

THE HIGH COURT**[2007 No. 2698P]****BETWEEN****CATHERINE GLYNN****PLAINTIFF****AND****THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL****DEFENDANTS****JUDGMENT of Kearns P. delivered on the 21st of March, 2014**

The plaintiff is a married woman from Faha, Caher in Co. Clare who was born on the 11th May, 1962. Her husband is a farmer and they have three children. Since 1979 she has been employed as a civil servant by the defendants herein performing clerical duties at Gort Garda Station in Co. Galway. She claims damages in these proceedings arising from events which occurred during the month of May, 2005 when she was required by Superintendent Mockler (hereafter "Supt. Mockler") to complete the monthly accounts for Gort Garda Station in the District Office of the station. The plaintiff contends that over a period of four days she suffered significant stress as a result of being hounded and harassed by Supt. Mockler in relation to the need to complete the task quickly and in relation to an issue of an individual cheque which Supt. Mockler had drawn in relation to his expenses.

THE PLAINTIFF'S CASE

The plaintiff, both in her legal proceedings and in her evidence, described how in 1996 major renovation works were being undertaken in Gort Garda Station which necessitated her performing her clerical duties in a portacabin adjacent to the main building. She was working there with Garda Denis Callaghy with whom she did not get on. She had to pass Garda Callaghy to get in and out of her seat given that they both sat at one long desk and she could only leave if he moved. Conditions were difficult and made worse (according to the plaintiff) because Garda Callaghy would not permit windows to be opened in the summer months and there was no proper heat in winter. She felt Garda Callaghy was constantly checking up on her in relation to her clerical duties and felt Supt. Mockler was blaming her for documents going astray in the office and for disseminating information about colleagues to other members of the garda station in an indiscreet manner.

She told the Court that she felt very stressed by these circumstances and took sick leave from the 6th November, 1996, which continued until the 1st May, 1997. She went to see her general practitioner, Dr. Piggott, who certified her as unfit for work during that period before she resumed duty on a three-day week basis in May, 1997.

On a date which the plaintiff placed in December, 1996 she met with Supt. Mockler in Glynn's Hotel in Gort. The purpose of the meeting was to discuss her workplace issues. The plaintiff did not dispute but that she chose the location for this meeting which took place in a small room adjacent to the ballroom and which lasted five hours. She felt the length of this meeting was unfair, that there was no lunch break, and she left feeling 'worse' than she did before the meeting. She told the Court that Supt. Mockler said he was aware of a problem between the plaintiff and Garda Callaghy and asked her to sort things out directly with Garda Callaghy. The plaintiff said she could not do this. According to the plaintiff, Supt. Mockler told her she "had had it good and from now on it would get tougher".

Thereafter, in January, 1997 Supt. Mockler rang her home on three occasions in one day. She felt this was harassment as she was absent from the workplace on certified sick leave. On the first occasion she put down the phone and declined to speak to him. On the second occasion her husband took the call and said she was "out of the house". On the third occasion, when Supt. Mockler asked another officer to call on his behalf and to transfer the call to him, she went to the phone, but the conversation, like the conversation which had taken place in Glynn's Hotel, was unproductive, and the plaintiff felt intimidated and fearful by reason of these multiple calls.

When she went to Dr. Piggott, her general practitioner, towards the end of January, 1997, he rang Supt. Mockler at her prompting and requested that he desist from phoning the plaintiff because the calls had made her anxious.

Following her return to work, the plaintiff gave evidence that her desk had been moved to the store in the garda station and had to insist on its being returned to her office. She went on maternity leave in October, 1997 until March, 1998 and on her return was switched to the sergeant's office where she was no longer working with Garda Callaghy and her workplace difficulties and stress ceased.

In 2004 she applied for a promotion to the position of Finance Officer and was successful. However, Garda Callaghy continued to perform the finance duties and she was advised she could not actually take up the position until either Garda Callaghy retired or left.

At this point it should be emphasised that, while a considerable amount of time was taken up during the court hearing (which lasted some five days) in trawling through this period of the plaintiff's discontent about her workplace, it does not of itself form any part of the plaintiff's claim for damages. Following her return to work in March, 1998 it is accepted on behalf of the plaintiff that she suffered no further significant problems until May, 2005. However, the events of 1996/1997 were the subject matter of extensive evidence on the basis that the events which followed in 2005 effectively triggered the feelings of being stressed and bullied which she claimed she had had to endure some eight years previously.

