

THE HIGH COURT

2010 140 P

BETWEEN

CHRISTOPHER GIBLIN

PLAINTIFF

AND

IRISH LIFE & PERMANENT PLC

DEFENDANT

Judgment of Miss Justice Laffoy delivered on the 10th day of February, 2010.**Factual background**

When the events the subject of these proceedings commenced, the plaintiff had been an employee of the defendant for almost 30 years. Latterly he was the manager of the defendant's branch at College Green, Dublin, 2.

By letter dated 31st August, 2009 from the defendant (as Permanent TSB) the plaintiff was informed that the defendant was investigating various accounts held in his own name or with which he was associated. He was informed that he was being placed on special leave with full pay until a full investigation had been completed. It was emphasised that the action being taken was "not a form of disciplinary action and should not be regarded as a pre-judging of the issues". In a subsequent letter from the defendant's solicitor to the plaintiff's solicitors dated 4th September, 2009, in which it was acknowledged that the defendant accepted that the plaintiff had "a long and unblemished record", the provisions of the defendant's document entitled "Disciplinary Procedures" (the Disciplinary Procedures), a copy of which was enclosed, on which the defendant was relying in conducting the investigation and in placing the plaintiff on special leave were outlined.

In the Disciplinary Procedures the definition of "disciplinary action" encompasses three types of sanction: warnings, oral or written; action short of dismissal, which covers ten different types of sanction from withdrawal of privileges to transfer; and dismissal with or without notice. The defendant's entitlement to place an employee on special leave derives from the following provision:

"Where serious misconduct is suspected the staff member may at the [defendant's] discretion be placed on special leave with full pay as a precautionary measure pending investigation of the matter. This is not a form of disciplinary action."

That is the provision which the defendant invoked when issuing the letter of 31st August, 2009.

The plaintiff was given particulars of the nature of the investigation into "suspected serious misconduct" being carried out by the defendant in a letter dated 14th September, 2009 from the defendant's solicitors. The nature of the inquiries being carried out by the Internal Audit department of the defendant and the accounts, account holders and transactions being enquired into were summarised. The plaintiff was informed that, if on receipt of the Internal Audit report the defendant was of the view that allegations would have to be put to the plaintiff, "the investigation would be conducted by" Mr. Frank Singleton and Mr. Ger Mitchell (the Investigation Team), each of whom described himself as "a Human Resources Executive" in his replying affidavit filed in response to this application.

Particulars of additional issues being reviewed by Internal Audit in the continuing enquiries were furnished to the plaintiff's solicitors on 21st September, 2009. By letter dated 22nd September, 2009 from the defendant's solicitor, the plaintiff was informed that the defendant had requested the Investigation Team "to investigate suspected serious misconduct" by the plaintiff. The plaintiff was informed that specific allegations would be sent by the Investigation Team to him on or before 25th September, 2009.

On 25th September, 2009 the Investigation Team sent, in a letter to the plaintiff, over 50 pages of queries, which the plaintiff has averred contained a total of 907 queries covering the period from January 2007 to 31st August, 2009. The letter outlined various procedures, codes and policy documents of the defendant, compliance with which in relation to various transactions the subject of the queries was being investigated. The plaintiff was asked to attend before the Investigation Team in Dublin on 9th October, 2009 to deal with the issues raised in the letter. The plaintiff was informed that he was entitled to have a representative to accompany him. He was also informed that, after hearing his answers to the questions outlined, the Investigation Team would decide whether or not his conduct "amounts to serious misconduct and if so, what sanctions if any should be applied, which sanctions could include your dismissal".

