

THE HIGH COURT

[2004 No. 3218 P.]

BETWEEN

WILLIAM BROWNE

PLAINTIFF

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND COMMISSIONER OF AN GARDA SÍOCHÁNA

DEFENDANTS

JUDGMENT of Mr. Justice Cross delivered on the 4th day of December, 2012

1. Introduction

1.1 The plaintiff in this case was born on 1st June, 1957 and was attested as a member of An Garda Síochána on 25th February, 1978 and remained a member in good standing until his retirement in December 2011.

1.2 The plaintiff is claiming damages for a personal injuries loss and damage as a result of the alleged negligence breach of contract, conspiracy and breach of duty on the part of the defendants in allegedly permitting the plaintiff to be subjected to a campaign of bullying and harassment by his superiors and failing to take any proper steps to investigate his complaints.

1.3 The plaintiff is also claiming other ancillary reliefs.

1.4 Counsel on behalf of the plaintiff summarised the plaintiff's complaints under twelve different headings. These complaints will be dealt with in turn subsequently.

2. Bullying and Harassment

2.1 As this Court has emphasised in *Kelly v. Bon Secours Health System Limited* [2012] IEHC 21 and *Nyhan v. Commissioner of An Garda Síochána & Anor* [2012] IEHC 329, there is no separate or distinct tort of bullying and harassment. The defendant owes a duty of care not to expose a worker to injury. In this regard, the plaintiff though a Garda Síochána is in no different position than any employee. One of the sub-aspects of this duty is the issue of bullying and harassment in the workplace.

2.2 The plaintiff's case is that the bullying and harassment came not merely from fellow employees but were in fact orchestrated or directed from senior members of An Garda Síochána or what is sometimes known as corporate bullying.

2.3 In cases where the bullying emanates from fellow workers, issues such as foreseeability and the knowledge of employers are always relevant.

2.4 Clearly if the bullying is found to have emanated from management then no issue of vicarious liability would apply.

2.5 In *Quigley v. Complex Tooling and Moulding Limited* [2009] I.R. 349 at para. 13, Fennelly J. adopted the definition of "workplace bullying" at para. 5 of the Industrial Relations Act 1990 (Code of Practice Detailing Procedures for Addressing Bullying in the Workplace) (Declaration) Order 2002 as being an accurate statement of the employers obligations 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."

Fennelly J. went on to state:-

"Counsel for the defendant submitted, and I would accept, that bullying must be:-

- repeated;
- inappropriate;
- undermining of the dignity of the employee at work."

2.6 The court accepted that definition in *Kelly and Nyhan* (above) and does so now.

2.7 If this plaintiff proves a campaign by management against him then unlike most plaintiffs in bullying case, he does not have to establish that the activities above complained of were known by the first named defendant or the second named defendant as he is alleging that senior management was deliberately orchestrating and organising the bullying.

2.8 As I stated in *Kelly and Nyhan*, in my view, the best summary of the questions to be addressed in a case such as this was set out by Clarke J. in *Maher v. Jabil Services Limited* [2005] 16 ELR 233 as follows:-

"(a) had the plaintiff suffered an injury to their health as opposed to ordinary occupational stress;

(b) if so, was that injury attributable to the workplace and;

(c) if so, was the harm suffered to the particular employee reasonably foreseeable in all the circumstances.”

2.9 As stated by this Court in *Nyhan*, these three questions are, of course, subject to the pre-existing requirement that the plaintiff establish an actionable wrong in the form of negligence, breach of duty, breach of contract or conspiracy. Whether or not any injury results from an actionable wrong is, of course, measured by the standard of reasonableness.

2.10 As this Court has also pointed the individual who believes that he or she has been subject to bullying and harassment frequently interprets every or most actions of their employers in an unfavourable light as if they are part of a campaign. Frequently, innocuous acts perpetrated without malice may come to be regarded as part of a harassment campaign.

2.11 Similarly, however, it must also be pointed out that for somebody who is sensitive and who believes themselves to have been bullied, actions that an ordinary robust employee would be regarded as a matter of nothing may further undermine confidence and may in fact be bullying by either fellow employees or management. This is, of course, especially the case if those fellow employees or management are aware of the stress that the employee or worker is labouring under.

2.12 In this matter I was assisted greatly by counsel on behalf of the plaintiff and on behalf of the defendants, I was furnished with written submissions from both sides and had the opportunity of observing the witnesses giving their evidence. It ought to be said that even where the court does not accept the testimony of one or other witness, the court does not believe that the witnesses were doing anything other than attempting to give the truthful evidence from their memory as best they could.

3 The Twelve Allegations

(A) The Canal Murders

3.1 The plaintiff was seconded at the express request of Detective Inspector O'S to assist in a murder investigation in Naas known as "the Canal Murders". The plaintiff was chosen as the victims (and it seems the suspects) came from in or around Kilmainham and the plaintiff was known to the family of at least one of the victims.

