

## THE HIGH COURT

[2014 No. 5864 P.]

BETWEEN

WALTER HARVEY

PLAINTIFF

AND

MINISTER FOR JOBS ENTERPRISE AND INNOVATION AND OTHERS

DEFENDANTS

**JUDGMENT of Mr. Justice Binchy delivered on the 16th day of July, 2018**

1. This judgment relates to an application brought by the defendants, by way of notice of motion dated 28th September, 2016, to dismiss these proceedings on the following grounds:-

1. Want of prosecution;
2. Inordinate and inexcusable delay;
3. The proceedings disclose no cause of action and are frivolous and vexatious;
4. The proceedings are unnecessary and scandalous and likely to embarrass, prejudice and delay; and
5. The proceedings are an abuse of court process.

2. Although initially returnable on 14th November, 2016, this motion did not come before the Court for hearing until 3rd May, 2018, having been adjourned on two previous occasions. The plaintiff is a lay litigant who has at all times represented himself in these proceedings. He also represented himself previously in proceedings brought against his former employer, the Courts Service, before the Employment Appeals Tribunal and in separate proceedings before this Court which he issued against the Courts Service and five individuals, alleging wrongful dismissal from the same employment.

3. At the outset it may be observed that on the morning of the hearing of this motion, the plaintiff failed to attend the callover of cases for the day, and then subsequently arrived approximately twenty minutes late, by which time the hearing of the application was underway. He then applied to adjourn the hearing of the motion. I enquired of him the basis for this adjournment application, and he said that he was unwell. I asked him if he had a medical certificate and he said that he did not, although he said he had attended with his doctor for the purpose of obtaining such a certificate but he had not obtained a certificate that was suitable. The plaintiff had not given any advance notification of his intention to make this application to the defendants, and nor did he suggest that he was making it as a result of the sudden onset of an illness. The plaintiff had not attended the callover of the list the week before the scheduled date for the hearing of this motion, but he was aware, since October, 2017 that the motion was scheduled for hearing on 3rd May, 2018. He did not file any replying affidavits in opposition to this motion.

4. Having heard the parties on this application, I informed the plaintiff that, since I was not of the opinion that he had a good reason to justify an adjournment of the hearing of the motion, I intended to proceed with the hearing. The plaintiff said that since he was unprepared for the hearing he could not participate, and he withdrew from the Court. A short time later however, he returned to Court and chose to sit in the rear of the courtroom, observing proceedings. There was nobody present in the courtroom other than the parties involved in the proceedings. The plaintiff soon interjected however to say that he could not hear counsel and asked that I direct counsel to speak up. I suggested to the plaintiff that he might hear better if he came forward, to which he replied that counsel should speak audibly so that all in the courtroom could hear. In any case he soon came forward and subsequently participated fully in the hearing. I might add that the plaintiff arrived in Court without any papers at all.

**Background**

5. Before addressing the proceedings and the pleadings in particular, it is desirable that I should set out some of the background to the proceedings, to the extent that it is available to me in the affidavits sworn on behalf of the applicants for the purpose of this application. This is both necessary and desirable in the particular circumstances of this case because the pleadings themselves are almost entirely silent on the background, and to the extent that they mention it are devoid of any clarity. This application is grounded upon the affidavit of Mr. John Murphy, Secretary General of the Department of Jobs, Enterprise and Innovation, sworn on 27th September, 2016. Mr. Murphy avers that these proceedings arise from the dismissal of the plaintiff by his former employer in September, 2008. Strangely enough, nowhere in this affidavit or in the pleadings is the plaintiff's former employer expressly identified, but I was given to understand during the course of the hearing that it was the Courts Service.

