

THE HIGH COURT

[2005 No. 354 J.R.]

MARY FARRELL & TOM COSTELLO

APPLICANTS

AND
 THE MINISTER FOR EDUCATION & SCIENCE
 COUNTY LONGFORD VOCATIONAL EDUCATION COMMITTEE
 & COUNTY ROSCOMMON VOCATIONAL EDUCATION COMMITTEE

RESPONDENTS

Judgment of Mr. Justice Feeney delivered on Wednesday 28th February, 2007

1. Now, I have had the opportunity of considering the papers in this matter and addressing my mind to the net issue which has been identified. The factual background and the legislative enactments giving rise to the issue before the court are succinctly and accurately set out in the submissions of both sides, in the Applicant's submissions in paragraphs one to paragraph six inclusive and in the Respondent's submissions in paragraph 1.1 to paragraphs the 2.3 inclusive.

2. All parties agree that the matters at issue in this Court can be summed up in the following terms: In the Applicant's submissions it is to be found at paragraph 7, where it is said that:

"...the net issue of these proceedings therefore is whether paragraph 1 of the schedule to Statutory Instrument No. 137 of 1974 applies to Adult Education Officers, AEOs. Therefore, the question is whether this office of Adult Education Officer is one of the duties of which are wholly or mainly of an administrative, executive or clerical nature."

3. The central issue is also dealt with and is identified in paragraph 3.9 of the Respondent's submissions which states:

"Having given those terms their ordinary and natural or literal meaning, the duties of an AEO must then be examined in order to determine whether they are primarily administrative, executive or clerical in nature within the meaning of those terms."

4. The parties have therefore identified the issue which falls to be determined by this Court.

5. The issue which this Court must address is the correct statutory interpretation as applied to the facts of this case. The approach to statutory interpretation is well established. A number of general principles can be identified which are of assistance to the Court in carrying out the task of interpretation. Firstly, words must be given their ordinary and natural meaning. Secondly, as stated by the Supreme Court in *EMS -V- the Minister For Justice Equality and Law Reform*, [2004] 1IR at 536, "basic canon of construction prima facie requires that the meaning of an enactment is to be the meaning intended by the legislature". Thirdly, words should be read as a whole to assist in establishing the meaning and words should be read in context.

6. The words in this case do not have precise or technical meanings and, therefore, it is all the more important to look to the intended meaning and full context. A detailed and informative analysis of the natural and ordinary meaning of the words "administrator", "administrative" and "administration" and the word "executive" are contained in the Respondent's submission and the Court accepts the meanings identified therein, given the untechnical and imprecise nature of those words. It is, however, the context of the two words, administrative and executive, and their meaning and understanding within Statutory Instrument No. 137 and the schedule thereto as applied to the facts of this case that is central to the decision of this Court.

7. The schedule to the Statutory Instrument reads as follows:

"Every office, the duties of which are wholly or mainly of an administrative, executive or clerical nature."

8. There is no dispute in this case in relation to the issue of clerical and the significant task is to concentrate on the use of the words "administrative" and "executive" as used within the entire of that schedule and within the context therein contained.

9. It is accepted and acknowledged that in deciding this case the Court should look to Circular 42/79 and its appendix to identify the duties or functions. Circular letter 42/79 uses the words "functions" and "duties" interchangeably and it is clear by cross reference to circular 41/98 that the words "functions" and "duties" effectively are interchangeable. For the purposes of this decision the Court accepts that "functions" in appendix 1 to circular letter 42/79 is the identification of an AEO's duty for the purposes of Statutory Instrument No. 137.

10. It is appropriate to look at the precise terms of circular letter 42/79. Paragraph 3 identifies the general functions in the following terms: "it is envisaged that the Organisers should discharge functions of an organising and coordinating nature and that these should include liaison with all appropriate local community interests. It is the intention also that the organisers should have a role to play from an educational point of view in the context of the provision of courses for local economic development. An outline of more specific functions, duties and responsibilities is given in appendix 1 to this Circular letter. It will be noted that provision is contained in these and in the Conditions of Service (appendix 3) for the preparation by each Organiser of an annual report on the adult education programme for the VEC concerned and for the Minister of Education."

11. The functions are set out in more specific detail in appendix 1 and I will later return to those particular functions as being of central importance in relation to the decision in this case. The essential words to consider are that:

"Every office the duties of which are wholly or mainly of an administrative, executive or clerical nature..."

12. Those Are the words that require to be considered. The particular words that must be looked at are "administrative" and "executive". That is not just by reference to their ordinary and natural meaning as separate words, as outline in the submissions of the Respondents, but also it is necessary to look at the surrounding words to establish meaning and context.

13. In particular, in looking at those words it is appropriate to have regard to the word "duties". Duties could be identified as a task that a person is bound to carry out. In this case the Court has accepted and acknowledged that the appropriate basis to go forward is to look at the functions as defined in appendix 1 as being duties, that is duties being tasks which an AEO is bound to carry out. Also of significance in looking at the context of the words "administrative" and "executive" is the word "nature". Nature is to be equated with the fundamental qualities of a thing, the essential character or characteristic or the essence of a thing. One is looking here in relation to the duties that are wholly or mainly of an administrative or executive nature", and are such that the essence or

essential character of the job. When one looks at the functions and duties in the schedule in appendix 1 it is unquestionably the case that there are administrative and executive tasks as part of the duties. However, those duties cannot be identified as being either wholly -- and the fact is that nobody suggests so, that they are wholly -- or even mainly administrative or executive. The essence or essential quality of the work is not administrative or executive.

14. Looked at as a whole, whilst there are elements of administration and executive tasks in the functions, the underlying and essential nature is educational. The Court is satisfied that on a correct and literal interpretation of the entire words in context that the functions of an AEO is neither wholly or mainly of an executive or an administrative nature. They are elements of both of those, significant elements, but not to the extent that such duties or functions can be identified as being mainly legislative or executive. The essence or nature of an AEO's function is educational. That is the background, the necessary qualification and is present in each and every function as set out in appendix 1 and forming an essential element of same. When one looks at the individual functions as set out in bullet points in appendix 1, one finds that an educational component is present in all of the items therein set out and, indeed, in a number of them, including the first three as listed, the educational element is overwhelmingly or entirely the matter of the function or duty given to an AEO.

15. In those circumstances the Court is satisfied that when one reads the entire of the relevant portion of the sentence from Statutory Instrument No. 137 of 1974 that the duties involving administrative and executive tasks are neither wholly or mainly the nature of the employment of an AEO. In those circumstances the Court is satisfied that "administrative" or "executive" cannot be categorised as the whole or main essence of the duties, and certainly not when the functions are taken together.

16. In the light of the above findings by the Court I will hear the parties in relation to what is the appropriate order to make.