3.2 Whilst on duty in Naas the plaintiff made claims for payment of subsistence allowance in accordance with An Garda Síochána finance code. Claims for the months of January and February 2000 were disallowed by Superintendent M. The plaintiff believes that these claims were legitimate and the court accepts that that is the case. The plaintiff claims that his superior, Superintendent M. was unhappy that the plaintiff had been posted to Naas away from his station and that he could ill afford to lose the services of an experienced detective. The court accepts that Superintendent M. was not happy to lose one of his detectives and made a number of inquiries on the plaintiff as to when he would be returning to Kilmainham.

3.3 The court accepts the evidence of the plaintiff that his initial claim was denied in its entirety and that he was required to submit a reduced claim for only those hours which he was actually at meetings or conducting inquiries in Naas which was eventually paid.

3.4 The plaintiff perceived the initial refusal to be unfair and submitted a letter of complaint through his solicitor.

3.5 It is the plaintiff's belief that it was this complaint through his solicitor that annoyed his superiors against him and that in any event that the latter claim for subsistence was never paid. It is not clear whether the plaintiff dealt with the queries from Superintendent M. as to these claims or not. The court accepts that the plaintiff would have been entitled to the full claim and that he has not been paid in its entirety but that is not the same as to suggest that the refusal of the defendants through Superintendent M. to pay the assistance amounted to bullying and harassment of the plaintiff.

3.6 There was a dispute as to the quantum of the claim and the court readily accepts that Superintendent M. may well have been annoyed about the manner in which the plaintiff was pursuing this claim and also readily accepts that this dispute and the legalistic manner which he adopted in dealing with his claim may have formed the basis of a soaring of further relations between the plaintiff and some of his superiors but the court does not accept that this incident of itself amounted to bullying and harassment. Superintendent M. was entitled to strictly scrutinised expenses claims. The fact that legitimate claims were not paid does not amount necessarily to bullying.

3.7 Though various declaratory reliefs are also claimed in relation to this sum, in view of subsequent findings, the court will not make an order in respect of this claim.

(B) The theft of an unmarked garda vehicle from Kilmainham Station

3.8 The plaintiff was required in September to travel to Naas to collect an official unmarked vehicle to which he had been assigned while working in Naas in order to return the vehicle to Dublin. He also had duties to perform in Naas and did not return the vehicle that evening to Garda Headquarters, Phoenix Park. The plaintiff said that the reasons he did not return it to headquarters in Phoenix Park is that there would not have been a garda there to sign in the vehicle at night time and that he attempted to park the vehicle in Kilmainham Garda Station but the car park was full and he parked it on the street outside the station.

3.9 On the night of 19th September, 2000, the car was stolen from outside the station.

3.10 Forensic evidence established that the vehicle's lock had been forced and fingerprints had been found indicating that the vehicle had been forcibly started.

3.11 An individual subsequently pleaded guilty to stealing the vehicle from outside the garda station although in earlier statements that individual had contended that he had taken the vehicle from elsewhere and that it was unlocked.

3.12 The court rejects any suggestion that the vehicle was either unlocked or left in an alternative location and indeed given the conviction of the individual for stealing the vehicle from outside Kilmainham Station, the court cannot understand how it was suggested to the plaintiff in cross examination that he may have left the vehicle unlocked and elsewhere.

3.13 Following the criminal conviction of the thief, Chief Superintendent D. revoked the plaintiff's permission to drive the vehicle citing ultimately para. 22.2(1)(a) of the code (having previously cited a different section). This revocation was not ultimately set aside for approximately eight and a half years.

3.14 It is contended by the plaintiff that the removal of permission by the Chief Superintendent was invalid as para. 22.2(1)(a) refers

to competency to drive and by letter from Superintendent M. stamped 8th February, 2001, it is clear that the withdrawal of authorisation was "as a result of (the plaintiff's) negligence and carelessness in ensuring the safe custody of an official vehicle entrusted to him resulting in the vehicle being the subject of unauthorised taking". Subsequently, a memo of 9th February, 2001, Chief Superintendent D. stated there was a "degree of negligence" displayed by the plaintiff in parking the vehicle outside Kilmainham Garda Station without "securing" it.

3.15 The authority of the plaintiff's superiors to withdraw his permission to drive a garda motor vehicle is not in issue in these proceedings in the sense of a judicial review decision that is being impugned.

3.16 The court accepts that the plaintiff could have and should have left the vehicle in Phoenix Park despite the fact that the office was closed as there was a member on duty to whom the keys could have been left. The court accepts that while the vehicle was locked and was stolen when locked, that leaving a car on the street which ought to have been in at least placed in the car park of Kilmainham Garda Station amounts to it being "unsecured" at least to a degree.

3.17 For the purposes of this judgment, the court will accept the provisions of para. 22.2(1)(a) which referred to certificates of competency to drive do probably allow the plaintiff's superiors to withdraw the permission to drive because of perceived negligence in the manner that it was left by the plaintiff on the street.

