



**THE COURT OF APPEAL**

Neutral Citation Number: [2018] IECA 34

**Record No. 2014/6445P**

**Court of Appeal No. 2017/210**

**Ryan P.  
Irvine J.  
Hedigan J.**

**BETWEEN/**

**MARIE O'REILLY**

**APPELLANT**

**AND**

**COMMISSIONER OF AN GARDA SÍOCHÁNA**

**RESPONDENT**

**JUDGMENT of Ms. Justice Irvine delivered on the 16th day of February 2018**

1. This is an appeal against the judgment and Order of the High Court (O'Connor J.) of the 6th April 2017 whereby he dismissed the claim of Ms. Marie O'Reilly ("Ms. O'Reilly") on the application of the defendant, the Commissioner of An Garda Síochána ("the Commissioner") at the conclusion of the plaintiff's evidence. She also appeals the Order for costs which he made in favour of the Commissioner.

**Background**

2. To describe the background to these proceedings as sad and tragic is not an understatement as it is abundantly clear from the papers submitted to this court that the circumstances surrounding these proceedings have caused Ms. O'Reilly great hardship and distress.

3. As a result of the events which I will now briefly summarise how Ms O'Reilly has found herself in a situation where, with the exception of two days in May 2011, she has not worked since March 2008 and has had no income since the 31st December 2009. The knock on effect of her loss of income has been the repossession of her home and need to rely on the charity of others allied to which she has found herself caught up in a multitude of disciplinary investigations and inquiries apart altogether from the current legal proceedings.

**Background**

4. Ms. O'Reilly joined An Garda Síochána in 1994 and was attested in December 1995. In September 2006 she was transferred to Manorhamilton garda station at her request. From March 2008 to December 2009 Ms. O'Reilly remained out of work on certified sick leave. In December 2009 she made a formal complaint of bullying and harassment and sexual harassment against fifteen members of An Garda Síochána based at Ballymote and Manorhamilton Garda Stations. Her complaint ran to some ninety pages. That complaint was investigated by a Chief Superintendent whose report was later submitted to the Assistant Commissioner. Ms. O'Reilly's complaint was not upheld.

5. By letter dated the 3rd August 2011 Ms. O'Reilly was notified of the fact that her complaint of bullying and harassment had not been upheld. Ms O'Reilly maintained before this court that she only came to learn of that letter on the 1st September 2011. However, even if that be the case, the date upon which she received the letter is not material to her appeal. What is of vital importance to her appeal is the fact that Ms. O'Reilly did not seek to appeal that decision and neither did she seek to challenge it by way of judicial review.

6. Ms. O'Reilly was removed from the Garda payroll with effect from the 1st January 2010 in circumstances where she remained out of work unsupported by medical certificates. In her submission to this court she maintains that there is nothing wrong with her health, and that she has been certified as fit to return to work. However, she asserts that she cannot be expected to work in the Sligo/Leitrim area, an environment where she fervently believes she was subjected to significant bullying, harassment and sexual harassment. She insists that she is entitled to be transferred to the Garda I.T. centre where she had worked for six years before her transfer to Sligo/Leitrim.

7. In May 2013, in accordance with the Garda Síochána (Discipline) Regulations 2007 (the 2007 Regulations), a member of An Garda Síochána was appointed to investigate Ms. O'Reilly's continued absence without leave from the 7th March 2012 to the 22nd May 2013. Ms O'Reilly was notified about this investigation but chose not to engage with the process. As a result of this investigation and an ensuing report of the 13th November 2013, a Board of Inquiry was established to determine whether Ms. O'Reilly's conduct amounted to a breach of discipline, under the 2007 regulations. The single breach of discipline before the Board was whether she had been absent from duty between the aforementioned dates without good and sufficient cause.

8. The Inquiry proper was scheduled to take place on the 26th June 2014. However, on the 24th June 2014, by letter addressed to the Board of Inquiry, Ms O'Reilly, sought an adjournment of the proceedings. On the same date she wrote to the Commissioner requesting that the disciplinary proceedings pending against her would be postponed until such time as she had received her personnel and medical file. That letter was passed to the Board of Inquiry in circumstances where the Commissioner considered it inappropriate to interfere with the disciplinary process.

