Neutral Citation Number: [2007] IEHC 319

**THE HIGH COURT**

**[2007 No. 6600P]**

**BETWEEN**

**MARY COFFEY**

**PLAINTIFF**

**AND**

**WILLIAM CONNOLLY AND SONS LIMITED**

**DEFENDANT**

**Judgment of Mr. Justice John Edwards delivered on Tuesday the 18th September, 2007.**

1. This is an application by the plaintiff for injunctive relief on an interlocutory basis.

**Facts**

2. The defendant is a limited liability company having its registered offices at Goresbridge in the County of Kilkenny. It carries on the business of manufacturing animal feeds and pet foods and trades under the name of Connolly's Red mills. It is a substantial enterprise employing approximately 95 people directly and another 80 people as subcontractors. Last year it had an annual turnover of €78.9 million. In recent years the defendant has pursued a strategy of diversification and has been seeking to develop new products and in particular high value pet food products. During the summer of 2006, and in the context of that diversification, the defendant sought to recruit a person to fill a new position in the company of Brand and Marketing Manager. The plaintiff applied for that position and was successful. By a letter dated 15th August, 2006 she was formally offered the position of Brand and Marketing Manager to commence work shortly thereafter. There is some dispute between the parties as to the exact date on which the plaintiff actually commenced work but nothing turns on it in my opinion.

3. The terms of the plaintiff's contract of employment with the defendant are contained in the letter of 15th August, 2006. The letter, which runs to some three A4 pages, sets out the proposed conditions of employment. At the end of the letter provision was made for the plaintiff to append her signature to the document and thereby to indicate her acceptance of the defendant's offer of employment on the terms and conditions therein set out. The plaintiff has signed the document in question and dated it the 1st September, 2006.

4. It is not necessary for the purposes of this judgment to recite the entire contents of the contract document as only certain terms thereof are relevant to the issues that I have to decide. It seems to me that the relevant conditions (which are numbered) are those set out at 2, 10, 11 and 17 respectively. It is necessary for the purposes of this judgment to recite those terms.

> "2. Probation
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> Your appointment will be subject to satisfactory completion of a probationary period of six months continuous service commencing from the date of employment. The company reserves the right to extend this probationary period and may terminate your contract at any time during the probationary period if in its opinion you are unsuitable for the position offered."
>
> "10. Annual Holidays and Public Holidays
>
> You will be entitled to 20 days annual holidays. Accrued annual holidays must be taken during the company annual holiday year, which runs from November to October. However, in certain exceptional circumstances, the carryover of annual holidays from one year to the next may be allowed, provided they are taken within six months of the next leave year. You will be entitled to take two weeks consecutive holidays during the summer period. All holidays must be agreed in advance using the holiday authorisation procedure.
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> You will be entitled to such days off as are designated as public holidays."
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> "11. Knowledge of Rules/Regulations
>
> You are required to familiarise yourself with and strictly abide by the following procedures:
>
> a. Grievance and Disciplinary Procedures (appendix 2)
>
> b. Health and Safety and Welfare Procedures
>
> c. Company Policies."
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> "17. Termination of Employment
>
> During probation your employment may be terminated by one weeks notice from either party (except in the case of serious misconduct, as detailed in Appendix 2 attached). Following completion of your probation your employment may be terminated by one months notice from either party. The company reserves the right to pay you in lieu of this notice period or such longer period as required by law. On termination of employment you undertake to return all company property."

5. It is also appropriate that I recite in full for the purposes of the judgment the contents of Appendix 2 to the letter of 15th August, 2006.

> "Appendix 2
>
> DISCIPLINARY PROCEDURES
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> In the interest of maintaining good working relationships and consistency, the company has established a procedure for disciplinary action because of failure to meet standards with regard to conduct, or performance.

The following procedure shall be observed in matters of discipline.

STAGE ONE – VERBAL WARNING

The management will warn an employee verbally of the specific aspect of the work or conduct which is below standard, stating clearly that this is the first warning and will advise the improvements which must be made. The incident will be noted by the management. If the conduct is satisfactory the warning lapses after six months.

