was saying this was a strict liability offence, the appellant's representative agreed.

Asked to say how much the companies registration office search had cost, the appellant's representative replied: "About €11.65."

The respondent's representative contended that there was no evidence that the abovementioned companies registration search was needed for the claim. He submitted that the matter was "sorted" by the fact that PC's name was on the contract, that there was no penalty per se for non-compliance and that no significant award should be made against the respondent.

Determination:

The Tribunal upholds Rights Commissioner Recommendation R-051558-TE-07/RG that the complaint is not well-founded. The appeal under the Terms of Employment (Information) Acts, 1994 and 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)