The arrangements for the plaintiff to respond to the queries of the Investigation Team were subsequently changed. The circumstances are not material in the context of the application with which the Court is concerned, although they may be material at the trial of the action. In any event, in a comprehensive letter of 27th October, 2009, comprising 29 pages, the plaintiff's solicitors, on his behalf, answered each of the queries raised by the Investigation Team. That response was met by a letter dated 6th November, 2009 from the defendant's solicitor raising further queries and seeking clarifications on behalf of the Investigation Team. The queries and clarifications sought ran to eleven pages. The plaintiff's solicitors were informed that the Investigation Team required written responses before the close of business on 13th November,

2009. Once again the arrangements were varied at the behest of the plaintiff, in that, ultimately, the plaintiff's solicitors were informed that the Investigation Team would meet on 19th November, 2009 and that the plaintiff could give verbal responses to the queries contained in the letter of 6th November, 2009. The plaintiff was warned in a letter of 17th November, 2009 that, if he elected not to attend the meeting, the Investigation Team would proceed on the basis of the responses set out in the letter dated 27th October, 2009 from his solicitors.

The plaintiff did attend the meeting on 19th November, 2009 with his solicitor and counsel, but it was made clear that, while he was willing to co-operate with the investigation, he was attending under protest. The position of the defendant in relation to the meeting was that the plaintiff had refused to furnish the clarifications and explanations sought. By letter dated 23rd November, 2009, the defendant's solicitor, on behalf of the Investigation Team, requested that the information sought in the letter of 6th November, 2009 be furnished by the following day, 24th November, 2009, as the plaintiff's solicitors had stated would be done at the meeting. A comprehensive letter of 24th November, 2009 from the plaintiff's solicitors, comprising about 30 pages, dealt with the matters raised in the letter of 6th November, 2009.

The next letter from the defendant's solicitor to the plaintiff's solicitors has been represented by the plaintiff as a watershed in the process from August 2009 onwards which led to these proceedings. It was a letter dated 25th November, 2009 from the defendant's solicitor to the plaintiff's solicitors sending the specific allegations which the Investigation Team were putting to the plaintiff. The letter was accompanied by 26 pages of allegations, which the plaintiff has averred listed 340 allegations, including alleged breaches of certain procedures, policy documents and the defendant's Code of Ethics, which the plaintiff has averred he does not recollect ever seeing or reading. The plaintiff was informed that a meeting had been fixed for 14th December, 2009 to enable the plaintiff to give his responses to each and every allegation. The plaintiff was informed that the Investigation Team, after considering the plaintiff's responses and any submissions made on his behalf, would "consider if any of his actions and/or omissions amount to serious misconduct and if yes what sanctions, if any, should be imposed up to and including dismissal".

The response of the plaintiff's solicitors, by letter dated 27th November, 2009, was that, given that the plaintiff had been furnished with allegations of misconduct, it was clear that the investigation had turned into disciplinary proceedings and, in the circumstances, the Investigation Team could not continue its investigation. To do so would contravene the Disciplinary Procedures, it was asserted. The plaintiff's solicitors sought confirmation that the investigation was at an end and that the defendant would proceed in accordance with the Disciplinary Procedures. The defendant did not accept that proposition and, by letter dated 1st December, 2009 from the defendant's solicitor, the plaintiff was informed that the investigation was not fully complete, as there were a number of clarifications which the Investigation Team wished the plaintiff to furnish. A six page list of "clarifications required" was enclosed.

By letter dated 10th December, 2009, the plaintiff's solicitors reiterated their contention that the Investigation Team could not continue "its purported investigation" once allegations of misconduct had been made against the plaintiff. The defendant was requested to cancel the proposed meeting on 14th December, 2009. The defendant's solicitor's response, by letter dated 14th December, 2009, was that the issues raised on behalf of the plaintiff could be raised with the Investigation Team at the meeting.

The meeting of 14th December, 2009 went ahead. The plaintiff attended with his solicitor and counsel. The plaintiff and his legal advisers maintained the position that had been set out in the letter of 10th December, 2009, contending that an investigation cannot be run in parallel with a disciplinary hearing. The plaintiff did not answer any questions. The plaintiff's position is that his counsel asked the Investigation Team to consider its position and revert with its proposal as to how to proceed.