STAGE TWO - WRITTEN WARNING

Where the employee does not improve to the required standard within the time allowed by the company, the management will issue a second warning (written) to the employee, and will record and file the main points of the discussion. If the required improvement is achieved the warning lapses after twelve months.

STAGE THREE – FINAL WRITTEN WARNING BEFORE DISMISSAL

If the employee standard of work or behaviour does not improve despite use of Stages One and Two s/he will be given a final written warning.

STAGE FOUR

If despite warnings given/action taken in accordance with Stages One, Two and Three an employee's conduct and performance is still not acceptable to the company, s/he will be dismissed.

SERIOUS MISCONDUCT

Notwithstanding the above disciplinary procedures certain conduct or actions may be such as to justify immediate suspension or termination of employment.

Management may send home an employee, with pay, for serious misconduct. In such cases the employee will be sent off the work premises until his case can be dealt with but any such action will be without prejudice to the ultimate decision of the company. Such cases will be considered by management within 48 hours and a final decision will be issue within five days."

6. When the plaintiff took up her position with the defendant company she relocated from County Clare to County Kilkenny with her eleven year old daughter. The defendant company gave her a sum of €12,000 towards her relocation expenses. She put her house in County Clare on the market but to date has been unsuccessful in selling it. After moving to Kilkenny she stayed in a hotel initially and after a short time rented a fishing lodge from William Connolly, a Director of the defendant company, at a rent of €1,500 a month. In March, 2007 she purchased a house in Thomastown for approximately €500,000 to establish a home base in Kilkenny close to her employment. Because she has been unable to sell her house in County Clare, she is currently paying two mortgages totalling a sum of €2,500 per month. Her daughter is currently in boarding school. The plaintiff has deposed that her decision in that regard was influenced in part by a desire on her part to be able to better concentrate on her job.

7. There is a very considerable level of dispute between the plaintiff and the defendant concerning how the plaintiff got on after she started work. There are significant conflicts in the evidence and it is impossible for me to resolve those conflicts on the basis of the affidavits. In any case it is not necessary for me to resolve them for the purposes of determining the application presently before the court. However, it is common case that the plaintiff attended a performance review on 30th April, 2007. The review was not concluded on that date. It was adjourned and was only concluded at a resumed meeting on 28th May, 2007. I have already alluded to the fact that there is some dispute between the parties as to when the plaintiff formally started work and that I do not consider this to be of great importance. Nevertheless, taking the latest date suggested, which is the date suggested by the defendant, namely, the 23rd October, 2006, it is clear that the initial six month probationary period provided by the contract terminated on 23rd April, 2007. The review meeting was not convened until 30th April, 2007 and, as I have said ,only concluded on 28th May, 2007. It is clear from the evidence that the defendant expressed unhappiness about aspects of the plaintiff's work performance in the course of that review. It was agreed between the parties on 28th May, 2007 that the plaintiff would remain on probation until 27th August, 2007. No point seems to have been made by the plaintiff that her probationary period had in fact expired on 23rd April, 2007 at the latest. On the contrary, it is common case that the plaintiff was agreeable to remaining on probation until 27th August, 2007. A record of what was discussed, and agreed to, was subsequently set out in an email from Alan Murphy, Financial Controller at Connolly's Red mills to Joe Connolly and William (otherwise Bill) Connolly, Directors of the defendant company, sent on 31st May, 2007. This email has been exhibited before me.

