Neutral Citation: [2014] IEHC 644

THE HIGH COURT

[2014 No. 2995 P]

BETWEEN

DUBLIN AIRPORT AUTHORITY PLC

PLAINTIFF

AND

SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION

DEFENDANT

THE HIGH COURT

[2014 No. 3013 P]

BETWEEN

RYANAIR LIMITED

PLAINTIFF

AND

SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION

DEFENDANT

JUDGMENT of Mr. Justice Gilligan delivered on 12th day of March, 2014

1. These proceedings by both Dublin Airport Authority plc and Ryanair Ltd seek injunctive relief restraining the defendant (SIPTU) from embarking on industrial action in pursuit of their claim with regard to the current IASS pension scheme dispute in the form of a four hour work stoppage at Dublin and Cork Airport by SIPTU members of the IASS pension scheme commencing at 5.00am on Friday, 14th March, 2014, and finishing at 9.00am on the same day.

2. Dublin Airport Authority plc seeks the following orders as set out in their notice of motion:-

> "1. An interlocutory injunction restraining the Defendant from organising any strike, work stoppage or other industrial action at the Plaintiff's premises at Dublin Airport and/or Cork Airport.
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> 2. An interlocutory injunction restraining the Defendant from organising, participating in, sanctioning or supporting any strike, work stoppage or other industrial action involving members of the staff of the Plaintiff and/or members of the staff of any associated or subsidiary company of the Plaintiff without first fully complying the provisions of the Industrial Relations 1990 Act and in particular Section 14 thereof.
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> 3. An interlocutory injunction restraining the Defendant from organising, sanctioning, supporting or participating in any strike or industrial action including any work stoppage without first conducting a full and complete secret ballot, in accordance with the Defendant union rules, of the entire membership of the Defendant employed by Plaintiff, its subsidiaries and associated companies.
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> 4. An interlocutory injunction restraining the Defendant, whether by itself, its servants, or agents, or otherwise, or any person acting in concert with it or any person having notice of the making of any order of this Honourable Court from interfering with the Plaintiff's business interests and economic relations and restraining the Defendant from breaching or inducing breaches of the Plaintiff's commercial contracts.
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> 5. An interlocutory injunction restraining the Defendant whether by itself, its servants or agents, from encouraging and/or permitting and/or allowing employees of the Plaintiff who are members of the Defendant from participating and/or supporting any strike or other industrial action taken on foot of a secret ballot which they were not invited to partake.
>
> 6. An interlocutory injunction restraining the Defendant whether by itself its servants or agents from causing, permitting, allowing and/or encouraging any employee of any associated subsidiary company of the Plaintiff who is not a member of the Irish Airline (General Employees) Superannuation Scheme from engaging in any strike or other industrial action.
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> 7. Further and other relief including, if necessary, an order abridging time for the service of this Notice of Motion.
>
> 8. Costs."

3. Ryanair Ltd seek the following reliefs as set out in their notice of motion:-

> "1. An interlocutory injunction restraining the defendant, its servants or agents, or any person with knowledge of the making of such Order from directly or indirectly:

(a) Organising, directing, sanctioning or endorsing the participation of all or part of its members in a strike at Dublin Airport, Cork Airport, and Shannon Airport on 14 March 2014, or thereafter;

(b) Providing funding or other financial assistance or support to its membership (or part thereof) engaging in a strike at Dublin Airport, Cork Airport and Shannon Airport on 14 March 2014, or thereafter.

2. An interlocutory injunction restraining the defendant, its servants or agents or any person with knowledge of the making of such Order from directly or indirectly (or howsoever) adopting or relying upon or otherwise giving effect to any purported notice of industrial or strike action at Dublin Airport, Cork Airport and Shannon Airport on 14 March, 2014.

3. An interlocutory injunction restraining the defendant, its servants or agents or any person acting in concert with them or with knowledge of the making of such an order from directly or indirectly (or howsoever) interfering with the plaintiff's business and undertaking and commercial contracts on 14 March, 2014 (or thereafter) whether by recourse to a strike or otherwise, howsoever.

4. An interlocutory injunction requiring the defendant, its servants or agents to rescind any instructions to its membership (or part thereof) to engage in industrial or related action on 14 March, 2014, at Dublin Airport, Cork Airport and Shannon Airport.

5. An interlocutory injunction restraining the defendant, its servants or agents or otherwise howsoever from directly or indirectly (or howsoever) inducing and/or procuring and/or threatening to induce and/or threatening to induce or procure breaches of commercial contracts or by any other unlawful means howsoever, so as to cause loss, harm or damage to the plaintiff.

6. Further or other relief.

7. Costs."

4. I shall firstly deal with the application made to the court on behalf of the Dublin Airport Authority plc.

5. In an affidavit as sworn by John McCormack, Group Head of Industrial Relations of the plaintiff, he refers to the fact that the plaintiff company owns and operates Dublin and Cork Airports and has approximately 2,500 employees.

