APPROVED **[2021] IEHC 455**

THE HIGH COURT
JUDICIAL REVIEW

2019 No. 727 JR

BETWEEN

SABINA MURPHY

APPLICANT

AND

CHIEF APPEALS OFFICER
(SOCIAL WELFARE APPEALS OFFICE)
MINISTER FOR EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

RESPONDENTS

CÓRAS IOMPAIR ÉIREANN

NOTICE PARTY

JUDGMENT of Mr. Justice Garrett Simons delivered on 30 July 2021

INTRODUCTION

1. These proceedings concern the validity of a statutory appeal made pursuant to the Social Welfare Consolidation Act 2005. The appeal had been submitted to the chief appeals officer and thereafter referred to an appeals officer for determination. The applicant for judicial review maintains that the appeal is invalid in that it has been taken by the incorrect company within the Córas Iompair Éireann group of companies. It is said that an appeal could only validly have been brought by Córas Iompair Éireann trading as CIE

International Tours; whereas the appeal has, it is alleged, been brought by a foreign registered company known as Córas Iompair Éireann International Tours Inc.

2. The application for judicial review is opposed on the merits by both the decision-maker and the putative appellant. In addition, both raise preliminary objections to the effect that the judicial review proceedings are irregular. It is submitted that it is unnecessary, therefore, for the High Court to embark upon a consideration of the substance of the case.

3. The grounds for saying that the judicial review proceedings are irregular differ. The decision-maker contends that the proceedings are *premature* because no final decision has been made on the objection that the statutory appeal is invalid. By contrast, the appellant contends that the judicial review proceedings should be dismissed by reason of *delay*, as having been brought outside the three-month time limit prescribed under Order 84, rule 21 of the Rules of the Superior Courts.

DESCRIPTION OF THE PARTIES

4. The following shorthand will be used throughout this judgment to describe the parties. The applicant for judicial review, Ms Murphy, will be referred to as "***the applicant***". The respondents will be referred to as "***the chief appeals officer***" or simply "***the respondents***", as appropriate. The putative appellant, Córas Iompair Éireann, will be referred to as "***the employer/appellant***". It should be emphasised that this latter shorthand is being used for ease of exposition only, and does not imply any finding by the court on the disputed question of whether the appeal has been validly made by the putative appellant. Córas Iompair Éireann is a statutory corporation established under the Transport Act 1950.

5. It may also be helpful for the reader to keep in mind that each side accuses the other of a procedural misstep. The applicant insists that the statutory appeal under the social

welfare legislation is invalid; and the other parties insist that these judicial review proceedings, which seek to challenge the acceptance of the appeal, are themselves irregular.

LEGISLATIVE REGIME

6. The application for judicial review is opposed on the grounds that it is at once too early and too late. In order to understand this paradox, it is necessary to consider the statutory regime governing appeals of this type.

7. The underlying dispute between the parties concerns the question of whether the applicant had been engaged in "insurable employment" for the purpose of the social welfare legislation. The resolution of this dispute required a determination as to whether the applicant was employed as a tour guide under a contract of service, or, alternatively, was self-employed and providing tour guiding services pursuant to a contract for services.

8. The applicant had made a reference to the Department of Employment and Social Protection for a decision on whether her employment was insurable employment. This reference had been adjudicated upon by a deciding officer in accordance with section 300 of the Social Welfare Consolidation Act 2005.

9. There is a statutory right of appeal against a decision of a deciding officer. The appeal is provided for under section 311 of the Social Welfare Consolidation Act 2005 as follows.

> "(1). Subject to subsection (4), where any person is dissatisfied with the decision given by a deciding officer […] the question shall, on notice of appeal being given to the Chief Appeals Officer within the prescribed time, be referred to an appeals officer.
>
> (2) Regulations may provide for the procedure to be followed on appeals and references under this Part."

10. The Social Welfare (Appeals) Regulations 1998 provide that an appeal is to be made within twenty-one days.

11. As appears, an appeal may be brought by any person who is dissatisfied with the decision given by a deciding officer. It will be necessary to return to consider this provision in more detail in due course, as the outcome of the objection that the statutory appeal is invalid turns on its meaning and effect. (See paragraph 58 *et seq*. below). The present discussion is confined to the separate objection that the judicial review proceedings are irregular. This requires consideration of the remedies which are available against a decision of an appeals officer.

