

THE HIGH COURT

[2001 No. 16585P]

BETWEEN

MATT QUIGLEY

PLAINTIFF

AND

COMPLEX TOOLING AND MOULDING

DEFENDANT

Judgment of Mr. Justice Vivian Lavan delivered on 9th of March 2005**Facts**

1. These proceedings concern a claim for damages for personal injuries arising from the plaintiff's employment with the defendant. The plaintiff is a married man with a family who lives in Kells, Co. Meath. Having worked in England for a period of time, he commenced working for a company called Southborough, a predecessor of the defendant, in 1977. He was employed as a factory operative and by the time of the events relevant to these proceedings he had become the fourth most senior employee. At some point, Southborough were taken over by Unidare Plc without any alteration in the plaintiff's working conditions and then at some point during 1998 the business was taken over by the defendant.

2. The defendant is a limited liability company and was engaged in the assembly of computer parts. Following the takeover by the defendant, a new plant manager, Mr. Ron Skinner, was appointed. The plaintiff's complaints in these proceedings relate to his treatment at the hands of this new plant manager.

3. The plaintiff claims that he was subjected to a campaign of harassment, bullying, humiliation and victimisation, which involved being subjected to excessive scrutiny, unfair and unreasonable treatment by the Plant Manager of the defendant company, Ron Skinner, and the Managing Director, Denis Hampton.

4. The plaintiff claims that despite frequent complaints to the defendant, its servants or agents about harassment, abuse and bullying, the defendant, its servants or agents, failed, refused or neglected to take any reasonable steps to prevent or stop the same. As a result of this he says he suffered severe mental distress and personal injury and seeks damages.

5. The plaintiff claims that his contract of employment contained the following express or in the alternative implied terms, that:-

- (a) he would not be subjected to oppressive, unreasonable or arbitrary treatment in his workplace,
- (b) he would not be subject to harassment and or intimidation in the workplace,
- (c) the defendant, its servants or agents would maintain mutual trust and confidence in the plaintiff and would not so conduct themselves so as to damage the plaintiff's health and, in particular, his psychological health,
- (d) the defendant would take reasonable care to ensure that complaints about harassment were dealt with fairly and promptly.

6. Particulars of the alleged breach of contract, negligence and breach of duty are set out in the plaintiff's statement of claim, and various incidents are described. The plaintiff also claims that he complained about the conduct of the defendant to his shop steward Mr. Paul Clarke and that complaints were made to management but that there was no improvement.

7. The plaintiff received a verbal warning in June 1999 as a result of an incident over "wash-up" policy. While other employees who had breached this policy had their warnings removed, this was not the case for the plaintiff. He then sought clarification from management as to why his warning remained on the file during which he had used abusive language towards the Human Resource Manager, for which he later apologised. The apology was not accepted and he received a final written warning and a two-day suspension. The plaintiff was called to a disciplinary hearing in October 1999 following an unofficial work stoppage in which the plaintiff was involved. There is no suggestion that the plaintiff organised the stoppage. The plaintiff was then dismissed from his employment on the 19th of August 1999 following the hearing.

8. The plaintiff states that he was told to leave by the front door and all of his personal possessions would be forwarded to him and he would not be allowed to collect them himself.

9. Following his dismissal the plaintiff commenced proceedings seeking re-instatement pursuant to the Unfair Dismissal Acts 1977-1993. These proceedings commenced on the 9th November, 1999 and came before a Rights Commissioner on the 17th and 23rd February, 2000. The Rights Commissioner's decision of the 10th March 2000 recommended that the plaintiffs be re-engaged. The defendant then appealed to the EAT and that case was heard on various dates during 2000 and then 2002. In a determination dated 7th February 2003 the EAT rejected the defendant's appeal and held that the dismissal was unfair and ordered re-engagement.

10. The defendant's plant had closed down in July, 2002 so the effect of the decision of the EAT was to treat the plaintiff as having been deemed to be still in the employment of the defendant up to the closure of the plant and therefore the plaintiff became entitled to a redundancy payment pursuant to the redundancy payment legislation as his employment would in any event have ended by July, 2002 when the factory closed.