3.18 Accordingly, somewhat reluctantly, the court is of the view that the removal of the plaintiff's permission to drive, the vehicle does not of itself amount to bullying or harassment or indeed is any legal wrong. The strength of the submissions on behalf of the plaintiff that the decision by Chief Superintendent D. to revoke permission to drive were based upon misapprehension that in fact the vehicle had been unlocked on the street in Kilmainham, is noted but the court feels that "unsecured" can conceivably cover a situation where the vehicle was left on the street though locked.

3.19 This, however, is not the end to the allegations of bullying and harassment in relation to the revocation of the authority to drive for a period in excess of eight and half years.

3.20 Superintendent M. and Chief Superintendent D. denied that the revocation of the permission to drive was a punishment. The court is of the view that the initial revocation was indeed a punishment but does not come to the conclusion that this punishment has been established as being bullying and harassment. What the court does find is that the explanations by the defence witnesses as to the reason that the revocation was continued (with clear implications as to the career and effectiveness of the plaintiff as a detective) is unreasonable excessive and without justification and amounted to an irregular attempt by the defendants to control the plaintiff.

3.21 The contention by the defendant's witnesses that the plaintiff would have been given back his vehicle, after approximately twelve months, had he only applied for it, was made for the first time in evidence in this court and in the view of the court merely adds to the plaintiff's grievances in this regard.

3.22 As was pointed out by submissions on behalf of the plaintiff, the plaintiff was never informed that the defendants would have returned the entitlement to drive a garda vehicle to the plaintiff after twelve months had he merely asked them to do so. He was given no documents advising him that he could make an application or that he would have looked upon favourably. It was not pleaded in the defence that the plaintiff could have adopted this course and Mr. T.L. of the Garda Representative Association specifically wrote by correspondence October 2005 requesting that the decision be reversed indicating that it marginalised the plaintiff's position and sidelined him and this request received no response.

3.23 Furthermore, the ultimate decision to return the plaintiff permission to drive was made in 2009 without any further formal request to the defendants.

3.24 The court holds that the continuing deprivation of the plaintiff's use of the car by the defendants after the period of one year up to 2009 was an attempt by the defendants to control and punish the plaintiff who was regarded as a source of trouble who had involved his solicitor in the expense issue discussed above, and that it was entirely unfair and an example of bullying and harassment by the defendants at a high level of management.

(C) The Rowntree Site

3.25 The plaintiff lived adjacent to the former factories of Nestle/Rowntree in Kilmainham. There was local opposition to this development and the plaintiff attended a protest meeting.

3.26 The plaintiff claims he was approached while at or after that meeting by a superior suggesting that they were undesirable characters of a subversive nature taking control of the meeting and of the protest campaign. A leaflet was being handed out at that meeting advertising a further meeting in March about the issue.

3.27 One day before the proposed a further meeting a copy of the leaflet advising of the protest was passed under the door of Inspector M. at Kilmainham station. This leaflet had a photocopy of the plaintiff's signature, rank, number and station appended to its end.

3.28 It has been subsequently accepted by the defendants that this signature is identical to and in fact was "lifted" from a letter the plaintiff wrote on 20th September, 2000, by way of explanation in relation to the taking of the garda vehicle to the sergeant in charge in Kilmainham.

3.29 This letter of September 2000 would have had a very limited circulation among fairly senior gardaí but clearly the plaintiff's signature was taken from that letter and photocopied at the foot of the notice in relation to the protest meeting.

3.30 In the letter of 20th September, the plaintiff's signature was appended and underneath the signature, his name and number and station are typed. However, the typist of that letter forgot to put an "e" at the end of Browne. This same transcription occurs at the foot of the notice that was put under Inspector M's door and as stated, it is accepted by the defendants that this signature and identification was then affixed to the notice of the protest meeting suggesting that the plaintiff was supporting and involved with this protest in his official capacity as a garda.

3.31 It is clearly inappropriate for a member of An Garda Síochána to be involved in any protest in being orchestrated by any political party or indeed by any extremists or subversives.

3.32 The court is of the view that there was clearly an attempt by some relatively senior members of An Garda Síochána who had a copy of the letter of 20th September to implicate the plaintiff with a political protest being organised or orchestrated by extremists or subversives.

3.33 The court is also of the view that this is defamatory of the plaintiff.

3.34 The matter was published to Inspector M. The inspector made inquiries about the matter and advised Detective Garda T. who was a friend of the plaintiff and he chose not to advise the inspector that it was indeed the plaintiff's signature.

3.35 The court is of the view that the publication by Inspector M. to Garda T. would have been covered by qualified privilege.

3.36 The court holds, however, that the publication of the leaflet to Inspector M. was a Libel on the plaintiff and that it was also part of a bullying and harassment campaign against the plaintiff seeking to undermine him in his position as a Detective Garda.

(D) The Failure to Attend the Trial in April

3.37 The plaintiff was advised by Superintendent M. that he was going to hold a sworn inquiry into the plaintiff's non-attendance at a court case on 11th April, 2001. The plaintiff advised Superintendent M. that he had not received any notification of that court case.