It is common case on the 9th May, 2005 she was instructed to commence the duties of finance officer in circumstances where Garda Callaghy was out of the station. She had no advance warning of this and was required to prepare and complete the monthly accounts for Gort Garda Station on Garda Callaghy's computer which she could not readily access. It also involved a return to the district office where she had previously worked with Garda Callaghy notwithstanding that her own computer, with which she was familiar, was located in the sergeant's office of the station.

In those circumstances, she told the Court she had to send for a disc from Loughrea to enable her complete the work properly. She maintains that she worked on the accounts over a period of four days in circumstances of considerable stress and difficulty. This involved transferring all records and accounts for the three previous months from a document known as the "red book" in order to enable her move on to the April accounts.

While completing those accounts in the week commencing the 9th May, 2005, her attention was drawn to a cheque for expenses drawn by Supt. Mockler in his own favour which had been inserted in the records on a day prior to the date upon which the station cheque was sent to Killarney for reimbursement. This was other than in accordance with the practice in the station and the plaintiff took up the matter with the accountant in Garda Headquarters to seek guidance on what she should do with the cheque. According to the plaintiff, Supt. Mockler became angry with her when she informed him of the course of action she had taken. She gave evidence that Supt. Mockler said she was making a "big deal out of nothing" and that he "threw the cheque at her" across the table in his office. She alleges that he said to her that her "friend", Galway-based Chief Superintendent Monaghan (to whom she had made certain representations before returning to work in 1997), was "gone now" and any assurances he might have given her about her working conditions were gone with him. The plaintiff claimed that she was told by Supt. Mockler that if she didn't do what he said, he would take her position from her.

The plaintiff was due to take a days leave on Friday, the 13th May, 2005, but felt so unwell arising from the matters she described that she had to remain in bed. She consulted her general practitioner on the 16th May, 2005, when she was prescribed medication and declared unfit to return to work. She told the Court she was suffering migraine-type headaches, panic attacks, palpitations and low self esteem.

She was referred by her G.P. to Dr. Michael Corry, who saw her in May, 2005. He did not feel that a return to work at this time was in the plaintiff's interest, and she subsequently attended the Anti-Bullying Research and Resource Centre at Trinity College in Dublin where she was assessed by Dr. Lynch.

After six months absence from work the plaintiff was put on half pay and was taken off the payroll altogether with effect from the 1st April, 2006. However, the plaintiff returned to work in July, 2006 at a time when Supt. Mockler had retired from Gort Garda Station. She maintained in evidence that she had worked contentedly there ever since.

Paragraph 24 of the defendant's notice for particulars herein dated the 2nd April, 2008, specifically enquired if the plaintiff had suffered from any psychological condition prior to the events complained of in the proceedings and, if so, to furnish full and detailed particulars in relation to same. This request was met by the reply "no". Neither in the course of her direct evidence, nor in the course of her various consultations with her medical advisors, did the plaintiff advert to relevant prior psychological history which only emerged during the Court hearing when the plaintiff's G.P. records were opened and put to the plaintiff in cross-examination. In May, 1995 the plaintiff had been noted by Dr. Piggott to be "down, irritable and not coping" and she was placed on Toframil, initially at a low dosage but one which was stepped up in June, 1995. In July, 1995 she had been prescribed Prozac in circumstances where she was complaining that her mood was down and that she had headaches. She was continued on Prozac in August, 1995 when she remained anxious though back at work but was complaining of stress. In November, 1995 she was placed on another anti-depressant, Seroxat (20 one nocte).

In cross-examination she conceded she was having some difficulties with depression for which she was prescribed medication in advance of the matters complained of. She accepted that in 1996 she had not filed any complaint of bullying. She had contacted Ms. Pamela Holland in the Employment Assistance Services of The Department of Justice in 1996. She accepted she had not complained to her of being bullied because she was afraid of being overheard. There were a considerable number of conversations with Ms. Holland who arranged to meet her at a particular café outside Gort in 1997. Although Ms. Holland drove down from Dublin for this meeting she accepted she had not turned up and gave no reason for her absence.

It was put to her that she was angry because she was receiving less pay than Garda Callaghy for work of equal value. In this regard she admitted she supported a case brought by her union on the issue of equal pay and felt she was perfectly entitled to do so. Asked why she had lodged no formal complaint, she stated it was because Supt. Mockler told her she would not have a chance if she complained.