6. The defendant, SIPTU, enjoys negotiating rights on behalf of a diverse range of categories of employees from cleaning and operative staff to security airport police and fire service, clerical and management staff and apart from the general terms and conditions of employment set out in the Employee Handbook, individual employees are issued with written terms and conditions of employment upon recruitment incorporating the dispute resolution procedure as applicable to their employment or referring to the agreements containing them.

7. Mr. McCormack refers to the fact that the IASS is a multi employer scheme with members from the plaintiff company and also from Aer Lingus and SR Technics and involves approximately 15,000 members, including active current employees of the employers, deferred pensioners and pensioners in benefits. Mr. McCormack says that the plaintiff has met all of its obligations to pay the appropriate contributions into the scheme and it continues to meet those obligations.

8. It is accepted that there is a substantial deficit apparent in the scheme and extensive negotiations and discussions with SIPTU and other trade unions are ongoing, and Aer Lingus are also engaged in such discussions. Parallel discussions have been taking place with the IASS trustees who are acting in the interests of all IASS members, and a substantial part of these industrial relations discussions took place under the auspices of the Labour Relations Commission.

9. In essence, the court is satisfied that the subject matter of the ongoing dispute between members of the IASS pension scheme and the Dublin Airport Authority plc and Aer Lingus is an extremely complex and difficult matter. A recent offer by the plaintiff herein to pay some €53.9m to address the pension issue, subject to the conditions stipulated in the Labour Court recommendation, has not been concluded as the various trade unions are awaiting the outcome of the trustees of the IASS deliberations on the future of that scheme.

10. In January, 2014 SIPTU conducted a ballot for industrial action in relation to a variety of matters relating to ceasing contributions to the IASS, taking limited industrial action or strike action. Mr. McCormack avers that this ballot was carried out only with members of the defendant trade union who were involved in the IASS including, as he understands the position, several hundred members of the defendant union who are governed by either or both the Airport Police Fire Service Agreements or the Dublin Airport Search Unit Agreement, and it appears that several hundred other members of the defendant union who are also employees of the plaintiff, DAA, did not participate in the ballot not being members of the IASS.

11. The industrial action which those taking part were asked to vote on were to bring about an acceptable resolution of the dispute on the pension issue by way of industrial action, including work to rule, a ban on overtime, a partial or complete withdrawal of cooperation from any element or aspect of work, limited work stoppages including picketing, the form, nature, timing and duration of which were to be determined by SIPTU to the full withdrawal of labour and the placing of pickets and the withholding of all pension contributions to the IASS scheme, pending resolution of the dispute.

12. Dermot O'Loughlin, the Pensions Policy Adviser, by way of a letter on behalf of the defendant as dated 13th February, 2014, advised Mr. McCormack that "our members in the DAA have voted in favour of taking industrial and strike action in pursuit of achieving fair and reasonable outcomes to the pension dispute". Mr. O'Loughlin acknowledges that the inexcusable procrastination of the trustees has done enormous harm to the settlement of the particular pension crisis, but he indicates in the letter that he does not accept that other critical matters that need to be addressed should be forestalled as a consequence of the trustees' procrastination. Furthermore, inter alia, he sets out that SIPTU remain available at very short notice to participate in the resolution of this long running pension dispute.

13. Brian Duncan, Chairman on behalf of the trustees of the IASS, in a letter of 14th February, 2014, to the Irish Congress of Trade Unions acknowledges, inter alia, that SIPTU in respect of both Aer Lingus and DAA have secured approval from their members for industrial action, including an all out strike in relation to the various pension issues, and that the trustees also understand that the other unions are still considering their position and that the trustees recognise accordingly that there is considerable pressure to

move forward as quickly as possible.

14. The defendant then on 27th February, 2014, formally served 14 days notice of their intention to take industrial action as previously referred to herein for a four hour period on 14th March, 2014, and that notice would be given in connection with further industrial action if the issues "between us are not resolved".

15. Kevin Toland, Chief Executive of the plaintiff company, in a letter of 5th March, 2014, to Jack O'Connor, General President SIPTU, *inter alia*, referred to the announcement of the expert panel group which had been put in place the previous Monday in an effort to resolve the dispute without recourse to industrial action and outlined the very serious consequences that industrial action would have for the companies concerned, their employees, members of the IASS and for the economy and requested that the expert panel be allowed to complete its work in an atmosphere untainted by actual or threatened industrial action and that he believed that a pension resolution could be achieved which would be capable of acceptance by all sides.

16. Mr. O'Connor replied in a letter of 5th March, 2014, stating, inter alia, that he welcomed the fact that the Dublin Airport Authority plc would be fully engaging with the expert panel and reassuring Mr. Toland that SIPTU would also engage with the panel, pointing out that the fact of the matter was that the issue has been dragging on for over three years and the view of SIPTU was that they were no nearer a solution with each passing week.