3.38 Superintendent M. had been informed by the plaintiff's Sergeant, Sergeant C., that a notification had been sent.

3.39 The plaintiff's explanation was supported by Detective Sergeant K.W. who advised management that no notification was received by him for transmission to Detective Garda B. and no entry relevant to the same was entered in the correspondence register.

3.40 This view of Sergeant W. was disputed by Sergeant C. and a letter was written on behalf of Superintendent M. dated stamped 11th April, 2001, indicating that the issue could only be dealt with "by way of disciplinary proceedings".

3.41 The explanation given by the plaintiff and supported by Sergeant W. was indeed reasonable and was ultimately accepted by management, but the court is not of the view that the threat that disciplinary proceedings would be undertaken was unreasonable or, indeed, was a matter of bullying or harassment.

3.42 Ultimately, and very sensibly, no disciplinary proceedings ensued. The non-attendance of a garda at a hearing which resulted in the proceedings being struck out is, of course, a serious matter and, if wilful, would have warranted disciplinary proceedings. In the circumstances, the court does not hold that the matter amounts to an example of bullying and harassment of the plaintiff.

(E) The Criminal Investigation into Alleged Fraudulent Claims for Alleged Overtime

3.43 At a meeting with Superintendent M. concerning the alleged failure to attend the April trial, Superintendent M. apparently produced the plaintiff's overtime and expenses claim form and alleged that the plaintiff had altered this document in a fraudulent manner.

3.44 It transpired that the plaintiff was required at Cloverhill Court on the day in question and attended at short notice. He had previously submitted his application for overtime and expenses and he subsequently added the claim in respect of Cloverhill.

3.45 Superintendent M., however, believed that there was fraud involved in a claim for £7.95 and made a complaint which led to a criminal investigation by Inspector Q.

3.46 The court was not satisfied with Superintendent M's explanation as to why a criminal investigation for fraud was initiated over a claim for £7.98 and, in particular finds that Superintendent M's explanation that his difficulty centred upon the fact that the certificate of a court attendance was not signed by the appropriate officer was not correct.

3.47 The court is not of the view that there was any basis for a criminal investigation in relation to the overtime and believes that, as a matter of probability, this investigation or threat of same was prompted by animus against the plaintiff by his superiors and part of the campaign to control him. The court holds that this also was an example of bullying and harassment.

(F) The Altercation at the Locker

3.48 In July, 2001 the plaintiff was asked by retired Detective Sergeant W., an old friend of the plaintiff, to assist his son B. to remove personal items from his locker.

3.49 The Station Sergeant, Sergeant C. who was in the detective office at the time, was concerned that the plaintiff and Sergeant W's son were acting in contravention of the Garda Regulations by removing official property and files from the station.

3.50 There was a clear altercation in the station which also clearly became heated. Sergeant C. insisted that the plaintiff was aggressive to him and the plaintiff said that he was trying to "hold the ring" between Sergeant C. and the young Mr. W., Mr. W. did not give evidence.

3.51 In any event after the altercations, the plaintiff was the subject of a complaint from Sergeant C. which led to an investigation under the An Garda Síochána Disciplinary Code and a sworn inquiry into alleged insubordination on four counts. This inquiry which was held on 12th March, 2002, convicted the plaintiff on one count and acquitted him on the others.

3.52 The plaintiff appealed this conviction and on 10th March, 2003, the conviction was overturned.

3.53 The plaintiff complained that he was subject to false allegations and perjury by Sergeant C. and he, in turn, made a formal complaint against Sergeant C. which did not result in any further disciplinary proceedings.

3.54 It is submitted on behalf of the plaintiff that the disciplinary proceedings against him were inappropriate and excessive given the fact that three of the four charges were initially dismissed and the fourth one ultimately dismissed on appeal.

3.55 The court is not of the view that this incident is an example of bullying or harassment. Sergeant C. who had clear differences with the plaintiff by this time was very annoyed as, indeed, was the plaintiff at what occurred in the station. It is clear that there was an altercation and heated exchanges ensued.

3.56 An officer such as Sergeant C. may honestly believe that a junior officer was insubordinate to him and make a complaint about

the alleged insubordination. The fact that an Inquiry finds there is no basis for such complaint is not, in the view of the court, evidence that the complaints were entirely unreasonable or, more importantly, that they were motivated by any malicious campaign or conspiracy against the plaintiff or amounted to bullying and harassment against him.

3.57 Once the complaint was made by Sergeant C. and a prima facie case was found, it was not unreasonable that a formal inquiry under the An Garda Síochána Disciplinary Regulations was held and, indeed, were the authorities not to hold such inquiry they might themselves be criticised.

3.58 The plaintiff's allegations under this heading are not upheld.

(G) Improper Dress

3.59 The Book of Evidence in the Canal Murders trial had apparently been stolen from court in North Brunswick Street on 7th September, 2001. This is clearly a very serious matter and on 8th September, 2001, the plaintiff met with an informant to recover this Book of Evidence. Ultimately, the book was recovered as a result of information received.