8. Following the conclusion of the plaintiff's first performance review on 28th May, 2007 the plaintiff remained in probationary employment with the defendant and continued to act on a day to day basis as the Brand and Marketing Manager for the defendant company. Again, there is significant conflict between the plaintiff and the defendant as to how the plaintiff was getting on in her job during this extended probationary period. Once again it is not necessary for me to resolve these conflicts at this stage. However, it appears that the 27th August came and went without any decision being taken by the defendant company with respect to the plaintiff's probation. Now the defendant company points to special circumstances in relation to that and it is important to set these out. In his affidavit of 8th September, 2007, Mr. Joe Connolly, a Director of the defendant company, asserts that the plaintiff, without any prior notice to the defendant, sent an e-mail to her superiors at 12.09 on Saturday 11th August, 2007 stating that she would be out of the office until the 29th of August. This e-mail further gave the additional particulars that she would be attending the RDS on the 11th and 12th of August in connection with company business, that she would be visiting the defendant's U.K. office from the 12th to the 14th of August, and that she would be on holidays from the 15th to the 29th of August inclusive, save for Saturday 25th August when she would visit the Pointers and Setters Championship Stakes on behalf of the defendant. It is the defendant's contention that at the time at which she sent this email the plaintiff must have been aware that by virtue of taking holidays at that time she would prevent the company from conducting a review of her performance until after the expiry of the extended probation period. She was not due to return from holidays until two days beyond the 27th of August, namely on 29th August, 2007. The defendant makes much of the fact that the plaintiff did not seek advance agreement to the taking of holidays at that time, as she was required to do in accordance with Condition 10 of the terms and conditions of her employment. It is the defendant's case that in circumstances where she gave the company no advance notice, and where she would have been aware that her proposed holidays straddled the originally fixed date on which her extended probationary period was to expire, she must be deemed to have acquiesced in a further extension of the probationary period until a date on which her performance review could be conveniently convened after her return. As it happened a review meeting was convened on 3rd September, 2007 and adjourned to 4th September, 2007. The

defendant contends that at this time the plaintiff was still on probation. The plaintiff contends that her probation had lapsed on the 27th of August.

9. In any event at the meeting that commenced on 3rd September, 2007, and which was adjourned to and concluded on 4th September, 2007, the plaintiff was told that the defendant considered that she had not completed her probation period satisfactorily and that they proposed to terminate her employment. Again, there are conflicts and disputes between the parties as to precisely what occurred at this time. I cannot, and in any event do not have to, resolve these conflicts at this time.

**The plaintiff's case**
10. The plaintiff contends that her probationary period expired by effluxion of time on 27th August, 2007. Since no action was taken by the defendant company to terminate her employment before the expiry of the extended probationary period, and since that period had not been extended by agreement between the parties, her employment thereafter was unconditional. The plaintiff says that upon her ceasing to be a probationer, if the defendant company had a problem with her performance, it was obliged to invoke the disciplinary procedure set out in appendix 2 to the letter of 15th August, 2006. She contends that before she could be validly and lawfully dismissed for poor performance in her job she would have to be afforded the benefit of the four stage process set out in the agreed disciplinary procedures recited in appendix 2. She says that in purporting to dismiss her summarily and without affording her the benefit of the agreed disciplinary procedures the defendant company is in breach of contract. Indeed, the plaintiff appears to be contending that the purported dismissal was ineffective in that paragraph 1. of the General Endorsement of Claim on her Plenary Summons claims a Declaration that the plaintiff is and remains an employee of the defendant. It would appear therefore that the plaintiff is making the case that she has not been wrongfully dismissed but rather that she has never been validly dismissed at all.

11. The specific reliefs that she seeks in her notice of motion are in the following terms:-

> 1. An interlocutory injunction restraining the defendant from treating the plaintiff otherwise than continuing to be employed by the defendants;
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> 2. An interlocutory injunction restraining the defendant from publicising or announcing or otherwise giving effect to the purported dismissal of the plaintiff from the position of marketing manager of the defendant and
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> 3. An interlocutory injunction restraining the defendant from appointing any other person to the position of marketing manager of the defendant
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> 4. Such further and other orders as this honourable may deem just and
>
> 5. An order providing for the costs of and incidental to this application.

12. Counsel for the plaintiff has helpfully referred the Court to various authorities including *American Cyanamid Co –v- Ethicon Ltd* [1975] 2 WLR 316; *Campus Oil Ltd -v- Minister for Industry and Energy and Others (No 2)* [1983] 1 IR 88; *Hill –v- CA Parsons & Co Ltd* [1972] 1 Ch 305; *Phelan –v- BIC (Ireland) Ltd, Biro BIC Ltd and others* [1997] ELR 208; *Shortt –v- Data Packaging Ltd* [1994] ELR 251; *Carroll –v- Bus Atha Cliath* [2005] 4 IR 184; *Maha Lingum –v- Health Service Executive* [2006] ELR 137 & *Naujoks –v- National Institute of Bioprocessing Research and Training Ltd* [2007] 18 ELR 25.