Following that meeting, the defendant's solicitor wrote to the plaintiff by letter dated 22nd December, 2009, which the plaintiff has averred was received during the Christmas break, in which the defendant's version of the history of the process was outlined, ending with an assertion that the plaintiff had failed to co-operate with the Investigation Team in a manner which was consistent with his obligations as an employee of the defendant. It was stated that the plaintiff would be given "one final chance" to answer the allegations set out in the letter of 25th November, 2009 at a meeting with the Investigation Team to be held on 14th January, 2010. It was stated that, if at that meeting the plaintiff should not answer each and every allegation, the Investigation Team would reach a view on his acts and omissions based on the substantial documentation already furnished to him on 25th September, 2009 and the responses given on his behalf by his solicitor in the letters of 27th October, 2009 and 24th November, 2009. It was made clear that there would be no further adjournment of the matter. Significantly, the letter did not address the issues raised on behalf of the plaintiff in the letter of 10th December, 2009 or at the meeting of 14th December, 2009.

In their response of 13th January, 2010 the plaintiff's solicitors asserted that the proposed meeting was ultra vires and that they had advised the plaintiff not to attend. In fact, at that stage, the plaintiff had initiated these proceedings by a plenary summons which issued on 8th January, 2010.

The meeting went ahead at 11a.m. on 14th January, 2010 without the attendance of the plaintiff or anyone on his behalf. Following the meeting, by letter dated 14th January, 2010 from the defendant (as Permanent TSB) and signed by the members of the Investigation Team, Mr. Singleton being designated "Employee Relations Manager" and Mr. Mitchell being designated "Area Manager", which was sent directly to the plaintiff and e-mailed to the solicitors at 12.28p.m., the plaintiff was informed that the Investigation Team were of the view that his behaviour amounted to serious misconduct and that this serious misconduct was a gross breach of the duty of trust that the plaintiff, as an experienced Branch Manager, owed to the defendant, as his employer, and that he should be dismissed as an employee of the defendant. His employment with the defendant would be terminated with effect from close of business on 25th January, 2010. However, the termination of his employment would not take effect on that date if he were to appeal the decision of the Investigation Team. He was advised that the appeal should be addressed to the Chief Executive of Permanent TSB to be received by him prior to close of business on 25th January, 2010. Otherwise the decision of the Investigation Team would be implemented without further notice. The plaintiff was also informed that any appeal "is as per the company's Disciplinary Process against the sanction imposed by us and it is not an appeal against our findings of fact".

While the process was continuing through the last quarter of 2009, obviously other matters were being addressed by the defendant which, would, in any event, have affected the plaintiff's employment with the defendant. The plaintiff was informed by letter dated 3rd December, 2009 from the defendant's solicitor "as a matter of courtesy" that the College Green branch was one of the branches which the defendant would be closing in the following months as part of the rationalisation of its Branch Network, that the staff of the College Green branch were being so informed on that day, and

that the defendant would be seeking applications for a "Voluntary Severance Package", but reserving the right of the defendant to decide which applications it would accept.

Disciplinary Procedures

The Disciplinary Procedures document is not a complex document. Having defined "disciplinary action" it outlines two processes. The first is for cases regarding performance and competence or misconduct where disciplinary action in the form of a warning may be warranted. The second is for cases where disciplinary action warranting either action short of dismissal or dismissal with or without notice is warranted. The process applicable to the second category of cases is outlined as follows:

"(i) The staff member will be advised of the alleged offence in writing. The staff member may make such oral or written representations as he/she sees fit, and may if he/she wishes obtain the assistance of a union and/or other representative from work and be accompanied by such representative at any interview held for the purpose of making oral representations. The [defendant] shall review all representations made and give notice in writing to the staff member of its decision. The [defendant] shall give its decision where possible within ten working days from the making of such representations.

(ii) If the staff member wishes to appeal against such decision, he/she shall give notice of appeal in writing to the HR Department or an Executive nominated by the Chief Executive, setting out the reasons for the appeal, within ten working days after receipt of notice of the said decision.

(iii) An appeal shall not constitute a fresh hearing. It will be heard by a Senior Executive nominated by the Chief Executive and shall take place as soon as possible. Disciplinary action including dismissal will not be taken pending the outcome of the appeal. At the appeal the staff member may be accompanied by his/ her representative. The [defendant] shall give notice in writing to the staff member of the decision on the appeal. The decision on the appeal shall, where possible, be given within ten working days from the hearing.