12. Section 320 of the Social Welfare Consolidation Act 2005 provides that the decision of an appeals officer "on any question" shall be final and conclusive, subject to specified rights of review and appeal. The following remedies are, potentially, relevant to the within proceedings.

    (i). An appeals officer may at any time revise any decision of an appeals officer where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given (Section 317). Although not expressly stated, the sense of this provision seems to be that the revision is to be carried out by a *different* appeals officer than the one who made the original decision.

    (ii). The chief appeals officer may, at any time, revise any decision of an appeals officer, where it appears to the chief appeals officer that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts (Section 318). If the chief appeals officer exercises his or her power to revise a decision, there is a right of appeal thereafter to the High Court (Section 327). There is no right of appeal against a *refusal* by the chief appeals officer to revise a

decision. See *Petecel v. Minister for Social Protection* [2020] IESC 41 (at paragraph 54).

(iii). Any person who is dissatisfied with the decision of an appeals officer may appeal that decision to the High Court on any question of law (Section 327). Perhaps surprisingly, there does not appear to be any requirement to exhaust the right of review to the chief appeals officer first, before embarking upon a statutory appeal to the High Court.

13. For the sake of completeness, it should be noted that certain other remedies are available *prior to* the making of a decision by an appeals officer. The chief appeals officer may, where he or she considers it appropriate, refer any question, which has been referred to an appeals officer, for the decision of the High Court (Section 306). This power appears to lapse once an appeals officer has actually made a decision. This is because a decision "on any question" becomes final and conclusive by virtue of section 320 (subject to the remedies referred to above). See *Petecel v. Minister for Social Protection* [2020] IESC 41 (at paragraph 50).

PROCEEDINGS BEFORE DECIDING OFFICER AND SUBSEQUENT APPEAL

14. For a number of years, the applicant had been engaged—to use a neutral term—by Córas Iompair Éireann to provide guiding services on bus tours run by that company. The applicant made a request for a decision under section 300 of the Social Welfare Consolidation Act 2005 on whether her employment represented insurable employment.

15. The application form pursuant to which this request had been originated has not been exhibited in these judicial review proceedings. It is not apparent, therefore, as to how the applicant described the company by which she claimed to be employed.

16. The form filed in response to the application on 22 January 2019 refers to the company name as "CIE Tours International". In fact, there is no such company registered in Ireland. Rather, "CIE Tours International" is a trading name or style used by Córas Iompair Éireann ("***CIE***").

17. The deciding officer notified his decision on 7 March 2019. The operative part of the decision reads as follows.

> "The employment
>
> Of: Sabina Murphy (PPS: REDACTED)
>
> By: CIE Tours (ER No: REDACTED)
>
> From: 26th April 2013 to date
>
> is insurable under the Social Welfare Acts at PRSI Class A"

18. The employer tax registration number and the personal public service number of the parties have been redacted in this judgment to respect their privacy. The tax registration number referred to in the decision corresponds to that of Córas Iompair Éireann.

19. There then follows what is described as a note on the reason for the decision. The note refers to a request having been made by the applicant in respect of her employment with "CIE Tours". The applicant is recorded as having stated that she works as a tour guide for "CIE under the auspices of CIE Tours International". The applicant is also recorded as stating that she answers directly to a named individual of CIE, but that when she is working she is working for "CIE Tours International". The note concludes by stating that the deciding officer is satisfied, on balance, that the applicant is employed under a contract of service by CIE Tours International on behalf of CIE.

20. The covering letter sent to each party indicated that if they were dissatisfied with the decision they may appeal in writing to the chief appeals officer. It is further stated that the appeal must be lodged within twenty-one days of the date of the letter.

21. An appeal against the deciding officer's decision was made under cover of letter dated 25 March 2019. The letterhead included the logo "CIE CIE Tours International". The opening paragraph of the letter states that "CIE Tours international" wishes to appeal the decision to the chief appeals officer. The letter then sets out the grounds of appeal and concludes by inviting the appeals officer to find that the applicant is not an employee of CIE Tours International.

22. By letter dated 30 April 2019, the applicant made a written objection to the effect that the appeal is invalid in that it has been brought in the name of a corporation registered in New York, i.e. CIE Tours International Inc. It was said that this company is a separate legal entity from the applicant's employer, Córas Iompair Éireann.

