Neutral Citation Number: [2009] IEHC 620

THE HIGH COURT

2009 7908 P

BETWEEN

MARINE TERMINALS LIMITED AND JOHN RAFFERTY

PLAINTIFFS

AND

JAMES LOUGHMAN, NIGEL LOUGHMAN, MICHAEL GLEESON, JONATHAN O'CONNELL, NIGEL WILLIAMSON, ICTU, PETER BUNTING, SIPTU, OLIVER McDONAGH, CHRISTY McQUILLAN, JOE O'FLYNN, KEN FLEMING

DEFENDANTS

JUDGMENT of Mr. Justice Feeney delivered on the 15th day of September, 2009

The two Plaintiffs seek interlocutory injunctive relief against 12 named Defendants and all persons having notice of the making of any order from carrying out certain activities. The activities in respect of which injunctive relief is sought are set forth at paragraphs 1, 2, 3, 4, 5 and 6 of the notice of motion which has been issued herein. Injunctive relief is also sought at paragraph 7 in relation to the retention of documents and certain electronic and other records and there is no issue or contention in relation to that matter.

The first Plaintiff is a firm involved in the trade of the provision of marine and dock services and the second named Plaintiff is the general manager of that company. The first and fifth named Defendants are all employees or former employees of the first named Plaintiff and they have been since the 3rd July 2009 engaged in an official trade dispute with the first named Plaintiff. There is no issue but that there is in existence a trade dispute involving the Plaintiff company and a number of the Defendants. The first and fifth named Defendants are part of a group of striking workers who have placed pickets on the first named Plaintiff's premises in the Dublin docks, such pickets being in furtherance of the accepted trade dispute.

The sixth named Defendant, the Irish Congress of Trade Unions is an organisation for the Irish trade union movement. It is a registered friendly society with a membership throughout the 32 counties of Ireland and it has its registered offices in Parnell Square in Dublin. That body has a number of statutory functions and operates as the representative of the trade union movement in relation to a number of committees and tribunals.

The seventh named Defendant is the assistant general secretary of the Irish Congress of Trade Unions and is responsible for what is called its Northern Ireland Committee.

The eighth defendant is a registered trade union and a registered friendly society. It is the largest trade union in the country and has its offices in Liberty Hall in Dublin.

The ninth named Defendant is a full time employee of SIPTU and is the branch organiser who is responsible for the Dublin port and docks where the official dispute is taking place.

The tenth Defendant is a full time employee of SIPTU and is the regional organiser who has the day to day responsibility in relation to the ongoing industrial dispute and dealing with the SIPTU members who are on strike.

The eleventh Defendant is the general secretary of the SIPTU trade union and the twelfth defendant is a representative of an organisation known as the International Transport Workers Federation which is known in short as the ITF.

There has been a strike in existence since the 3rd July this year and it is common case there is in existence an industrial dispute between the Plaintiff and some of its workers including a number of the Defendants. The strike has proceeded for a number of weeks and there has been earlier proceedings which are not directly relevant to this action. There was also, at one stage, a blockade or interference with the passage of ships entering Dublin Port which resulted in action being taken by the Dublin Port Authority in relation to what was identified within those separate proceedings as the illegal act of interfering with the passage of boats.

These proceedings arise out of a number of events that occurred on different dates in late August of this year. There are three primary events which are the subject matter of contention and have been dealt with in affidavit and in argument before this court. The first is a protest march which occurred on the 24th August this year leading to the illegal entry and trespass on to the Plaintiff's premises. The second matter relates to a visit to Athy by a number of the Defendants on the 27th August of this year for the purposes of putting up a number of fly posters identifying a particular person and making comments about that person. The third matter is an incident which occurred in a filling station on the same date which related to a worker associated with the Plaintiff companies and a number of the Defendants and there is a dispute in relation to the facts of that matter and I will return to that later in this judgment.

The evidence available to the Court indicates that on the 12th August of this year SIPTU, the ITF and the ICTU and the union UNITE met for what was identified in a SIPTU document as the identification of a plan to coordinate a campaign to support the workers. It appears from the documentation and information available to this Court that a clear decision was taken at that meeting to escalate the dispute. That was confirmed by a quotation to be identified from a SIPTU document and is stated in a document on SIPTU's website in the form of a news release.

