

THE HIGH COURT

[2010 No. 1051 P]

BETWEEN

WALTER JOHN HARVEY

PLAINTIFF/RESPONDENT

AND

THE COURTS SERVICE, JOHN GLENNON, MARGARET O'RAFFERTY, EMER DARCY, DAVID O'SHEA, EUGENE LYNCH, P.J.  
FITZPATRICK

DEFENDANTS/APPLICANTS

**JUDGMENT of Mr. Justice Tony O'Connor delivered on the 5th day of November, 2015.**

**The application**

1. In summary this is an application by the defendants seeking:-

- (i) An order pursuant to s. 15 (2) of the Unfair Dismissals Act, 1977 striking out the plaintiff's claim as against the defendants on the grounds that the plaintiff is now barred from recovering damages at common law for wrongful dismissal which took effect from the 5th September, 2008;
- (ii) An order pursuant to o. 19 (28) of the Rules of the Superior Courts ("RSC") striking out the plaintiff's claim as against the defendants on the grounds that same discloses no reasonable cause of action or is "frivolous or vexatious";
- (iii) In the alternative an order pursuant to o. 19 (27) of the RSC striking out those matters in the plaintiff's statement of claim which are unnecessary and scandalous and which are designed to prejudice or embarrass the defendants:-
- (iv) An order pursuant to the inherent jurisdiction of the court striking out the plaintiff's action on one or more of the following grounds:-
  - (a) that the plaintiff's action is clearly unsustainable;
  - (b) that the plaintiff's action is bound to fail;
  - (c) that the plaintiff's action is frivolous and/or vexatious.

**Relevant statutory provision**

2. Section 15 of the Unfair Dismissals Act, 1977 (as amended by s. 10 of the Unfair Dismissals (Amendment) Act, 1993) with the most relevant wording underlined is:-

- (i) *"Nothing in this Act, apart from this section, shall prejudice the right of a person to recover damages at common law for wrongful dismissal.*
- (ii) *"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."*

The court rejects the plaintiff's submission at the hearing of this application that the original statutory provision enacted in 1977 may be relied upon only. Even if the original section assisted the plaintiff's claim which it does not do so, this court is obliged to uphold the law as it stands enacted by the Oireachtas.

**Previous Judgements**

3. The Supreme Court in *Parsons v. Iarnród Éireann* [1997] 2 I.R. 523, the High Court in *Paul Nolan v. Emo Oil Services Limited* [2009] 20 ELR 122 (Laffoy J.), the High Court in *Cunningham v. Intel Ireland Limited* [2013] IEHC 207 (Hedigan J.) and the High Court in *Culkin v. Sligo County Council* [2015] IEHC 46 (Kearns P.) have all established that a claim like that of the plaintiff in relation to his dismissal can be curtailed by Section 15 of the Unfair Dismissals Act, 1977 (as amended) or similar legislation.

**Employment facts**

4. The plaintiff according to his Amended Statement of Claim ("ASC") delivered on the 20th July, 2015 described himself as having been a civil servant within the Courts Service and more particularly a Service Officer from June 2000 to the 4th May, 2007 when he was suspended. It is common case that he was dismissed with effect from the 5th September, 2008.

**EAT**

5. Subsequent to his dismissal the plaintiff lodged a form T1-A with the Employment Appeals Tribunal ("EAT"). The first named defendant was identified as the "Employer's full legal name" on that form signed by the plaintiff and which was received by the EAT on the 16th January, 2009. The plaintiff in his replying affidavit sworn on the 20th July, 2015 alleged that the EAT acted in an overtly corrupt manner at the hearing of his claim in 2011. He indicated to the court at the hearing of this application that he had issued proceedings recently in relation to those allegations.

**The plenary summons**

6. The plenary summons which was issued on the 4th February, 2010 was renewed in February 2011, July 2011, January 2012 and July 2012. The endorsement of claim in the plenary summons only sought reliefs against the second to seventh named defendants and made no mention of assault or defamation.