**The defendant's case**
13. The defendant has also referred to Court to various authorities, including *the Maha Lingum, Shortt* and *Carroll* cases cited by the plaintiff. In addition the defendant referred the Court to *Evans –v- IRFB Services (Ireland) Ltd* [2005] 2 ILRM 358; and *Foley –v- Aer Lingus Group Plc* , an unreported High Court judgment of the late Ms Justice Mella Carroll delivered on the 1st of June, 2001. Further, Counsel for the defendant, Mr Rory Brady S.C., has furnished the Court with detailed written submissions, which the Court was grateful to receive. The defendant's arguments as therein set out may be summarised as follows. The defendant is adamant that the plaintiff stands dismissed, and that she was dismissed during the currency of on-going probation. It contends that as she was still a probationer it was entitled to terminate her employment on the grounds of unacceptable job performance without recourse to the disciplinary procedure. The defendant contends that it did not intend or ever propose to take any disciplinary action against the plaintiff. The defendant made the decision that the plaintiff had not completed her probation period satisfactorily and decided to terminate the contract while providing the plaintiff with her full notice entitlement. In those circumstances the defendant was entitled to dismiss under the contract.

14. The defendant says that the relief being sought by the plaintiff is, in substance, a mandatory interlocutory injunction. The defendant makes the point that the courts have been slow to grant interlocutory injunctions to enforce contracts of employment and that this reluctance of the courts to grant orders in wrongful dismissal cases derives from the inability of a court to supervise what would amount to a specific performance of a contract of employment. The defendant contends that the plaintiff always understood that there would be a review of her probationary period before her probation would cease. Accordingly, even though the 27th August, 2007 had passed before the review meeting took place the plaintiff's probation continued. The defendant further contends that damages would be an adequate remedy in this case as the plaintiff, if she succeeds, would be entitled to recover 19 months salary at most. Moreover, it was submitted that the plaintiff has significant property assets and is by no means indigent. This is not the type of case to which the principles in *Fennelly –v- Assicurazioni Generali S.P.A. and another* (unreported, ex tempore, Costello P, 13th August, 1997) apply, so says the defendant. As to the balance of convenience the defendant says it has lost confidence in the plaintiff and that as the relationship between the parties was marked with problems the Court would have to exercise extreme caution before directing the resumption of the plaintiff's employment with the defendant.

**The Law**
15. The Supreme Court in *Campus Oil v The Minister for Industry (No. 2)* [1983] 1 I.R. 88 identified the principles to be applied by a court in the granting or withholding of interlocutory injunctive relief. Firstly, the court must be satisfied that the strength of the plaintiff's case meets a certain minimum threshold. In the case of a prohibitory injunction the plaintiff is required to satisfy the Court that there is a fair issue to be tried. However, if the applicant is seeking a mandatory interlocutory injunction the threshold is higher. In the case of *Maha Lingam v. The Health Service Executive* [2006] E.L.R. 137 Fennelly J. stated:-

> "It is well established that the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of interlocutory injunction where the injunction sought is in effect mandatory. In such a case it is necessary for the applicant to show at least that he has a strong case that he is likely to succeed in the hearing of the action."

16. Secondly, the court must consider whether damages would be an adequate remedy for the party seeking the injunction, if he was successful at the trial of the action; and, thirdly, whether the balance of convenience favours the grant or refusal of an injunction at

the interlocutory stage.

17. With regard to the question of the threshold, I have to agree with the defendant that in this case the plaintiff is, in substance, seeking a mandatory interlocutory injunction. Close scrutiny of the plaintiff's case is instructive. She does not contend that she has been wrongfully dismissed. Her position is that she has not in fact been dismissed. That much is clear from the General Endorsement of Claim to her Plenary Summons and also from the way in which she has framed her claim for interlocutory relief. Ostensibly her position would appear to be that while the defendant's action in purportedly dismissing her was wrongful, and amounted to a repudiatory breach of contract, it did not of itself automatically terminate the employment relationship. She has elected not to regard the employer's breach of contract as terminating the contract. It is clear to me from a review of the authorities that, in principle, she is entitled to adopt that position. In that regard see *Industrial Yarns Limited v. Green* [1984] I.L.R.M. 15, wherein Costello J. stated:-

> "At common law that repudiation would not automatically bring the contract of employment to an end. The employee is free to accept that the repudiation has terminated the contract or not to do so. (See Gunton v. Richmond upon Thames LBC [1980] 3 W.L.R. 714 for a recent view on the effect of an employers repudiation of the contract of employment)."