It was put to her that she specified the location for their meeting in December, 1996 and that he had offered her support. It was put to her that the word "bullying" had never been raised by her in that conversation, but the plaintiff maintained that the meeting was unfair and made her situation worse than it had been before. While out on sick leave she had telephoned Chief Superintendent Monaghan to tell him about her workplace difficulties and he had assured that she would never be put in this situation again.

In relation to the events of May, 2005 it was put to her that Garda Callaghy had in fact given her his password for the computer and that all of the work for the April accounts had been done. It was further put to her that there was no rule or regulation that the cheque to the accountant's office in Killarney had to be the first cheque of the month, but she maintained it was the practice. She felt perfectly entitled to seek assistance and guidance from Garda Headquarters. While the term "irregular payment" had been raised by her in her pleadings, she accepted that there was nothing untoward in what Supt. Mockler had done. It was put to her that far from bullying or harassing her, Supt. Mockler during that week, firstly, had met her on Monday and asked her to complete the accounts, and was then preparing for a murder crime conference and actually dealing with a murder investigation. The plaintiff accepted that Supt. Mockler had other duties but where there had been a departure in the normal practice for making up the accounts she felt she was entitled to raise it with Supt. Mockler and that he had raised his voice to her and treated her badly. She agreed however that, when she asked him to do so, Supt. Mockler shortened her working hours by 30 minutes every day, but said that this was on condition that she work through part of the lunch period instead.

Dr. Lynch gave evidence of meeting with the plaintiff in November 2005 and June, 2012. The plaintiff's complaints to her were consistent with the evidence the plaintiff had given. Various tests indicated that the plaintiff lacked self esteem and self confidence and was showing mild signs of depression.

She accepted that bullying often has a significant subjective component and accepted that she had been misled on a prior occasion in this regard by a former patient. She accepted she had not been told of any previous history of either depression or of the plaintiff being placed on medication for this condition. She accepted that a patient's past history was extremely important. Without it, psychological tests could be skewed.

The plaintiff's husband, Brian Glynn gave evidence that the plaintiff was very upset about her situation at work. In particular, after the visit to meet Superintendent Mockler in Glynn's Hotel in December, 1996 she was very upset and was crying. He confirmed that three telephone calls had taken place on a particular day and that he had taken one of them.

Dr. Raymond Piggott is the plaintiff's general practitioner and he stated that the plaintiff had been his patient since 1988. He confirmed that his reports for the purpose of the court case did not include any reference to the plaintiff's prior medications for depression. He accepted this was an error on his part due to the transfer of his records in the practice from paper to computer in or around that time. He stated that the initial prescriptions were for premenstrual tension, but accepted that the Prozac and Seroxat were to deal with problems of depression. He accepted that there were other difficulties in the plaintiff's life in that her nephew drowned in December, 1996 and her father died in October, 1995.

His notes from January, 1997 indicated that the plaintiff was suffering continuous stress at work. His notes confirmed his consultation with the plaintiff in January, 1997 when she described a number of phone calls which Supt. Mockler had made to the house. Having regard to her degree of stress and anxiety, he telephoned Supt. Mockler while the plaintiff was with him to request that he desist from making these calls. He said that Supt. Mockler's response was to say that he was "appalled" that things had come to this. However, he believed the plaintiff felt intimidated by Supt. Mockler and that he had no option but to call. He referred the plaintiff to Dr. Deirdre O'Donnell for further advice and counselling. He confirmed that the plaintiff returned to work in May, 1997 and was out on maternity leave from October, 1997.

Her symptoms of stress were again evident in May, 2005 in the aftermath of the episode in relation to the accounts. She complained of panicking, chest pain and palpitations, hypervigilance and loss of short term memory. He referred the plaintiff at that stage to Dr. Michael Corry. In August, 2005 he received a letter from Supt. Mockler asking if he (Dr. Piggott) could do anything to help in resolving the problem, but as he did not feel comfortable in replying to this letter he left it to Dr. Corry to do so.

Dr. Deirdre O'Donnell gave evidence of evaluating the plaintiff in early 1997 and recalled her as being extremely distressed and anxious. Her symptoms were in line with the kind of complaints typical of bullying and harassment. She discharged her from her care in May, 1997. She accepted her further meeting with the plaintiff in 2010 was for the purpose of the present litigation.