Part of the plan to escalate the dispute included a protest march in which SIPTU, the ITF and the ICTU all participated. That was to be held and in fact was held on the 24th August of this year at the gates to Dublin Port. Those bodies promoted the march and prominently participated in the march including the provision of a number of the speakers and the organisation or chairing of the speeches. The Court has read the contents of those speeches insofar as they are available on transcript and has also heard part of them and also seen a video of the area surrounding the speeches which identifies, describes and provides audio material in relation to part of the events which occurred on that date. All the parties have had access to the same footage of the video screening that has

been made available to the Court and the Court has had the opportunity of seeing and considering that video footage.

From the transcripts and the video, including the recording, the Court can identify that the language and delivery of the speeches on the occasion of the protest march must be viewed in the context that it was a protest march. It also must be viewed in the context that persons have a right to protest and to freely express their views. The courts have under the influence of the European Convention on Human Rights in the recent past shown an increasing preparedness to recognise the right and importance of the right of freedom of expression and to give it its due importance when balancing that right against competing rights. The courts recognise the importance of the right of freedom of expression and even though it is not an unqualified right, nor is it one that cannot be prevailed over by other rights in certain limited circumstances, the courts have demonstrated on a number of occasions the importance of such rights. That is to be gleaned from the recent High Court decision, detailing extensive authorities in relation to the matter, of *Herity v. Associated Newspapers* [2009] I.R. 316 which since the start of this case and today's date has moved from being an unreported judgment to being a reported judgment now to be found in Volume 1 of 2009 I.R. at page 316. The importance and significance of freedom of expression is illustrated by a quotation from that judgment from Dunne J. following her review of the authorities relating to the matter at page 338 where she states as follows:

> "The right of freedom of expression extends the same protection to worthless, prurient and meretricious publication as it does to worthy, serious and socially valuable works. The undoubted fact that news media frequently and implausibly invoke the public interest to cloak worthless and even offensive material does not affect the principle. Like Kelly J. I cite the following passage from Hoffman L.J. as he then was in *R v. Central Television Plc* [1994] Family 192:
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> > "Newspapers are sometimes irresponsible and their motives in a market economy cannot expect to be unalloyed by considerations of commercial advantage. Publication may cause needless pain, distress and damage to individuals or harm to other aspects of the public interest. But a freedom which is restricted to what Judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and Judges, however well motivated, think should not be published. It means the right to say things which "right thinking people" regard as dangerous and irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute."

Dunne J. goes on on page 339 to state:

> "That is a powerful expression of the right to freedom expression. It is not authority however for saying that the right of freedom of expression is more significant than the right to privacy. As Hoffman L.J. noted in *R v. Central Television Plc* the freedom is subject to clearly defined exceptions laid down by common law or statute. It is in that context that the constitutional right to privacy comes into the equation. Accordingly it seems to me that there is a balancing exercise engaged in circumstances where the right to freedom of expression conflicts with the right to privacy. It is clear that newspapers are free to publish all sorts of matters regardless of public interest and questions of good taste but as is the case with the right to privacy the right to freedom of expression is not an unqualified right. Lord Hoffman noted in the passage just quoted above and approved by Fennelly J. in *Mahon v. Post Publications Limited* [2007] I ESC 15 and [2007] 3 IR 338." This freedom is subject only to clearly defined exceptions laid down by common law and statute."

Later in this judgment because it impacts on two different aspects of this judgment I will return to the issue of the balancing of different rights and also to the issue of proportionality in relation to how one approaches the right of freedom of expression when it is in conflict with other rights. It is also the case that the rights identified in the quotations which I have given which belong to the newspapers equally belong to private citizens and trade unions and the right of freedom of expression is a general one and is not either special or limited to the newspaper media.