11. Although it heard evidence from the plaintiff on the alleged harassment and bullying, the EAT made no determination in respect of these claims. The Plant Manager made no statement before the Tribunal. The Tribunal felt that the absence of the Plant Manager, being a vital witness, made it difficult to assess what exactly was conveyed to the employee

12. By virtue of having brought proceedings for unfair dismissal the plaintiff is not entitled to claim damages for wrongful dismissal. This is the position by virtue of section 15 of the Unfair Dismissal Act 1977 as amended by section 10 of the Amendment Act 1993. Section 15(2) as amended provides:

"Where a recommendation has been made by a rights commissioner in respect of a claim by an employee for redress under this Act or the hearing of a claim by the Tribunal has commenced, the employee shall not be entitled to recover damages

at common law for wrongful dismissal in respect of the dismissal concerned."

13. As a result the plaintiff in these proceedings does not and could not seek compensation for wrongful dismissal.

The Conduct of the Defendant

14. The uncontradicted facts of the harassment claimed by the plaintiff are laid out in the statement of claim as follows:-

"(a) During the month of July/August in 1998 the Plaintiff was subjected to humiliation at the hands of the Defendant Managing Director, Denis Hampton, following his refusal to accept an voluntary redundancy package which had been offered to him by John Dory, on behalf of the Defendant. During a meeting on the issue, the Plaintiff enquired of John Dory as to what was the reason behind the fact that he was the only member of staff to be offered voluntary redundancy, stating that it was the principle that interested him. John Dory stated "the principle, don't make me laugh", at which Denis Hampton laughed also.

(b) The Defendants its servant or agents made humiliating and demeaning reference to and about the Plaintiff, such as on the 6th of April 1999, when Ron Skinner informed Fidelma Browne, an operative into the Defendant Company, that the Plaintiff and a colleague Seamus Reilly, would into be retaining their Grade 11 rate of pay, and stated "don't worry, I'll sort out the granddads". On another occasion, after the Plaintiff had through exasperation resulting from the bullying and intimidation at work, raised his voice to a colleague, Ron Skinner asked Seamus Reilly "Do you think that Matt talks to his wife like that. Do you think she would accept being spoken to like this?",

(c) The Plaintiff was subjected to excessive and humiliating scrutiny by the Defendant's Plant Manager, Mr. Ron Skinner. He often stood for up to 30 minutes on a box approximately 8 feet behind the Plaintiff's work station, with the effect of intimidating the plaintiff. He also made comments about the Plaintiff's work, for example stating to Joe Power (an operative in the employ of the Defendant) that he would have to give the Plaintiff "some broom training", suggesting that the Plaintiff was not capable of the most basic duties, when in fact he had received two awards for cleanest work area from previous management. The plaintiff felt that the purpose of this intimidation and scrutiny was that Ron Skinner was engaging in a campaign to seek justifications for not paying the Plaintiff his Grade 11 rate of pay."

15. This evidence was supported by colleagues who also witnessed this practise.

16. The plaintiff complained about the bullying and abuse to the shop steward, Mr. Paul Clarke on the 24th of July, 1998. He also complained firstly to Ron Skinner himself, and latterly to Denis Hampton about the behaviour of Ron Skinner on the 8th of April, 1999, but felt that no improvement in Ron Skinner's behaviour was apparent. In the plaintiff's submissions, he describes how he felt that both Ron Skinner and Denis Hampton were ridiculing him for making the complaints, in that shortly afterwards he noted the two men pointing at him and laughing.

17. The defendant did not call the plant manager or any other member of management (other than the Human Resource Director) to give evidence. Nor did the defendant adduce any medical evidence.

18. The plaintiff described how he began to feel nervous and he felt he was being criticised without any particular logic to the criticism he received from Mr. Skinner. He gave uncontradicted evidence that he was singled out by Mr. Skinner for this type of critical treatment.