6. Following upon his dismissal, the plaintiff brought an unfair dismissal claim before the Employment Appeals Tribunal ("the EAT") on 16th January, 2009. There were a number of adjournments of those proceedings and eventually, while they were at hearing, the plaintiff withdrew his claim. It appears that he did so because he felt he was not receiving a fair hearing. In 2010, the plaintiff brought wrongful dismissal proceedings in this Court in connection with the same dismissal. Those proceedings entitled *Harvey v. Courts Service & Ors* [2015] IEHC 680, were struck out by this Court (O'Connor J.) on 5th November, 2015. The proceedings were struck out, *inter alia*, because the Court determined that the plaintiff was precluded from bringing such proceedings having already instituted an unfair dismissal claim before the EAT. Some of the remarks of O'Connor J. in those proceedings are also apposite to these proceedings, because similar issues arise. It is therefore worth quoting in part from his judgment, taking up from para. 15 thereof. The reference to "ASC" is to the amended statement of claim in those proceedings:-

"15. Neither the plenary summons nor the prolix ASC claimed damages for assault or defamation. The ASC did not disclose the necessary particulars of the actions or words. Dates and parties involved were identified in general terms. In those circumstances, the court cannot import particulars at this late stage. The plaintiff was already given the opportunity to mend his hand by the recent leave of the Court to amend his original statement of claim. The court should not look for details in a myriad of other documentation which the plaintiff mentioned during the course of the application. Neither the court nor the defendants have a duty to divine from a long narrative of alleged agreements as in the ASC, causes of action or some procedure which will assist the plaintiff to have those grievances aired or resolved to his satisfaction.

16. The plaintiff has rights but those rights bring responsibilities. In this case the plaintiff has the duty to deliver a statement of claim in accordance with the RSC. The plaintiff at the hearing of this application showed his ability when pressed by the court to identify the points which he wished to make. Suffice to say at the moment that the court rejects any attempt by the plaintiff now to seek damages for assault or defamation in these proceedings.

17. The plaintiff made very serious general allegations in the ASC. He mentioned that there were contrived or false complaints made in December 2006 and in the period from 4th May, 2007 to September 2008 without setting out the words used, when they were uttered or the name of those who used those words or who heard those words. He contended that he has been denied justice but appears blissfully unaware of the rights of others. He has made general allegations of the most serious nature against fellow citizens whose names and reputations require vindication too."

7. The plaintiff appealed the decision of O'Connor J. to the Court of Appeal. However, before the Court of Appeal, he took exception to the composition thereof because the then President of the Court of Appeal (who was not sitting in the hearing of his appeal) was at the time a member of the board of the Courts Service, and, at the same time, was in effect "the boss" of the members of the Court of Appeal. Accordingly, in the plaintiff's view, it was not possible to convene a Court of Appeal that would be independent in the hearing of an appeal involving the Courts Service, and he invited the entire Court to recuse itself. Unsurprisingly, both his argument and application were rejected by the Court of Appeal, and since that Court was unwilling to recuse itself in the matter, the plaintiff did not prosecute his appeal as a result of which it was struck out. The Court of Appeal handed down its decision *ex tempore*, on 3rd May, 2017.

### **The proceedings**

8. The plaintiff issued these proceedings by way of plenary summons issued on 4th July, 2014. On 21st December, 2015, the plaintiff obtained an order for the renewal of these proceedings for a period of six months, following which the proceedings were served. The date of service is unclear, but an appearance was entered on 30th June, 2016, which would suggest that the plaintiff did not serve the proceedings until very close to the end of the period for which the summons was renewed. The statement of claim is dated 27th July, 2016.

9. Although the general indorsement of claim to the plenary summons runs to more than two pages, it is very difficult to decipher the precise nature of the claim advanced by the plaintiff. Unfortunately, the statement of claim which runs to some twelve and a half pages of dense typescript does not shed any great light on or give any further clarity as to the nature of the plaintiff's claim. Be that as it may I will endeavour to summarise the plaintiff's claim as advanced in the plenary summons and statement of claim.