The right of freedom of expression equally extends to speeches made at protest marches. It allows and permits the use of strong and emotive language delivered in a robust and articulate way. Generally speaking it is desirable that it should be left to the legislature and not to the courts to stake out the exceptions. That is clear from the approach of our Supreme Court. There are clear exceptions laid down by common law and statute law such as in the law of defamation and the law concerning threatening behaviour and intimidation. Having read the speeches and heard the extracts on the video recording this Court is satisfied that the contents of those speeches as such could not at this point in time give rise to a right to injunct such conduct or expression. The use of the term "scab" and the use of terms such as "crimes against Irish workers" are strong and forceful language but they were used in circumstances where it must be recognised that they represented the entitlement of the persons expressing such views to express their views in relation to the matters in issue.

This is in fact recognised by the approach which the Plaintiffs have adopted where they do not seek general relief directed at the use of such expressions as "scab" or "crimes against Irish workers". They did initially seek such relief in a paragraph in the notice of motion but during the course of argument before the Court it became clear that their application was a more refined and considered one. Given the authorities which I have identified that approach represents not only a realistic but a necessary approach as the courts could not on the evidence before it have arrived at a situation where the use of the terms "scab" or "crimes against Irish workers" in the speeches at the protest march on the 24th August could be viewed in such a manner as to make them capable of being restricted by some form of injunctive relief in relation to the future use of such terms at such events as the protest march.

The Plaintiff's approach in effect recognises that the wide relief sought in the notice of motion would be an excessive, unnecessary and disproportionate restriction of freedom of expression.

After the speeches on the 24th August this year the protest altered from what was a legal and permissible demonstration to lead to a series of events that on the evidence were outside what is permitted by the law. There was a concerted trespass onto private lands and into the premises used by the first named Plaintiff. Those premises were used for a demonstration and during which highly vocal chants were used as a means of communicating in a very forthright manner addressed to the persons who were on the premises. That conduct could not be permitted or tolerated by the Court. However there is a real issue before this Court as to whether these defendants were involved in or participated in such demonstration and trespass. The Plaintiff suggests in evidence that the contents of the speeches should be heard and interpreted by the Court as leading to the conclusion that the Defendants encouraged and knew of the fact that such a illegal protest would occur and that they are therefore responsible for it. This is put by the Plaintiffs in the following terms and I quote from an affidavit sworn on behalf of the Plaintiff:

> "I believe there Mr. McQuillan and SIPTU were well aware of what was to occur when the crowd moved to the gate."

That is in relation to the movement from the protest outside the gates to the event (which is to be identified from the video) where a person other than one of the 12 defendants calls upon the persons who had congregated at the gate to enter illegally on to private

property and to occupy the premises used by the first named Plaintiff.

The Plaintiffs base that averment on the interpretation which they place on the speeches and request the Court to injunct the Defendants on the basis that they actively participated by arrangement in the illegal activities which took place on the 24th August. This is directly denied on affidavit by the Defendants. There is no dispute about the Defendants prominent role in the protest, demonstration and speeches but as to the subsequent trespass and hostile chanting and occupation there is a straightforward and unequivocal denial. Mr. McQuillan avers:

> "I say and believe that this deponent, SIPTU and the eleventh named defendant (Mr. O'Flynn) at no stage envisaged or supported the entering by others to the premises of the first named Plaintiff."

This clear and unequivocal averment stands in contrast to the supposition and inference which the Plaintiffs rely on to link the Defendants to the illegal acts of the 24th August. Even on the basis of the test applicable for interlocutory injunctions identified by the Supreme Court in the Campus Oil case this Court is satisfied that the Plaintiff has not established an arguable case of the Defendants' involvement in the illegal portion of that protest of the 24th August. I should say in passing that it is common case between the Plaintiffs and the Defendants in their legal argument before the Court that the correct principles for this court to apply in relation to the interlocutory relief are to be gleaned from the Irish Supreme Court decision in Campus Oil and it is those principles which I consistently apply throughout this judgment.

For the court to hold that the Defendants were responsible for what occurred on the 24th August and namely the illegal portion of the protest, that is the portion which took place following the illegal entry and occupation of the first named Plaintiff's premises, the Court would have to infer from the Defendants' words and actions an intention and an knowledge. That is expressly denied on oath. To rely upon on implied meaning and supposition against a clear and unequivocal averment is a course of action which this Court will not adopt. It accepts the averments which clearly deny knowledge of or support for the illegal trespass and demonstration within the private property. This Court will not therefore grant an injunction against the Defendants based upon the events which occurred on the 24th August.