23. The Social Welfare Appeals Office circulated this written objection to the employer/appellant, who responded by letter dated 2 May 2019. This letter explains that the tour activities of CIE continue to be managed within CIE's own organisation, except to the extent that local activities in the United States of America are more conveniently operated by the New York registered company. The employees of CIE Tours International based in the Republic of Ireland are all said to be employees of CIE, and not of the subsidiary company, CIE Tours International Inc, registered in the State of New York. It is said that the appeal had thus been made by the appropriate appellant.

24. The office manager of the Social Welfare Appeals Office wrote to the applicant as follows on 22 May 2019.

> "I would like to inform you that having examined the papers on this case it has been decided that this appeal received from CIE Tours International in respect of a recent decision from the *Scope Section* of the Department of Employment Affairs and Social Protection, regarding your insurability, will remain registered with this office.
>
> Any contentions you may have in relation to this appeal will be addressed by an Appeals Officer at an oral hearing."

25. The applicant sought to refer the matter to the chief appeals officer by letter dated 23 May 2019. This letter requested the chief appeals officer to strike out the appeal.

26. This request was replied to by way of a letter dated 3 July 2019 from an executive officer in the Social Welfare Appeals Office. The letter, in relevant part, reads as follows.

> "The Appeals Officer wishes to advise you that he finds no reason to strike out the appeal on the grounds that you argue. Having examined all the documentation presented to the deciding officer, Mr Welsh, and considered at arriving at his decision, it is clear that the employer or the provider of the work is CIE and no case was made by either party that the work was provided by any other entity, namely CIE Tours International.
>
> It's noted that the decision of Mr Welsh refers to the employment of you by CIE and there is no reference to CIE Tours International.
>
> […]
>
> The Appeals Officer is quite satisfied that a valid appeal has been submitted by CIE and that at no time did CIE submit otherwise and have not sought to confuse the matter by '*obfuscating and misrepresenting the legal status of the internal control of activities under the CIE Entity*' *(your letter of 23/5/19)*.
>
> In your letter of 23/5/19 you refer to a breach of your rights to privacy by the Social Welfare Appeals Office by '*providing details of my complaint regarding the Scope Section Investigation to a third party*'. Having read the file, the Appeals Officer is not clear as to what is meant by a complaint regarding the Scope Section investigation.
>
> However, in the absence of any other reference, and in the context in which you raise this matter, it is assumed that the 'third party' to which you refer is CIE Tours International. In that context the Appeals Officer hopes you are reassured by the explanation given above that CIE is the correct appellant."

27. The letter goes on then to explain that the appeals officer has acceded to a request by CIE for an oral hearing. It is stated that the appeals officer had provisionally set aside the week of 19 August 2019.

28. The letter concludes as follows.

> "The Appeals Officer hopes that the above is sufficient to address the matter you have raised in your letter of 23/5/19. Please revert at your earliest convenience with any comment. If agreeable to you, please

> indicate your availability during the week of 19/8/19. It is hoped that the hearing can be completed in one day."

29. The applicant did not make any formal response to that letter.

30. For completeness, it should be noted that a letter was also sent to the employer/appellant on 3 July 2019 stating *inter alia* that the appeals officer has written to the applicant "to assure her that the appeal is valid and is properly made by CIE".

31. The next correspondence of relevance is a letter to the parties dated 30 September 2019. This letter indicated that the oral hearing had been fixed for 14 October 2019.

32. The applicant requested an adjournment by email dated 9 October 2019. The delay in responding is explained by reference to the fact that the applicant had been recuperating from a surgical procedure. It was also indicated that the applicant had been advised to seek judicial review of the decision of 3 July 2019, and that she would "endeavour to file for Judicial Review in the coming days".

33. In the event, these judicial review proceedings were filed in the Central Office of the High Court on 15 October 2019. The requisite application for leave to apply for judicial review was not moved before a judge of the High Court until 4 November 2019. Leave to apply in terms of an amended statement of grounds was granted on that date.

34. The substantive application for judicial review came on for hearing before me on 15 July 2021.

35. The final correspondence of relevance is a letter of 11 November 2019 from the Social Welfare Appeals Office. This letter suggests, for the first time, that the issue in respect of the validity of the appeal can be raised as a preliminary step at the oral hearing before the appeals officer. This letter postdates the application for leave to apply for judicial review.

