Judgment Title: Kastrup Trae-Aluvinduet A/S -v- Aluwood Concepts Ltd

Neutral Citation: [2009] IEHC 577

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Judgment by: Mac Menamin J.

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THE HIGH COURT
2009 169 MCA

IN THE MATTER OF THE ARBITRATION ACTS 1954 – 1998

AND IN THE MATTER OF THE NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS 1958

AND SECTION 7 OF THE ARBITRATION ACT 1980

AND IN THE MATTER OF AN ARBITRATION

BETWEEN

KASTRUP TRAE-ALUVINDUET A/S
APPLICANT
AND

ALUWOOD CONCEPTS LTD.
RESPONDENT

JUDGEMENT of Mr. Justice John MacMenamin dated the 13th day of November, 2009.

1. In this application the applicant ("Kastrup") seeks:

(i) An order pursuant to s. 7 of the Arbitration Act 1980 and s. 41 of the Arbitration Act 1954 enforcing the award of the Danish Arbitration Board for the Construction Industry dated 21st April, 2009, in this State in the same manner as if the said award was a judgment or order of this Honourable Court to identical effect;

(ii) Judgment in the sum of DKK904,063.93, together with DKK48,837.98 for legal costs, DKK44,308 for costs related to the arbitration tribunal in conducting proceedings, and DKK10,731.24 for costs of translation;

(iii) Interest on the principal sum of DKK759,249.27 from the 2nd December, 2008, was at the rate of 1.8% per month or part thereof, to the date of payment.

Factual background

2. The applicant is a limited company registered in Denmark. The respondent carries on the business of supplying Scandinavian window and door products having its registered office in Co. Waterford. Prior to the matters in suit the applicant and the respondent had an ongoing business relationship. The applicant supplied the respondent with Scandinavian doors and windows. These were transported to Ireland and used in developments by the respondent. This relationship operated on the basis of individual contracts between the parties for individual jobs being undertaken by the respondent. The plaintiff says all of these individual contracts were governed by a set of "Common Terms and Conditions of Sale".

3. The said terms and conditions of sale contained at paragraph 11, a "Disputes" section which reads as follows:

"Submissions of question concerning the delivery for the opinion of experts appointed by the court must follow the rules of the General Conditions of 1992 for Works and Supplies in the Building and Construction Industry ("Almindelige Betingelser for Arbejde og Leverancer i. Bygge-og Anaegsvirksomhed 1992 )(AB 92) (S. 45).

Disputes between parties falling under AB 92, s. 22, subs. 14 shall be settled in

accordance with AB 92, s. 46.

Disputes shall reach a final settlement at the Danish Court of Arbitration for the Building and Construction Industry, cf. the general conditions for works and supplies in the building and construction industry of 1992 (AB 92) 0, s. 47."

4. The manner of alleged incorporation of this term into the contractual relationship is outlined later in this judgment. The business between the plaintiff and the defendant initiated in 2006 continued over a period of several years. It was substantial, amounting to hundreds of thousands of euro per annum. In 2008 disputes as to payment arose between the applicant and the respondent company. On 15th August, 2008, Danish solicitors acting for the applicant wrote to the respondent outlining the level of unpaid invoices which were owing at that time and requesting payment. These invoices totalled DKK945,372.06.

5. Aluwood had previously purported to raise a number of complaints of alleged defects in the product supplied by the applicant. By this the respondents sought to justify a refusal to pay for the goods in full. On 9th July 2008, Aluwood objected that the account furnished by Kastrup did not take into account a number of "contra-charges". Kastrup wrote saying "we will have a look at your list and relate to which of your charges according to your terms and conditions of sale". The applicant's solicitor noted these matters in correspondence, but went on to indicate that if a payment of the outstanding balance was not received within ten days of the receipt of a letter of final demand the applicant would initiate legal proceedings pursuant to "article 11 of the applicant's common terms and conditions of sale".

6. The respondent did not reply to that letter. Specifically, Aluwood raised no question at that time regarding any reference to the common conditions of sale. The applicant's solicitors initiated arbitration proceedings in Denmark.