(iv) Dismissal is the final stage of the disciplinary procedure. The decision to dismiss is taken following a thorough investigation of all the relevant circumstances. Depending on the circumstances dismissal may be with or without notice. In the event of dismissal preceded by notice, the Company has the right to require the staff member to take garden leave, that is, not to attend at his/her place of work pending expiry of the notice period or to pay in lieu of notice."

It may be fairly observed, in my view, that the Disciplinary Procedures are elemental, particularly when applied in the context of a process to determine whether a sanction as severe as what amounts to summary dismissal in effect should be imposed on a senior manager who has been in the employment of the defendant for 30 years.

The application

On this application the plaintiff seeks interlocutory injunctions pending the trial of the action restraining the defendant from –

(1) terminating or dismissing the plaintiff or from taking any steps to implement the purported dismissal of, or any decision adverse to, the plaintiff, on foot of its purported investigation and/or disciplinary procedure into the plaintiff;

(2) imposing any sanctions upon the plaintiff, including dismissal, without full compliance by the defendant with natural and constitutional justice and fair procedures and the defendant's own procedures;

(3) giving effect to the purported dismissal of the plaintiff and from stopping the payment of his salary or from announcing the termination of employment of the plaintiff;

(4) relying on or using suspension, disciplinary procedure or findings therein and/or dismissal of the plaintiff in any decision concerning his employment or termination thereof;

(5) conducting any disciplinary or appeal proceedings concerning the plaintiff unless conducted in accordance with natural justice and fair procedures by impartial independent persons.

The plaintiff also seeks mandatory orders directing that the defendant -

(1) if necessary to pay salary and "pension contributions etc." and all monies due to the plaintiff;

(2) to reinstate the plaintiff to his position with the defendant.

At the hearing of the application it was emphasised by counsel for the plaintiff that, at the trial of the action, the plaintiff will be seeking declaratory relief, including a declaration that the decision reached by the defendant on 31st August, 2009 suspending the plaintiff from his employment is null and void and of no effect and a declaration that any decision affirming or continuing the said suspension or imposing any sanction upon or dismissing the plaintiff is null and void and of no effect. At the hearing the Court gave leave to amend the endorsement of claim on the plenary summons to include the words "or dismissing" in para. 4.

By order of the Court (MacMenamin J.) made on 21st January, 2010, on an ex parte application, the defendant was restrained from giving effect to the purported dismissal of the plaintiff and from stopping the payment of his salary or from announcing the termination of his employment. That order remains in place.

Issues raised by plaintiff

In broad terms, the plaintiff's case is that the process leading to his dismissal and the making of the decision to dismiss

were not conducted in accordance with fair procedures and natural and constitutional justice. There are two distinct limbs to the plaintiff's complaints. It was submitted on his behalf that the process was fatally flawed both in the lead up to the decision to dismiss him and in the making of that decision, so that the decision was null and void. Secondly, it was submitted that the plaintiff has not been afforded the type of appeal process to which he is entitled against that decision under the Disciplinary Procedures or a fair appeal process.

On the first limb, it was submitted on behalf of the plaintiff that the dismissal of the plaintiff was null and void because it was unfair and flawed on a number of grounds, in particular:

(a) the dismissal decision was made by the same persons, the Investigation Team, who conducted the investigation;

(b) it was the Investigation Team who found that there was a case to answer, who formulated the allegations or accusations;

(c) the decision to dismiss the plaintiff was made in such a short space of time that the Investigation Team cannot have come to a proper and fair decision or conclusion regarding approximately 340 allegations allegedly proven;

(d) while the defendant had sought further clarification and information, the plaintiff was denied the opportunity to provide the defendant with written answers and was dismissed without the necessary information, because the plaintiff was attempting to obtain information from third parties in relation to queries which the plaintiff had not answered;

(e) the plaintiff was deprived of fair procedures;

(f) without prejudice to the plaintiff's complaints in relation to the process up to the making of the decision to dismiss, crucially the plaintiff should have been given an opportunity to provide written or oral representations or submissions to the defendant on possible sanctions;

(g) the "so called" Investigation Team did not have power to dismiss the plaintiff;

(h) the plaintiff had a right to expect that he could only be dismissed by a senior officer of the defendant bank who had been uninvolved in, and was untainted by, the earlier process.