3.60 After his meeting with the informant, the plaintiff arrived at Kilmainham Station at 7.30pm on 8th September somewhat late and was summoned Superintendent M. who the plaintiff alleges censored him for being improperly dressed and for not having logged into the computer. He was subsequently told to get home and dress appropriately and log himself into the computer.

3.61 It is not the view of the court that Superintendent M's reaction to the plaintiff appearing late in the station and not appropriately dressed was unreasonable.

3.62 Subsequently, when it transpired what the plaintiff was doing and the good work he had achieved nothing further came of it and the court does not hold that it was an example of bullying or harassment for the Superintendent to take the attitude that he did.

(H) The Witness Order on the Plaintiff

3.63 In October, 2001 Sergeant C. served a witness order on the plaintiff requiring him to attend a murder trial. The plaintiff had previously served summonses on witnesses some of whom it was feared might not attend. The plaintiff explained that he would be on holiday on the date and applied for seven days leave but was advised he could not because he was required in trial.

3.64 The plaintiff believes that Sergeant C. had told members in the station that the plaintiff had tried to "con" Sergeant McC into signing his leave form and an altercation occurred between the plaintiff and Sergeant C. resulting in a complaint by Sergeant C. of alleged insubordination.

3.65 The accused in the trial changed his plea and the plaintiff's attendance was not required. He was able to take his annual leave and ultimately nothing occurred further on the matter.

3.66 The court is not of the view that this incident amounts to bullying or harassment. Clearly, the plaintiff was going to be required to attend at a murder trial and his refusal to do so would be a very serious matter. However, the fact that the incident, which the court believes was minor, possibly could have led to more serious disciplinary affairs indicates the tense state of personal relations at the time in the station.

(I) The Missing Statements in the Rape Case

3.67 In September or October, 2003 original statements in respect of a rape allegation were locked in the plaintiff's cabinet together with an exhibit. These statements and the exhibit were missing from the plaintiff's locker when the plaintiff opened it.

3.68 The plaintiff reported this fact to his superiors and the fact that he believed the statements were deliberately taken from his locker. The plaintiff made a complaint that this taking of files and exhibits was part of the campaign of bullying against him and notwithstanding the fact that Detective Inspector O'G. recorded that the plaintiff made this allegation in December, 2003 it was wrongly suggested to the plaintiff by the defence that his first reference to this claim did not arise until February, 2005.

3.69 It was decided not to conduct any criminal investigation into this matter and the plaintiff complains about this. The plaintiff was the subject of a complaint by the victim of the crime as to the missing evidence which investigation exonerated the plaintiff.

3.70 The court is of the view that it was not unreasonable of the plaintiff's superiors to take a decision not to make a criminal investigation of the theft of the evidence and the files from the plaintiff's locker. The court is also of the view, however, that the actual stealing of these documents from the plaintiff's locker, which the court accepts occurred, is evidence of a campaign by members of An Garda Síochána against the plaintiff in order to discredit him in the eyes of his superiors. These items could only have been stolen by a member of An Garda Síochána as there is no suggestion of any "break-in" to the station. It is not clear who was responsible for this incident and it probably was some junior members of the force and the court does not accept that this campaign was necessarily orchestrated by the senior officers. However, the stealing of these items was clearly aimed at undermining and demonising the plaintiff in the eyes of his superiors and was an example of bullying against him within the definitions outlined above. It would have been clearly foreseeable that this action would have undermined the plaintiff's dignity and caused him distress and injury in his career as a garda.

(J) The Removal of the Plaintiff's Firearm

3.71 In October 2004, the plaintiff was rostered by Sergeant C. in a manner which the plaintiff considers was excessive and unfair.

3.72 The court does not accept that the rostering by Sergeant C. was in fact unfairly directed against the plaintiff in that the resources in the area were stretched at the time and though the plaintiff was rostered more frequently than others, there was an explanation given for this in court which explanation the court accepts. The court does, however, accept that the plaintiff who had shown stress previously and who had been given a sick certificate for a week due to his stress genuinely believed that this rostering was part of his superior's campaign against him.

3.73 The court does also accept that the action by the plaintiff in "going sick" was as a result of genuine stress or anxiety. Indeed, though the plaintiff was questioned on this point in court and though witnesses from the garda authorities from time to time seemed to suggest that the plaintiff's refusal to obey his instructions was something other than as a result of sickness, the plaintiff's employers did accept that he was absent for a week due to anxiety or stress and accordingly cannot now in the view of the court suggest that there was anything bogus about the plaintiff's reaction to him being rostered. He was medically certified as unfit for one week.

3.74 While the plaintiff was out sick, he was required to return to Kilmainham Garda Station on 8th October, 2004 and Superintendent Q. decided that his firearm ought to be removed given that the plaintiff was suffering from anxiety. Chief Superintendent D. agreed with this decision of Superintendent Q. On 9th October, 2009, Chief Superintendent D. reported that two days previously the plaintiff had let be known to his immediate supervisor, Sergeant C. that he would not perform his duty and reported sick suffering from stress and that he had submitted a medical certificate stating that he suffered from "anxiety".

3.75 Chief Superintendent D. stated that:-

"I am concerned at the member's attitude in refusing to carry out the duty he had been detailed to.