19. The plaintiff also gave evidence that his change in mood for the worse was noticed by his work colleagues.

The effect of this conduct on the plaintiff

20. The plaintiff described how during the course of his employment and during the course of these events he developed a dread of work. He described how prior to this he had enjoyed work and was a popular colleague and was someone who enjoyed a healthy social life. As a consequence of Mr. Skinner's conduct towards the plaintiff, the plaintiff feels felt that his position in the company was repeatedly undermined.

21. When examined on the 8th January 2001, the plaintiff was found to be clinically depressed arising directly from his industrial relations problems, and was prescribed anti-depressant medication. The plaintiff stopped taking the anti-depressant medication due to side-effects.

22. The plaintiff states that he did not suffer from anxiety or depression prior to 1998. The plaintiff states that prior to 1998 he used to partake in a number of outdoor pursuits but no longer feels able to do so.

23. It is submitted that the cumulative effect of the defendant's conduct toward the plaintiff during the course of his employment was to cause him significant mental distress and anxiety which left an otherwise robust man in a mentally vulnerable condition to the extent that the additional stresses of his employment proceedings led to his clinical expression.

24. The plaintiff has not taken up work since his dismissal from the defendant company and a plenary summons was issued on 9th November, 2001 claiming relief for personal injuries, loss and damage suffered by reason of the breach of contract and negligence and breach of duty on the part of the defendant, its servant or agents.

25. The plaintiff is also claiming € 20,816.16 for total loss of earnings to date of redundancy and € 773.94 in special damages for medical expenses.

The Evidence

26. I found the plaintiff to be a decent man with an excellent work record prior to the events the subject matter of these proceedings. In fact he was never out of work for even one day. I accept his evidence in full.

27. In support of the plaintiff's claim I heard from nine fellow workers.

28. Mrs. Ursula Clinton worked in the factory from May, 1995 until July, 2002 when the defendant company ceased business. She gave evidence of the "terrible domineering demeanour" of a Mr. Ron Skinner towards the plaintiff.

29. Likewise, Mr. Oliver Reilly gave similar evidence. He had worked in the factory from 1988 until 1998 when he chose to leave.

30. Mrs. Caroline Mooney worked in the factory from 1993 up to the year 2000. Her evidence was as to the unfair treatment of the plaintiff by Mr. Skinner.

31. Mr. Paul Clarke was a shop steward and worked at the factory from April, 1984 until its closure in 2002. He likewise verified the character of the plaintiff and the animosity of Mr. Skinner towards him. All efforts by Mr. Clarke to have the plaintiff's complaints dealt with by management ended in failure.

32. Mr. Lester Ferguson worked at the factory from March, 1992 until October, 1998. He gave specific evidence of Mr. Skinner's watching the plaintiff, at times for a duration of one half hour, on at least three occasions. He was of the view that Mr. Skinner's treatment of the plaintiff was unfair.

33. Mr. John Shipp has known the plaintiff for some 30 years. He worked in the factory from February, 1978 until May, 2002. Therein he held the position of chargehand. His working life began in 1956 and he would not have accepted the behaviour of Mr. Skinner had it been directed at him. This witness's view of the plaintiff was that the plaintiff was a person of impeccable character and an excellent worker.

34. Mr. Patrick Farrelly worked in the factory from December, 1984 until May, 2002, when it closed. He also held the position of chargehand. Prior to the take-over of the factory, by the defendants, the plaintiff was never late for work. Following the take-over and the actions of Mr. Skinner the plaintiff's personality changed for the worse.

35. For the defence Miss Cathy Holden gave evidence. She held the post of Human Resources from April, 1999 until January, 2001. This witness had no sympathy for the plaintiff primarily due to an altercation between herself and the plaintiff in or around June of 1999. I am satisfied, that the plaintiff was reacting to the treatment he was subjected to.

36. No other evidence was adduced by the defence. It was, in my view, a telling feature of the defendants' case that neither Mr. Skinner nor any other member of management was called to contradict the plaintiff's case.