Counsel for the plaintiff summarised the outcome of the process as that the Investigation Team formulated the queries, made the accusations, decided on guilt, dismissed the plaintiff summarily and in doing so acted first as investigator and then successively as prosecutor, judge and executioner.

On the second limb, it was submitted that both in relation to the time which the Investigation Team prescribed within which he was required to serve notice of appeal and the limited nature of the appeal indicated, the provisions of the Disciplinary Procedures were not complied with and the process failed to provide for fair procedures.

Further, it was submitted on behalf of the plaintiff that the process provided for in the Disciplinary Procedures does not make provision for a fair and proper appeal and that, in the circumstances, this is a situation in which the Court should intervene notwithstanding that the plaintiff has initiated an appeal without prejudice to these proceedings.

The defendant disputed all of the foregoing assertions on the part of the plaintiff and stood over the decision of 14th January, 2010.

The law

As was pointed out by Clarke J. in *Bergin v. Galway Clinic Doughiska Ltd.* [2008] 2 I.R. 205 (at p. 212), the jurisprudence on employment injunctions has been in a state of evolution. Nonetheless, the legal principles which come into play on this interlocutory application, in my view, are well settled. On this application, as the Court has had the benefit of comprehensive written submissions from both sides, I consider a summary of the relevant principles is all that is necessary.

First, in conducting a process to determine whether the plaintiff should have a serious sanction, including the most serious sanction available, namely, dismissal, imposed on him, the defendant must act in accordance within the terms of the plaintiff's contract of employment, including the implied term that the plaintiff, as employee, is entitled to the benefit of fair procedures (*Glover v. B.L.N.* [1973] I.R. 388). However, it is well recognised that what fair procedures demand depends on the terms of the plaintiff's employment and the circumstances surrounding his proposed dismissal (*Mooney v. An Post* [1998] 4 I.R. 288).

Secondly, where the plaintiff is seeking what is in effect a mandatory injunction, what Clarke J. described in the *Bergin* case (at p. 213) as "injunctive relief which would have, to some extent, the effect of continuing his or her employment", the standard by reference to which the Court determines whether to grant the relief is whether the plaintiff has established that he has a strong case that he will be successful at the trial of the action (*Maha Lingam v. Health Service Executive* [2006] ELR 137). As Clarke J. pointed out in the *Bergin* case (at p. 214), "an order remains a mandatory order, even though the plaintiff claims that a purported termination of his employment is unlawful by reason of a finding of wrongdoing having been arrived at in breach of the principles of natural justice", because, however couched, the substance of the relief is the same.

Thirdly, as with all other applications for interlocutory injunctions, in deciding to grant an injunction in an employment context, the Court must be satisfied that damages would not be an adequate remedy for the plaintiff and that the balance of convenience favours the grant of the injunction. As a general proposition, in the context of employment injunctions, the jurisprudence of the courts has developed over the last quarter century so that it is generally considered that the prospect of an award of damages following the trial of the action is not an adequate remedy for a successful plaintiff who has been deprived of his salary pending the trial of the action. In relation to where the balance of

convenience lies, because of the nature of the employer/employee relationship, that issue must be determined having regard to the precise form of relief sought by the plaintiff and will bear on the type of relief the Court is prepared to grant.

Application of the law to the facts

Whether formulated as prohibitory or mandatory, in essence, the relief claimed by the plaintiff on this application is mandatory relief. What he is seeking is that he continues in the employment of the defendant until the trial of the action and is paid his salary. Accordingly, the crucial questions are whether –

(1) the plaintiff has established that he has a strong case that the decision to dismiss him was made in breach of his contractual entitlement to fair procedures and, accordingly, cannot stand, and

(2) the Court should intervene now notwithstanding the existence of his right of appeal under the Disciplinary Proceedings.