However as illustrated by the approach of the English Courts in the case of *News Group Limited v. SOGAT* [1987] ICR 181 there are circumstances where unions can become responsible and liable to be injuncted for the torts or illegal acts of others. That is where previous events have demonstrated that such union or unions knew that violence had occurred and torts had been committed by others at pickets and marches organised by the unions.

In the headnote to that case the following is stated at headnote 4 on page 182:

> "The defendants could not be liable for the torts of others merely because in organising the pickets and marches they could foresee that individuals might commit tortious acts but that since the defendants organising the pickets and marches knew that violence had occurred and torts had been committed it was their duty to control their members or desist in organising the picketing and demonstration. Since the Plaintiffs have established that they had an arguable case that they would succeed at the trial of the action and they needed the protection of injunctive relief until that date the Court would exercise its discretion and grant injunctions against the Defendants' unions and against the third, fifth and eighth Defendants personally but in a form that permitted their continuing to organising peaceful picketing and marches."

The Court raised this matter with counsel during the course of argument and the issue in the headnote which I have read is in fact clarified when one has regard to the actual text of the judgment. If one turns to pages 216/217 of the judgment:

> "In my judgment therefore the defendants are not liable simply because they organise a March or picketing during the course of which tortious acts are committed by third parties even though such acts can be foreseen. But it is to be noted that in all cases to which I have referred liability is sought to be established on the basis of a single act or omission on the part of the defendants whether it be a failure to secure the premises so as to omit vandals who cause damage, thieves who enter to steal or tenants who are admitted to the premises to commit a nuisance."

Later on in the judgment the judge Indicated as follows at page 218:

> "So far as the marches and demonstrations at Wapping are concerned although it is not the invariable pattern violence and nuisance have occurred with sufficient frequency, particularly on those occasions when a large number of people attend and there is no proper control for it to amount to a detectable pattern.
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> As to control it seems to me that the defendant unions can exercise substantial control over their members and in the ultimate event if they cannot control them they may have to desist from organising the activity in question or organise it away from the plaintiff's premises."

In this case the stage has not been reached, to any extent, where the resort to illegal activities and nuisance have occurred with sufficient frequency that one could identify what is described as a 'detectable pattern'. It is not possible at this point in time to identify such a pattern, however the stage has been reached where a series of events have occurred, that is the illegal trespass and demonstration on the 24th August, including at that protest, the use of union banners, the disputed event in the forecourt on the 27th August and the use of fly posters in Athy on the same date. Those events have occurred and any future protests must be viewed against the knowledge of such past events and the union must at this stage be aware that in organising marches and demonstrations that a stage can be reached were absent control the Court will be put in a position that it would be prepared to consider whether to intervene by way of injunctive relief. That stage has not been reached but the union must now be aware of the risks of escalating the strike. Escalate is a term which they themselves have used and have stated the intention to so do. The influence and potential control of events by the trade unions and its representatives is in fact illustrated by the facts of this case where it is averred in Mr. Flemings' affidavit of the 11th September 2009 that he was in fact requested by a senior member of the Gardaí to intervene during the course of the illegal activities and trespass and he was brought on to the premises for the purposes of intervening and having the protesters leave. That is an illustration of the power and control the trade unions can have and exercise. Indeed it is a fact that this Court has taken into account in arriving at the conclusion that the stage has not been reached, to any extent, where the resort to illegal activities and nuisance have occurred with sufficient frequency that a detectable pattern can be identified or where the Court can identify the support of the trade unions for that type of illegal activity.

This court has also had regard to the approach of the Supreme Court in the case of *E.I. Limited v. Kennedy and Others* [1968] I.R. 69. In that case the Court held that there was not sufficient evidence of the continuance of the unlawful mode of picketing which had existed at the start of the strike to justify an interlocutory injunction on that ground, see page 103 of the judgment of Fitzgerald

J. as he then was.

Here at this stage there is neither evidence of continuing illegal acts since late August or the established detectable pattern referred to in the other cases. However events have occurred which could form part of a detectable pattern if they were to be repeated and therefore the Court will give the Plaintiffs liberty to apply to this Court which entitlement can be exercised if there is a significant event or repeated events of illegal activities coinciding with union backed pickets or protest marches.