9. Ms. O'Reilly's request to the Board of Inquiry for an adjournment was granted on a peremptory basis until the 24th July 2014. On the 23rd July 2014, she again wrote to the Board, this time advising it of her intention to apply to the High Court for an injunction to restrain the inquiry. Accordingly, on the 24th July 2013 she issued a plenary summons and made an unsuccessful application for an

interim injunction. What she did obtain was an Order permitting her short service of a notice of motion for an interlocutory injunction returnable for Tuesday, the 29th July 2014. However, this did not avail Ms O'Reilly in circumstances where the Board of Inquiry proceeded, as planned, with the disciplinary inquiry in her absence on the 24th July 2014.

10. Following its consideration of the alleged breach of discipline on the part of Ms. O'Reilly the Board, on the 24th July 2014 made a recommendation to the Commissioner that she be dismissed from An Garda Síochána. On the 5th September 2014 Ms O'Reilly was served with Notice of her dismissal. At this point, it is extremely important to record that Ms O'Reilly has raised no public law challenge to the decision of the Board, as would have been her entitlement if she considered that the inquiry had been conducted in breach of natural justice or fair procedures. Instead, as was her entitlement under the 2007 Regulations, on the 12th September 2014, Ms O'Reilly submitted an appeal against the decision to dismiss her from An Garda Síochána. That appeal remains live and in the meantime her dismissal has been suspended.

11. Ms. O'Reilly is also the subject matter of two other separate disciplinary inquiries under the 2007 Regulations about which this court knows little save that Ms. O'Reilly is clearly of the view that these are the result of a deliberate campaign or policy which will ultimately result in her dismissal from An Garda Síochána.

### **The Pleadings**

12. In her plenary summons of the 24th July 2014, the focus of Ms. O'Reilly's claim was the disciplinary proceedings due to take place on the 24th July 2014. From the general endorsement of claim, it would appear her principal concern was that the hearing before the Board of Inquiry concerning her alleged breach of discipline within the meaning of regulation five of the 2007 regulations would not take place until such time as she had possession of her Garda Personnel and Medical File.

13. In her amended plenary summons of the 30th July 2015 and in the statement of claim that followed Ms. O'Reilly advanced a multiplicity of complaints and claims against the Commissioner. She maintained, inter alia, an entitlement to damages for breach of contract and the payment of her wages since 2008. She claimed that the Commissioner had failed to investigate the complaints she had made in December 2009 concerning bullying, harassment and sexual harassment and had impermissibly failed to transfer her to a garda station where she would not be subjected to such conduct. Ms O'Reilly also sought orders restraining the Commissioner from proceeding with any inquiries under the 2007 regulations until such time as she had been provided with a medical and personnel file; an order directing that any such pending inquiries would be heard together as well as an order removing from her personnel file any mention of disciplinary proceedings.

14. In her defence of the 10th September 2015 the Commissioner, by way of a preliminary objection, maintained that the Statement of Claim failed to disclose a reasonable cause of action. Insofar as Ms. O'Reilly had sought orders interfering with the conduct of disciplinary proceedings pending against her under Regulations 2007, it was claimed that the proceedings were premature. The Commissioner denied breach of any legal duty and claimed full compliance with the 2007 Regulations. She asserted that Ms. O'Reilly's complaint of bullying and harassment had been fully investigated, that Ms. O'Reilly had failed to engage with the Garda Occupational Health Service to facilitate her return to duty and that the Court had no jurisdiction to consider any issues concerning Ms. O'Reilly's request that she be transferred to a different posting. That was an internal matter for An Garda Síochána.

15. The Commissioner maintained that the Board of Inquiry established to consider Ms. O'Reilly's absence without leave from An Garda Síochána was properly established and was conducted in accordance with the 2007 Regulations. Ms. O'Reilly had not challenged the conduct of the Inquiry and had on the 12th September 2014 appealed the decision that she be dismissed pursuant to Regulation 33 of the 2007 Regulations.

16. Insofar as Ms. O'Reilly sought any application for an injunction restraining the continuance of any disciplinary proceedings pending against her, she was not entitled at law to do so, she having lodged an appeal against the decision to dismiss her from An Garda Síochána.

17. Finally, the Commissioner maintained that all or any financial loss or damage occasioned to Ms. O'Reilly has been occasioned by reason of her own conduct in failing to engage with the Garda Occupational Health Service and / or follow a therapeutic regime to facilitate her return to duty.

