

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

BETWEEN:

SEAN DEVLIN

Plaintiff/Appellant;

-and-

WILSON WRIGHT

Defendant/Respondent.

STEPHENS J

[1] On 1 October 2009 by Notice of Application in the Small Claims Court, the plaintiff, Sean Devlin, initiated a claim against the defendant, Wilson Wright for £1,500. The plaintiff alleged that he was employed by the defendant as a taxi driver. That on termination of his employment on 7 September 2009 the defendant owed that sum to him in respect of his remuneration.

[2] On 8 December 2009 the defendant lodged a Notice of Dispute in which he stated that the plaintiff had been involved in two separate road traffic accidents within a period of 24 hours and that the plaintiff's driving and behaviour were unacceptable. That after the second road traffic accident the defendant informed the plaintiff that his actions were such that his employment would have to be terminated. The defendant then contended that the plaintiff upon being informed that his employment would have to be terminated volunteered to pay for the repairs occasioned by the road traffic accidents. The cost of those repairs amounted to £1,500. The defendant stated that the plaintiff's employment continued and the amount of £1,500 was deducted by the defendant from the plaintiff's wages and that subsequent to those deductions the plaintiff resigned from his employment. It can be seen from the Notice of Dispute that the plaintiff's employment by the defendant was admitted. The issues related to matters such as whether there was an agreement by the plaintiff to pay for the cost of the repairs occasioned by the road traffic accidents out of his wages.

[3] The proceedings were transferred to the Civil Bill list and on 21 January 2011 it came on for hearing before the Deputy District Judge. Part of the documentary evidence in the case was the plaintiff's P45 statement which identified his employer as DT Taxis (NI) Limited and not as Wilson Wright. It is suggested that the learned

Deputy District Judge on noticing this invited counsel for the defendant to make an application to dismiss the plaintiff's claim on the basis that the plaintiff was not employed by the defendant but rather was employed by DT Taxis (NI) Limited which was not a party to the proceedings. In any event such an application was made on behalf of the defendant and judgment was entered against the plaintiff on the basis that the defendant, Wilson Wright, was not the employer of the plaintiff. I make it clear that even if the application was at the suggestion of the learned District Judge it was still an application by the defendant. There is a duty on the advisers to the parties to assist the trial judge in carrying out his duty of identifying the crucial issues and to see that they are tried as expeditiously and as inexpensively as possible, see *Ashmore v Corporation of Llyods* [1992] 2 All ER 486 at 488 f - h. There is also a duty on counsel to draw to the court's attention legal authorities which are adverse to the interests of their client, see paragraph 8.01 of the Code of Conduct for the Bar of Northern Ireland. The rules and authorities which should have been brought to the attention of the learned Deputy District Judge were those in relation to amendment, see Order 9 Rules 1 and 3 of the County Court Rules, *Rock v Hall t/as Huntley Hair Transplants* [2000] NIQB 45, *Evans Construction Limited v Charrington and Co Limited and Another* [1983] QB 810 and *International Bulk Shipping and Services v Minerals and Metals Trading Corporation of India* [1996] 1 All ER 1017 at 10276.

[4] The defendant controls DT Taxis (NI) Limited. He was at all times aware of the plaintiff's mistake. The issues to be tried were set out in the notices of application and dispute. Employment was not in issue. This was a clear case in which the learned Deputy District Judge should have amended the notice of application to join the correct defendant rather than dismissing the plaintiff's claim.

[5] I amend the notice of application to remove Wilson Wright and to add DT Taxis (NI) Limited as a defendant.

[6] In view of ongoing negotiations between the parties in relation to the substantive appeal I was asked to and have reserved any decision in relation to costs. If the proceedings are not settled then I will wish to hear submissions as to why the correct defendant, DT Taxis (NI) Limited, should not pay the costs of the hearing before the learned Deputy District Judge. The defendant, (I use that term in its wide sense as encompassing both DT Taxis (NI) Limited and Wilson Wright) applied to dismiss the plaintiff's claim before the learned Deputy District Judge and in the event the basis upon which they did so was mistaken. The question arises as to whether costs before the learned Deputy District Judge should follow that event taking into consideration the additional factor that the authorities should have been drawn to the attention of the learned Deputy District Judge.