Dr. McInerney is a consultant psychiatrist who assessed the plaintiff in 2010. Dr. McInerney believed the plaintiff had suffered an upset in 1996/1997 but the symptoms in 2005 were more severe and more intense. She was also suffering from anticipatory anxiety, part of which was undoubtedly due to the upcoming legal action. She believed she was suffering from an adjustment disorder, rather than post traumatic stress syndrome. She accepted in cross-examination that the plaintiff clearly had life stressors before the events in 1996/1997, but the events of that period made her more vulnerable to further stress and upset in 2005.

THE DEFENCE CASE

The defence case commenced with the evidence of Garda Callaghy. He worked with the plaintiff from 1994. He believed the plaintiff had issues about the fact that he was on a higher rate as a garda because she was a civilian. He accepted that working conditions in the portacabin in 1996 were uncomfortable, but he had given the plaintiff the option of where to sit. He could not open windows, because the window was behind her desk and he would have had to stretch over her to do so. There were two heaters in the office during cold weather. He never heard any suggestion of anyone, including himself, following her around the garda station. He accepted the plaintiff declined to speak to him, but was unaware of the meeting between the plaintiff and Supt. Mockler in Glynn's Hotel.

He confirmed that at the end of April and the start of May, 2005 he had been in Templemore. He had done the accounts in the books, but did not have the accounts for the month of April uploaded on computer. These were available, however, in the original Red Book, and as far as he was concerned his password and that of the plaintiff were the same. He had spoken with her on the 9th May, 2005, when he explained to her that all she had to do to complete the accounts was to copy the material onto a disc and explained to her how to do it.

The matter of Supt. Mockler's expenses cheque was a minor issue and no problem really. He accepted that the usual practice in making up the accounts was that the first entry for the new month should be the cheque paid to the Department in Killarney.

Supt. Mockler was the main witness for the defence. He retired in 2006. He confirmed that the plaintiff was working with Garda Callaghy in the same office and that she had more knowledge of the work than he had, at least in clerical work generally. He found her to be an excellent employee.

When in November, 1996 the plaintiff went on sick leave and her medical certificates gave "work related stress" as the reason, he assumed at the time that the plaintiff had issues with working in the portacabin and working with Garda Callaghy. He was certainly unaware that the plaintiff had any issues with him or of any suggestion of bullying.

His recollection was that the meeting in the hotel took place on the 8th January, 1997. She selected the venue and the manager of the hotel directed them to a small function room upstairs. He offered tea and refreshments which she declined. She told him during the meeting that her issue was with Garda Callaghy, that he was not "telling her things". This was the only allegation of substance. There were no complaints about bullying or harassment, nor indeed about inability to open windows, insufficient heat in winter or being followed. He certainly had not said that he would make it hard for her at work. He felt she was comfortable throughout the meeting and at lunchtime he had suggested that they chat during lunch, an invitation she declined.

His subsequent telephone calls to her home were part of a process of ensuring that staff were properly supported and helped. He was interested to know when she would be coming back and also suggested that a meeting be arranged with Garda Callaghy to address any difficulties between them. He confirmed that when he first rang the plaintiff she hung up the phone and that on the second occasion the plaintiff's husband said "she was out". The third call was of brief duration. When Dr. Piggott rang him up to say "don't call", he never called her again.

She came back on a three-day week that year and took maternity leave in October, 1997. When she returned in May, 1998 she moved into the sergeant's office and worked away happily there until the difficulties which arose in 2005.

In 2004 she had applied for the position of Finance Officer and was duly appointed to that role and paid accordingly. However, the ongoing difficulty was that if a garda clerk wished to stay in that position, as did Garda Callaghy, a newly appointed officer had to wait until that other person either retired, left or transferred.

When Supt. Mockler came back from a short period of leave on the 5th May, 2005, in circumstances where Garda Callaghy was away, he realised the accounts for the month of April needed to be dealt with immediately. On Monday morning of the following week he asked her to deal with the accounts. He felt she was well capable of performing this task as she had the function of completing the Red Book from which the records were drawn in 1994, before Garda Callaghy arrived at the station. As far as he was concerned, she had more than enough experience to perform this function, but assumed she would carry it out in the upstairs district office.