### **The High Court Hearing and Judgment**

18. Ms. O'Reilly's claim was heard before the High Court (O'Connor J.) between the 30th March 2017 and the 6th April 2017. During that period Ms. O'Reilly gave evidence and she also called a number of witnesses to give evidence on her behalf. Following the conclusion of that evidence the respondent made an application to dismiss Ms. O'Reilly's claim on the basis that she had failed to establish the evidence necessary to support a judgment in her favour in respect of any of the reliefs claimed in the proceedings.

19. In his *ex tempore* judgment delivered on the 6th April 2017 the High Court judge set out in some detail the nature of Ms. O'Reilly's grievances and he categorised the grounds upon which she had sought relief as follows:-

"(i) There was a failure to investigate properly, and in accordance with the defendant's own procedures the complaints of the plaintiff concerning bullying and harassment;

(ii) the recommendation of the independent Board of Inquiry established under An Garda Síochána (Discipline Regulations) and the decisions by the defendant made on foot of that recommendation to dismiss the plaintiff from An Garda Síochána was made unlawfully and/or in breach of the plaintiff's rights;

(iii) the reduction and non-payment of the plaintiff's salary since the 21st December, 2009 constituted a breach of contract; and

(iv) the defendant and/or her agents have undermined the authority and power of this Court by their representations to the court and by their failure to take up the DAR for certain hearings in order to give the plaintiff a transcript."

20. The High Court judge found favour with the respondent's application that the proceeding be dismissed and he supported that decision based upon the following conclusions, namely:-

(i) Ms. O'Reilly had not appealed nor made an application pursuant to Ord. 84 of the Rules of the Superior Courts to challenge the decision of the 3rd August 2011 not to uphold her complaint of bullying and harassment.

(ii) Ms. O'Reilly had not proved an entitlement to damages arising from her alleged bullying and harassment in accordance

with the requirements of the decision of Laffoy J. in *McGrath v. Trintech* [2005] 4 I.R. 382. Accordingly, Ms. O'Reilly had not established an entitlement to relief concerning her sense of grievance about the procedural and substantive aspects of her bullying and harassment complaint.

(iii) Ms. O'Reilly was not to be excused for her failure to comply with the Rules of the Superior Courts concerning challenges to decisions which were amenable to challenge by way of judicial review.

(iv) Ms. O'Reilly had not established that the Board of Inquiry had acted *ultra vires* or unlawfully.

(v) Ms. O'Reilly had failed to adduce evidence of a breach of her contract of employment such as would entitle her to an award of damages for loss of salary since the 31st December 2009. Her reliance on the Payment of Wages Act 1991 was ill founded. He also concluded that Ms. O'Reilly had excluded herself from a further claim for loss of salary having pursued the mechanism under the Payment of Wages Act 1991.

(vi) Ms. O'Reilly, long before the 24th July 2014, could have taken steps by way of notice of motion to restrain the commencement of the disciplinary proceedings. It was not good enough for a person who was the subject matter of a disciplinary hearing to write the day before the proposed hearing to advise that they were about to issue proceedings to restrain that hearing and to expect that in the light of such notification the Disciplinary Board would refrain from proceeding further. That was to seek to usurp the role of such a body.

(vii) Whilst the court had sympathy with Ms. O'Reilly because of her honestly held beliefs concerning the wrong doing which she alleged, it was nonetheless the case that she had not established a cause of action which was capable of remedy within the strictures of the plenary proceedings which she had issued.

### **The Appeal**

21. In her notice of appeal Ms. O'Reilly relies upon five grounds of appeal. These are as follows:-

(1) Objective bias. Ms O'Reilly claims that the trial judge, unbeknownst to her at the time of the hearing, was a member of a Mental Health Tribunal / Mental Health Commission and that another member of that Tribunal / Commission was a Dr. Devitt, a psychiatrist, who had provided a medical report in connection with the inquiry into her complaint of bullying and harassment. The trial judge had not, in accordance with practice and custom, disclosed this relationship.

(2) The trial judge was guilty of demonstrable bias. This was evident (i) from the fact that he had refused her application to direct the production of certain CCTV footage which she maintains was material to her claim (ii) that he had refused her application for a stay on all of the of the disciplinary proceedings pending against her, notwithstanding the fact that she had advised him of her intention to appeal his decision to this court and (iii) had ignored the fact that he had been misled by counsel for the Commissioner.