TIMING OF JUDICIAL REVIEW PROCEEDINGS

36. The gravamen of the applicant's case is that the appeals officer, who had been assigned to determine her appeal, had made a decision on 3 July 2019 rejecting her objection that the appeal is invalid. The applicant submits that in circumstances where she had previously sought to raise this issue with the chief appeals officer on 23 May 2019, and this had not been addressed, the only remedy remaining was to go by way of judicial review.

37. There is no consensus between the other parties to these proceedings as to what would have been the proper procedural response to the letter of 3 July 2019. The position formally adopted by the chief appeals officer and other respondents is that no final decision had been reached on the validity of the appeal. The letter of 3 July 2019 at most represented a provisional decision, and not a final decision amenable to judicial review. It is said, therefore, that these judicial review proceedings are premature.

38. The implication of these submissions is that the appropriate course for the applicant to have adopted would have been to participate at the full hearing before the appeals officer scheduled for October 2019. The applicant should, presumably, have reagitated her objection that the appeal is invalid as having been brought in the name of the incorrect company. It would only be after the appeals officer had issued a final determination on the appeal that it would be timely to pursue the matter further, whether by a request for review by the chief appeals officer or by an appeal on a question of law to the High Court.

39. By contrast, the position adopted by the employer/appellant is that a *final* decision had already been made on the validity of the appeal. This decision is said to be amenable to judicial review. On this analysis, time began to run against the applicant from (i) the date on which she was first notified, by letter dated 22 May 2019, that the appeal was to remain on the register; or, at the very latest, from (ii) the date of receipt of the letter of

3 July 2019. In either event, it is said that the application for judicial review was made outside the three month time-limit prescribed under Order 84, rule 21 of the Rules of the Superior Courts. It is further said that the applicant has not put forward any explanation for the delay such as would justify the grant of an extension of time.

FINDINGS OF COURT ON TIMING OF JUDICIAL REVIEW PROCEEDINGS

40. I have come to the conclusion that the only reasonable interpretation of the letter of 3 July 2019 is that the appeals officer had reached a definitive decision that the appeal had been validly made. The language used in the letter—"quite satisfied that a valid appeal has been submitted"—is unequivocal. The letter can only be understood as meaning that the objection that the appeal was invalid had been dealt with as a preliminary issue, and that the issue had been resolved against the applicant. Tellingly, this is precisely how the other party to the appeal understood the letter, as evidenced by the time-limit objection raised by the employer/appellant.

41. This finding is not upset by the letter of 11 November 2019 from the Social Welfare Appeals Office. This letter postdates the institution of the judicial review proceedings. This letter suggests, for the first time, that the issue in respect of the validity of the appeal could be raised as a preliminary step at the oral hearing before the appeals officer. This letter cannot change *ex post facto* the meaning and effect of the letter of 3 July 2019.

42. The more difficult question is as to what steps the applicant should have taken to challenge the decision on the validity of the appeal. The most obvious step would have been to request the chief appeals officer to revise the appeals officer's decision. Section 318 of the Social Welfare Consolidation Act 2005 provides that the chief appeals officer may, *at any time*, revise any decision of an appeals officer where it appears to her that the decision was erroneous by reason of some mistake having been made in relation

to the law or the facts. In the present case, however, an earlier attempt by the applicant to involve the chief appeals officer had not been responded to. More specifically, the applicant's letter of 23 May 2019 had not been dealt with by the chief appeals officer. The letter had, instead, seemingly been assigned to the appeals officer and a reply sent on their behalf.

43. Given this previous unsatisfactory experience, it is perhaps understandable that the applicant would not wish to pursue this route again. An alternative remedy would have been to appeal the decision of 3 July 2019 to the High Court on a question of law pursuant to section 327 of the Social Welfare Consolidation Act 2005. In the event, however, the applicant chose a *non-statutory* route and instituted these judicial review proceedings.

44. No point has been taken against the applicant to the effect that the remedies provided under the Social Welfare Consolidation Act 2005 are intended to be exclusive or exhaustive. It is not necessary, therefore, for the purpose of these proceedings to consider the implications of section 320 of the Social Welfare Consolidation Act 2005. This section provides that the decision of an appeals officer "on any question" shall be final and conclusive, subject to specified rights of review and appeal. No argument has been addressed to me as to whether this provision represents an ouster clause which precludes conventional judicial review under Order 84 of the Rules of the Superior Courts.