37. Taking the evidence of the witnesses called by the plaintiff, I conclude that all are genuine, respectable and truthful witnesses. They are all residents of Kells, Co. Meath. In my view there was no exaggeration in their evidence.

38. This evidence depicted a happy working environment as run by the defendants' predecessors in title. Giving that view of those witnesses I accept, on the balance of probabilities, that the plaintiff's case has been made out in full.

39. I am satisfied and find as fact:-

1. The plaintiff was a successful worker prior to the arrival of the current defendants.
2. That he had an exemplary work record and never missed a day's work.
3. That the defendants through their servants or agents adopted a particularly unfair approach to the plaintiff. That they singled him out for unacceptable treatment and sought to obtain his departure from the workforce.
4. That this treatment resulted in the plaintiff suffering illness and depression.
5. I accept the evidence of Dr. Coffey in full.

Submissions of the Defendant

40. It is denied by the defendant that the plaintiff was subject to the alleged or any harassment, bullying, or abuse or that he suffered the alleged or any harassment bullying, humiliation or victimisation or that he was subject to excessive scrutiny or was treated unfairly or unreasonably as alleged or at all. It is claimed by the defendant that if the plaintiff suffered the alleged or any personal injury, loss or damage than same were not caused by or contributed to by any act or omission on the part of the defendant, its servants or agents.

41. It is submitted that part of the plaintiff's allegations are "trivial". In relation to the offer of voluntary redundancy that was not accepted by the plaintiff, it is submitted by the defendant that such an offer would be seen in a positive light by employees. In relation to other complaints of the plaintiff, such as being referred to as "granddad" by the plant manager, and being moved from section to section, Counsel for the defendant submits that neither could be classified as anything worse than being in bad taste but do not amount to harassment. It is submitted that insofar as any of the behaviour complained against was "inappropriate" that none of the behaviour was repeated so as to constitute "bullying" as defined under the Code of Practice.

42. It is the defendant's interpretation of the plaintiff's medical evidence that the plaintiff's complaints centred not on the alleged bullying and harassment but arose out of either his dismissal or the delays encountered in prosecuting his complaint.

43. In relation to the plaintiff's claim for special damages the defendants submit that it would be inappropriate for the plaintiff to recover for essentially the same loss as the Employment Appeals Tribunal has ruled on, whether or not he has been successful in enforcing the award of the Tribunal.

The Decision

44. The plaintiff claims that the conduct of the defendant amounted to a breach of contract, was negligent and was in breach of a duty of care towards the plaintiff as employee, and that he has suffered injury by reason of the treatment meted out to him.

45. On the facts of this case that there are two question which must be answered:-

- 1) Can the plaintiff recover for injuries suffered by him on the lead up to his dismissal or is this already covered by the decision of the EAT in the plaintiff's appeal?
- 2) Was the alleged conduct of the defendant such as to cause them to be in breach of their duty as employers to protect employees from bullying in the workplace?

46. In order for the plaintiff to succeed in his claim for damages both question need to be answered in the affirmative.

Unfair Dismissals Process

47. An examination of the law on unfair dismissal is necessary to answer the first question.

48. It has been held in this jurisdiction, in *Parsons v. Iarnród Éireann* [1997] 2 I.R.523, that a plaintiff was precluded, by virtue of the provisions of s. 15 of the Unfair Dismissal Act 1977, from bringing an action at common law in respect of a dismissal which had previously been the subject of a claim to a Rights Commissioner under the Act of 1977. Explaining the relationship of the statutory code to the common law jurisdiction, in delivering judgment in the Supreme Court, Barrington J. stated as follows (at p. 529):

"What the Unfair Dismissals Act, 1977 does is to give the worker who feels that he has been unfairly dismissed an additional remedy which may carry with it the very far-reaching relief of reinstatement in his previous employment. It does not limit the worker's rights, it extends them. At the same time, s. 15 of the Unfair Dismissals Act provides that the worker must choose between suing for damages at common law and claiming relief under the new Act. Sub-section (2) accordingly provides that if he claims relief under the Act he is not entitled to recover damages at common law; while sub-section (3) provides that where proceedings for damages at common law for wrongful dismissal are initiated by or on behalf of an employee the employee shall not be entitled to redress under the Unfair Dismissals Act in respect of the same dismissal.