The next event which it is necessary for the Court to address is the event averred to by Mr. O'Gara in his affidavit sworn on the 9th September of this year. That event took place in a garage forecourt on Sean Moore Road at approximately 1:00 p.m. on the 27th August. On that occasion he met the third, fourth and fifth named Defendants and there is no doubt but that they did meet because there is common case that that occurred and no dispute in relation to the meeting. It is what occurred which is in dispute. Mr. O'Gara avers he was not only called a scab but was in effect threatened and intimidated including use of a phrase from one of the Defendants to the effect of knowing where he lived. This is disputed in the affidavit of the third named Defendant who avers to a benign conversation having taken place on that date.

At this interlocutory stage this Court cannot decide between the disputed versions as to what occurred. However on the application of the test identified in the Campus Oil case this Court is satisfied there is sworn evidence of events that satisfy the test that there is an arguable case in relation to that event which meets the necessary threshold, that is that there is a fair question to be tried in relation to the issue as to whether threats or intimidation took place on that occasion.

Determining and determining no more but that there is a fair question to be ultimately tried. The real issue of what occurred can be determined by oral evidence including examination and cross-examination. However, once there is in the Court's view a fair question to be tried the Court must then consider the question of the balance of convenience and to determine whether or not the balance of convenience favours the grant of an injunction. Having considered the matter this Court is satisfied that the balance of convenience favours the grant of the injunction. On the side of Mr. O'Gara and people employed by the Plaintiff there is a claim of an event which identifies a threat whilst on the other side it is clearly averred that there is no intention or desire to threat. In those circumstances in looking at the balance of convenience one must have regard to the fact that the position adopted by the Defendants is that they did not nor do they have any desire to threaten anybody and in those circumstances any inconvenience caused by the imposition of an injunction would be of inconsequential effect. The Court is also satisfied that damages would not be adequate remedy for the Plaintiff in relation to the issue of threats given the difficulty in quantifying damages in relation to such matters. The Defendants, as the Court has pointed out, will on their own averred position not be adversely affected by the order and the discretion which is available to this Court clearly favours the grant of an injunction relating to this matter. However, that injunction must be limited in extent and the Court must ensure that such injunction is no wider than is necessary. No other Defendants have been identified as having intimidated Mr. O'Gara other than three identified Defendants. Nor is there any claim as to any of the other Defendants being involved and there is no indication that the union or any of the other Defendants conducting their affairs to permit such conduct.

In those circumstances the injunction under this heading will be solely against the third, fourth and fifth named Defendants and will be in the terms of paragraph 3 of the notice of motion.

The third and final event which gives rise to the application before this Court relates to what occurred in Athy on the 27th August of this year. There is clear evidence available before this Court that part of the escalation of the strike by various Defendants included the concept of a naming and shaming campaign. That campaign of SIPTU and of the Irish Congress of Trade Unions is illustrated by references contained in a speech on the 24th August 2009. The Court is satisfied that there is evidence that there was the intention to mount and to support a naming and shaming campaign. This is illustrated by the speech of the seventh named Defendant as a senior member of the Irish Congress of Trade Unions. In the speech made on the 24th August which indicates that the strikers would travel to Warrenpoint to make Mr. Rafferty, a person who was viewed as being a strike breaker, to make him a pariah in his own community. There can be little doubt but that it was part of the intention and approach of the escalation of the strike that naming and shaming would become part of the process.

It is also the case that in the speech made by Mr. Kevin Doherty at the protest on the 24th August there was reference to the fact of workers being very vulnerable. The use of the word vulnerable creates a potential for real and obvious apprehension on the part of persons at whom it is directed. On the 27th August of this year a number of the Defendants travelled to Athy and approximately 150 fliers were posted in Athy which was the home town of one of the persons who continued to work for the Plaintiff or its related company, namely a Brian Dooley. He was an employee who continued to be at work and was viewed as being a strike breaker or a scab by the Defendants and as target of the naming and shaming campaign due to the fact that Mr. Dooley had continued to work and was not on strike. It was determined to put up 150 fliers identifying him by name and identifying him as a scab.