7. While Aluwood contends that it was not on notice of any such terms and conditions from the commencement of the trading relationship, I find this is not so. In fact, in a letter of 18th August, 2006, which commenced the commercial relationship, Kastrup indicated that the basis of such business relationship would inter alia be in accordance with "1. common sales and delivery conditions of VI (VI: The organisation of Danish window producers)". This same reference was repeated in a confirmation of the order of 24th August, 2006. The plaintiff and the defendant were both substantially engaged in a common course of commerce. Aluwood was in no way a simple "consumer" with such rights as a consumer might enjoy. It is a near universal practice in this type of trade that contractual or commercial relationships would be subject to some form of arbitration clause. It cannot be said that the existence of such a clause came as a "bolt from the blue" insofar as the respondent was concerned. If it was, this point was not raised in any correspondence then.

8. On 3rd September, 2008, Kastrup's lawyers sent a copy of the particularised invoice outlining the principal debt to the respondent firm. On 6th November, 2008, they wrote to Aluwood's Irish solicitors indicating that arbitration proceedings had been initiated against the respondent on 3rd September at the Danish Arbitration Institute, in accordance with Kastrup's

"Common Terms and Conditions of Sale" which had been agreed between the parties. In that letter Kastrup's solicitor indicated that the deadline for filing a defence had been postponed three times from 2nd October, 2008, to 27th October, 2008, and finally to 6th November, 2008.

9. The respondent's solicitors contacted Kastrup's lawyers by way of email on the same date (6th November, 2008). No defence to the claim had yet been filed. Messrs. Hallys, Aluwood's solicitors were informed that absent a defence, the Danish Arbitration Institute would issue its verdict solely on Kastrup's statement of claim. Aluwood were informed that such a verdict would be final and directly enforceable against the respondent in Ireland.

10. On 11th November, 2008, Messrs. Hallys objected to the fact that the statement of claim in the Danish arbitration had been provided to Aluwood in the Danish language, and that their client's proprietor, Mr. Brennan did not speak that language. In another letter of the same date, they sought details of the claim in English, and also looked for details of the common terms and conditions of sale, with evidence that these had been agreed between the parties. They wrote to similar effect to the Danish Arbitration Institute. On 13th November, 2008, Mr. Hally of that firm wrote again to Kastrup's lawyers, repeating that neither he nor his clients spoke Danish, although it was clear that Mr. Dahl, Kastrup's lawyer spoke English. He again sought copies of the terms and conditions of sale. He denied that his client was bound by the conditions or by any arbitration in Denmark. But this denial of the binding nature of the conditions was not particularised

11. Mr. Hally was contacted by the Institute, informing him that the language of the case was Danish, that his client should find an interpreter, and that it would be advisable to hire a Danish solicitor who could act on behalf of his client. This was reasonable advice. On 19th December, 2008, he contacted the Institute indicating that he had been in touch with a Danish solicitor and had asked for his client to be advised in relation to the matter. On 23rd December, 2008, Mr. Hally wrote to Mr. Brennan again pressing his client for instructions in relation to the claim. He said:

"Would you please let us have your instructions in relation to both matters as soon as possible, bearing in mind that if something is not done pretty quickly the claim will be dealt with without reference to any representations on your part."

This was not only fair warning – it also shows the defendants own understanding of the procedural situation. It also shows Mr. Hally had not received any substantive instructions in the matter even by late December, 2008.

12. The Institute yet again extended the time for Aluwood to submit a statement of response. It could not have been fairer. It was indicated that such response should be filed by 16th January, 2009. This was, at minimum, the fourth extension of time. Furthermore the defendant was yet again informed should it fail to respond within that time limit, the case would be decided on the basis of the claim which had been furnished already by Kastrup.

13. For financial reasons Aluwood did not consider itself in a position to retain either a Danish lawyer or even a Danish translator. The fees requested by the Danish lawyer were entirely

reasonable. There is no evidence as to the cost of a translator. I can only assume there was no serious effort made to obtain one. If there was, I would have expected there to be evidence on this point. This was a matter in the defendant's hands entirely. Instead, on 2nd February, 2009, Mr. Brennan, the respondent's proprietor contacted the Institute indicating that it would not be attending the hearing for the alleged reason that it was being "held in Denmark and not Ireland". He furnished written details of Aluwood's counterclaims, stated that this work had been in Ireland, but gave no other reason why the arbitration should be in Ireland rather than Denmark.