45. On the assumption that judicial review is available in principle, notwithstanding the existence of a statutory right of appeal to the High Court on a question of law, I am satisfied that the decision of 3 July 2019 is of a type which is amenable to judicial review. The validity of the appeal had been determined by the appeals officer as a preliminary issue. This determination is distinct and separate to any subsequent decision on the substance of the appeal. The applicant was entitled to challenge the legality of the decision of 3 July 2019, and was not required to await the final outcome of the appeal

proper. Indeed, had the applicant chosen to wait, she would almost certainly have been met with an accusation of delay. I find, therefore, that the judicial review proceedings are not premature.

46. It should be emphasised that this finding has been reached by reference to the very particular facts of the present case. The outcome would have been otherwise had the letter of 3 July 2019 been worded differently. If, for example, the letter had expressly stated that the decision on the validity of the appeal was provisional only, and that the matter would be open for reconsideration at the full hearing, then judicial review would have been premature.

47. The next issue to be addressed is whether there has been compliance with the time-limit under Order 84, rule 21. This provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. The employer/appellant contends that the application for judicial review was made out of time. On its analysis, time began to run from the date of the letter of 22 May 2019, or, at the very latest, from the letter of 3 July 2019. In reply, the applicant submits that it was only when she received the letter notifying her of the intention to proceed with the hearing (30 September 2019) that time began to run against her. (The relevant correspondence is summarised at paragraphs 24 to 29 above).

48. The notion that time began to run from the letter of 22 May 2019 can be disposed of shortly. There is nothing in this letter which indicates that it was intended to be a definitive decision on the validity of the appeal, still less that such a decision had been made by either the appeals officer or the chief appeals officer. The letter is, in fact, signed by the officer manager of the Social Welfare Appeals Office. Moreover, no reasons are stated in this letter. The letter suggests no more than that a decision has been taken, by a non-statutory administrator, that the appeal will “remain registered”. The final

paragraph of the letter states that any contentions in relation to the appeal will be addressed by an appeals officer. This paragraph suggests that the question of the validity of the appeal could be reagitated before the appeals officer.

49. The position in relation to the letter of 3 July 2019 is more nuanced. This is a reasoned letter, and indicates that a decision has been made by the appeals officer assigned to the case. As explained earlier, this decision is amenable to judicial review. For the purpose of the time-limit, the question is when the grounds for the application for judicial review first arose. I am satisfied that the grounds of challenge had crystallised as of 3 July 2019. As of that date, the applicant was in receipt of a reasoned decision which indicated that the appeals officer was satisfied that a valid appeal had been submitted. In particular, the views of the appeals officer in relation to the identity of the appellant had been clearly stated.

50. It is apparent from a reading of the amended statement of grounds that the grounds advanced in the proceedings are all based on the content of the letter of 3 July 2019. As of that date, the applicant had been armed with all of the material necessary to formulate her legal challenge. Time began to run from that date, and the application for leave should have been moved before a judge of the High Court within three months. In the event, these judicial review proceedings were not filed in the Central Office of the High Court until 15 October 2019. The requisite application for leave to apply for judicial review was not moved until 4 November 2019. The application for judicial review was thus made one month outside the three month period allowed under Order 84.

FINDINGS OF COURT ON EXTENSION OF TIME

51. The next matter which arises for consideration is whether an extension of time is justified. The principles governing an application for an extension of time in judicial review

proceedings have been set out authoritatively by the Supreme Court in *M. O'S. v. Residential Institutions Redress Board* [2018] IESC 61; [2019] 1 I.L.R.M. 149 ("***M. O'S***."). The majority judgment in *M. O'S.* contains the following statement of general principle (at paragraph 60 thereof).