It is clear this action was done by a number of the Defendants, it was openly acknowledged in the affidavits ultimately sworn by them. It is also clear from the affidavit of Julie O'Neill sworn herein which includes speeches made by the first and second named Defendants that they went to Athy to put up the fliers, they put them up in such quantities and in such a place that the local community responded and both the first and second named Defendants refer to the fact that their conduct was such as they got hassle in the local community. There is no doubt the fly posting was done by the first and second named Defendants with a view to shaming a worker. The real issue is as to whether the purpose of that was to intimidate or coerce that person who was a non-striker from working or of provoking a breach of the peace or to invade the privacy of that worker. Mr. Dooley has sworn an affidavit before this Court and the Court accepts that there is affidavit evidence that he felt threatened thereby. That issue cannot be determined finally at an interlocutory hearing but there is evidence before the Court that the response by Mr. Dooley to the mass use of saturation fly posting on that occasion resulted in him feeling threatened. That ultimately will be tested but for the purposes of interlocutory hearing this Court will proceed on the basis that there is a case to answer in relation to this matter. The trade union denies any involvement or knowledge of the fly posting and claim not only that they have no knowledge but they can't see how the poster is intended to intimidate. The Court has difficulty in accepting that it is an impossibility to understand or to see how the use of a mass poster campaign in a relatively small provincial town of less than 10,000 persons and the use of 150 posters with somebody's name on it could not by viewed in the light that it had the capacity to intimidate or potentially coerce.

A number of the union personnel have sworn affidavits denying knowledge of that campaign. However, an examination of the evidence before this Court indicates that the union supported and promulgated a name and shame campaign. There is affidavit evidence in relation to the use of a union car. There is the clear involvement of a number of members of the trade union in relation to the activity. In those circumstances the Court is satisfied that in relation to the Defendants there is a case to answer, at this interlocutory stage, in relation to the union and the Defendants being parties who were supportive of, encouraged and participated in the fly postering campaign. In those circumstances the Court must approach the matter, not on the basis of any final determination as to what occurred, but based upon the fact the Court is satisfied that there is a case to answer and on that approach the Court must consider what follows therefrom.

However at present it is clear that the case is that the Plaintiffs have established a fair question to be tried given that the use of the fly posters in the manner adopted. It is not just the language but it is the amount and the location of same which the Court has taken into account in considering if it was done for the purposes of coercing or threatening the person identified therein. There is a fair question to be tried in relation to that issue and a fair question in relation to the issue as to whether the union has been a party to such conduct, not only to coerce workers who are continuing to work but to interfere with those persons' rights to work, those persons' rights to privacy. There is also a fair question in relation to the issue identified in the submissions of the Plaintiff to the effect that the Defendants have engaged in conduct detrimental to the interests of an employee. All these issues have not been determined by the Court but the stage has been reached that there is evidence before the Court that there is a fair question to be tried in relation to these matters.

One must balance in relation to these matters the fact that what is contained on the poster is an expression or a view which a person can argue and is entitled to argue and represents their right of freedom of expression. As indicated earlier in this judgment that is not an absolute right but it is one which one must on occasions, and particularly on occasions identified by law, take into account, in a balancing exercise or in determining proportionality whether that right is more than counterbalanced by other existing rights. In this case given the contents of the fly posters, the sheer number of the posters, the location of the posters and the apparent intent of causing a person shame or to become a pariah and when one takes all those matters into account and has on the other side to take into account the rights of a person to work, the rights of a person to privacy, the rights of a person to ensure a trade union does not engage in conduct detrimental to the interests of an employee, all of those matters lead to a determination that in this instance, at the interlocutory stage, it would be both proportionate and correct to grant an injunction.

Here the Court must balance the right of freedom of expression against the competing rights which I have identified. The Court must also ensure that any limit on the freedom of expression at an interlocutory stage is proportionate and balanced. Whilst the Court favours the grant of an injunction it must be on the minimum necessary to protect the competing rights which have been identified. On the interlocutory stages the rights sought to be protected have been identified and the Court is satisfied that there is a case to argue. The Court is satisfied that on the Campus Oil tests both in relation to the balance of convenience and in relation to the question of damages that an injunction should be granted.