17. Mr. O'Connor states that the situation is most unsatisfactory, not least for the SIPTU members who very much appreciate the seriousness of the situation but who feel so frustrated and disappointed at any lack of real progress that they feel they have no other option but to take industrial action, and Mr. O'Connor regrets that there is currently no basis for the suspension of the proposed industrial action.

18. Mr. McCormack in his affidavit in referring to the letter of 13th February, 2014, specifically points out that in the first sentence SIPTU were stating that "members in the DAA have voted in favour of taking industrial and strike action in pursuit of achieving fair and reasonable outcomes to the pension dispute", and he avers that it is clear and unambiguous that the defendant intended to give notice to the plaintiff company that all of its members in the DAA, including non IASS members, would be taking part in the industrial action and/or strike despite the fact that all of its members had not participated in the ballot, and he avers that it is clear from the letter that the defendant union expected all of its members to partake in the industrial action. Mr. McCormack refers specifically to the fact that many of the defendants members are working side by side, particularly in Terminal 1 of Dublin Airport, some of whom, but not all of whom, are members of the IASS and that it is inconceivable that the defendant could have anticipated that non-members of IASS could continue to work and not be called upon to support the industrial action. Mr. McCormack avers that the defendant union will know further that if pickets are placed at the entrance to the airports it will involve all of the plaintiff's employees, including those who are not members of IASS, and Mr. McCormack avers that the actions of the defendant union in limiting the ballot of members of IASS is in breach of the Industrial Relations Act 1990, and that it would be unreasonable for the defendant union to not expect the plaintiff's employees who are members of the union to be called upon to engage in the industrial action.

19. Mr. McCormack further avers that there is a difficulty with the defendant's action in that in conducting its ballot it included those employees who are governed by the Airport Police and Fire Service Agreements or the Dublin Airport Search Unit Agreement which expressly prohibits the taking of industrial action while those agreements are extant, and they remain extant. Mr. McCormack avers that these agreements impose contractual obligations on the employees not to engage in industrial action until at least certain processes are concluded and further, that the defendant union is bound not to conduct a ballot for the purposes of engaging in such action until all of the procedures set forth in the agreements have been exhausted.

20. It is further averred that it is noteworthy that the industrial action has been called to take place on the morning of Friday, 14th March, 2014, which the defendant union is well aware is among the busiest days of the year at Dublin and Cork Airports, having regard to the time of year and a variety of other events taking place.

21. Mr. McCormack avers that by its letter of 27th February, 2014, the defendant union has sought to correct its hand as the notice seeks to limit the industrial action to members of the defendant union who are members of IASS, and he believes that the letter is an attempt by the defendant union to retrospectively validate a secret ballot which it knows was overly limited and not compliant with the provisions of the Industrial Relations Act 1990.

22. Mr. McCormack avers that the defendant union's threat to engage in a four hour work stoppage at Dublin and Cork Airports on Friday, 14th March will cause irreparable loss and damage to the plaintiff and that the withdrawal of labour, and particularly that of the police and fire service, security services and essential airfield staff, is likely to lead to the closure of both airports. It is anticipated that some 10,000 passengers will be affected in Dublin and approximately 1,200 passengers in Cork and that the knock on effect will cause significant disruption for at least 24 hours.

23. Mr. McCormack avers that in the particular circumstances the plaintiff company will suffer irreparable loss and damage which will run to the order of millions of euro, and that in the particular circumstances if the injunctive relief as sought is not granted, damages will not adequately compensate the plaintiff for its loss and that further, the balance of convenience favours the granting of the injunction in all the circumstances.

24. In a supplemental affidavit as sworn in the Ryanair proceedings it is suggested that a protest walk/drive is also contemplated for Friday, 14th March at 1.00pm from the SIPTU office to Aer Lingus headquarters and then to the Dublin Airport Authority headquarters and this Court takes the view that any aspect of proposed industrial action is caught by the reliefs that are sought, both by the Dublin Airport Authority and Ryanair.

25. Mr. Connaughton S.C., on behalf of the plaintiff, submits to the court that the result of the proposed industrial action will be catastrophic for his client as the object is to shut down Dublin and Cork Airports. He submits that the proposed action of SIPTU is unlawful and he relies on the factual issues as raised by Mr. McCormack placing great significance on the fact that no replying affidavit on behalf of SIPTU has been delivered to contradict in any way the averments of Mr. McCormack on the plaintiff's behalf.

26. Mr. Connaughton relies on certain specific provisions of the Industrial Relations Act 1990, referring to the definition in s. 8 relating to a trade dispute as meaning:-

> "Any dispute between employers and workers which is connected with the employment or non-employment or the terms or conditions of or affecting the employment of any person."