(3) The trial judge erred in law in concluding that the evidence Ms O'Reilly adduced was inadequate to prove her case.

(4) That she was not afforded any of the legal protections provided for under the Protected Disclosures Act 2014.

(5) Because of 1-4 above there had been a miscarriage of justice.

### **Objective bias**

22. The test for objective bias is stated distinctly by Denham J. in *Bula Limited v. Tara Mines Limited (No. 6)* [2000] 4 I.R. 412 where she quoted with approval from the judgment of the Constitutional Court of South Africa in *President of the Republic of South Africa v. South African Rugby Football Union* [1999] 4 S.A. 147 at para 48 inter alia as follows:-

"The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience."

23. Having considered the submission made by Ms. O'Reilly concerning objective bias, I am satisfied that this ground of appeal must fail. Of principal importance is the fact that there was no evidence before the Court of Appeal to ground the complaint of objective bias. Where a party seeks to set aside a judgment made on the grounds of objective bias the party seeking such relief must put evidence before the Court to establish the facts which they maintain support their claim. In most circumstances this is done by notice of motion supported by a ground affidavit which will set out all of the relevant details.

24. On the present appeal there was no affidavit before the Court setting out evidence upon which the Court could rely. All the Court had to go on was a statement made by Ms. O'Reilly in the course of her submission that she had been told by a third party, after the proceedings had been determined, that the High Court judge had been a member of the same mental health tribunal / mental health commission as Dr. Devitt. The Court had no evidence that this was so.

25. I fully appreciate that Ms. O'Reilly as a lay litigant is probably not familiar with the proofs required to set aside a judgment on the basis of objective bias. I can also understand that, because she believes she has been mistreated by her employer and has unfairly had her claim dismissed by the High Court, she may have become concerned, on learning of some potential connection between the trial judge and a medical doctor whom she attended for the purposes of a medical examination in relation to her complaint of bullying and harassment.

26. While individual judges, may choose to disclose any connections they may have with potential witness or parties they are not obliged to do so unless they consider that the reasonable, objective and informed person would, on being made aware of the relevant facts would reasonably apprehend that the judge would not be minded to adjudicate upon the case in a fair and impartial manner. That is the threshold at which a judge must recuse himself or herself from hearing the proceedings before them. However, casual relationships, such as here suggested by Ms O'Reilly even if there was evidence in support would not reach this threshold. For

example, in *Talbot v. Heritage Golf Club* [2009] IESC 26, Denham J. held that the test of objective bias was not satisfied by the attendance at the same school of judges and lawyers in the case before her.

27. I consider it important that Ms O'Reilly be reassured that even if she had produced an affidavit which established that the trial judge and Dr. Devitt had been members of the same Tribunal / Commission that would not have given rise to a valid claim of objective bias. Dr. Devitt was not, for example, a key witness in the case. Indeed he wasn't involved in the proceedings even in the most peripheral way. Neither was his medical report key to any issue that the trial judge had to decide. His name was mentioned only in the most peripheral sense on three occasions on the final day of the hearing in relation to matters which were immaterial to the substance of what the trial judge had to decide. Accordingly, this ground of appeal must fail.

28. Every litigant has a constitutional right to have their case determined by an impartial judge and in accordance with natural justice and fair procedures. However, the fact that a judge makes rulings against a party in the course of proceedings is not evidence of bias. In this case the High Court judge did indeed make a number of rulings against Ms. O'Reilly. However, she does not advance any basis for the allegation she makes. More fundamentally, actual bias is not established by decisions in the proceedings themselves: see *Orange Communications Limited v. Director of Telecommunications Regulation and Meteor Mobile Communications Limited, Defendants (No. 2)* [2000] 4 IR 159. The head note states that "bias could not be established from the nature of a decision made, as the allegation of bias had to be made on foot of circumstances outside the actual decisions made in the case itself. The manner in which proceedings were conducted could not in itself create a reasonable suspicion of bias.