The traditional relief at common law for unfair dismissal was a claim for damages. The plaintiff may also have been entitled to declarations in certain circumstances such as, for instance, that there was an implied term in his contract entitling him to fair procedures before he was dismissed. Such declarations were in aid of the common law remedy and had no independent existence apart from it. If the plaintiff loses his right to sue for damages at common law the heart has gone out of his claim and there is no other free-standing relief which he can claim at law or in equity."

49. It is submitted by counsel for the plaintiff that when an employee suffers from an illness caused by his pre-dismissal unfair treatment he has a common law cause of action which precedes and is independent of, his subsequent dismissal. In support of this submission, counsel for the plaintiff referred to the recent English decision of *Eastwood & Williams v Magnox Electric Plc*, [2004] UK House of Lords 35.

50. In this case, the plaintiffs commenced proceedings for negligence and breach of contract against their former employers. Both men brought unfair dismissal proceedings which were settled. In their common law proceedings, which were considered by the House of Lords, they alleged they suffered personal injuries in the form of psychiatric illnesses caused by a deliberate course of conduct by certain individuals using the machinery of the disciplinary process.

51. Both the *Eastwood* and *Williams* claims were dismissed by the High Court and then the Court of Appeal on the basis that all the circumstances attending their dismissals were covered by the Employment Tribunal.

52. However the House of Lords unanimously overturned the Court of Appeal and ruled that all three claims could proceed. Lord Nicholls of Birkenhead states at paragraph 27 that ; -

"If before his dismissal, whether actual or constructive, an employee has acquired a cause of action at law, for breach of contract or otherwise, that cause of action remains unimpaired by his subsequent unfair dismissal and the statutory rights flowing therefrom. By definition, in law such a cause of action exists independently of the dismissal.

["..."]

In such cases, the employee has a common law cause of action which precedes, and is independent of, his subsequent dismissal. In respect of his subsequent dismissal he may of course present a claim to an employment tribunal. If he brings proceedings both in court and before a tribunal he cannot recover any overlapping heads of loss twice over."

53. Lord Nicholls, at paragraph 13, described the statutory code of unfair dismissals as providing "a floor and not just a ceiling".

54. Counsel for the plaintiff submitted that the decision in *Eastwood* is not inconsistent with the law on unfair dismissals in this jurisdiction. I take the view that this would seem to be the preferable interpretation. It has not been proved by the defendant that the injuries suffered by the plaintiff on account of harassment in the workplace were not a separate cause of action to the plaintiff's unfair dismissal action.

55. Counsel for the defendant submitted that the injury to the plaintiff was caused by the dismissal and therefore it falls inside the remit of the EAT. In support of this submission, counsel for the defendant referred to the decision of the House of Lords in *Johnson v. Unisys Limited*, [2001] 2 All E.R. 801 which looked at the interaction between statutory unfair dismissal claims and claims for damages arising out of dismissal. In that case, the plaintiff, who had been the beneficiary of an award from a statutory industrial tribunal, which had upheld his complaint that he had been unfairly summarily dismissed, initiated a civil action against his employer for breach of contract and negligence alleging that the manner of his dismissal had caused him to suffer a nervous breakdown and had made it impossible to find work.

56. The House of Lords held that an employee had no right of action at common law to recover financial losses arising from the unfair manner of his dismissal.

57. *Johnson* has been quoted with approval in this jurisdiction by Carroll J. in *Orr v. Zomax Limited* (unreported High Court, 25th March, 2004).