27. Further, reliance is placed on s. 14(2)(a) wherein it is provided that:-

> "(2) The rules of every trade union shall contain a provision that:-
>
> > (a) the union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot, entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot for the union concerned to believe will be called upon to engage in the strike or other industrial action;

and further, s. 19(2) which provides that:-

> "(2) Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14 , the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union before engaging in the strike or other industrial action gives notice of not less than one week to the employer concerned of its intention to do so, a court shall not grant an injunction restraining the strike or other industrial action where the respondent establishes a fair case that he was acting in contemplation or furtherance of a trade dispute."

28. Mr. Connaughton contends that if there is a trade dispute, which he does not accept, then it is a dispute which SIPTU has with the plaintiff in respect of all its members as employed by the plaintiff and it is fatal that SIPTU has not, in advance of serving notice of industrial action, taken a ballot of all those members and it follows in the particular circumstances, and as outlined by Mr. McCormack in this affidavit which is uncontradicted, that at the time of the taking of the ballot the defendant trade union could not reasonably have believed that it was not going to be calling upon all of its DAA members to participate in the strike or other industrial action. Further, Mr. Connaughton submits that as is averred to by Mr. McCormack the dispute is clearly a broader based dispute than just the IASS. There is no question but that SIPTU was planning industrial action which was going to shut the airport for four hours. Mr. Connaughton submits that it is patently clear that if the fire service and the airport security staff are not operating, the airport closes.

29. Further, Mr. Connaughton submits that hundreds of the employees of the plaintiff who are governed by either or both the Airport Police and Fire Service Agreements or the ASU Agreement are, effectively, prevented from taking industrial action and in the particular circumstances SIPTU have ignored completely in their deliberations that these agreements governing the police, fire service personnel, and the Airport Search Unit employees effectively prohibit SIPTU from balloting those persons from taking industrial action during the currency of the actual agreements, and they remain current and valid and the Airport Police and Fire Service Agreement are registered with the Labour Court and while it is conceded that the ASU Agreement is not so registered, Mr. Connaughton submits that it is still a legal contractual document. Mr. Connaughton phrases his submission by posing the question as to how SIPTU could have reasonably believed at the time of the taking of the ballot that it could expect the members of the police and fire service units and the airport security unit to participate or engage or call upon them to participate or engage in the strike or other industrial action knowing that to do so would be a breach of the express agreement which had been entered into with the plaintiff or its predecessor.

30. Furthermore, Mr. Connaughton contends by way of posing the question as to how could anyone but speculate as to the impact that the proposed four hour industrial stoppage action will have on other persons who are members of SIPTU and are working beside those persons who actually did ballot and who are participating in the industrial action.

31. Mr. Connaughton contends that the actual ballot is defective and not in accordance with the provisions of s. 14(2)(a) of the Industrial Relations Act 1990, and that accordingly, protection as afforded to SIPTU pursuant to s. 19(2) is not available and that accordingly, it is a matter for the court to decide this application for injunctive relief on the basis of the principles as laid down in *Campus Oil Limited & Ors v. Minister for Industry and Energy & Ors (No.2)* [1983] I.R. 88.

32. Further, Mr. Connaughton contends that the subject matter of the dispute between the parties hereto is not a valid trade dispute at all. It is accepted that the definition in s. 8 of the 1990 Act is broad in its scope and, in essence, Mr. Connaughton submits that what is at stake is a "pension's crisis" as it is described by Mr. O'Loughlin of SIPTU in his letter of 13th February. It is submitted that that is not a trade dispute within the meaning of s. 8 and is patently not a dispute connected with the employment or non-employment of workers and patently not to do with the terms or conditions of the workers concerned, in particular because Mr. McCormack has averred on affidavit that the plaintiff is fully compliant and has been fully compliant with his contribution obligations in relation to the superannuation scheme. It is contended that, in essence, we have here a multiplicity of parties involving the Pensions Board, trade unions representing current employees and a further two classes of important persons namely, the deferred pensioners and the pensioners in benefit and involves other employees in the scheme, and Aer Lingus and the pension trustee and Mr. Connaughton contends that his contractual obligations are to ensure primarily that the plaintiff's meet any contractual promise to the employees in respect of the superannuation scheme. In particular, Mr. Connaughton contends that the words "or affecting the employment of any person" has to be connected or concerned with the conditions under which the employee works. In essence, in the context of a proper construction of the entire phrase it is submitted that a serious question to be tried arises.

33. Mr. Connaughton contends that in the particular circumstances of this case damages are not an adequate remedy and that the balance of convenience favours the granting of the relief as sought.