Keane CJ said:

"The authorities, however, lend no support whatever to the proposition . . . that the court is entitled to infer from the establishment of a number of errors in the impugned decision, or the process leading to the decision, that the decision itself was vitiated by the existence of bias which can be equated to objective bias." At p. 187

And Geoghegan J said:

"It is still the case that there is no authority or precedent or even relevant *obiter dicta* indicate that bias can be established from the nature of the actual decisions made. The learned High Court Judge took the view that in the absence of precedent this might be a reasonable development of the law. But I do not think that that view was justified in that it fundamentally alters the true meaning of bias. It seems clear from the case law in Ireland and England that an allegation of bias must be made on foot of circumstances outside the actual decisions made in the case itself. I would accept that in a situation where there was an arguable case of bias based on traditional proofs the added factor of cumulative wrong decisions all one way might be tantamount to corroboration of alleged bias and be a relevant factor in that restricted sense in the proving of bias. But of itself and by itself it can never be evidence of bias." At p. 251

29. Those declarations of the law make the position clear but to make assurance doubly secure in the unfortunate circumstances of this case and in order to deal with all the grounds put forward by Ms O'Reilly I nevertheless address this issue.

### **CCTV**

30. For the purposes of assessing the validity of this ground of appeal I have tried unsuccessfully to locate in the transcript the application which Ms O'Reilly maintains she made for an order that the Commissioner provide her with a copy of certain CCTV footage and which she claims the High Court judge refused. However, even assuming that she did in fact make such an application, I have to say that it was an application that was highly irregular coming as it did in the course of the substantive hearing. Once again, because she is a lay litigant, Ms O'Reilly may not understand that a party who wishes to rely upon a document or CCTV footage at the hearing of their proceedings, if they do not have it in their possession, will invariably make an application for discovery to obtain that document or CCTV footage in advance of the hearing. It is only in very exceptional circumstances that discovery of a document or something like CCTV footage would be ordered in the course of the proceedings. That being so, and in the absence of any reasoned explanation as to why the Court should consider the refusal of any application she may have made for disclosure of CCTV footage, I could not consider any such refusal evidence of demonstrable bias.

31. Insofar as Ms. O'Reilly alleges bias against the trial judge for his failure to stay all disciplinary proceedings against her including her own appeal against her dismissal in light of her intended appeal to this Court, once again her submission is, I fear, misconceived. Again, it may be difficult for Ms. O'Reilly as a lay litigant to understand the circumstances in which a High Court judge may grant a stay on their Order pending an appeal.

32. In the vast majority of cases it is the unsuccessful defendant, faced with an order against them, that will apply for a stay on entry and/or execution pending an appeal on the basis that it would be unfair to make them, for example, satisfy a judgment in circumstances where they believed they would be successful in their appeal. However, in the present case the High Court judge did not make any positive Order against Ms O'Reilly in favour of the Commissioner, with the exception of the costs order, which she might have asked him to stay pending an appeal. In the present case the High Court judge did no more than dismiss Ms. O'Reilly's claim on the basis that her evidence was insufficient to support any of the claims she had made.

33. The application which Ms. O'Reilly describes as an application for a stay was in fact her application for an injunction which would have the effect of suspending all of the disciplinary proceedings pending against her including her own appeal against the decision of the Board of Inquiry pending the hearing of her appeal against the decision of the High Court judge. It may not have been obvious to Ms. O'Reilly but the effect of granting that application would have been to reverse the trial judge's decision to dismiss her claim. For this reason I am satisfied that the trial judge's refusal of what Ms. O'Reilly describes as a "stay" does not amount to evidence of bias.

34. As regards the claim that the High Court judge ignored the fact that he had been misled by counsel for the respondent, Ms. O'Reilly did not refer the court to any evidence of such conduct on the part of the respondent. Neither did she explain what it was that the trial judge should, or ought to have done, in light of the alleged misrepresentation relied upon. Accordingly, this could not support a case of demonstrable bias.

### **Ms O'Reilly's evidence was not inadequate**

35. Ms. O'Reilly in her submissions takes issue with the failure of the trial judge to have proper regard to her *viva voce* evidence with the result that he impermissibly dismissed her claim. Unfortunately, Ms. O'Reilly misunderstands the laws of evidence and she cannot understand why she did not win her case in circumstances where the defendant did not call any evidence to contest that which she had advanced. It seems to me that Ms. O'Reilly does not appreciate that the reason her claim was dismissed was that the trial judge concluded that, having heard all that she had to offer, she had not produced evidence sufficient to establish her entitlement to the

relief which she claimed.

36. While Ms. O'Reilly did call evidence from another witness to establish that she too had been subjected to bullying and harassment as a member of An Garda Síochána, the trial judge was not satisfied that this evidence entitled her to have him conclude that the Commissioner had failed to investigate the complaint made by Ms. O'Reilly in December 2009 in respect of bullying, harassment and sexual harassment. That complaint by Ms. O'Reilly had not been upheld and she had neither appealed nor challenged that decision.