The trade union denies involvement in this matter, that is identified from paragraph 7 of the affidavit of Ken Fleming sworn on the 9th September of this year where he said the union never recommended or suggested such a process to any of the Defendants. However at this stage there is evidence available to the Court that the trade union has as part of its name and shame campaign been involved in and supported such activity. That ultimately will be tested and determined at the oral hearing which will take place at the hearing of the action.

The minimum necessary injunction must link the use of fliers to personal identification. It cannot be necessary to limit the expression or the expression of the views of parties, which do not cause the harm which the Court seeks to avoid by means of interlocutory injunction. The injunction will therefore not be in the wider general terms identified in paragraph 1 of the notice of motion but will be in the more precise and limited terms as per paragraph 2 of the notice of motion which links the prohibition to the personal identification by name or address of particular persons. The Court is satisfied that such injunction, for the interlocutory period, would provide the minimum protection necessary and would not be excessive in balancing the competing rights at this point in time.

The Court is also satisfied that the Campus Oil test in relation to balance of convenience and damages not being a suitable remedy both favour the granting of an injunction. There is a case to answer that the Plaintiffs' workers' rights to privacy and to associate and to work and to be free from coercion or threats are being interfered with by the name and shame campaign and the balance of convenience requires an injunction.

In arriving at this determination the Court has taken into account the arguments raised by counsel on behalf of the Defendants. That argument in particular centered upon the contention that threats to employees would not amount to the tort of intimidation unless employees succumbed to the threats and thereby damage resulted. The Court has considered this matter and has at this interlocutory stage adopted an approach similar to the approach identified by the English courts in the News Group case. I have already given its reference. The Court will grant injunctive relief where there is evidence, as there is in this case, that the conduct was viewed as threats and were taken seriously by the person so threatened.

At page 204 of the judgment in the *News Group v. SOGAT* case the following was stated:

> "If a threat is little more than idle abuse and is not to be taken seriously then it would not be sufficient to found an action for intimidation. Indeed the tort is not complete unless the person threatened succumbs to the threat and damage is suffered but it is clear that injunctive relief can be granted to restrain the unlawful act and also threats to commit an unlawful act (reference given). But in order for an injunction to be granted the threat or threats must be serious and taken seriously by those who received them."

That is the position which pertains in this case as in this case it is not just the use of the fly posters but how they were used and where they were used and when all those matters are taken together with the incident in the forecourt it leads this Court to the decision that there is a case to answer in relation to coercion and threats. The issue in relation to the balancing of the right of freedom of expression against the rights of a worker to continue to work and not to be exposed to detrimental actions has been considered at this stage but my final determination will require oral evidence.

There is also a case to answer as to whether the conduct of the saturation use of fly posting concerning an identified individual represents unreasonable harassment of a worker. The test in Campus Oil is whether the balance of convenience favours the granting of an injunction and the Court must also consider whether damages would be an adequate remedy. Under both of those headings the Court is satisfied it is appropriate to grant an injunction and therefore an injunction will be granted against all the Defendants in the terms of paragraph 2 of the notice of motion.

Also in considering the question of balance of convenience the Court has had regard to the open letter which was produced by the Defendants and which was issued on behalf of all the Defendants which indicated a willingness to refrain from a certain manner of naming and shaming, that is not travelling to a particular area. Whilst the injunction ultimately granted by the Court is somewhat wider the Court has taken into account the fact that the Defendants, in open letter, were prepared to limit their future conduct.

Finally as the Court has previously indicated that there is no issue in relation to paragraph 7 and the Court will continue the order therefore in relation to paragraph 7 of the notice of motion. In relation to the other reliefs sought at paragraphs 1, 3, 4, 5 and 6 the Court declines to make any order in relation to those particular matters other than the two reliefs which have been granted, firstly against three named Defendants in relation to paragraph 3 and in relation to all Defendants as regards paragraph 2 and the

continuation of the order in relation to paragraph 7. As I have already indicated absent some extraordinary, inventive and brilliant submission I will be reserving the question of costs but I would hear the parties if they have a submission which comes within the category which I have identified.