34. Mr. Keane S.C., on the defendant's behalf, in dealing firstly with the aspect as to whether or not there is a trade dispute submits that the definition as contained in s. 8 of the Industrial Relations Act 1990, is very broad and that the jurisprudence to date from the *Silver Tassey* case through to the *Ardmore Studios* case demonstrates that the courts are minded to give a very broad interpretation to the question as to whether or not a trade dispute exists. In reference to the *Nolan Transport* case, Mr. Keane submits that where one party considers there is a trade dispute and the other disagrees, such disagreement does not negate a trade dispute. The issue, Mr. Keane submits, is as to whether or not the defendants have a *bona fide* belief that there is a genuine dispute. The question in Mr. Keane's submission is as to whether or not any dispute that affects the plaintiffs herein and the defendant and is connected with their employment. Of particular importance is the fact that the section provides for or and could not be broader and for Mr. Connaughton to suggest that employers' contributions and their role in relation to pension entitlements affecting workers is not a dispute between an employer and a worker connected with their employer, is absurd.

35. It is contended on the defendant's behalf that it is perfectly legitimate for a trade union to want to improve its member employee's position with an employer and to improve their contractual terms and to suggest that the issue here is not a trade dispute because it is not a breach of contract, is utterly misconceived.

36. Mr. Keane submits that simply because there is a multiplicity of parties does not affect the overall situation. It is submitted that

pension's entitlement and fringe benefits are recognised as having the capability of being part of a trade dispute and he refers to the House of Lords decision in *Universe Tanker Ships Incorporated of Monrovia Appellants v. International Transport Workers Federation & Ors Respondents* [1983] A.C. 366.

37. Further, Mr. Keane submits that the balloting and the way in which the ballot is conducted is a matter for the defendant trade union and you only ballot the people who are going to be affected by the trade dispute and who are affected by it. In Mr. Keane's submission the only people that were balloted are the people that are affected by the outcome, and that is their entitlement. Reference is made to Kerr on *Trade Union and Industrial Relations* and the passage therein as follows:-

> "The decision of when and how to hold a ballot is decided by the trade union rules. The electorate is stated to be those members of the union whom at the time of the ballot it is reasonable for the union to believe will be called upon to engage in the strike or other industrial action."

38. In respect of the agreements affecting the Fire and Police Service and Search Units, Mr. Keane submits that these are collective agreements that have not been incorporated into employee's contracts and that, in particular, the second agreement with the Search Unit was never registered with the Labour Court.

Conclusion

39. In my view, Mr. Connaughton, on the plaintiff's behalf, raises two significant points in respect of the defendant's compliance with s. 14(2)(a) of the Industrial Relations Act 1990. It is apparent and not contradicted that only those persons who were employees of the plaintiff, members of the defendant trade union and participants in the IASS scheme were called upon to participate in the secret ballot and that amongst such persons are members of the Airport Police, Fire Service and Airport Search Units. In my view a serious issue arises for determination as to whether or not such persons, having regard to the various agreements which they were subject to, were entitled to be called upon by SIPTU to vote at all having regard to the fact that the agreements provide for a whole series of events to take place prior to such persons taking part in industrial action, and there is no indication on the defendant's behalf that such procedures were complied with. Further, only those persons who are members of the IASS pension scheme were called upon to ballot and clearly the question arises as to whether or not SIPTU should have included all of its member employees whom it was reasonable at the time of the ballot for SIPTU to believe would be called upon to engage in the strike or other industrial action.

40. The uncontroverted averment of Mr. McCormack is to the effect that particularly, for example, in Terminal 1, members of the IASS pension scheme and non-members but both being members of SIPTU are working side by side, and Mr. McCormack avers, without contradiction, that "it is inconceivable that the defendant could have anticipated that the non-members of IASS could continue to work and not be called upon to support the industrial action".

41. Further, this Court has to bear in mind the various ballot papers, as previously referred to herein, the nature and extent of the industrial action including picketing as proposed on behalf of SIPTU, although I accept that in respect of the immediate four hour work stoppage proposed for Friday 14th March, there is no reference to actual picketing.

42. For these reasons and in the absence of any replying affidavit the legal validity of the secret ballot is clearly in issue. In the particular circumstances of this application no evidence has been offered by SIPTU of compliance with the secret ballot requirement or that the averments of Mr. McCormack in this regard are mistaken. Accordingly, I am satisfied a serious issue to be tried arises.

43. I am also satisfied that the participation in the ballot of those members who are subject to the various industrial agreements prohibiting industrial action unless a series of alternative procedures have been complied with, raises a serious issue to be tried as to whether or not their participation in any proposed industrial action would be lawful having regard to their pre-existing and extant contractual agreements and further, there is a serious issue raised to be tried as regards the entitlement of SIPTU to procure a breach of legally binding employment agreements.