37. In respect of her claim for arrears of wages since the 1st January 2010, Ms. O'Reilly in the course of her appeal was not in a position to point to any evidence which she had adduced in the High Court which supported her lawful entitlement to an order to this effect. Neither did she refer this court to any contractual provisional or regulation which she had brought to the attention of the High Court judge to demonstrate her entitlement to this particular relief. Accordingly, regardless of the fact that the defendant did not call any evidence in the High Court, the plain fact of the matter is that Ms. O'Reilly was not in a position to support her own claim to arrears of wages and thus the High Court judge acted entirely appropriately when he dismissed this aspect of her claim.

38. While Ms. O'Reilly has also appealed the failure of the High Court judge to grant her an order transferring her out of the area where she maintains she was bullied *i.e.* to an area beyond Sligo/Leitrim, in the course of her appeal Ms. O'Reilly did not draw the Court's attention to any evidence or legal argument that she had advanced in the court below which would demonstrate that the trial judge erred in law or in fact in concluding that she had established an entitlement to any such order.

39. From the submissions made by Ms. O'Reilly in the course of the appeal, I fear that she considers she was entitled to win her claim on all fronts in circumstances where the Commissioner decided to call no evidence. It is undeniable that she feels that she was wrong footed by the Commissioner's list of witnesses, which had been notified to her and whom she expected she would be in a position to cross-examine. Because she anticipated that these witnesses would be called to contest her claim she did not serve them with a subpoena as she might otherwise have done to require their attendance. These facts, amongst others, have clearly fortified Ms. O'Reilly's belief that she did not obtain a fair hearing. She highlights her grievance concerning the failure on the part of the Commissioner to call any of these six witnesses by referring to the statement made by the trial judge at the opening of the case when, in the course of describing the procedure that he would adopt, he told her that at the conclusion of her evidence the defendants' witnesses would be called and she would be afforded an opportunity to cross examine them.

40. It is certainly the case that in the vast majority of witness actions the defendant will, at the conclusion of the evidence adduced, on behalf of the plaintiff, call such witnesses as it considers necessary to defend the claim advanced by the plaintiff. However, a defendant may consider, having listened carefully to the evidence adduced on behalf of the plaintiff that the evidence adduced, even if taken at its height, was insufficient to support the claim advanced. If a defendant is of that view they may, in accordance with the principles set out in the Supreme Court decision of *Hetherington v. Ultra Tyre Services Limited* [1990] 32I decide not to go into evidence and instead ask the court to deliver its decision on the basis of the evidence as it exists at that moment in time.

41. A defendant who decides to adopt the strategy just described is not acting in an irregular or improper manner. In fact it is the proper approach to take where the defendant believes that it is clear that the plaintiff's evidence is insufficient to support the claim made. The approach not only saves court time but it also reduces the costs that would otherwise have been expended if the defendant had decided to give evidence. When a defendant makes such an application the Court must take the evidence adduced by the plaintiff at its height and then decide whether any part of the claim has been made out. The fact that a defendant had earlier delivered a list of potential witnesses does not preclude a defendant making an application for what is commonly described as a non suit. Even where a list of potential witnesses is served by a defendant on a plaintiff, it is implicit that if the plaintiff's case is not made out those witnesses will not be called.

42. I should also state that it is standard practice for a judge when embarking upon a claim where one of the parties is a lay litigant to outline the procedure that the Court will follow. That is precisely what the High Court did in the present case. It was not, however, for the High Court judge to anticipate that there might be any weakness in the plaintiff's case and to advise that if there was there might be an application for a direction and the defendant might decide not to call any evidence. Here the High Court judge advise the plaintiff as to what he considered was likely to happen and the fact that he indicated that the defendant would give evidence at the close of the plaintiff's case is not something that Ms. O'Reilly can seek to rely upon to contend there has been any miscarriage of justice.

#### **Protected Disclosures Act 2014**

43. Ms. O'Reilly commenced these proceedings by way of plenary summons dated the 24th July 2014. The relief claimed in that plenary summons was confined, in effect, to seeking an injunction to prevent the hearing of the disciplinary proceedings scheduled for hearing on the 24th July 2014. However, in July 2015 Ms. O'Reilly was granted leave to amend her plenary summons and she did so on the 30th July 2015 when she delivered a much expanded claim which was later supported by a statement of claim on the 30th August 2015.