### **Plenary summons**

10. The plaintiff claims damages "exemplary and punitive" in the sum of €1,500,000, arising out of what he describes as the "substantial damage and loss caused by servants and/or agents of the State". He claims that the defendants did by their actions and inactions, individually and/or collectively, cause him serious harm, damage and loss. He claims that this damage was caused by the defendants acting in breach of duty, including statutory duty, through gross negligence and/or intentional wrongdoing. He claims that he was denied justice and redress in accordance with unfair dismissal legislation in breach of EU law and his human rights. He claims that the individual defendants named in the proceedings conducted themselves so as to protect what he describes as "peers within and/or a "sister" State body". He claims that he was denied due process and fairness and natural and constitutional justice. It is implicit, although not expressly stated, that this was denied to him in the conduct of the EAT proceedings. He claims that he was forced to withdraw his claim before the EAT because of the conduct of "servants and/or agents of the State within the EAT, and or the Department now known as Jobs, Enterprise and Innovation". He singles out individuals by name or by position. But he does not particularise the conduct of which he complains save in one respect. That is that he alleges that the EAT denied him his right to examine relevant persons "being also servants and/or agents of the State, and this (and other actions and/or inactions) on their part, was essentially, and effectively, "corrupt" and in breach and/or contravention of his rights, and of and to their own duties and obligations and or remit."

### **Statement of claim**

11. In his statement of claim, the plaintiff described the hearing before the EAT as a "farcical sham". He alleges that the EAT engaged in "actions or inactions of a highly improper and/or wrongful and/or unlawful nature". In effect he claims that they did so in order to protect other servants or employees of the State or a "sister" State body. He claims that the chair of the EAT "proceeded to trample on the plaintiff's rights, in contravention of his right to natural justice and/or his constitutional rights and in so doing did knowingly and/or intentionally and/or negligently and/or carelessly act in breach and/or contravention of and/or violation of their own individual and collective remit". He provides only very limited particulars of this sweeping allegation.

12. The plaintiff complains that claims that "six managerial servants and/or agents of the Courts Service and/or of the Department of Justice and Equality", failed to attend to give evidence in the proceedings before the EAT. One of those personnel, whom he describes as the Director of HR (presumably in the Courts Service), he also describes as "the central key person". He claims that the EAT had first indicated that it would require that person to attend but then resiled from that position and forced him to go on with the proceedings. The plaintiff further complains that subpoenas had been served on these personnel requiring their attendance, and the EAT took no action in the face of their failure to attend.

13. He further alleges that a Director of the Courts Service acted as judge in his own cause and engaged in fabrication of documentation and fraud. This allegation would appear to be made in the context of procedures leading up to the dismissal of the plaintiff.

14. The plaintiff also makes allegations that he applied for legal aid but received no final decision upon his application, or at least did not receive a timely response to his application. It was as a result of being forced to withdraw his proceedings before the EAT that he was required to issue his proceedings for wrongful dismissal in the High Court. He says that the defendants then "availed of further "misuse" of "State monies" to obtain a strike out and a denial of my case and claims being provided and/or afforded a fair trial of hearing before a jury of their peers". He goes on to assert why those proceedings should have proceeded to a full trial before a jury.

15. The plaintiff, at para. 35 of his statement of claim purports to provide particulars of his claim but the particulars provided amount to no more than an attempt to summarise the very general allegations referred to above. However, he specifically adds that the chair of the EAT uttered falsehoods or untruths and thereby misled other members of the Tribunal, and he further alleges that the chair specifically displayed an unhealthy and improper cynicism towards the plaintiff and his claim, and further, that the chair engaged in open malice towards the plaintiff.