He was shocked to see that the plaintiff was attempting to perform these functions in the sergeant's office and that the books were open on her desk unattended during a lunch break. That office was not a secure location. He removed them back to the district office and told her to complete the work there. He accepted she stated there had been a problem with the computer but she called Garda Callaghy to get assistance. It is within the discretion of the district officer as to where the accounts are to be done under the Garda Síochána Finance Code Regulations and as per Supt. Mockler's instructions the accounts were to be completed in the district office.

In so far as the cheque incident was concerned, he had been out of the office on Tuesday, the 10th May, 2005, but was back in on Wednesday. The plaintiff came to Supt. Mockler's office about a cheque for his expenses which had been given to him some days previously. She explained that she had telephoned Mr. Guidon in the Commissioner's Office because she felt it was "irregular". He felt this implied some wrongdoing on his part and told her to call the accountant's office in Killarney. He simply gave the cheque back to her. He was not conscious of any upset or distress, nor did she make any complaint to him at the time. However, he accepted that the plaintiff made it clear that she was unhappy completing the accounts upstairs. He felt it was his function to direct where the work was done and there were security implications in having such work done in the sergeant's office which was downstairs in a room which was unlocked, unlike the district office. He did not threaten her or raise his voice or suggest that any assurances she had previously received from Chief Superintendent Monaghan were now worthless.

It was put to him in cross-examination that she was perfectly entitled to seek clarification as to the status of the cheque, a proposition with which the witness agreed. He accepted that the accounts, as a matter of good practice, should have been completed on the fifth day of the month. He further agreed that no substitute had been arranged for Garda Callaghy during his absence in Templemore. He denied the suggestion that he was putting "a gloss on unpleasant events" to conceal the fact that the plaintiff had been treated unfairly.

He accepted that when the plaintiff applied for promotion to the position of Finance Officer through an internal Department of Justice competition he had approved her application but in a subsequent telephone call had expressed concerns up the line about the plaintiff's "consistent hostile attitude" in relation to certain aspects of her work.

Retired Chief Superintendent Tom Monaghan also gave evidence. He had known the plaintiff going back to 1993 and understood that she was "unwell" more than average. He was asked by the Employment Assistance Service to call the plaintiff in relation to her illness and her future which he did in April 1997. He was aware that she was out of work due to stress, but in the course of their conversation she made no mention of bullying or difficulties with any garda, nor did she bring up the meeting in Glynn's Hotel. He did not give her any assurances, but was aware of the building works going on in Gort Garda Station and that there were consequential difficulties for those working there in portacabin accommodation. His reason for contacting the plaintiff was in relation to assessing staff for optional discharge if they were on prolonged periods of sick leave. When asked to be a witness in the case he was shocked to hear that the plaintiff had raised allegations of bullying. He had not arranged her switch to the sergeant's office following her return to work in 1997. He had allocated another clerical assistant to Gort at a later time when staff became available. He had visited Gort Garda Station on a number of occasions and had discussions there with the plaintiff who appeared to him to be of a nervous disposition. His visits to the station were generally for the purpose of inspection but he kept the tone light and informal and often retired to the kitchen with the staff members for tea. He would have been conscious of any sort of allegations of bullying given that there was a new culture of female garda members in the force and there had been allegations by other female gardaí that they had been sexually harassed. A "Divisional Welfare Committee" had been set up in relation to issues of that sort and had such an issue been raised by the plaintiff he would certainly have remembered to bring it up at a meeting of this body.

Mr. Gerry Guidon, Financial Accountant, in the Department of Justice, gave evidence that his job was to coach, mentor and advise staff in relation to finances. He confirmed there was no rule or regulation that the first cheque of the month should be the accountant's cheque, but it was the normal practice. A cheque would only be cancelled if it was for the incorrect amount, incorrect payee or was more than six months out of date. Any question of security of the records was a matter for the district officer, under the Garda Síochána Finance Code Regulations, in this case, Supt. Mockler. He had no memory of any specific query addressed to him by telephone by the plaintiff.

Pamela Holland is employed by the defendant in the Employment Assistance Service which provides a confidential service for civilian employees of the Department. She was first contacted by the plaintiff in 1996. There were a number of short abrupt calls, the general tenor of which was to convey to her that the plaintiff felt stressed and anxious, that the work environment was tense and that she did not have good relations with the person working in the room with her.