14. Mr. Brennan wrote in this letter that his firm could not afford the retainer fee for a Danish solicitor. He indicated that the level of business between his firm and Kastrup had amounted to €840,000 over the period. Finally, he wrote that Aluwood would not be attending any hearing in Denmark but would certainly appear at a hearing in Ireland "if we are still in business". The impression this letter conveys is a great deal more eloquent about the defendant's situation than any mere words.

15. On 12th March, 2009, Aluwood were provided with a copy of the applicant's claim in Danish. Mr. Hally had repeatedly complained that the "claim" was in Danish. Mr. Dahl indicated that unless directed by the Arbitration Board he would not furnish the pleadings in English, as the language of the Arbitration was Danish.

16. On the 26th March, 2009, the Institute contacted Aluwood by letter. It indicated that the Chairman of the Tribunal, a High Court judge in Denmark, had made the following rulings:

a) That the procedural language for the Arbitration would be Danish;

b) That for this reason the claimant would not be ordered to translate its pleading or any other exhibit into English;

c) That for the same reason the hearing would be in Danish; and

d) If a party wished to have an interpreter present during that hearing they should make arrangements for that purpose.

The arbitral hearing and a later challenge to jurisdiction

17. The hearing of the Arbitration was fixed for 7th April, 2009, a fact well known to Aluwood. The previous evening, at 17.31 Messrs. Hallys wrote by email on 6th April, 2009, to the Institute. Only then did they raise a point that the respondent had never submitted to the Danish Arbitration Board having jurisdiction to deal with the dispute. They also contended that there was no evidence in any documentation to show that both parties had agreed to submit to arbitration as would be required under article 1 of the 2006 Rules. They suggested that there was no evidence that there had been a defined legal relationship between the parties. They said that while the claim was being made by Kastrup, in fact the debt had been assigned to another firm who had no interest in the debt. On this basis, Mr. Hally submitted that the Arbitration Board had no jurisdiction to deal with this issue. These were all purely technical points raised far too late in

the day.

18. Unsurprisingly, the Danish Arbitration Board for the Construction Industry did not accept any of these very late written submissions. It proceeded to make an award after the hearing, which award was made in Copenhagen on 20th April, 2009.

The defendants first lines of defence: not an "award"

19. The first issues for determination are whether (i) there was an "award" made pursuant to an arbitration agreement, which (ii) does not come within any of the exceptions where a court might refuse to enforce under the New York Convention 1958 (identified in the Arbitration Act 1980).

20. Aluwood accept that if the award sought to be enforced is an "award" within the meaning of s. 6 (1) of the 1980 Act, the Court is obliged by the provisions of that Act to recognise and enforce the award, unless they establish one or more grounds upon which the Court might be entitled to refuse to enforce such award.

21. Section 9 of the Arbitration Act 1980 sets out the grounds upon which a court might refuse to enforce such an award. The burden of establishing such an award rests upon the party who opposes enforcement. The respondent accepts that enforcement of an award should not be refused by a court otherwise than pursuant to the grounds as set out in s. 9 of the Act of 1980. These grounds are exhaustive and the Court must recognise and enforce the award unless the party opposing enforcement does not prove that one or more of those grounds actually apply.

22. In brief such grounds of opposition may be summarised as:

(a) incapacity of a party;

(b) invalidity of the arbitration agreement under the law of the country or the party subject to it;

(c) absence of proper notice of the appointment of the arbitrator;

(d) an award deals with the difference not contemplated by or falling within the terms of the arbitration;

(e) the composition of the arbitral authority or the procedure adopted therein not being in accordance with the agreement of the parties or the law of the country where the arbitration took place;

(f) the award not yet being binding on the parties or had been set aside or suspended;

(g) the award being in respect of a matter not capable of settlement by arbitration under the law of the state or where it would be contrary to public policy to enforce the award;

(h) any matter which although part of the award was not actually submitted to arbitration. Essentially therefore the grounds are confined to issues of fair procedure, or matters going to jurisdiction or the law of the State where enforcement is sought.