58. Counsel for both the defendant and the plaintiff referred to the recent judgement of Laffoy J in *McGrath v. Trintech*, (Unreported High Court, 29th October 2004). Here one of the issues before the Court was whether this principle could accommodate the implication into the contract of a more specific term that the plaintiff would not be dismissed without due cause or without reasonable notice. In rejecting this argument, Laffoy J analysed the decision in *Johnson v. Unisys Limited* and at page 16 states ; -

"The essence of the plaintiff's case, however, is that there should be implied into his contract with the defendant a term that mere compliance with the express notice provision in the contract would not validly and effectively terminate the contractual relationship at common law. There is no authority for this proposition. I am persuaded by the authorities cited by the defendant's counsel that the proposition is not sound in principle. Accordingly, I have come to the conclusion that

terms in relation to dismissal and redundancy on the lines pleaded by the plaintiff cannot be implied into the plaintiff's contract of employment with the defendant so as to give rise to a cause of action at common law."

59. It is my opinion, however, that the argument being made in this case is different in that the plaintiff, unlike in *McGrath v. Trintech*, does not seek to challenge his dismissal but rather contends that the conduct of the defendant during the course of his employment was such as to amount to a breach of an implied duty to maintain trust and confidence during the employment relationship and this caused him injury.

60. In the plaintiff's case the remedy ordered by the EAT was re-engagement. Accordingly it was submitted that there is no basis for precluding the plaintiff in these proceedings from claiming compensation for personal injuries. In doing so, he cannot be accused of having "a second bite at the cherry", as per Nicholls LJ in *Eastwood* at paragraph 23.

61. In my opinion, the question of what loss the EAT can award compensation for is not relevant as evidence has been given that the EAT did not look at the plaintiff's claims of harassment during the appeal. Under Section 7 (1) (c) Unfair Dismissals Act 1977, the EAT cannot award compensation for anything other than financial loss in an unfair dismissal claim (save in exceptional circumstances where if there is no financial loss, the EAT can award compensation limited to a maximum of 4 weeks pay).

62. The plaintiff has offered uncontradicted evidence as to the immediate effect of the harassment on his state of health. Evidence has been offered to prove that the injuries of which the plaintiff complains had their root in the treatment of him by the servants of the defendant during his employment with the defendant.

63. Given this, I would accept the plaintiff's argument that the claim for injuries resulting from harassment in the workplace is a separate and distinct cause of action to his claim for unfair dismissal.

Duty of Employer to Protect Employee from Bullying in the Workplace

64. Second, it falls to be decided whether the defendant was in breach of its duty to the plaintiff as an employee to provide a safe place of work by exposing the plaintiff to bullying in the workplace, and that by being in breach of this duty the defendant has caused the plaintiff to suffer personal injuries.

Employer's Duty of Care

65. Under common law an employer must take reasonable care for the health and safety of its employees. An employer is also liable for the acts of its clients or customers of the business, in so far as such acts may affect the health and safety of its own employees. These obligations have been further defined in legislation.

66. The Safety Health and Welfare at Work Act 1989 ("the 1989 Act") and the Safety, Health and Welfare at Work Regulations 1993 impose an obligation on every employer to provide systems of work that are, as far as is reasonably practicable, safe and without risk to health. This duty of care is implied into the contract of employment and breach of this duty may be treated as a breach of that contract.

67. Hederman J in *Kennedy v Hugh Dairy Limited* [1989] ILRM 117 framed the general duty of care owed by an employer to his employee as whether the employer had taken reasonable care for the safety of his employee or had he subjected him to unnecessary risks.

68. The legislature has also placed a similar duty of care of employers. Section 6(1) of the Safety Health and Welfare at Work Act 1989 states that:-

"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees".

69. It is submitted by the plaintiff that the defendant had not taken reasonable care for the plaintiff's health.

70. It has been a fairly recent movement towards the thinking that an employer must take care not only of the physical health of their employees, for example by providing safe equipment, but also must take reasonable care to protect them against mental injury, such as is complained of by the plaintiff in this case.

71. It follows on from this that employers now have an obligation to prevent their employees from such that would cause mental injury, i.e. stress, harassment and bullying in the workplace.