By way of response she called to the station, but her visit seemed to embarrass the plaintiff who requested that they go to the car park for their conversation. In follow up contacts and conversations, the plaintiff had referred to suggestions of bullying. This was a matter of grave concern to Ms. Holland who asked that any such allegation be advanced in writing. This the plaintiff refused to do.

In 1997 she rang the plaintiff to say she would come down to Gort to meet her confidentially. The plaintiff identified a café in the visitor's centre of a resort outside Gort and a time and date was fixed for the meeting. The plaintiff gave her directions how to find it. She drove down from Dublin, went to the café and waited for two hours but the plaintiff did not show up. When she tried to telephone the plaintiff there was no response so she left a voicemail saying she was waiting for her. Her further interaction with the plaintiff came in 2008 when the plaintiff raised with her the issue as to whether or not any counselling she might wish to have would be paid for, given that gardaí have paid counselling from the medical fund.

Professor Patricia Casey, Consultant Psychiatrist, had one interview with the plaintiff in May, 2012. At this meeting the plaintiff confirmed she had no complaints and no difficulty since 2005. Her current status was that she was well. In terms of past medical history, she indicated she had no past psychiatric or psychological problems. However, when her G.P. notes became available they indicated that she had been depressed following the birth of her baby in 1995 and further stress associated with the death of her father had resulted in more significant anti-depressants being prescribed for her between May and November, 1995.

The plaintiff had no symptoms of post traumatic stress disorder. She would agree that the plaintiff had what she described as an "adjustment disorder", which she described as an abnormal level of stress and anxiety arising in a reactive way to life events. This is a self limiting condition which occurs in close proximity to a single event, and when the stressor is removed, the symptoms improve.

LEGAL PRINCIPLES

It is important to record at the outset that bullying is one of the more obnoxious traits in human behaviour. That is so because it involves a deliberate and repeated course of action designed to humiliate and belittle the victim. It is conduct which is intended to reduce that person's sense of self worth. It may occasion significant pain and suffering to any person so treated. The phenomenon of teenage suicide is often linked to bullying. Bullying can occur at any stage in life and between all age groups. The young can bully the old and *vice versa*; those in authority can bully pupils or employees, those charged with the care of the weak and elderly can similarly

behave and school or workplace colleagues can engage in bullying behaviour (in any of its multiple forms) to such a degree that life no longer seems worth living for the victim. Any rational person who has seen the effects of bullying will agree that it is an activity which carries a grave risk for the victim's health and for his or her ability to function in a normal way.

That said, bullying, workplace stress and occupational stress are all things which, conceptually at least, are quite different from each other, though on occasion they can overlap and coincide. Occupational stress is not actionable given that occupational stress is something which every employed person may experience at some stage of his or her working life and can occur for reasons quite distinct from and unrelated to bullying. Workplace stress on the other hand may be actionable if certain legal criteria are met. It can be the result of behaviour which falls far short of bullying. It can be the result of negligence where excessive demands are made of an employee or where complaints about shortcomings in the workplace go unheeded. It lacks however that degree of deliberateness which is the hallmark of bullying.

It follows that the first question that must be asked in every bullying case is whether the behaviour complained of, by reference to an objective test, imports that degree of calibrated inappropriateness and repetition which differentiates bullying from workplace stress or occupational stress.

The legal definition of bullying as recommended by the Report by the Task Force on the Prevention of Workplace Bullying (Stationery Office, March, 2001) is set out in the Industrial Relations Act 1990 (Code of Practice Detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002 (S.I. No. 17 of 2002) as:-

"[R]epeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could *reasonably* be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, it is not considered to be bullying." (Emphasis added)

This wording must be taken as requiring an objective test to determine if bullying has occurred. The test must, for reasons of common sense also, be an objective one given that any other would leave every defendant vulnerable to allegations of bullying based on purely subjective perceptions on the part of a plaintiff who might contend that straightforward situations at work or otherwise were construed by him/her as amounting to bullying.

In *Quigley v. Complex Tooling and Moulding Ltd.* [2009] 1 I.R. 349, the Supreme Court, when defining bullying or harassment at work, did not feel any need to go further than the statutory definition. As Fennelly J. stated at p. 372:-

"Since the definition of workplace bullying taken from the code of practice laid down in the statutory instrument has been accepted by the defendant as an accurate statement of the common law duty of care, it is not appropriate to refer to other authority."