> "I have concluded that the case law cited above, insofar as it applies to the extension of the time specified under Ord.84 for the bringing of judicial review proceedings, makes clear that the jurisdiction which the court is to exercise on an application to extend time is a discretionary jurisdiction which must be exercised in accordance with the relevant principles in the interests of justice. It clearly requires an applicant to satisfy the court of the reasons for which the application was not brought both within the time specified in the rule and also during any subsequent period up to the date upon which the application for leave was brought. It also requires the court to consider whether the reasons proffered by an applicant objectively explain and justify the failure to apply within the time specified and any subsequent period prior to the application and are sufficient to justify the court exercising its discretion to extend time. The inclusion of sub-rule (4) indicates expressly that the court may have regard to the impact of an extension of time on any respondent or notice party. The case law makes clear that the court must also have regard to all the relevant facts and circumstances, which include the decision sought to be challenged, the nature of the claim made that it is invalid or unlawful and any relevant facts and circumstances pertaining to the parties, and must ultimately determine in accordance with the interests of justice whether or not the extension should be granted. The decision may require the court to balance rights of an applicant with those of a respondent or notice party. The judgments cited do not, in my view, admit of a bright line principle which precludes a court taking into account a relevant change in the jurisprudence of the courts when deciding whether an applicant has established a good and sufficient reason for an extension of time. Further, the judgments cited above do not envisage any absolute rule in relation to what may or may not be taken into account or constitute a good reason or a good and sufficient reason. The court, in an application for an extension of time, is exercising a discretionary jurisdiction and in the words of Denham J. in *De Roiste*, '[t]here are no absolutes in the exercise of a discretion. An absolute rule is the antithesis of discretion. The exercise of a discretion is the balancing of factors – a judgement.'"

52. The judgment attaches weight to the fact that the administrative decision impugned in those proceedings had been made pursuant to legislation which was for the purpose of administering a no fault redress scheme for a class of vulnerable and injured persons.

53. Having regard to these principles, I am satisfied that the present case is an appropriate case in which to grant an extension of time, for the following reasons.

54. The court in the exercise of its discretion must have some regard to the legislative context in which the decision is made. Whereas the social welfare legislation is of more general application than the legislation at issue in *M. O'S.*, the statutory scheme is such that it impacts on persons who may be vulnerable and have little formal education. The system of appeals and reviews under the legislation is labyrinthian. In some instances, it will be difficult to know what remedy should be pursued. It would seem unduly harsh were an individual to be shut out from a remedy because they failed to comply with a time-limit which is not obvious.

55. There is no suggestion, of course, that the applicant in the present case is vulnerable or lacking in formal education: the applicant is a qualified barrister. Nevertheless, the approach of the appeals officer had caused much confusion as to the precise nature of the remedies available. The appeals officer had, in effect, determined the validity of the appeal as a preliminary issue in advance of the oral hearing into the underlying merits of the appeal. Yet the letter of 3 July 2019 does not explain what remedies are available against that determination. Still less does the letter explain that there is any time-limit prescribed. This confusion was compounded in these proceedings by the respondents adopting the position that far from being out of time, the proceedings are premature. It was the employer/appellant who raised the time-limit objection. This sort of pincer movement risks creating a Catch-22 situation whereby an applicant is damned no matter what they do. The timing of judicial review proceedings will always be criticised as either too soon or too late.

56. The applicant notified the Social Welfare Appeals Office, by email of 9 October 2019, of her intention to apply for judicial review. This would have been a short number of

days outside the three month time-limit. Whereas the giving of such notice does not stop time running for the purpose of Order 84, rule 21, it is relevant to the question of prejudice. Neither the respondents nor the employer/appellant can realistically assert that they have been adversely affected by the delay in the institution of these proceedings. Separately, the email of 9 October 2019 also explains that, during the currency of the three month period, the applicant had been recovering from surgery under general anaesthetic on 3 September 2019.

57. Against this procedural history, I am satisfied that it is in the interests of justice that the short extension of one month should be granted. The approach of the respondents, and the applicant's recuperation from surgery, constitute circumstances outside the control of the applicant and good and sufficient reason to extend time.

UNDERLYING MERITS

58. For the reasons set out under the previous headings, I have concluded that none of the procedural objections raised by the respondents and the employer/appellant have the effect of shutting out the proceedings. It follows, therefore, that it is necessary to consider the underlying merits of the application for judicial review.

59. The essence of the case made by the applicant is that the appeal has been taken in the name of what she describes as an "alien" company, namely CIE International Tours Inc. This is a company which is registered in New York in the United States of America. It is said that this company has no connection whatsoever with the terms upon which the applicant was engaged as a tour guide. Accordingly, it is said that the foreign registered company does not have standing to maintain an appeal.