18. I am not required at this stage of the proceedings to determine whether or not the plaintiff's employment has in fact been lawfully, or for that matter effectively, determined. These will be matters for determination at the trial of the action. What I am concerned with, however, is whether she is entitled to interlocutory relief pending the trial, and, if so, whether that should be mandatory or prohibitory relief, or both. As I have indicated it is clear to me that the plaintiff is seeking to have her contract of employment positively enforced pending the trial of the action. Although the injunctions she has claimed are couched in prohibitory language, the practical effect of the injunction claimed at paragraph 1. of her Notice of Motion, if granted, will be to require the defendant to treat the contract as continuing to subsist until the issue as to the validity or otherwise of the purported determination is decided at the trial. Undoubtedly the plaintiff has raised a fair issue to be tried. I am completely satisfied about that. However, I am not convinced that the plaintiff has discharged the onus upon her of showing that she has a strong case that she is likely to succeed in her action. She clearly has a stateable case but she must go a good deal further than that to meet the required threshold. The evidence in certain key respects is conflicting. Even if it were possible for this court to resolve the issue as to whether or not the plaintiff was still on probation at the time that she was purportedly dismissed on the basis of the affidavits alone, and I do not believe that it is, that issue would not be dispositive of the matter. There is a serious issue concerning the correct interpretation of the contract that requires resolution. The plaintiff contends that the defendant contracted to give her the benefit of the disciplinary procedure in the event of any perceived lack of acceptable performance on her part (after her probation period had expired) and, that being so, her purported dismissal without resort to the disciplinary procedure was not just unlawful but ineffective. As to whether the plaintiff's interpretation of the contract is correct, the matter is arguable both ways. It is clear to me that both sides are in a position to proffer cogent legal arguments in support of their respective positions on that issue. It is not for me to resolve that issue at this time. There is definitely a fair issue to be tried but it could not be said that the plaintiff's case is so strong with respect to it as to induce the belief that she is more likely than not to succeed at the trial of the action. She might or might not succeed. The jurisprudence in this area is not yet settled and is continuing to evolve.

19. Additionally, her contention that her purported dismissal was not just unlawful but was also ineffective raises serious legal issues in terms of the primary relief that she claims in her General Endorsement of Claim. At para.1. of the General Endorsement of Claim she seeks a declaration that she is and remains an employee of the defendant. However, there is case-law that suggests that such a declaration should never be made. In *Vine v. NDLB* [1957] A.C. 488, Viscount Kilmuir L.C. (at 500) made it clear that a declaration that a dismissal was null and void will not be granted in the case of an ordinary contract of employment. Further, Barry J. in *Barbour v. Manchester Regional Hospitals Board* [1958] 1 W.L.R. 181 at pp. 194 to 195 made it clear that a declaration would not be granted to the effect that the plaintiff's employment had never been validly determined. If, however, the plaintiff had sought a declaration that his employment had never been lawfully or rightly determined, such a declaration, if necessary, might have been made. There is little doubt that a declaration will lie to declare a breach of contract. Moreover, a declaration will lie to declare that a dismissal was wrongful. However, the plaintiff in this case does not seek such relief. Rather, she seeks a positive declaration that the plaintiff is and remains an employee of the defendant. On the basis of the authorities that I have mentioned it must surely be open to question, though it remains to be determined at the trial of the action, whether the plaintiff would be successful in obtaining the primary relief that she seeks.