While the plaintiff also complained of workplace stress (to which other legal considerations apply), the genesis of that particular aspect of the case lies in events which transpired in 1996 and 1997 which are not the subject matter of the present claim for compensation. Indeed they were not the subject matter of any legal claim at the time. On the contrary, the present claim is one in which in the plaintiff's pleadings it is alleged that "the plaintiff was repeatedly hounded and harassed" by the said superintendent over a four day period in May, 2005 in relation to the preparation of monthly accounts and "the need to complete the task quickly and in relation to the issue of the irregular payment to him".

Reliance on was placed by Mr. Rogers on the decision of Herbert J. in *Sweeney v. The Board of Management of Ballinteer Community School* [2011] IEHC 131 (Unreported, High Court, Herbert J., 24th March, 2011) to argue that the legal test for bullying was a two-pronged test, the second part of which is to inquire whether the activities complained of were such as to meet a test of reasonable foreseeability that the particular claimant would suffer harm or damage. However, Herbert J. in that case found there had been continuous bullying and harassment of the plaintiff so that this further requirement does not seem appropriate in the context of a bullying allegation. Such a test seems more appropriate to cases where it is alleged an employer failed to alleviate workplace stress which they knew, or should have known, was likely to cause injury to an employee.

In the present case and in so far as any case of creating or causing workplace stress was pursued, the relevant legal principles were laid down in *Berber v. Dunnes Stores* [2009] E.L.R. 61, a decision which adopted the 'practical propositions' derived by Hale L.J. from case law and set out by her in *Hatton v. Sutherland* [2002] 2 All E.R. 1 as follows:-

- "1. The ordinary principles of employer's liability apply.
2. The threshold question is whether the kind of harm to the particular employee was reasonably foreseeable: this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors).
3. Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability.
4. The employer is generally entitled to take what he is told by his employee (including what he is told by the employee's medical adviser) at face value unless there is good reason to think to the contrary.
5. The indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.
6. The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the cost and practicability of preventing it, and the justifications for running the risk.
7. An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this.

8. If the only reasonable and effective steps would have been to dismiss or demote the employee the employer will not be in breach of duty in allowing a willing employee to continue in the job.

9. In all cases it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care.

10. The claimant must show that the breach of duty caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm."

It must now be considered whether the plaintiff has made out a case under either the heading of workplace bullying or actionable workplace stress as defined in *Hatton's* case.

DECISION

I believe there were two issues which greatly exercised the plaintiff in this case, namely, her sense of injustice that she, as a civilian employee, was not being paid the same rate for the same work as her garda colleague, Garda Callaghy. Second, but equally important, the working conditions in which both were obliged to work in 1996 can only be described as unsatisfactory and for that reason conducive to work place stress. It is not difficult to see how working relations between colleagues could become strained in such circumstances. That is what I believe occurred between the plaintiff and Garda Callaghy. However, those facts, and I find those were the facts, fall far short of substantiating an allegation of bullying by Garda Callaghy or anyone else.

In evaluating the different witnesses in this case, the court felt considerable concerns about certain aspects of the plaintiff's evidence. In particular, the Court felt there was no acceptable explanation for the plaintiff's failure to disclose her prior history of depression to either her own medical experts (apart from Dr. Piggott, whose report made no reference to it) or by way of reply to particulars. In a case of this nature, an omission or failure of this sort is enormously significant, given that so much turns on the credibility of the witnesses on both sides. Effectively, the plaintiff subverted the value of evidence tendered both by herself and by her own medical experts to a very significant degree given that the latter were left in the dark about this prior history.

Having had the ample opportunity of assessing the plaintiff's demeanour in the witness box, the Court was left with a clear impression of a person who was somewhat perfectionist and was a person who took offence easily. She was not slow to criticise others and tended to turn minor incidents into events of major proportions. In particular I find her lack of co-operation with Ms. Pamela Holland to be quite extraordinary, given that Ms. Holland on one occasion travelled a long distance to meet her and address her concerns but was left high and dry having waited at a location designated by the plaintiff for that meeting. No satisfactory explanation for this treatment of Ms. Holland was offered by the plaintiff.