44. In *Nolan Transport (Oaklands) Limited v. Halligan* [1999] 1 I.R. 128 Murphy J, although expressly stating that s.19 was not before the Court, did make the following observations about s.19(2) in considering *G. & T. Crampton Ltd v. Building and Allied Trades Union* and others [1998] 1 ILRM 430 and stated at p. 160-161 that he:

> "would find it difficult to escape the conclusion reached by Keane J. and accepted by Laffoy J., that the onus lies upon the party resisting an application for an interlocutory injunction to show that a secret ballot as envisaged by s. 14 has been held."

Murphy J continued that:

> "Moreover, it could hardly be sufficient to establish the existence of a stateable case in relation to the compliance with the rules required to be adopted by a union pursuant to s. 14 aforesaid. The decision of a court on an interlocutory application as to whether or not the particular immunity granted by s. 19(2) is available is itself a final decision and determines finally whether that statutory benefit is available to the trade union. Concern must exist, as to how decisions of that nature could be made in practice. There may be serious difficulty, and even a degree of unreality, in requiring the court to make an actual determination on the balance of probabilities as to whether all of the requirements of the secret ballot have been complied with when the substantive issue itself is dealt with at that stage on the basis of a serious issue to be tried".

45. In *G. & T. Crampton v. Building and Allied Trades Union*, Laffoy J (as she then was), in considering the applicability of s.19(2) stated that:

> "It seems to me that in applying the foregoing provision I must determine whether three pre-conditions - that a secret ballot was held, that its outcome favoured industrial action and that the requisite notice was given - stipulated in the provision have been fulfilled and, if they have, I must then decide whether the Defendants have established a fair case that they were acting in contemplation or furtherance of a trade dispute and, if they have, I must refuse the Plaintiff's application.

She continued in the next sentence to hold that:

> "In the Nolan case Keane J., having commented that there appeared to be no authority on Section 19, stated that as a matter of first impression the onus must be on the person resisting the injunction to establish that the provisions of Section 14 have been complied with and that the Court must be satisfied on the evidence before it that Section 14 has

been complied with. I have not been referred to any other authority on Section 19. I respectfully agree with the view expressed by Keane J.

46. Hamilton, C.J. in giving judgment for the Supreme Court, expressly adopted Laffoy J's (as she then was) reasoning and her finding that in the above case that she was entitled to conclude that the condition precedent to the implementation of s.19 had not been established, stating that:

> "That being so I am satisfied that there are two issues to be tried in this case that have been raised by the plaintiff in these proceedings and I am satisfied that there is a fundamental issue with regard to the interpretation of ss. 14 and 19 of the Act and that the learned trial judge was entitled to come to the conclusion that the condition precedent to the implementation of s. 19 was not established.

47. This being the case, he held that he was satisfied Laffoy J. then proceeded to deal with the matter by applying the principles laid down in *Campus Oil*, subsequently finding that

> "such a question had been raised, she found that damages would be an inadequate remedy and that the balance of convenience was in favour of the granting of the injunction."

48. Hamilton C.J. further stated that:

> "when a court holds that there is an issue to be tried, the position is as set out in the judgment of the former Chief Justice, Finlay CJ in *Westman Holdings Ltd v. McCormack* [1992] 1 IR 151…and the passage to which I would refer is contained at p.157 of the report:
>
> > 'Having regard to the decision of this Court in *Campus Oil v. Minister for Industry and Energy* and in particular the judgment of O'Higgins CJ in that case, I am satisfied that once a conclusion is reached, that the plaintiff seeking an interlocutory injunction has raised a fair question to be tried at the hearing of the action in which if he succeeded he would be entitled to a permanent injunction, the court should not express any view on the strength of the contending submissions leading to the raising of such a fair or bona fide question but should proceed to consider the other matters which then arise in regard to the granting of an interlocutory injunction."'

49. I take the view that having regard to the situation that arises, the onus lies upon SIPTU to show that a secret ballot in compliance with s. 14 of the Act of 1990, has been held and in this regard no evidence has been adduced to assist the court, and I am satisfied in such circumstances that the defendant is not entitled to rely on the restriction of the right to an injunction as provided to a trade union pursuant to s. 19(2) of the Industrial Relations Act 1990, and it accordingly follows that the application herein is to be dealt with in accordance with the principles as laid down in *Campus Oil*, which are as neatly summarised by Laffoy J. in *McCann v. Morrissey* [2013] IEHC 288 at para. 23:-

> "...the criteria for determining whether the applicant is entitled to the interlocutory relief sought are those laid down by the Supreme Court in *Campus Oil v. Minister for Industry and Energy (No. 2)* [1983] I.R. 88, namely:
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> (a) whether the applicant has established that there is a serious issue to be tried;
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> (b) whether damages would be an adequate remedy for the applicant, if he was successful at the trial, and, conversely, whether, if he was not successful at the trial, the entitlement of the defendants to resort to the undertaking as to damages, which was given to the Court by the applicant, would be an adequate remedy for them; and
>
> (c) whether the balance of convenience lies is granting or refusing the interlocutory injunction."