23. The respondent says that the evidence before this Court establishes that there was never any binding arbitration agreement in place between the parties and therefore the award was not made in pursuance of an arbitration agreement. Counsel says the applicant did not draw the respondent's attention to the existence of the contents of the "Common Terms and Conditions" that contain the arbitration clause. It is suggested further that the first time the respondent became aware of these conditions was on 9th July, 2008 when the applicant sent the email to the respondent stating that the respondent's list of contra charges would have to be assessed "in accordance with" these conditions. It is said the respondent did not agree to a contractual relationship between the parties being governed by common terms and conditions, and, that the conditions were never incorporated into any of the individual contracts between the parties. In particular, it is said that the parties had not submitted or agreed to the general conditions of the agreement of 10th December, 1992. I reject this submission as a matter of fact and law.

24. In Cremer (Peter) GMBH v. Co-Operative Molasses Traders Ltd. [1985] ILRM 564 the respondent opposed an application for an order enforcing a foreign arbitral award pursuant to the Act of 1980 on the basis that there was no binding contract in existence between the parties and therefore no binding arbitration agreement.

25. I accept the simple point that, in order for there to be an "award" contained in s. 6.1 of the 1980 Act, a court must be satisfied that the document or decision sought to be enforced is, within the meaning of that Act, an "award" made in pursuance of an arbitration agreement under the Act. In such a determination the court should not rely on any decision reached by the arbitral authority. The court is not debarred from reaching a decision on that issue by reason of the existence in the award of a decision by the arbitral authority that an arbitration agreement was in existence (per Finlay C.J. in Cremer).

26. In approaching this issue the following facts are material. I find both the applicant's initial quotation to the respondent dated 18th August, 2006 and the order confirmation dated 24th August, 2006, both referred to the common terms. On the initial quotation there is written next to the word "basis"; a specific reference to the "Common Sales and Delivery Conditions" of VI, the organisation of Danish window producers. The organisation of Danish window producers are called "Vindues Industrien in Danish, hence "VI".

27. The height of the respondent's case appears to lie in the contention that his attention was not specifically drawn to the existence or content of these terms and conditions. Aluwood says that it did not receive the "general conditions" being the Danish provision for the form of arbitration set out in the applicant's common terms.

28. I am unable to accept the respondent's submission in this regard. On the plain face of the correspondence the common terms were incorporated into the contract. It does not lie with the respondent to now assert that these terms did not form part of the agreement. The objection

which the respondents make came at a very late date. Had there been any suggestion that these terms and conditions came as a real surprise, one would have expected an early objection to have been made. The respondent is not the situation of an ordinary consumer. Both the applicant and the respondent were involved in a trading relationship where arbitration agreements of this type are very prevalent if not universal. In fact there is no direct evidence at all before this Court that the respondent was not on notice of these general conditions as the affidavit averment to that effect is made not by Mr. Brennan, the respondent's proprietor but by his solicitor. This is hearsay and goes to weight. I prefer the plaintiff's evidence. Had there been a real evidential issue on this point one would have expected that the best evidence would have been adduced – that is Mr. Brennan's own averment that he was unaware of any general conditions of this type. There is no such evidence. On any basis however, I prefer the evidence of the applicants that the respondent must be taken to have been aware of these general conditions. As a matter of law moreover I consider that the respondent must be taken to have been on notice of the conditions.

29. In Sweeney v. Mulcahy [1993] I.L.R.M. 289 the plaintiff engaged the defendant to carry out renovations on his house. The defendant wrote to the plaintiff stating that the conditions of engagement and the scale of minimum charges laid down by the Royal Institute of Architects of Ireland (R.I.A.I) would apply. The defendant did not send a copy of the conditions of the R.I.A.I. to the plaintiff but stated that a copy of them was available on request. The plaintiff did not formally acknowledge the letter in writing but the parties met again and continued with the project. O'Hanlon J. pointed out that there may have been an explanation as to why the plaintiff did not ask for a copy of these conditions. This was on the basis that another architect had been retained by the plaintiff and her husband in relation to the same or a similar project previously and had then provided them with a copy of the conditions of engagement and scale of minimum charges.

30. In this case the respondent was informed in the first letter as to the existence of the conditions. It was open to Aluwood to seek copies of these conditions but they did not do so.

31. O'Hanlon J. observed in Sweeney;

"Having regard to the foregoing facts I am of opinion that the agreement between the plaintiff and the defendant must be regarded as incorporating the R.I.A.I. Conditions of Engagement and Scale of Minimum Charges as this was expressly put forward by the defendant at the outset as the basis upon which she was prepared to act as architect in the matter, and the plaintiff allowed the work to proceed thereafter without expressing any dissent."