In contrast, I found the evidence of Supt. Mockler to be both credible and reliable. I am satisfied and find as a fact that he was unaware of difficulties between the plaintiff and Garda Callaghy until the meeting in the hotel in Gort in December, 1996 (or January, 1997 as the case may be). The plaintiff portrayed this meeting as though it was one where she was virtually held captive for five hours and denied food or refreshments. Having heard Supt. Mockler's account of this meeting, I find his version of events much more credible and I prefer his account to that offered by the plaintiff. Having observed his demeanour in the witness box, he impressed me as a truthful and careful historian of events at Gort Garda Station both then and later. His subsequent agreement to allow the plaintiff work a shorter week is not the hallmark of a bully.

I make the same finding in relation to the supposed "harassment" alleged to have occurred when Supt. Mockler phoned the plaintiff in the aftermath of that meeting at her home in January, 1997. He was perfectly entitled to make such a telephone call as a concerned senior officer in the station, given that he wished to enquire as to when the plaintiff might be returning to work and whether he could help in any way, but on making the call the plaintiff hung up the phone. Her husband then said she had gone out and Supt. Mockler was ultimately obliged to have another officer call the house to have what most people would regard as a perfectly routine conversation with a work colleague. I reject totally any suggestion that these telephone calls constituted harassment or bullying of any kind. I find as a fact that there was no bullying or harassment of the plaintiff in 1996/1997.

In so far as the events of May, 2005 are concerned, Supt. Mockler was out of the office for one of the four days during which the plaintiff was dealing with the accounts, engaged as he was in a murder inquiry. He was quite within his entitlement to ask the plaintiff to complete the accounts for Killarney in the context of Garda Callaghy's absence. This may have come as a surprise to the plaintiff, but I am satisfied she was well capable of performing the task and should not have adopted the unwilling disposition which she did adopt in relation to that task. The matter of the Superintendent's cheque was, in the view of this Court, 'a thing of nothing', which certainly could, and should have been, sorted out between the two of them in the garda station, as one would expect normal working colleagues to do. Quite apart from the sheer physical impracticality of "throwing" a cheque, I do not believe or accept the plaintiff's account in regard to that particular incident, but prefer instead the evidence tendered by Supt. Mockler whose calmness and patience under prolonged cross-examination greatly impressed the Court.

In summary, I cannot see that anything in the behaviour of either Garda Callaghy or Supt. Mockler constituted bullying or harassment in this case. Indeed, when the plaintiff was moved to the office in which she wished to work, all her complaints ceased in 1998 and only resurfaced when she was asked to do something she was unwilling to do in 2005. The length of this interval is remarkable in the context of this case because, far from supporting a complaint of bullying (which is commonly experienced as an ongoing phenomenon) it indicates that in reality the plaintiff had a workplace issue and her complaints and stress went away once she moved to a different environment within the station.

Furthermore, the events upon which the plaintiff relies to mount her claim turn on the events of a few short days in May, 2005 a time span more identifiable with a once-off or single incident rather than the kind of 'repetitive' and 'inappropriate' conduct which constitutes the wrong of workplace bullying or harassment. Even if events were as described by the plaintiff, they are more synonymous with the kind of 'isolated incident' excluded from the definition of bullying by S.I. 17 of 2002.

Another notable feature of the case is that not a single other member of Gort Garda Station has offered evidence to suggest that there was any culture of workplace bullying or harassment in Gort Garda Station, nor was there a single witness to corroborate the plaintiff's complaints in any way.

Overall the Court was left convinced that, far from being a case of workplace bullying, the plaintiff's problems all stemmed from what she saw as unreasonable working conditions in 1996 and what she saw as an unreasonable request directed to her by Supt. Mockler in 2005.

I would therefore dismiss the claim in so far as it consists of an allegation of bullying.

I am also of the view that this is not a case in which the plaintiff has made out a case of workplace stress causing or contributing to foreseeable injury or damage. She had no complaints of workplace stress for the eight years between 1997 and 2005. Her workplace conditions were not markedly altered when, in May, 2005 she was asked to perform a straightforward task for which she was well qualified. Supt. Mockler was, on the findings of fact I have made, entitled to assume she could comply with his requests in that regard.

I would therefore dismiss the claim on this ground also.

Even if mistaken on these issues I would also be of the view that the plaintiff failed to demonstrate that her stress was attributable to the matters she complained of in this case. She had a prior history of stress and depression which was not disclosed until it was uncovered through the discovery process. I believe any subsequent stresses suffered by the plaintiff were attributable both to life events (including the tragic death of her nephew and the death of her father) and, in 2005, to occupational stress only.

I would therefore dismiss the claim