

Notice to Nowhere: High Court Refuses Enforcement of Adjudicator's Decision in Industry First

Briefing Note

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In a breakthrough judgement and a break from tradition for the construction industry, the High Court has for the first time since the enactment of the Construction Contracts Act 2013 (the **Act**) refused leave to enforce an Adjudicator's award, on the basis that a Notice of Intention to Refer to Adjudication (the **Notice**) was not validly served in accordance with the requirements of the Act, and the construction contract itself.

The Facts

In *Tenderbids Ltd v Electrical Waste Management Ltd* [2025] IEHC 139, the sole procedural point relates to the fact that the construction contract expressly provided that notices were to be delivered by registered post, whereas the Applicant purported to deliver a notice of intention to refer to Adjudication by email.

The Respondent did not respond to the Adjudication, and an Adjudicator made an award in the Applicant's favour of €1,531,830.85 to be paid within seven days of their decision on 8 August 2024. The Adjudicator determined that the Applicant had served a valid Notice saying that delivery by email is an effective means to serve such a notice.

In its High Court action to enforce the Adjudicator's award, the Applicant submitted that the Notice had been delivered by effective means in accordance with section 10 of the Act, that evidence indicated that the Respondent had received the notice of intention to refer by way of email, and that the Respondent had not suffered any prejudice by reason of the alleged defect in service.

The Law

Section 10 of the Act provides that:

"(1) The parties to a construction contract may agree on the manner by which notices under this Act shall be delivered.

(2) If or to the extent that there is no such agreement, a notice may be delivered by post or by any other effective means."

The construction contract itself (an amended RIAI Yellow form) provided that "[a]s allowed under s10 of the Construction Contracts Act 2013 (CCA) **all notices arising under the CCA shall be delivered by registered post.**" (emphasis added)

Simons J stated that under the Applicant's argument, Section 10 of the Act:

"must be read as if it provided that a notice may be delivered by post or by any other effective means notwithstanding that the parties to a construction contract have agreed on the manner by which notices under the Act shall be delivered. This necessitates displacing the clear language of the section... **this is not a permissible approach to statutory interpretation.**" (emphasis added)

Simons J went on to state:

“The legal consequence of this failure is that the payment dispute was never validly referred to adjudication. It follows that the purported adjudicator’s award is a nullity. Accordingly, the application for leave to enforce the adjudicator’s award must be refused.”

Takeaways

This judgement serves as a cautionary tale to employers, contractors, sub-contractors and any other parties involved in Adjudication that the notice provisions in a construction contract are not to be taken lightly for the purposes of serving a Notice of Intention to Refer to Adjudication, even where receipt has been acknowledged, but ignored, by the addressee.

If you would like to discuss the above case and its implications in further detail, please contact Fiona Egan or your usual Beauchamps contact.



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