60. With respect, this necessitates an artificial reading of the documentation leading up to the making of the appeal. The content of this documentation has been summarised at

paragraphs 14 *et seq*. above. The starting point for the analysis must be the request made by the applicant herself to the deciding officer. It appears from the terms of the decision that the applicant had identified her employer as Córas Iompair Éireann trading as CIE International Tours. Therefore, from the very outset, the trading name "CIE Tours International" appeared as part of the mix. The deciding officer's decision expressly finds that the applicant is employed under a contract of service by CIE Tours International on behalf of CIE. Further, the employer's tax number as stated in the decision is that of Córas Iompair Éireann.

61. It is evident from the documentation that both parties, namely the employer/appellant and the applicant, had used the terms "CIE" and "CIE International Tours" interchangeably. It appears that it is only post-decision that the applicant has seized upon the happenstance of there being a company registered in the United States of America called CIE International Tours Inc.

62. The applicant cannot approbate and reprobate. The applicant herself had been loose in her description of her employer, referring to CIE International Tours in substitution for the correct legal name, Córas Iompair Éireann. This informal approach is entirely understandable given that this was the style under which the bus tours were marketed.

63. Against this background, it is unreal for the applicant suddenly to insist that a much greater level of precision must apply in the context of the appeal. The statement in the letter of 25 March 2019 that "CIE Tours International" wishes to appeal the decision of the deciding officer could only be understood as referring to CIE. It is contrived to suggest that the appellant was CIE Tours International Inc, and that the foreign registered company had, for the first time, entered into the fray.

64. More generally, it should be noted that the wording of the legislation is relatively generous. Section 311 of the Social Welfare Consolidation Act 2005 does not, for

example, restrict the right of appeal to an employer, employee or a party to the decision of first instance. Rather it speaks of any person dissatisfied with the decision given by a deciding officer. Whereas this language would have to be read as implicitly excluding a frivolous or vexatious appeal by a person with no connection whatsoever to the dispute, it does not impose the same rigour as might apply, for example, in relation to other statutory schemes. The right of appeal under the planning legislation, for example, is normally confined to a person who has made a submission at first instance and is in a position to produce the relevant receipt in respect of same.

65. The more generous standing requirement is perhaps not surprising in the context of social welfare legislation, where a whole range of decisions will be involved. This is a legislative scheme to which recourse will be had by individuals who may have limited formal education. Such an individual might well make an error in the description of their employer, referring to the name by which a company is generally known, rather than the precise title as registered with the Companies Registration Office. It is perhaps telling that the applicant herself, a qualified barrister, did not properly identify her employer by its statutory title. It would be contrary to the scheme of the legislation were an appeal, under what is intended to be an informal procedure, to be struck out because of some immaterial error in the description of the employer.

CONCLUSION

66. No point has been taken against the applicant to the effect that the remedies provided under the Social Welfare Consolidation Act 2005 are intended to be exclusive or exhaustive. It is not necessary, therefore, for the purpose of these proceedings to consider the implications of section 320 of the Social Welfare Consolidation Act 2005. On the assumption that judicial review is available in principle, notwithstanding the existence of

a statutory right of appeal to the High Court on a question of law, I am satisfied that the decision of 3 July 2019 is of a type which is amenable to judicial review.

67. The objection that the judicial review proceedings are premature is rejected. The decision of 3 July 2019 is amenable to judicial review, and the application for leave to apply for judicial review should, strictly speaking, have been moved within three months of that date. However, for the reasons outlined at paragraphs 53 to 57 above, it is in the interests of justice that the short extension of one month should be granted under Order 84, rule 21.

68. The application for judicial review fails on the merits. The statutory appeal was validly made by Córas Iompair Éireann. The suggestion that it had, in fact, been brought in the name of the foreign registered company, CIE International Tours Inc., is contrived.

69. The proceedings will, therefore, be dismissed. The case will be listed on 15 October 2021 at 10.30 am for final orders and to address the issue of costs. The parties are to file short written legal submissions on costs in advance of the hearing.

Appearances

The applicant represented herself
Alex White, SC and Martin Fitzgerald for the respondents instructed by the Chief State Solicitor
Peter Ward, SC and Cathy Maguire for the notice party instructed by Colm Costello

Approved