I respectfully ask that [the plaintiff] be examined by a psychiatrist through the [CMO] to determine his continued suitability as a member of the detective branch police..."

3.76 At the handing over of the firearm, Superintendent Q. stated in evidence that he offered a transfer to the plaintiff to Kevin Street Garda Station (with which evidence the plaintiff agrees) but the plaintiff declined to accept this offer. The plaintiff says he refused the transfer as he would have had to continue to work under Chief Superintendent D. and indeed because Sergeant C. would have continued to be in a position to roster him in a manner that the plaintiff considered to be excessive.

3.77 Evidence was given on behalf of the defendants that had the plaintiff accepted a transfer out of Kilmainham that consideration would have been given for a return of his firearm. The plaintiff was not advised of that potential benefit to him when offered the transfer initially or indeed at any time thereafter.

3.78 After examining the plaintiff, the Chief Medical Officer and an independent psychiatrist both found that the plaintiff was fit for duty and to carry the firearm. They also accepted the fact that he had been suffering from anxiety due to work related difficulties.

3.79 On 14th February, 2005, Superintendent Q., Detective Inspector O'G. and Superintendents B., C. and D. and Sergeant C. made a decision not to return the plaintiff his firearm having been advised that in a letter from Assistant Commissioner R. dated 3rd February, 2005, that the Chief Medical Officer "advised the member fit for duty including firearms duties". None of the decision makers at this meeting were apparently in possession of any of the medical reports or the opinions directly from the Chief Medical Officer or the psychiatrist and neither did they chose to request copies of any medical reports before they made their decision.

3.80 Chief Superintendent D. in a letter dated 15th February, 2005, outlined the reasons for the "unanimous agreement" that the firearm should not be returned to the plaintiff as follows:-

"[The plaintiff] was sick leave twice with anxiety and stress in July 2001 and October 2004.

[The plaintiff] has a personal grudge against DS C. his immediate supervisor in Kilmainham Station.

[The plaintiff] will not accept DS C., Kilmainham Station, as his supervisor.

[The plaintiff] refused to work on an armed protection post in Inchicore on 7th October, 2004, having been detailed to do so, on a duty roster drawn up by DS C. It is alleged that the [the plaintiff] wrote the word 'unavailable' on the duty roster for 7th October, 2004 and told DS C. he was going sick. [The plaintiff] then reported sick with stress and furnished a doctor's medical certificate certifying him unfit for duty with anxiety.

The divisional officer – Chief Superintendent D, Pearse Street Station, who is an employer under the Safety, Health and Welfare at Work Act 1989, and in such capacity has a public and statutory duty and in particular a duty of care for the protection and safety of his employees and members of the public and as such has deemed [the plaintiff] not to be a fit person to have possession of a firearm. The divisional officer based his grounds which are outlined above for arriving at this decision following the meeting in Kevin Street Garda Station earlier on the evening on 14th February, 2005, with DS C., Kilmainham Station, DI O'G., Kevin Street Station, DS B., Pearse Street Station and S Q. Kevin Street Station, together with his own responsibilities as an employer under the Safety, Health and Welfare at Work Act 1989."

3.81 In response to a question from the court, Detective Sergeant C. specifically indicated that he was not in fear of the plaintiff using the gun on him.

3.82 It should be noted that almost all of the above reasons are in fact disciplinary reasons. In evidence, Chief Superintendent D. did indicate that he was fearful, in effect, that the gun might be used by the plaintiff, who had suffered from stress or anxiety, on Sergeant C. The court does not accept that to be an accurate description of Superintendent D's state of mind at the time as had the plaintiff agreed to a transfer from Kilmainham, it is clear that his gun would have been returned.

3.83 The court does not accept that the issue of the plaintiff potentially abusing his firearm as a result of his past stress was in the circumstances a valid evidence based medical reason as the decision makers ignored and had not read the medical reports which the management had secured.

3.84 Other than the supposed issue of stress, all of the matters that were taken into consideration at the meeting in February 2005, were disciplinary matters. It seems clear that the plaintiff's supervisors did not really accept that the plaintiff's absence from work after the rostering issue was a genuine illness related one. The court has already indicated that it cannot accept there to be any doubt other than the plaintiff was genuinely suffering from anxiety for approximately one week after the incident and this fact was fully accepted by his employers at the time.

3.85 It was submitted by the plaintiffs that as the reason for the depriving of the plaintiff of his gun in February 2005, were in essence disciplinary reasons and that had disciplinary proceedings been initiated, the plaintiff would have had an opportunity of being heard that therefore the decision was invalid. It is again important to make clear that this case is not proceeding on the basis of any judicial review type of inquiry to adjudicate on the rationality of decisions being made by the plaintiff's employers. The decisions will only fall to be analysed in terms of whether or not they may amount to bullying or harassment or any actionable wrong.

3.86 The court accepts that the decision in relation to firearms is a matter for the plaintiff's superiors. The court also accepts that the initial decision to remove the plaintiff's firearm in October 2004, at a time the plaintiff was suffering from stress or anxiety was a reasonable decision to make.

