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NEWS REPORT

Country:	Ireland
Title:	<i>Wach v Travelodge Management Company Limited</i>
Date:	6 January 2017
Expert:	Frances Meenan
Update of flash report nr:	12-IE-GE-2016-Workplace Relations Act 2015
<u>Context</u>	
Issue at stake:	Jurisdiction – employer incorrectly identified
Ground of discrimination:	Sex
Source:	National court decision
Field:	Other
Applicable law:	Employment Equality Act 1998 (as amended)

Content

Case development: The claimant initially brought a claim to the Equality Tribunal; the claim was not defended due to inadvertence by the respondent. The claimant was awarded EUR 63 000. The decision was appealed to the Labour Court by Travelodge Management Limited. There was a cross-appeal where the claimant wished to amend the name of the respondent.

The net issue was that the respondent contended that the claimant named the wrong respondent as her employer. The respondent stated that the claimant was employed by Smorgs (Ireland) Limited. The business of Smorgs (Ireland) Limited was subsequently transferred to Smorgs ROI Management Limited and the claimant's employment was transferred to that company pursuant to the European Communities Protection of Employees (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) (Directive 2001/23). The company carried on business under the registered business name of 'Travelodge'. The claimant's representative before the Labour Court stated that all the documentation given to her in respect of her employment by her employer was 'Travelodge' or 'Travel Lodge'. Then following a search of the Companies Registration Office, there was a company named Travelodge Management Limited and it was presumed that this was the correct legal identity of her employer. Indeed, the claimant had brought a previous claim under different legislation which was settled and 'Travelodge Management Limited' was the employer named in the settlement agreement that was signed by both parties.

The Labour Court commented that the claimant named the wrong respondent and that it was a bona fide mistake. The Court also noted that the respondent did not respond to the claim for some 30 months. The Court could not substitute the name of the correct employer as the time limit for bringing a claim had expired. Further it was not appropriate to exercise a discretion to substitute a party to the proceedings when the limitation period had expired as against the respondent. The Court also relied on *Levez v TH Jennings (Harlow Pools) Ltd*. Case C-326/96 [1998] ECR I-7835 (at para. 18) and

IMPACT v Minister for Agriculture and Food Case C-268/06 [2008] ELR 181 (at para. 46) that the well-established principle of equivalence requires that the detailed procedural rules governing actions for safeguarding an individual's rights under Community law must be no less favourable than those governing similar domestic actions. The Court could not substitute Smorgs (Ireland) Limited or Smorgs ROI Management Limited for the named respondent.

Key points of analysis: Such a result is tragic for any claimant. It is regrettable that there was some 30 months between the initiation of the claim and the hearing of the appeal; such delay meant that the claimant could not amend the claim within the statutory six-month time limit (which may be extended by a further six months). The respondent did not attend before the Equality Tribunal so there clearly was a delay in the defense to the case. What is regrettable is that if there were formal pleadings before the Equality Tribunal or the Labour Court (except for the claim form) then there would have been a defence which would have stated that there was a jurisdictional issue.

There was no evidence of any documentation such as a contract of employment or statement of terms and conditions of employment or pay statement, for example. There was evidence of a transfer of a business yet again there was no evidence of any information to employees in relation thereto. Where there is doubt as to the name of the employer, a claim can be made under the Terms of Employment (Information) Act 1994 which transposed Directive 91/533.

Internet link source:

<https://www.workplacerelations.ie/en/Cases/2015/July/FDA1511.html>, accessed 21 December 2016.