50. Mr. Connaughton raises the issue as to whether or not there is an existence between the parties hereto a valid trade dispute within the meaning of s. 8 of the Industrial Relations Act 1990. He instantly accepted that the definition as set out in s. 8 is very broad in its scope. However, Mr. Connaughton contends that what is involved is as described by Mr. O'Loughlin on behalf of SIPTU a pensions crisis which is patently not a dispute connected with the employment or non-employment of workers, and is patently not to do with the terms or conditions of the workers concerned because Mr. McCormack has averred on affidavit that the plaintiff is fully compliant with the contribution regulations in relation to the superannuation scheme. It is contended that the plaintiffs' contractual and related obligations are to make sure primarily that they meet any contractual promise to their employees in respect of the superannuation scheme and, in effect, Mr. Connaughton says this is what they have done. I propose also at this juncture to refer briefly to the submissions of Mr. Hayden on behalf of Ryanair in the associated case who also contends that there is not a *bona fide* trade dispute in existence between the parties and draws a distinction between defined benefit and defined contribution schemes, and in Mr. Hayden's submission the parties involved have been circling each other for some considerable number of years, but for some period of time the scheme has been accepted as a defined contribution scheme. The fact that the scheme has not performed is not a matter that can be visited upon the employer, being the plaintiff in the associated action, and Mr. Hayden submits that in the particular circumstances that arise herein neither Aer Lingus nor the Dublin Airport Authority have any liability, contractual or otherwise, to make up for any deficit in the IASS.

51. With regard to this aspect there is a statutory definition as to the meaning of a trade dispute as set out in s. 8 of the Act of 1990 and the jurisprudence of the Superior Courts has always tended towards a broad definition as to what is included within the term trade dispute. The very fact of the negotiations that have gone on in this regard for some years now and the involvement of so many parties, both employers and trade unions and the Labour Court and now more recently an expert panel nominated by the government who are all attempting to try to resolve the issues that arise around the IASS scheme tend towards a finding that what is involved is a matter relating to terms and conditions of employment giving rise to a trade dispute within the meaning of s. 8 of the Act of 1990.

52. The previous legislation which governed this area, the Trade Disputes Act 1906, gave workers the freedom to take industrial action while allowing them certain immunities to commit legal wrongs. These immunities are now contained in ss. 10-12 of the 1990 Act such as a right to peaceful picketing and immunity from liability for interference with trade. However, while these protections were similar under the Trade Disputes Act 1906, the definition of "trade dispute" for the purpose of conferring these immunities was narrowed by the Industrial Relations Act 1990. Forde and Byrne state at para. 1-29 that:

> "Under the 1906 Act a 'trade dispute' for these purposes, as well as disputes between employers and workers, could

> include a dispute between employers and one between workers or their trade unions, but this is no longer so. The term means 'any dispute between employers and workers which is connected with the employment or non-employment, or the terms or conditions of or affecting employment, of any person. In the past the Irish courts tended to interpret what is a 'trade dispute' in a restrictive fashion, such as excluding from its scope disputes in the non-profit and the public service sections. But the exclusion of these sectors was ended in 1982. "

53. Mr. Keane S.C. and Mr. Hayden S.C. and Mr. Connaughton S.C. all acknowledge that the court has in the past given a broad interpretation of the term "trade dispute." Mr. Keane submits that the definition given in the legislation is broad and that to narrow it by requiring that there be a disputed breach of a contractual term would be overly restrictive, rather a disagreement around employee benefits such as pension entitlements is sufficient to make out this definition. Mr. Keane relies on *Elliott* and the statement of Clarke J. in that case to the effect that a trade dispute may exist simply where workers are seeking better terms of employment, as is the case in this instance. Mr Keane also relied on the decision in *Universal Tank Ships v. International Transport Workers Federation* [1983] 1 A.C. 366 where it was held that pensions and other fringe benefits of employees could legitimately be the subject of a dispute.

54. Anthony Kerr in *The Trade Union and Industrial Relations Acts*, (3rd Ed) 2007, Roundhall states in relation to the definition of "trade dispute" in s. 8 that:

> "[T]his definition differs somewhat from that in the 1906 Act, in that it is both broader and narrower. As well as removing disputes between workmen from its ambit it also covers disputes connected with terms or conditions 'of or affecting' the employment of any person. The definition is not limited to disputes between an employer and his or her workers, because worker is denied as any person who is or was employed 'whether or not in the employment of the employer with whom a trade dispute arises.'"