16. He also makes allegations of abusive conduct at the time of the EAT hearing, on the part of a hall porter or messenger in the employ of the Courts Service. On the penultimate page of his statement of claim, the plaintiff claims the following:-

"and the plaintiff believes and says the actions or inactions engaged in by one and/or more of the named defendants, individually and/or collectively, have created and given rise to his having cause of action and that in and by their acts and/or omissions did engage in breach of law and/or of the plaintiff's rights and their own duty and/or statutory duty inclusive of duty of care and in so doing did also tortuously interfere with his rights to address and so did by

1. Engaging in misrepresentation and/or
2. Did engage in deceit and/or
3. Did engage in open malice towards the plaintiff and/or his claim and/or
4. Did engage in conspiracy and/or collusion and/or
5. Did engage in malfeasance and/or
6. Did engage in fraud and/or
7. Did engage in professional negligence and/or
8. Did engage in gross negligence and/or
9. Did act carelessly and/or
10. Did engage in intentional infliction of emotional distress and/or
11. Did engage in negligent infliction of an emotional distress and/or
12. Did engage in breach of duty and/or statutory duty and/or
13. The actions and/or inactions generate and give rise to their employer, the EAT, and/or the DJEI, and/or the State, Ireland being vicariously liable for the wrongs of one or more of their/its servants and/or agents ..."

#### **Submissions of the Defendants**

17. The submissions of the defendant may be summarised as follows. The proceedings are grounded on allegations as to historical breach of fair procedures in 2010/2011 by the EAT. The plaintiff withdrew his application before the EAT and did not challenge by judicial review or otherwise the procedures followed by the EAT.

18. Notwithstanding having brought a claim for unfair dismissal, the plaintiff also brought a claim for wrongful dismissal which was dismissed in the High Court. Thereafter he failed to prosecute his appeal before the Court of Appeal. Accordingly, it is submitted that these proceedings should be struck out on the grounds that they fail to disclose any cause of action, are an abuse of the court process, and are frivolous, vexatious and unnecessarily scandalous. It is submitted that on any neutral reading of the statement of claim that these proceedings are grounded in historical allegations of a breach of fair procedures in 2010/11 by the EAT from whom the plaintiff withdrew his application in 2011. Any complaints the plaintiff had at the time could have been addressed by way of judicial review, but he brought no such proceedings. Alternatively, he could have allowed the proceedings before the EAT to proceed to a conclusion and thereafter appeal any decision made, but he did not do that either.

19. It is submitted that these proceedings are clearly an attempt to circumvent the strict time limits applicable to the bringing of judicial review applications. It is further submitted that they are misconceived in law and in fact and are wholly lacking in the prerequisites for liability, including proof of causation.

20. It is also submitted that the proceedings are contrary to O. 19, r. 1 of the Rules of the Superior Courts which requires pleadings to be clear and succinct. These proceedings, it is submitted, are ambiguous and difficult to interpret, although the primary focus of the proceedings appears to be on the allegation of the alleged breach of the plaintiff's rights to fair procedures when his case was before the EAT.

21. The defendants also submit that by these proceedings the plaintiff seeks to recover damages for pure economic loss and that, on the case as pleaded, the plaintiff's case falls far short of the requirements to substantiate such a claim. In particular, it is argued that as far as these defendants are concerned, there is not the kind of special proximity in relationship that is required to substantiate a claim of pure economic loss. Moreover, there is a complete lack of causation between the claim of pecuniary loss of up to €1.5 million and the allegations of unfair process.

22. Insofar as the plaintiff appears to be making a claim grounded on public misfeasance, the plea is not meaningfully supported by particulars of special acts or omissions on specific dates and there is nothing in the proceedings to suggest the presence of any active intentional wrongdoing causative of the alleged damage or conduct synonymous with bad faith.

23. It is submitted that the plaintiff has made extravagant and unwarranted allegations against the defendants which are unnecessary and scandalous and should be struck out pursuant to O. 19, r. 27 of the Rules of the Superior Court which provides:-

"The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client."

24. It is submitted that the allegations made by the plaintiff in these proceedings are invective opinion rather than allegations of fact. The defendants also rely upon O. 19, r. 28 of the Rules of the Superior Courts on the grounds that the proceedings do not disclose any reasonable cause of action. The defendants rely on the decision of McCracken J. in *Fay v. Tegral Pipes* [2005] 2 I.R. 261 in which he stated:-

"While the words "frivolous and vexatious" are frequently used in relation to applications such as this, the real purpose of

the jurisdiction is to ensure that there will not be an abuse of the process of the courts. Such abuse cannot be permitted for two reasons. Firstly, the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second and equally important purpose of the jurisdiction is to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed."