3.87 The court is not of the view, however, that the continuation of the refusal to allow the plaintiff to have a firearm after it was clearly indicated by the Chief Medical Officer and the independent psychiatrist that the plaintiff was fit medically for the carrying of a firearm was a fair decision.

3.88 The court does not accept the rational of the decision as outlined by the defence witnesses.

3.89 The court has come to the conclusion that had the plaintiff accepted a transfer out of Kilmainham, he would have been readily given his gun back certainly by the meeting of February 2005 and that the refusal to return his gun to him was part of an informal disciplinary decision to punish the plaintiff as a result of his alleged grudge against Sergeant C. and his alleged refusal to accept Sergeant C. as his supervisor.

3.90 If the plaintiff could have been given back his gun after a transfer out of Kilmainham (even to a station in the same district) it is clear that public safety or health issues were not involved and the court rejects the explanation given by the defence witnesses in this regard.

3.91 The court fully accepts that being a detective without his firearm (and also for a time without the ability to drive a car) was a serious impairment to the plaintiff's ability to function fully. The court finds that it is only when the medical experts indicated forcefully that the plaintiff was fit medically to have a firearm and repeated this when, in effect, asked for a second opinion by the plaintiff's superiors, that it was decided as a method of punishment or control of the plaintiff to continue his deprivation of a firearm. The court believes that the plaintiff's superiors were unfairly using the firearm to control the plaintiff and if possible to remove him from Kilmainham where they perceive him as a troublemaker.

3.92 The court does not accept the evidence of the plaintiff's superiors to the effect that they were concerned after the Abbeylara incident and Inquiry, that the plaintiff would or might use his firearm on other members. The court believes that this is an explanation that was come to when it was clear there was no medical basis of depriving the plaintiff of his firearm. It is the view of the court that the continuing deprivation of the plaintiff of his firearm after February 2005 can only be regarded as an example of bullying and harassment on the plaintiff.

3.93 The seriousness of the plaintiff's position, as a detective garda without a car or firearm, is indeed evidenced by letter of 4th October, 2006, from Chief Superintendent M. giving the plaintiff fourteen days to explain why he should not be returned to uniform duties as he had been allegedly rendered incapable of performing his duties by reason of his absence of a firearm and authority to drive a vehicle. The fact that nothing came of this letter does not alter the fact that it clearly is evidence of the seriously debilitating situation the plaintiff was working under as a detective garda.

(K) The Poster Campaign in Kilmainham Garda Station

3.94 Various posters were placed in locations in Kilmainham Garda Station around February 2010, the plaintiff alleges to be examples of bullying and harassment. These posters or "flyers" contains such statements as "Free Willy" and "D. Garda Willy Browne – Fighting to clear his name since 2001" and "D. Garda Willy Browne is an innocent man" etc.

3.95 The court accepts that these posters were unfortunate and indeed could be regarded as degrading. The court thinks, however, that the posters represented a misconceived attempt at humour or "ragging" rather than bullying or harassment.

3.96 It is, of course, the case that "ragging" can be very insidious and can in certain circumstances amount to an example of bullying and harassment, however, in this case the plaintiff did not make anything about these posters and the court will not regard them as being an example of bullying or harassment.

(L) The Failure of the Defendant to Carry Out an Inquiry

3.97 The plaintiff alleges that the defendants failed to investigate his legitimate complaints of bullying and harassment.

3.98 The plaintiff requested the Garda Representative Association to intervene at local level and in 2004, the plaintiff requested Mr. T.L. of the Garda Representative Association to intervene at a higher level.

3.99 It was submitted by the plaintiff that the actions of the Garda Representative Association were a *de facto* invocation of grievance and harassment procedures to which no objection was made in respect of formality until 2011. The court accepts that Mr. T.L. made repeated efforts to bring the plaintiff's grievances to the attention of the authorities.

3.100 The court accepts that the plaintiff's concerns were treated in a manner that indicated that the defendants did not really take his complaints of bullying and harassment seriously.

3.101 The court has already found that there were a number of examples of bullying and harassment both by more junior members of the staff and also by more senior management.

3.102 The court accepts that these actions and the combination therefore represent an example of the definition of bullying adopted by Fennelly J. in Quigley (above) have been actions "which could reasonably be regarded as undermining the individual's right to dignity at work".

3.103 The court is not of the view that the actions of the defendants in failing to properly investigate the plaintiff's complaints or in failing to evoke disciplinary proceedings or in failing to deal with the various representations made on behalf of the plaintiff by the Garda Representative Association, while highly regrettable amounts to an example of bullying and harassment.

4 Conspiracy

4.1 Given the findings already made, the court does not feel it necessary to make any further findings under the additional claims for damages under the headings of conspiracy.

5 Injury

5.1 The next issue is whether as a result of the above actions the plaintiff has suffered what. Clarke J. in *Maier v. Jabil Services Limited* (above) defined as an injury to health as opposed to ordinary occupational stress attributable to the workplace which was reasonably foreseeable.