For the reasons set out below, I am of the view that he has established that he has a strong case on both questions.

What the Court is concerned with is not whether the decision made on 14th January, 2010 was right or wrong. Unusually for this type of case, because of the sheer volume of the allegations against the plaintiff, it is not possible to form any view whether the behaviour of the plaintiff amounted to serious misconduct, as the Investigation Team found, and, even if it were, it would be inappropriate to do so. All the Court is concerned with is the process by which the Investigation Team reached their conclusion. In considering the process, it seems to me that the Court must have regard to the fact that the defendant has regulatory and statutory responsibilities, as well as responsibilities to its customers, and that it is entitled to ensure that, where an investigation into the conduct of an employee is being conducted, the investigation is not stonewalled by the employee. The evidence before the Court does not suggest that the plaintiff and his legal advisers were dilatory in responding to the voluminous queries from the Investigation Team. The evidence suggests that the plaintiff and his legal advisers co-operated with the investigation in as timely a fashion as was reasonably possible until they raised the issue as to the propriety of the Investigation Team conducting the process after the allegations were furnished to the plaintiff.

It is not to be inferred from this decision that I consider that it is not appropriate for executives of the defendant who are involved in the human resources aspects of the defendant's management to conduct the type of investigation which was conducted in relation to the plaintiff. Nor is it to be inferred that I am of the view that the person or persons who conduct the "thorough investigation" to be conducted under para. (iv) of the Disciplinary Procedures in all cases should not be the decision maker as to whether the conduct of the employee being investigated warrants a serious sanction such as dismissal. A one stage inquisitorial process may be appropriate in many cases. However, in this case there is a strong argument that, because of the manner in which the entire process was conducted up to 14th January, 2010, the members of the Investigation Team should not have made the decision on whether the allegations against the plaintiff gave rise to serious misconduct so as to warrant dismissal and, in any event, they should not have made the decision in the absence of the plaintiff and his representatives in the circumstances which then prevailed.

On the evidence of the correspondence from the defendant to the plaintiff and his solicitors and on the evidence of the dealings of the defendant and the Investigation Team with the plaintiff, it seems to me that the management of the defendant and the members of the Investigation Team were manifestly confused as to the role and function of the Investigation Team at the various stages in the process. In the letter of 14th September, 2009 the plaintiff was told that, on the basis of the Internal Audit report, the defendant would determine whether allegations would be put to the plaintiff and it nominated the Investigation Team to conduct the investigation, which suggests that the Investigation Team role related to the post allegation phase. Yet when the Investigation Team commenced their involvement, their contention was that they were conducting an investigation. To add to the confusion, in requesting the plaintiff to attend the meeting on 9th October, 2009, apparently, the Investigation Team envisaged that the decision as to whether the plaintiff's conduct amounted to serious misconduct would be made even though the plaintiff had not yet been informed of specific allegations and that remained the position until the 25th November, 2009. Even after 25th November, 2009, when the specific allegations had been furnished to the plaintiff, the members of the Investigation Team clearly considered that their investigation was still ongoing.

When one considers the process alongside the provisions of the Disciplinary Procedures, which I have quoted earlier, there is a strong argument that what was happening before 25th November, 2009 was the "thorough investigation" provided for in para. (iv) and that the disciplinary process based on alleged misconduct only commenced on 25th November, 2009 when the specific allegations were furnished to the plaintiff, because it is clearly envisaged in para. (i) that the employee be given specific allegations in writing and that he or she has an opportunity to respond to those specific allegations. What the decision maker has to consider in determining whether disciplinary action is warranted is the response of the employee to the specific allegations and any representations made by the employee or on his or her behalf. In the light of what had happened previously, a strong argument can be made that the plaintiff's legal advisers were justified in the stance they took at the meeting of 14th December, 2009. In any event, once they adopted that stance, the Investigation Team should have addressed the serious issue raised on behalf of the plaintiff as to whether its members should make the decision on disciplinary action against the plaintiff. Having failed to do so, a strong argument can be made that they should not have proceeded to make the decision in the absence of the plaintiff or his legal representatives.