#### **Submissions of the Plaintiff**

25. The plaintiff did not engage in any substantive way with the motion before the Court, save to address the arguments based on his delay in progressing the proceedings. He said that he was inhibited from progressing the proceedings by reason of health difficulties (which he did not particularise or vouch by way of medical report or medical certificate) and his difficulty in obtaining legal aid. Additionally, he had made a protected disclosure to the Minister for Justice about his various complaints, and he claims that the manner in which this disclosure was handled caused him further difficulty in progressing these proceedings. He did not present the Court with any evidence at all in relation to these issues.

26. In relation to the argument that he should have seen the proceedings before the EAT through to a conclusion, and then either appealed that decision or taken proceedings by way of judicial review, he submitted that his grievance is not that the EAT acted in error, but that it was engaged in corruption and therefore that judicial review was not the appropriate remedy. Although I urged him to address the motion, and the arguments made by counsel for the defendants, nonetheless most of the plaintiff's submissions were taken up with repeating his grievances with the defendants and the allegations that he makes against them in these proceedings.

#### **Decision**

27. The defendants are entitled to succeed with this application on the basis of not just one of the grounds advanced, but on the basis of several of those grounds. Firstly, I am fully satisfied that the proceedings disclose no cause of action and are frivolous and vexatious. The pleadings are almost impossible to follow, to the point of being hopelessly incoherent. The only thing that is clear is that the plaintiff has a grievance against all defendants and with any person or body that does not address these grievances to his satisfaction. The pleadings are anything but clear and succinct as required by O. 19, r. 1 of the Rules of the Superior Courts.

28. I fully agree with the submissions of the defendants that, insofar as it is possible to interpret the proceedings, they appear to be grounded in historical allegations of breach of fair procedures in the conduct of the proceedings before the EAT. Had the plaintiff not withdrawn his claim before that body, there is no doubt at all that he would have had available to him an appropriate remedy, if his grievances were well founded, whether by way of an appeal to the Circuit Court or by way of judicial review. Not having done so, it is not open to him now to construct another claim which is derived in substantial measure from his complaints about the manner in which the EAT dealt with his claim, well outside the time limits for the bringing of an appeal from a decision of the EAT or for the issue of judicial review proceedings in relation to the same.

29. The plaintiff has made allegations which are both unnecessary and scandalous and which tend to prejudice, embarrass and delay the fair trial of the action. These allegations are made in the most general of ways but in some cases against persons who are either identified or whose identity may be discerned. The proceedings should therefore be struck out pursuant to O. 19, r. 27 of the Rules of the Superior Courts. Furthermore, such particulars of wrongdoing as are given are vague and nowhere near the standard required to make out a case and as such do not disclose any reasonable cause of action. The proceedings are also, beyond any doubt, frivolous and vexatious within the meaning of O. 19, r. 28 of the Rules of the Superior Courts. The extract from the decision of McCracken J. in *Fay v. Tegral Pipes* above is apposite. The plaintiff is undoubtedly convinced that he has been grievously wronged, but he has failed utterly to identify any facts upon which he grounds his complaints, not to mention the causes of action which he intends to pursue by these proceedings. Instead he makes sweeping allegations, of the most general kind, and then claims damages. For all of these reasons, I consider that the defendants must succeed with their motion and the proceedings should be struck out on the following grounds:-

- (1) the proceedings are an abuse of court process;
- (2) the proceedings disclose no cause of action and are frivolous and vexatious; and
- (3) the proceedings are unnecessary and scandalous and likely to embarrass, prejudice and delay.

30. Having decided as I have above, there is no need to consider the additional question as to whether the plaintiff has been guilty of inordinate and inexcusable delay in the prosecution of these proceedings.