5.2 The court is of the view that both the actions of senior management and of the more junior gardaí were reasonably foreseeable to undermine and cause injury to the plaintiff. The fixing of the plaintiff's name and signature to a political leaflet advertising a meeting

associated with undesirable political elements can only be designed to undermine the plaintiff as indeed can the removal or theft from his locker of exhibits. The continued removal of the plaintiff's right to drive a garda vehicle, the threatening of a criminal fraud investigation to a disputed trivial claim for overtime and the continuing removal of the plaintiff's right to carry a firearm also as found were attempts to punish the plaintiff and were clearly constituted to undermine the plaintiff in his role as a garda and it was reasonably foreseeable that injury would result.

6 Quantum

6.1 The court was treated to an extensive analysis from both sets of witnesses to the plaintiff's actual earnings and the notes that the plaintiff did earn less than some of his peers for a period. The plaintiff, however, has not established on the balance of probabilities the extensive claim for loss of earnings that he has made out and the court will award the plaintiff under the head a small sum of €5,000 for loss of earnings.

6.2 The plaintiff has made out a proper claim that some of his substance monies in relation to the Canal Murders etc. was not fully paid to him but rather than make any of the declaratory orders sought under this heading, the court includes any sums due under the above heading in the sum of €5,000 already awarded.

7 General Damages

7.1 The court believes the plaintiff suffered a significant stress reaction. The plaintiff was only out of work for two weeks as a result of anxiety or stress. The plaintiff's injury, however, is not limited to that two week period. The court heard the evidence from Dr. Geraghty, the plaintiff's general practitioner, with the effect that the plaintiff's personality has changed dramatically since 2000. He is not good humoured, is stressed, tired without physical cause, has suffered from personality change and anxiety, matrimonial dysfunction caused by psychological rather than physical factors and had suffered a reactive depression of moderate to severe nature which is ongoing for twelve years.

7.2 The court also heard from Dr. David Shanley, retired consultant psychiatrist who recounted that the plaintiff suffered from sleep difficulties, tiredness, and no libido which has a marked effect on his relationship with his wife (this was also confirmed by the plaintiff's wife). Dr. Shanley diagnosed an adjustment disorder which is of moderate severity which he indicated was similar to Dr. Geraghty's diagnosis and his depression was a reactive type and that there are ongoing psychological consequences. Since the plaintiff's retirement in December 2011 from An Garda Síochána, he has been feeling better. The court also heard from Dr. Jean Lynch, Psychologist, from the Bullying Centre.

7.3 The defendant's medical expert was Prof. Casey. As was stated by counsel for the defendants, Prof. Casey's evidence was contingent upon what the plaintiff was saying is correct. Assuming that to be the case, Prof. Casey stated that in her belief, the plaintiff suffered "a mild adverse reaction". In effect, she did not seriously differ from Dr. Shanley indicating that the plaintiff recorded a major improvement since his retirement. Prof. Casey agrees that in September 2012, she diagnosed him from suffering from the mild adjustment disorder and referred to his stress as being moderate.

7.4 The court accepts that the plaintiff suffered a significant though moderate psychiatric injury. In particular, the court accepts Dr. Shanley's evidence of a reactive type depression which thankfully is easing after the plaintiff's retirement. The plaintiff's situation has not, however, fully returned to pre-2000 levels and in particular the plaintiff is suffering from ongoing matrimonial dysfunction. The court hopes and expects that this will not be an ongoing problem.

7.5 The defendants submit that the plaintiff merely suffered from an anxiety which resulted in a total of two weeks absence from work. The court does not believe it is fair to categorise the plaintiff as merely suffering from anxiety resulting in a two week absence from work. The reactive depression though only moderate was an ongoing continuous matter for approximately ten years until his retirement. The court does accept that apart from the two week absence, the plaintiff was able to do his work though clearly his enjoyment of his work was less than it would otherwise be as his function as a detective was curtailed especially by the loss of his firearm and of his permission to drive a garda vehicle.

7.6 The court believes that the appropriate sum for the damages for his personal injury due to his depression and stress as a result of the bullying as so found is a sum of €55,000 being damages both to the present and representing a small sum into the future.

8 Defamation

8.1 The court has held that there was defamation and libel of the plaintiff. The court holds, however, that the plaintiff has only established a very limited publication of the libel which was made to Inspector M. This libel was potentially extremely serious and indeed motivated by malice. However, Inspector M. readily accepted the plaintiff's explanation that the plaintiff's signature was forged and no serious damage ensued to the plaintiff's reputation. The court does, however, take into account the nasty and indeed malicious nature of the action and in those circumstances and in view of the other findings of the court in relation to the plaintiff's being bullied and harassed and in order to avoid any suggestion of double counting the court will award the plaintiff the sum of €25,000 under the heading of defamation.

9 Conclusion

9.1 Totalling the sum of €5,000 for special damages; €55,000 for damages for bullying and harassment and €25,000 for defamation, comes to the sum of €85,000 damages in total which I will award to the plaintiff.