32. In Holfeld Plastics Ltd. v. ISAP Omv Group Spa [1999] IEHC 24, Geoghegan J. considered whether the plaintiff was bound by an exclusive jurisdiction clause in the defendant's standard terms. For the purposes of the "notice", the principle engaged in this case, I do not think that there is a substantive difference between exclusive jurisdiction clauses, conditions of engagement setting out minimum charges, or arbitration clauses. In Holfeld the terms had been referred to and appended to the defendant's initial quotation but the plaintiff contended it had not read them at the time the agreement was reached. Geoghegan J. stated at p. 4 of his judgment:

"If it was simply a matter of interpreting the contract in accordance with Irish law, I

would have no hesitation in holding in favour of the defendant. These are two commercial companies dealing at arm's length, and a company such as the plaintiff should expect supplier companies such as the defendant to annex to all its sales its own terms and conditions. Both quotations made it expressly clear that those conditions were to apply and on any reasonably careful reading of them the plaintiff would have been on notice of the exclusive jurisdiction clause."

I consider this observation is particularly apropos in the current case.

33. In Stryker Corporation v. Sulzer Metco AG [2006] IEHC 60 O'Neill J. also had to determine whether the defendant's standard terms and conditions had been incorporated into the agreement between the parties in circumstances where those standard terms contained an exclusive jurisdiction clause for the purposes of article 17 of the Lugano Convention. He found:

"It is clear in my view … that the necessary agreement may be inferred even in the absence of proof of actual agreement where the circumstances are such as to demonstrate that in the commercial context in which the agreement exists, the existence of that consensus or agreement is in those circumstances a probability rather than otherwise. Thus as was demonstrated in the Holfeld case agreement was inferred even though it was contended that the general conditions had never been read and hence not agreed to but where these general conditions were expressly referred to on the face of the contract."

34. Applying these principles to the instant case, I take the view that even looking at the situation "in the round" (the test proposed by the respondent), I would be prepared to make similar inferences as those made in Sweeney, Holfeld and Stryker. On the balance of probability I find that this term formed part of the agreement for the reasons outlined.

35. I am fortified in this finding by the observation made in Credit Suisse Financial Products v. Societe Generale d'Enterprises [1997] I.L.P.T. 165 C A. There the Court of Appeal of England and Wales held that where the text of the contract contains an express reference to the relevant conditions, the fact that the other party does not have a copy of these is irrelevant.

36. The parties entered into a written contract which stipulated that it was to "supplement, form part of, and be subject to," the 1992 International Swaps and Derivatives Association Master Agreement. This included a jurisdiction clause conferring jurisdiction on the English courts. Credit Suisse commenced proceedings in England relying on the jurisdiction clause. The defendant contested jurisdiction on the basis that the formal requirements of article 17 had not been met. In the High Court the judge had found that, since the defendant did not have a copy of the Master Agreement in his possession and readily available to it, the incorporation of that Agreement containing the jurisdiction clause was insufficient to bring the case within the article. All three judges in the Court of Appeal disagreed. Saville L.J. (as he then was) gave the only judgment holding:

"To my mind the question is simply whether the express reference in the written contract in the present case amounts to a clear and precise demonstration that the clause conferring jurisdiction was the subject of consensus between the parties."

He continued:

"I have no doubt at all that it does. It seems to me that there is nothing in the (European Case law) which begins to suggest that where in the written contract itself there is an express incorporation by reference of other written terms, no consensus is established unless the profferee signing the contract has been supplied with a copy of those terms, or as the judge put it, he has 'a copy of those conditions in his possession and readily available to him'".

Saville L.J. later concluded:

"It seems to me to be clear from the judgment in Slotti that the court considered that a 'guarantee' of real consent does exist where there is an express reference in the written contract itself by way of incorporation of other written terms which include a clause in conferring jurisdiction. Indeed given such an express reference, it seems to me self-evident that the profferee of the written contract, by signing without reservation, has agreed in writing the incorporated terms (and thus the clause conferring jurisdiction) for the simple reason that the very words of the signed written contract itself are to that effect. To my mind the fact the profferee did not have a copy of the Master Agreement in his possession and readily available to him or, as he said in his affidavit, that he thought the reference to the Master Agreement was a 'standing clause'(whatever that may mean) is neither here nor there; for in truth (the profferee) by signing the confirmation, did agree in writing that the terms of the Master Agreement formed part of the contract he was making."