72. That the common law recognises that employers can be liable for bullying is reflected in McMahon & Binchy, Common Law of Torts, 3rd Edition. At paragraph 18.80, the authors state that:-

"An employee may be personally liable for sexual harassment or bullying of an employee, either on the basis that the employer ought to have been aware of the offending employee's propensity to act in this way or on the basis of an unreasonable failure to provide a safe system of work".

73. In this case, the plaintiff has given evidence of treatment by servants of the defendant which the plaintiff claims amounted to bullying in the workplace, and by not preventing such as is claimed by the plaintiff, the defendant, as employers, were negligent and in breach of their duty.

74. In the Code of Practice published pursuant to the provision of the Industrial Relations Act 1990, "bullying" is defined as follows:-

"Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying."

75. The defendant submitted that the treatment complained of does not amount to bullying and that the incidents complained of were isolated and that therefore they could not amount to bullying as defined in the Code of Practice.

76. The plaintiff complains of various incidents, which have been set out above, which range from being refereed to as "granddad",

aspersions being cast by the Plant Manager on his ability to do his job, and general intimidating behaviour by the Plant Manager.

77. In the High Court case of *Kerwin v. Aughinish Alumina Limited*, O'Neill J compensated the plaintiff for stress and health problems he had suffered as a result of intimidation which centred around his supervisors.

78. From the evidence of the plaintiff, who states that this treatment made him feel humiliated, in conjunction with the Code of Practice definition of bullying, the only conclusion that can be reached is that the treatment does amount to bullying. These were not isolated incidents, as claimed by the defendants but all together amounted to a campaign of bullying which had repercussions on the mental health of the plaintiff.

Psychiatric Injury

79. In this case, the plaintiff has suffering from depression, which is an ailment known to have its causes in stressful situation, such as those described by the plaintiff. Can the defendant, as an employer be liable for injury to an employee's mental condition. This can be answered by looking at section 2 of the Safety, Health and Welfare at Work Act 1989 which defines "personal injury" as "any disease and any impairment of a person's physical or mental condition".

80. In relation to the Health, Safety and Welfare at Work Act 1989, Laffoy J says, at page 51 of her judgement in *McGrath v. Trintech* that :-

"In the Act of 1989 the expression "personal injury" is defined in similar terms to the definition contained in s. 2 of the Civil Liability Act, 1961, as including "any disease and any impairment of a person's physical or mental condition". It is undoubtedly the case that the general duties imposed by the Act of 1989 extend to the protection of the psychiatric health of employees and comprehend the obligation to provide systems and measures which safeguard the employee against psychiatric injury induced by the stress and pressures of the employee's working conditions and workload. As is pointed out in *McMahon and Binchy* at p. 605 (footnote 93), almost without exception, the 1993 Regulations provide "for strict and even absolute duties". However, in a civil action the plaintiff must establish that the injury was caused by the breach. The question which arises in this case is whether the plaintiff has established a breach of a statutory duty in consequence of which he has suffered the injury and loss of which he complains."

81. In the landmark English decision of *Walker v. Northumberland County Council* ([1995] 1 All ER 737), Coleman J saw no reason why "the risk of psychiatric damage should be excluded from the scope of an employer's duty of care". In this case Coleman J held that where it was reasonably foreseeable to an employer that an employee might suffer a nervous breakdown because of the stress and pressure of their workload, the employer was under a duty of care, as part of the duty to provide a safe system of work, not to cause the employee psychiatric damage by reason of the volume or character of the work which the employee was required to perform. It was held that because of a previous work related nervous breakdown, the second breakdown was reasonably foreseeable by the employer. Walker has been favourably refereed to in this jurisdiction in the nervous shock case of *Curran v. Cadbury (Ireland) Ltd.* [2000] 2 I.L.R.M. 343. At page 349 of his decision, Judge McMahon observed that :-

"The duty of the employer towards his employee is not confined to protecting the employee from physical injury only; it also extends to protecting the employee from non-physical injury such as psychiatric illness or the mental illness that might result from negligence or from harassment or bullying in the workplace. In *Walker v. Northumberland County Council*... the English courts imposed liability where the plaintiff foreseeably suffered a nervous breakdown because of unreasonably stressful working conditions imposed on him by his employer. There is no reason to suspect that our courts would not allow this line of authority if it came before the courts in this jurisdiction."