44. It is true to say that Ms. O'Reilly, in the course of her High Court hearing, endeavoured to place reliance on the Protective Disclosures Act 2014. However, when she did so the High Court judge brought to her attention that the Act was not in place at the time she made her complaint of bullying and harassment and sexual harassment. However, more fundamental than that, the High Court judge made a ruling that Ms. O'Reilly was not entitled to make any submission based upon any alleged breach of the Protected Disclosures Act 2014 given that she had not, in her pleadings, sought to rely upon it in addition to which she had not adduced any evidence to support a claim that there had been any breach of its terms.

45. In the course of her submissions to this Court Ms. O'Reilly failed to demonstrate that the High Court judge erred in law when, in light of the pleadings, he refused to consider any alleged breach of the Protected Disclosures act 2014 and accordingly this ground of appeal must also fail.

#### **Miscarriage of justice**

46. Ms. O'Reilly in her final ground of appeal relies on each of the earlier grounds of appeal and contends that when all of them are considered together it is clear that she was the subject of a miscarriage of justice. In circumstances where I am satisfied that each of the first four grounds of appeal must fail it follows that this ground of appeal must also fail.

#### **Miscellaneous**

47. It is important for Ms. O'Reilly to recognise that the appeal that she brought against the decision of the High Court judge was one which was extremely limited. She did not, for example, contest that a direction should not have been granted based upon the evidence which she had adduced. In fact, in her appeal she raises no ground of appeal on any of the substantive issues decided by the trial judge and for this reason it would be quite inappropriate for this Court to engage with the substance of the various claims

made by her before the High Court.

48. It is also perhaps appropriate at the conclusion of this judgment to make a number of observations which, I hope will assist Ms. O'Reilly in clarifying her present position. First, whilst she is clearly dissatisfied and grossly upset concerning the outcome of her ninety page complaint in respect of bullying and harassment, the Inquiry into her complaints was concluded in August 2011 and for some reason, notwithstanding her dissatisfaction with that decision, she did not appeal it and neither did she challenge the fairness of the procedure adopted by way of judicial review. That being so she must come to realise that she has no further avenue by which she may pursue that particular complaint.

49. Insofar as the Board of Inquiry established on the 6th December 2013 made a recommendation, following the hearing that took place on the 24th July 2014, that she be dismissed, Ms. O'Reilly has lodged an appeal against that decision. Her appeal entitles her to a full rehearing of the complaint made against her. That complainant was that she had been in neglect of her duty and was in breach of discipline with the meaning of Regulation 5 of The Garda Síochána (Discipline) Regulations 2007 and in particular by reason of her continued absence from work without leave.

50. As a matter of fact Ms. O'Reilly has only attended work on two days since March 2008 namely the 10th and 31st May 2011. Nonetheless she maintains that she is more than willing and well able to return to work and that there is nothing medically that would preclude her from resuming her duties as a member of An Garda Síochána. Her principal complaint is that if she returned to work she would have to return to the same toxic situation that resulted in her making her complaint of bullying and harassment back in December 2009. Ms. O'Reilly is clearly intent upon trying to achieve a result whereby she can return to work in what she considers to be a non toxic environment. However, this Court can have no role in relation to decisions made by the Commissioner as to where she is assigned. Her desire to be transferred out of the Sligo / Leitrim division is clearly a matter for internal management in An Garda Síochána.

51. Regardless of whatever other disciplinary enquiries may remain outstanding in respect of Ms. O'Reilly's conduct, her failure to fully engage with her upcoming appeal will undoubtedly bring to a close any prospect she has, whatever that may be, of successfully defending the breach of discipline alleged against her. It is clearly in her interests to engage with that process and to procure such medical or other evidence as she considers might assist her in making her defence and in particular to establish that she had good and sufficient cause to remain absent from duty during the period identified in the complaint against her.

52. As was stated by the President of the Court in the course of the hearing of the appeal, this is indeed one of the saddest cases to come before this Court since it was established. However, for any appellant to succeed on their appeal they must have valid grounds of appeal. In this case Ms. O'Reilly has not established that she has any. I, for my part, am fully satisfied that each of the grounds of appeal is without foundation and I would accordingly dismiss the appeal.