Neutral Citation Number: [2008] IEHC 92

THE HIGH COURT

2008 No. 1484P

BETWEEN

ELIZABETH TURNER

PLAINTIFF

AND
FINTAN O'REILLY
TRADING AS FINTAN O'REILLY & COMPANY SOLICITORS

DEFENDANT

Judgment of Mr. Justice John Hedigan delivered on the 8th day of April, 2008.

1. The plaintiff is a legal executive who has worked for the past eleven and a half years for the defendant, who is a firm of solicitors practising in Elliot House, St. Mary's Square, Athlone, Co. Westmeath. She joined the firm as a receptionist and has worked her way up to the position of legal executive. Her work primarily involves conveyancing work. There is no written contract of employment between her and the defendant. There is no written disciplinary procedure in the firm. The application is an application for orders:-

> (1) Restraining the defendant from dismissing the plaintiff,
>
> (2) Restraining the defendant from appointing any other person to her position,
>
> (3) An order to afford full rights of appeal to an independent third party arising out of any disciplinary action that may be imposed upon her,
>
> (4) An order requiring the defendant to pay her salary, bonuses, expenses and pension contributions.

The Background

2. Between the 4th February, 2008 and the 18th February, 2008, a dispute arose in relation to the plaintiff's salary between her and the defendant. Whilst the evidence is somewhat contradictory, this dispute became quite heated. On the 18th the defendant handed the plaintiff a letter which reported to dismiss her there and then and required her resignation by the following Friday. She was to leave the office immediately. No disciplinary action had been taken against the plaintiff at this stage. Heated exchanges followed the transmission of this letter and the plaintiff left her employment there and then. On the 20th February, 2008, the plaintiff received a letter from Gerard Gallagher, solicitor of the same firm. This letter informed her that the defendant had delegated him to conduct an inquiry concerning certain allegations of gross misconduct alleged against her by the defendant and he set them out. These related to the heated exchanges and included allegations she had made derogatory remarks about other staff members. His letter went on to notify her that she was:-

> "Now being put on paid suspension pending the outcome of my investigation into the allegations of gross misconduct being laid against you."

3. The letter invited her to a meeting, with representation if she wished, in order to reply to these allegations. He further indicated that the reason he had been delegated to do the task was because he had not been involved in any of the incidents giving rise to the allegations of misconduct. He concluded:-

> "No decision regarding the termination of your employment will be made until such time as my investigations have been completed."

4. On the 21st February, the plaintiff received a further letter from Gerard Gallagher notifying her of further allegations that she had been in contact with a former partner of the defendants from whom he had parted after issues concerning breach of trust and confidence had arisen between them. The allegation was that in meeting him she had given rise to questions concerning her reliability as to trust and confidence within the firm. This was the first time these allegations had been mentioned. The plaintiff is currently suspended on full pay.

The applicable law

5. Injunctive relief of this nature in employment matters usually amounts to an application for interlocutory mandatory relief. This is so in this case. Were such relief to be granted it would require an employer to retain in his employ a person he would otherwise be free to dismiss. Dealing with this type of case in *Bergin v. Galway Clinic Doughiska Ltd.*, an unreported judgment of the 2nd November, 2007, Mr. Justice Clarke held:-

> "In any case in which an employee seeks to prevent a dismissal or a process leading to a dismissal, as a matter of common law, and in whatever terms the claim is couched, the employee concerned is seeking what is, in substance, a mandatory injunction which has the effect of necessarily continuing his contract of employment even though the employer might otherwise be entitled to terminate it. In those circumstances it is necessary for the employee concerned to establish a strong case in order to obtain interlocutory relief."

6. The requirement for a strong case has also been applied by Ms. Justice Laffoy in *Naujoks v. National Institution of Bioprocessing Research and Training Limited* [2007] 18 E.L.R. 25 and was followed by Irvine J. in *Stoskus v. Goode Concrete Ltd.*, (Unreported, 18th December, 2007). With regard to the interference by the Court with ongoing disciplinary proceedings in *Becker v. The Board of Management of St. Dominic's Secondary School & Ors.,* (Unreported, 13th April, 2006), I have been referred to page 7 of 19 of the transcript of Mr. Justice Clarke's *extempore* judgment and I quote:-

> "In approaching the grant or otherwise of an interlocutory injunction a number of legal principles, it seems to me, need to be applied. Firstly, it is my view that a Court should only intervene in the course of an uncompleted disciplinary process in a clear case. It does not seem to me to be consistent either with a proper invocation of the Court's jurisdiction or the proper conduct of disciplinary processes in an employment context that the Court should be invited to intervene at a variety of stages in the course of that process.
>
> This should not be taken to mean that there may not be circumstances where it is appropriate for the Court to intervene.

> But I would wish to emphasise that in my view the mere fact that there may be an argument as to whether a particular disciplinary process has taken an appropriate course does not of itself justify the Court in intervening (even where the proposition put forward by the Plaintiff is arguable) to prevent the process moving to its natural conclusion.
>
> In general terms it seems to me that the circumstances in which the Court should intervene is where a step, or steps, or an act, has been taken in the process which cannot be cured and which is manifestly at variance with fair procedures and the entitlement to them.
>
> In coming to a view as to whether that stage has been reached, it is important to note that the Court should not assume that unfairness will occur in the future, nor should it make assumptions about the likely future course of the process. The Court should intervene only where it has been demonstrated that the process has already been so tainted with an absence of fair procedures that it cannot be allowed to continue."

The application of these principles

7. In this case the defendant argues that the plaintiff has not been dismissed, notwithstanding the letter of the 18th February, 2008, which seems to demand her resignation. If it seemed to do so, he argues, he has now mended his hand and now concedes she remains in his employ and is entitled to the benefit of a fair investigation of the allegations made against her. It is clear to me that the attempt to dismiss the plaintiff on the 18th February, 2008, was entirely improper and made with no regard to fair procedures. Whatever the result of these proceedings, this may well have consequences in costs at their conclusion. For the moment, however, proceedings are in train and I must have regard to the principles outlined above by Clarke J. I cannot make any assumptions that any investigation will not be a fair one. I can note that if it is not, that will give rise to further consequences. The only question, it seems to me, that I must answer is as to whether the process herein regarding the plaintiff's employment has been so tainted with an absence of fair procedures that it cannot be allowed to be continued. It seems to me that while the infirmities in the process on the 18th February, were tainted by unfairness, nothing so far has tainted the disciplinary investigation and I think it should be allowed to proceed to its conclusion. Following that conclusion the plaintiff may take such proceedings as seem appropriate if she considers the disciplinary proceedings were not fairly conducted. For the Court to intervene at this stage would, in my view, be premature. Consequently I refuse the application for the interlocutory relief sought but it is my intention, in the light of my views concerning the original attempt to dismiss, to reserve the costs of this application to be costs in the action.