55. In *Silver Tassie v.Cleary* [1958] I.L.T.R. 27 Dixon J. in the High Court held that the defendant Union had a genuine belief that its members had reasonable grounds on which to dispute the dismissal of one of their members by the plaintiff employer and that this belief was sufficient to constitute a trade dispute within the meaning of the Trade Disputes Act 1906, otherwise the protections and immunities provided to employees in such a situation by that Act would in effect be vitiated. In the Supreme Court appeal from this decision of the High Court it was held by O'Daly J. at p. 30 that

> "It was provided by the Trade Disputes Act, 1906, that peaceful picketing of an employer's premises was lawful, provided it was in the furtherance of a trade dispute. The Act defined "trade dispute" as meaning "any dispute between employers and workmen … which is connected with the employment or non-employment … of any person". Despite the observation of Lord Parker in *Larkin v. Long* [1915] A.C. 814 at pp. 832-3 that "the Act to the extent that it abrogates or curtails common law rights ought, according to the principles that had hitherto prevailed in construing Acts of the Legislature, to be construed with reasonable strictness and not to be given a meaning wider than the words used will justify", it still remains that the language of the aforementioned definition is given a wide and general interpretation."

56. Despite the fact that the provision which is contained in s. 8 of the Industrial Relations Act 1990 is not exactly the same as the provision of the Trade Disputes Act 1906 to which this statement directly relates, the reference made to this provision in its truncated form as set out above, is not sufficiently dissimilar to the provision which currently represents the law (i.e. s. 8 of the Industrial Relations Act 1990) to state that this broad interpretation of what constitutes a "trade dispute" for the purposes of the 1990 Act does not remain the correct approach for a court to take when construing the current provision. The Supreme Court affirmed the decision of the High Court to grant the injunctive relief sought and held at p. 30 that "[i]t is quite clear that the genuineness of a dispute does not depend upon what are the true facts of the dispute, but rather it depends on the *bona-fides* of the parties." This decision was followed in the High Court decision of Budd J. in *Ardmore Studios (Ir) Ltd. v.Lynch and Ors* [1965] IR 1 where it was held that the key question for the Court was whether there was on the part of the Union a genuine and bona fide belief that the dispute was genuine.

57. Mr. Connaughton urges upon the court that the plaintiff, in effect, has acted on a *bona fide* basis with relation to the IASS scheme and has made all the necessary contributions and by implication complied with its obligations in respect of the scheme. Mr. Keane on behalf of SIPTU without the benefit of being in a position to rely on any affidavit advanced on his client's behalf, raises the issue as regards SIPTU having a genuine belief that its members had reasonable grounds to consider that the facts herein give rise to a trade dispute and that the genuineness of a dispute does not depend on what are the true facts of the dispute, but rather depends on the *bona fides* of the parties. I take the view that the onus on this aspect of the application rests with the moving parties and the conclusion I reach is that I do not have sufficient information before me relating to the IASS scheme to make a determination as to whether or not a serious issue arises for determination as regards whether or not the "pension crisis" gives rise to a trade dispute within the meaning of s. 8 of the Act. In my view this will be a matter for determination by the court on a full hearing and not a basis for the granting of any injunctive relief against SIPTU on this application.

58. Accordingly, in relation to the matters which I have found do give rise to a serious issue to be tried, I turn to the aspect as to whether or not damages would be a sufficient remedy. It is clear on the facts as presented to the court that if injunctive relief is not granted to the plaintiff Dublin Airport Authority, damages as averred to by Mr. McCormack will run in the order of millions of euro and the reality as he says is that the defendant trade union would not be a mark in respect of the plaintiff recovering same. In addition, the defendant trade union enjoys the immunity as set out in s. 13 of the Act of 1990, and the reality of the situation is that if the injunctive relief as sought herein is not granted, damages will not be an adequate remedy to adequately compensate the plaintiff for the loss it will undoubtedly suffer.

59. As averred to by Mr. McCormack having regard to the significant disruption that will be caused to passengers and airlines and to the economy if injunctive relief is not granted, I am satisfied that the balance of convenience in the particular circumstances favours the plaintiff and the granting of the injunctive relief as sought. I note the undertaking as to damages as given by Mr. McCormack on behalf of the plaintiff.

60. In the particular circumstances where I am acceding to the application for injunctive relief as sought by Dublin Airport Authority plc, I do not consider it necessary to consider the application by Ryanair or to decide on any of the issues that have arisen as between Ryanair and SIPTU, and I make no findings thereon.

61. Accordingly, I will hear the submissions of counsel as to the form of the order to be drawn up.

62. Finally, I would like to add that having read and considered the papers herein, I can understand the frustration of SIPTU and its members who are part of the IASS scheme, but undoubtedly the situation with the scheme that has arisen is extremely complicated

and appears to pose many difficulties. I note, in particular, the very civil correspondence that has taken place herein between Dublin Airport Authority plc and SIPTU and it would, in my view, be particularly unfortunate if these proceedings and the interlocutory relief granted were in any way utilised by any party as a basis for all relevant parties not engaging fully with the expert panel in an effort to achieve a final reasonable resolution of the pensions crisis arising out of the IASS scheme.