20. On the other hand, there is a line of authorities in this country tending to suggest that where a purported dismissal was in breach of fair procedures and natural and constitutional justice the dismissal may be not just unlawful but ineffective. The plaintiff relies, *inter alia*, on the decision of Clark J in *Carroll –v- Bus Atha Cliath* [2005] 4 IR 184. There are a number of passages in the judgment in that case that I have found particularly helpful. In the course of his judgment Clark J quoted the following passage, *inter alia*, from the judgment of Barrington J in *Parsons v. Iarnod Eireann* [1997] 2 I.R. 523:

> "The traditional relief at common law for unfair dismissal was a claim for damages. The plaintiff may also have been entitled to declaration in certain circumstances, for instance, that there was an implied term in his contract entitling him to fair procedures before he was dismissed. But such declarations were in aid of his 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 is gone out of his claim and there is no freestanding relief which he can claim at law or in equity."

21. In *Carroll v. Bus Átha Cliath*, Clarke J. viewed this statement as:-

> "….a recent reiteration of the general principle of law to the effect that a court will not grant orders which have, in substance, the effect of ordering specific performance of a contract of employment.

22. He then went on:

> "In *Cassidy v. Shannon Castle Banquets*, [2000] E.L.R. 248, Budd J granted a declaration that a purported dismissal was in breach of natural and constitutional justice and that, as a consequence, the dismissal was without efficacy and invalid. However, it was made clear that the above declarations did not coerce a re-instatement. In that respect *Parsons v. Iarnrod Eireann* was distinguished. It is also clear from a consideration of the judgment of Budd J. in C*assidy v. Shannon Castle Banquets* that a factor taken into account in that case was the entitlement of the plaintiff to clear his name. In that respect it is of some importance to note that there have been significant developments in the typical terms of employment of many employees in recent years. Such changes have a material effect upon the circumstances in which, as a matter of contract, many employees can be dismissed.
>
> The traditional position at common law was that a contract of employment could be terminated on reasonable notice without giving any reason. In those circumstances it was obvious that the only remedy for a breach of contract by way

> of dismissal was for the payment of the amount that could have been earned had appropriate notice been given. However, it is now frequently the case that employees cannot be dismissed, as a matter of contract, save for good reason such as incapacity, stated misbehaviour redundancy or the like. It would appear that the development of the law in relation to affording employees as certain compliances with the rules of natural justice in respect of possible dismissal derives, at least in material part, from this development. If the stated reason for seeking to dismiss an employee is an allegation of misconduct, then the courts have, consistently, held that there is an obligation to afford that employee fair procedures in respect of any determination leading to such a dismissal. That does not alter the fact that the employer, may still, if he is contractual free to so do, dismiss an employee for no reason. It simply means that where an employer is obliged to rely upon stated misconduct for a dismissal, or where not so obliged chooses to rely upon stated misconduct, the employer concerned is obliged to conduct the process leading to a determination as to whether there was such misconduct in accordance with many of the principles of natural justice.
>
> In those circumstances it seems to me that it is open to the court to grant declarations concerning most alleged breaches by an employer of his contractual obligations. *Parsons v. Iarnrod Eireann* imposes a limit in cases where the declaration could not avail the plaintiff in any practical way.
>
> Where, as here, the consequences of a declaration as to a breach in respect of the plaintiff's entitlement to date simply gives rise to a claim in damages, then no difficulty therefore arises."

22. Later Clark J went on to say:

> "However, a more difficult question arises as to whether I should … make orders which would require the defendant physically to provide the plaintiff with work. I have been referred to some limited number of authorities which suggest that in certain limited circumstances, the courts have, notwithstanding the general policy to the contrary, granted injunctive relief which has the effect of requiring that an employee be actually permitted to work. Many of those judgments appear to have arisen at an interlocutory stage. *O'Donnell v. Chief State Solicitors*, [2003] E.L.R. 268, *Martin v. Nationwide Building Society*, [2001] 1 I.R. 228 and *Brian v. Finglas Child and Adolescent Centre,* (unreported, High Court, Kelly J. 10th May, 2004). The extent to which there may be, notwithstanding the general policy of the courts to the contrary, a jurisdiction to make a mandatory order which would have the effect of entitling an employee to return actively to work after appropriate findings and a plenary hearing is, therefore, open to significant doubt. Even if such a jurisdiction exists, it seems to me that it could, by inference, only arise in circumstances where it was clear that no other difficulties could reasonably be expected to arise by virtue of the making of an order."