Moreover, the default position adopted by the defendant in allowing the plaintiff the "one final chance" compounds the manifestly confused nature of the approach of the Investigation Team, in that they indicated that their decision would be made on the basis of the plaintiff's responses of 27th October, 2009 and 24th November, 2009 to the investigation queries raised by them on the 25th September, 2009, not on the basis of the specific allegations furnished to the plaintiff on 25th November, 2009.

Finally, the alacrity with which the members of the Investigation Team made their decision on 14th January, 2010 is strongly suggestive of pre-judgment on their part, given the volume and range of allegations made against the plaintiff.

In summary, the Investigation Team made their decision at a time when the plaintiff's legal advisers were challenging their

entitlement to do so and had not responded to the specific allegations of misconduct because of that challenge. They made the decision without having had a response to the additional information they sought after furnishing the specific allegations, which they asserted was required as part of the ongoing investigation, which presumably they considered was necessary. They did not address the plaintiff's challenge to their continuation in the process after the meeting of the 14th December, 2009 but made their decision notwithstanding that challenge in the absence of the plaintiff or his representatives in what could be strongly argued was an unreasonably short period after 22nd December, 2009, given the intervention of the Christmas holiday period. Having regard to those factors, I consider that the plaintiff has a strong case that he was deprived of fair procedures and that a fair hearing was imperilled by the conduct of the Investigation Team.

In relation to the appeal process, in attempting to truncate the time within which the plaintiff was entitled to appeal their decision from ten working days to six working days, the Investigation Team acted in breach of the Disciplinary Procedures. Further, in purporting to limit the appeal to an appeal against sanction only, in my view, the Investigation Team attempted to deprive the plaintiff of his entitlement under the Disciplinary Procedures. Just because para. (iii) provides that an appeal shall not constitute a fresh hearing does not mean that, in the event of an appeal, a decision that the employee has been guilty of misconduct as found by the decision maker at first instance is not subject to review. I am satisfied that the plaintiff has established that there is a strong case that he is not being afforded the type of appeal to which he is contractually entitled and that it is proper that the Court should intervene at this juncture.

Turning to the question of the adequacy of damages, I am satisfied on the evidence that an award of damages, if he is successful at the trial, would not constitute adequate recompense to the plaintiff for the loss of his salary and other benefits from 14th January, 2010. The plaintiff has averred that he is a married man, aged 48 years, with four children age 20, 18, 15 and 13. He depends on his salary and is concerned about his "pension position", which I understand to mean his pension contributions. Apart from that, if the plaintiff succeeds at the trial of the action in establishing that the decision to dismiss him was null and void, in my view, the actual and potential damage to his reputation and to his future career prospects which he is likely to suffer in consequence of being perceived to have been summarily dismissed from the senior position of Branch Manager of a financial institution for misconduct, is not something that would necessarily be adequately compensated by an award of damages.

In relation to the question of the balance of convenience, I am satisfied that it favours the grant of an interlocutory injunction. However, given that the Disciplinary Procedures provide for the placing of an employee on special leave with full pay pending investigation of allegations of serious misconduct against the employee, and that the defendant availed of that provision against the plaintiff on the basis of a suspicion of serious misconduct on his part, albeit *supra* protest from the plaintiff, I consider that the Court should ensure that such relief as is granted to the plaintiff on this interlocutory application is formulated in such a manner as not to deprive the defendant of its entitlement to continue the plaintiff on special leave until these proceedings are determined or until further order.

Order

In broad terms, the form of order which I propose granting is an order restraining the defendant from dismissing the plaintiff until further order subject to the proviso that the defendant may continue the placement of the plaintiff on special leave with full pay in accordance with the Disciplinary Procedures until further order. I will hear submissions from the parties as to the precise form of order and in relation to case management of the action with a view to expediting the trial.