37. The principle applied by the Court of Appeal also applies with equal force to the situation here where the respondent firm traded extensively on foot of the conditions for a period of up to eighteen months prior to raising this point at a late hour. I therefore reject the respondent's submission. I hold that the award is enforceable as a matter of Irish law.

The second issue – "unfair procedure" in the arbitration

38. It remains then to deal with the one outstanding issue of "fair procedures". Under this general heading the respondent makes three complaints. These are:

(1) that it was deprived of the opportunity to file a defence;

(2) that the Danish Arbitration Board wrongly refused to direct an English translation of the pleadings submitted by the applicant in March 12th, 2009;

(3) that the same arbitration board wrongly refused to consider the submissions of the respondent when making its award.

39. The first two complaints hinge entirely around a generalised complaint that the arbitration was conducted through the Danish language. I reject them. The undisputable facts show that the respondent was furnished with all necessary documents to meet the claim being made in sufficient time to deal with it, if Aluwood wished to do so. The fact that the documents were not furnished with an English translation is not contested. The applicant was not obliged to furnish translations. The respondent was at liberty to have all or any of the documents translated. These were by no means voluminous. In fact, there is no evidence that the respondent made any effort to have these documents translated at any time. It is not open to a respondent in

circumstances such as these, to bury its corporate head in the sand. In fact I infer it did not intend to participate in the arbitration at any time. The respondent informed the Arbitration Board to this effect on 2nd February, 2009. This happened after the respondent's solicitor had indicated in November/December 2008 he was waiting for a firm of Danish lawyers to revert to him in relation to possible representation. Mr. Brennan was well aware of the position by 23rd December, 2008. Ultimately the respondent decided not to take up appropriate representation in Denmark because it was not prepared to pay the retainer in order to protect its interests. It cannot be said that the financial retainer requested was inordinate. The defendant delayed throughout.

40. I was referred to two authorities said to support the plaintiff's case on "procedures". These were Brostrom Tankers v. Factorias Vulcano S.A. [2004] 2 I.R. 191 and Re Eurofood IFSC Ltd. [2004] 4 I.R. 370. However I consider that the facts outlined in those cases are so different as to have no materiality to the present case.

41. No legal authority from any jurisdiction has been cited to me to the effect that want of fair procedures would arise in circumstances where the failing in question might have been immediately remediable by the "aggrieved" party itself taking just the minimal steps required to protect its interests. Had the respondent wished to engage with the process it could have done so. The reason why it did not do so was not due to matters beyond its control. It was due to choice.

42. It was also submitted on behalf of the respondent that the Danish Arbitration Board had wrongly refused to consider the counterclaims of the respondent when making its award. I consider this submission is misconceived and also unsupported by the facts. The award clearly indicated that the Board considered the respondent's counter claims, made in correspondence, but simply found that they were not proven in evidence. The burden of proof for any claim in an arbitration made by the respondent is obviously on that respondent. The Arbitration Board simply stated that the respondent had not proved the claims. This was the fact. There was no evidence before the Board. Therefore the claim could not be allowed. The principle of "he who asserts must prove" is applicable. Furthermore, as is evident from the award, the written counterclaims were considered during the oral hearing as the applicant itself accepted two of the counterclaims, in fact even lowering its own claim because of these counterclaims – a matter mentioned directly in the arbitration award.

43. Finally, it is to be noted that there is an onus upon the party opposing enforcement to prove to the Court that it raised grounds upon which it resists enforcement at the earliest opportunity before the arbitral forum. (See the judgment of Colman J. in Minmetals Germany Gmbh v. Ferco Steel Ltd. [1999] All E.R. (Comm.) 315. In this case the lateness of all the "procedural" claims raised by the respondents before the Danish Arbitration Board speak for themselves. It was too late. The issue as to jurisdiction was raised at the eleventh minute of the eleventh hour on the evening prior to the arbitration itself. The point was devoid of merit. I would imagine the force of such a claim before the Arbitrator was in reverse ratio to its timeliness. The same observation is true here also. The respondent fails in its defences. The applicant is entitled to the relief it seeks.

URL: http://www.bailii.org/ie/cases/IEHC/2009/H577.html