

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD36/2011  
MN39/2011  
WT15/2011

against  
EMPLOYER *-respondent*  
EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.

Members: Mr G. Andrews  
Mr O. Wills

heard this claim at Tralee on 2nd August 2012

#### **Representation:**

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Claimant:  
Respondent:

#### **Preliminary Issue**

##### **Respondent:**

The claimant initially worked in KP Hotel before he was transferred to KA Hotel. The Contract of Employment states the 'Hotel Group' as his employer and names various hotels (including KA and KP Hotel) as places of employment within the Hotel Group. The respondent has a signed copy of the claimant's contract. The payslips show a further (and correct) company as his employer; 'C ltd'.

The respondent submits that as the correct legal entity was not named on the T1A and as such the Tribunal have no jurisdiction to hear the claim. Section 39 of the Organisation of Working Time Act, 1997 states;

'(4) If an employee wishes to pursue against a person a claim for relief in respect of any matter under an enactment referred to in *subsection (2)*, or the Table thereto, and has already instituted

proceedings under that enactment in respect of that matter, being proceedings in which the said person has not been given an opportunity to be heard and—

(a) the fact of the said person not having been given an opportunity to be heard in those proceedings was due to the respondent's name in those proceedings or any other particular necessary to identify the respondent having been incorrectly stated in the notice or other process by which the proceedings were instituted, and

(b) the said misstatement was due to inadvertence,'

The respondent maintains that the above section does not apply as the claimant had 'proper and adequate' opportunity to rectify the mistake and accepts that he saw the correct employer name on his payslips.

### **Claimant:**

The claimant completed the T1A with the aid of his union representative. He named the HR Manager (OM) and the hotel he worked in (KA) Hotel, as his employers. The claimant accepts that C limited was on the payslips. He did not receive a Contract of Employment only a staffhandbook. The claimant's work permits state KP Hotel as his employer for the duration of his employment.

The claimant had sight of the T2 for the first time at the hearing. The T2 states that the wrong employer is named but does not amend it to the correct legal entity. The respondent would not be prejudiced by amending the name and are on notice as established by their appearance at the hearing.

### **Majority Decision**

The Tribunal find by majority decision (with Mr Wills dissenting) that the Tribunal does not have jurisdiction to hear this claim. Consequently the claims under the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 are dismissed.

### **Dissenting Opinion of Mr Wills**

As a preliminary matter the respondents put it to the Tribunal that 'the T1A form submitted by the applicant was invalid in that it does not correctly set out the legal identity of his employers'. The respondent put it that the applicant commenced work with the (OD) Hotel Group in the (KP) Hotel in 2002 and later transferred to the (KA) Hotel in 2006.

The respondent also stated that the employers contacted the Department of Enterprise Trade and Employment (re: work permits) and briefed them of the situation, to which the respondent was advised that 'as the applicant continued to work for the (OD) Hotel Group in an associated hotel, there was no requirement to amend the work permit(s) issuing.'

The applicant accepted in evidence that he had received the pay slip (2/6/2006) on which (C) Ltd. was printed. In response the applicant accepted that 'OM' was an incorrect entity but contended to their knowledge (KA) Hotel was the employer, also the applicant requested if required that the T1A would be amended given that no record of (C) Ltd. existed until the

hearing. The applicant also contended that the respondent did not, as obliged on the T2 form give the employer's correct legal name. The respondent refused to an amendment of the T1A.

Considering on all the evidence, documentation and matters raised I concluded that the preliminary application was not proven and should fall for the following reasons (inter alia):

- \* All Work Permits from 2002 to date of dismissal 2010 stated the applicant's employer as (KP) Hotel
- \* In 2006 the Department of Enterprise Trade and Employment confirmed that the Work Permits covered all entities within the (OD) Hotel Group (KT Hotel, KA Hotel, KP Hotel and RI Hotel.)
- \* All contracts of employment submitted by the respondent contained the KA Hotel as the employer.
- \*The KA Hotel is registered with the CRO as a legal entity.
- \* The pay slip submitted did not identify 'C Ltd.' as an employer.
- \*The respondent did not identify 'C Ltd.' as the correct legal employer as required on the statutory form T2.
- \* The respondent was on notice as established by their appearance at the hearing.
- \* The respondent would not be prejudiced by allowing the case proceed or amending the T1A as suggested by the applicant.

Therefore I am convinced that while that 'OM' was an incorrect legal entity KA Hotel was the correct legal name of the applicant's employer.

### **Determination**

Having heard the evidence and listened to submissions made by both parties the Tribunal by way of majority find as follows;

The claimant makes an application to amend the T1A to insert C Limited as the correct employer, relying on section 39 of the Organisation of Working Time Act 1997.

On the face of the T1A the entity sued in these proceedings is not the employer of the claimant.

The majority are satisfied that the correct identity of the employer could have easily and simply been established by reference to easily and readily available documentation, or a company registration office search, and the correct entity put on notice of the claim.

The majority acknowledge that section 39 of the Organisation of Working Time Act 1997 gives certain scope to the Tribunal to allow for an application to be made to the Tribunal for amendment of the name of the employer. Such power is qualified quite significantly in section 39(4) b of such section noting that there must be inadvertence on the part of the relying party, to justify the making of an amendment. The word inadvertence is the qualifier in these circumstances, meaning an accident or oversight.

The majority are satisfied that there was no inadvertence in this matter. In evidence the claimant stated he had his payslips which clearly state his employer as C Limited, before the T1A was

completed. Clearly the T2 submitted highlighted the issue. This was dated 24/8/11, and thereafter the claimant and his representative were on notice that there was an error on their part. Further the majority are satisfied that the correct employer was on the claimants payslip, and that the claimant had trade union representation since 2010 when he was suspended, and whom acted for him at all material times.

At all times on examination of the evidence of the correct employer that was in the possession of the claimant and his representatives it was clear that the actual employer was identifiable.

Therefore the majority are satisfied that the claim fails as on the evidence presented the claimant brought the claim against the wrong entity and in light of the above we are satisfied that the claimant cannot benefit from section 39 of the Organisation of Working Time Act 1997 in these circumstances.

Consequently the claims under the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)