82. To allow for reasonably foreseeable psychiatric injury would also follow the recent decision of Laffoy J in *Trintech v. McGrath*, which has been referred to in the submissions of both parties of this case. Laffoy J added the condition that the injury complained of be foreseeable before liability is imposed. The fundamental test is whether the defendant fell below the standard to be properly expected of a reasonable and prudent employer.

83. In *Walker*, liability was imposed when the defendants were held to have knowledge of the plaintiff's disposition towards mental illness caused by stress.

84. In the facts at hand, the plaintiff states that he informed his employers of the bullying and he complains that nothing was in fact done to prevent further bullying.

85. It is my opinion, that the action of the defendant in not preventing any further injury to the plaintiff's mental health by taking no action whatsoever against the bullying, falls short of the standard of a reasonable prudent employer. This would be in line with the position in the English courts on bullying after the case of *Waters v. Commissioner of Police for the Metropolis* (2000) IRLR 720 HL. In this case Slynn Ld summarised the position thus:-

"If an employer knows that acts being done by his employees during their employment may cause mental or physical harm to a particular fellow employee and he does nothing to supervise or prevent such acts, when it is in his power to do so, it is clearly arguable he may be in breach of his duty to that employee."

Conclusion

86. It is my opinion that the plaintiff has suffered personal injury as a direct consequence of a breach of the defendant's duties as employers to prevent workplace bullying.

87. Having found for the plaintiff, I now turn to the issue of damages.

General Damages

88. The plaintiff is seeking damages in the sum of € 20,816.16 for total loss of earnings to date of redundancy and € 773.94 in special damages for medical expenses.

89. Evidence has been given to the Court that the plaintiff is suffering from depression which he believes has been induced by the bullying experienced by him. The plaintiff claims that his physical and mental health has been damaged and he has suffered from prolonged bouts of depression and inability to sleep. In the submissions of the plaintiff, it is described how his sleep and appetite has been disturbed and his concentration is poor. The plaintiff states that he finds it difficult to go out and mix with people and has lost interest in life.

90. Jurisprudence on damages for loss caused by bullying in the workplace is sparse given the recent nature of the area. Following *Parsons v. Iarnród Éireann*, the Court cannot allow for heads of compensation to overlap. Therefore the Court will not be able to award damages for loss of earning up to the date of redundancy as this is a heading that has already been covered in the case in the plaintiff's action before the EAT.

91. Also, this is not a case of constructive dismissal, therefore damages to be awarded will not cover loss of earnings. Damages can be awarded to compensate for the suffering caused by the injury which the plaintiff received as a consequence of the defendant's breach.

92. This is a case concerning psychiatric injury to the plaintiff, and when seeking authority on what damages are to be awarded, it will be useful to look at the jurisprudence regarding nervous shock. In *Curran v Cadbury Ireland Ltd*, McMahon J looked at the medical evidence which had been offered in support of the plaintiff's claim for psychiatric injury caused by the defendant's negligence. In awarding the plaintiff £12,000 for pain and suffering, £5,000 for future pain and suffering and £1,700 for agreed special damages, McMahon J took into consideration that the plaintiff had suffered a very unpleasant experience which had a serious effect on her emotional life for more than three and a half years. Here the plaintiff had been suffering from depression and anxiety following an incident in the workplace caused by the defendant's negligence.

93. In the recent case of *McGrath v Garda Commissioner*, the plaintiff claimed general damages for personal injuries and for loss and distress which he suffered by reason of his loss of standing in the community arising from his suspension. Morris J in the High Court assessed damages of £40,000 to compensate the plaintiff for the stress and anxiety and the general disruption to his enjoyment of life cause during his four year suspension from his position which had been delayed due to defendant's negligence.

Special damages

94. The plaintiff is entitled to recover the sum of € 773.94 as assessed in relation to medical expenses.