23. This judgment raises a number of issues that bear upon the question as to whether or not the plaintiff in the instant case has demonstrated strong grounds. Firstly, even if the plaintiff were to succeed in satisfying a Court that her purported dismissal was in breach of contract, and/or in breach of natural and constitutional justice and that, as a consequence, the dismissal was without efficacy and invalid, it seems unlikely that a Court would coerce her re-instatement. The plaintiff is effectively claiming this. Quite apart from the declaratory relief claimed in the General Endorsement of Claim, injunctive relief is sought which, though prohibitory in language, is mandatory in substance. As pointed out by Clark J it is questionable as to whether a jurisdiction to make such orders exists. Even if it does, issues of trust and confidence would come into play. In the all circumstances one could not be confident that the plaintiff would succeed. At best she has raised fair issues to be tried.

24. Accordingly, in so far as the plaintiff claims what is, in substance, mandatory interlocutory injunctive relief in paragraph 1 of her Notice of Motion, that claim falls at the first hurdle. However, she also claims additional injunctions on the more usual prohibitory basis. In relation to paragraphs 2 and 3 of her Notice of Motion, I am satisfied that the plaintiff has raised a fair issue to be tried at the trial of the action and that I can now go on to consider the question of the adequacy of damages in relation to those. Having considered all of the evidence in this case I am satisfied that damages would not be an adequate remedy in the event of the plaintiff being successful at the trial of action. With respect to the injunction claimed at paragraph 2 if, pending the resolution of the issues in this case, the fact of the plaintiff having been purportedly dismissed by the defendant were to be published widely, such publication would undoubtedly damage the plaintiff's standing and reputation both within the company and without. With respect to the injunction sought at paragraph 3, I am satisfied that the plaintiff has altered her position to her detriment in ways that cannot be fully compensated in damages. While the costs of moving and accommodation and so forth can all be addressed under the heading of damages, the circumstances of this case also impinge upon her family and domestic life and the arrangements that she has made with regard to her daughter's education. I am satisfied that the plaintiff's claim for prohibitory injunctive relief meets the requirement that damages should not be an adequate remedy.

25. Turning then to the balance of convenience, the plaintiff claims that she requires injunctive relief to maintain the status quo pending the trial of the action. Certainly injunctions 2 and 3 as claimed in her Notice of Motion will assist in that regard. However, it is been strongly urged upon me on behalf of the defendant that the balance of convenience does not favour the granting of interlocutory injunctive relief even on the limited basis under consideration by me now. The defendant's argument in that regard is that a relationship of trust and confidence is an essential feature of the contract of employment. It is urged upon me that there has been a total loss of trust and confidence and various aspects of the evidence have been drawn to my attention in support of that contention. However, in circumstances where I am declining to grant an injunction in the terms claimed at paragraph 1 of the plaintiff's Notice of Motion, it seems to me that the defendants trust and confidence argument loses much of its force. If I grant to the plaintiff the injunctions claimed at paragraphs 2 and 3 of her Notice of Motion it will have the effect of restraining the defendants from publishing the fact of her purported dismissal and it will require them to forebear from filling her post until the hearing of the action. In other words her job will be kept open until the issues in this case have been fully litigated. However, defendant will not be coerced to permit her to work pending the trial of the action or to pay her. It seems to me that in those circumstances issues of trust and confidence simply don't arise. Now it might well be said that the defendant could be prejudiced in the conduct of its business by being unable to fill the plaintiff's post. However, it is quite clear from the evidence that the defendant's management structure is hierarchical. The plaintiff's contract requires her to report to the Sales Director and Managing Director of the company. Equally, there are quite a number of personnel subordinate to her in the structure. I imagine that the functions of her post could be apportioned in the short term between her superiors and her subordinates. Therefore I am not satisfied that a consideration of this kind would tip the balance of convenience against the granting of injunctive relief.

26. In all the circumstances I am disposed to grant to the plaintiff prohibitory interlocutory injunctions in the terms of paragraphs 2 and 3 of her Notice of Motion. However, I must refuse her application for an interlocutory injunction in the terms of paragraph 1 thereof. I will reserve the question of costs to the hearing of the action.