**Amended Statement of Claim**

7. The plaintiff in his ASC delivered on the 20th July 2015 (for which leave was granted to deliver following the issue on the 2nd of

March, 2015 of the notice of motion giving rise to this judgment) described how the first named defendant was his "employer or under the aegis of the Department of Justice and Equality".

8. The plaintiff listed each of the other defendants in these proceedings as officers or employees of the first named defendant in his application to the EAT. He described them in that application as *"those engaged in detrimental wrongdoing against me [the plaintiff] in effecting the undeserved dismissal through unlawful procedural, civil and criminal act (sic) against me and who I request be summoned to answer for the actions in so effecting my dismissal from my permanent pensionable civil service position."* The original statement of claim delivered on the 15th March, 2013 ran to 26 pages of tightly typed paragraphs. The ASC contained 45 pages of tightly typed paragraphs with an "additional note of information on one page at the beginning."

### **Order 19 (3) of the RSC**

9. Counsel for the defendants submitted that the ASC did not have any proper regard to o. 19 (3) of the RSC which requires *"in a summary form a statement of the material facts"* and not the evidence by which the facts are to be proved. The plaintiff in person repeatedly submitted that he should not be disadvantaged by being a lay litigant and that the court should seek to do justice between the parties.

10. The ASC is a polemic and is not a statement in a summary form of the material facts on which the plaintiff could be allowed to rely upon for his claim. The Court does not wish to offend the plaintiff in this regard but this finding does inform the Court's decision making process for this application.

11. As for the plaintiff's submission about being a lay litigant, the court cannot differentiate between those who have professional legal representation and those who represent themselves. On occasion the administering of justice may be improved by practice directions which facilitate the hearing of applications. In this application Practice Direction 54 was applied and an "Information Sheet" (Form 1) was filed and served on behalf of the defendants who had professional legal representation. This sought to set out the relevant claim, facts, principles, statutory provisions and case law with which the court was concerned.

12. The plaintiff in the ASC sought reliefs from the court for alleged breach of his rights. The plaintiff failed to recognize or comply with the consequent obligation to comply with the laws and rules which the court must uphold in regard to the prosecution of his alleged claim for breach of his rights.

### **Assault/defamation**

13. During the course of the hearing of this application on the 21st and 22nd October, 2015 the plaintiff representing himself alleged that he was the subject of assault and defamation by one or more of the defendants and for which the first named defendant was alleged to be vicariously liable. He submitted that these claims should be considered by the court in this application as causes of action which would entitle him to damages if proven at trial.

### **Legislative constraints**

14. The law requires that such serious allegations are particularised. They are the subject of statutory provisions to which the court must have regard. Those statutory provisions include in respect of claims for damages for personal injuries the requirements of the Personal Injuries Assessment Board Act, 2003 and the Civil Liability and Courts Act, 2004. The plaintiff ignored or was oblivious to these statutory requirements. Any claim which the plaintiff may wish to pursue arising from alleged defamation is governed by the Defamation Act, 2009, which provides *inter alia* for a limitation period for one year that may be extended up to a maximum of two years if the justice of the case so requires. Claims for damages for personal injury from assault or negligence must be processed through the Personal Injuries Assessment Board and then comply with the Civil Liability and Courts Act, 2004. The Court mentions the said legislation so that the plaintiff may understand the significant impediments which he would have to overcome if the Court allowed him to prosecute any element of his claims which he sought to explain at the hearing of this application.

### **Conclusion about assault and defamation claims**

15. Neither the plenary summons nor the prolix ASC claimed damages for assault or defamation. The ASC did not disclose the necessary particulars of the actions or words. Dates and parties involved were identified in general terms. In those circumstances, the court cannot import particulars at this late stage. The plaintiff was already given the opportunity to mend his hand by the recent leave of the Court to amend his original statement of claim. The court should not look for details in a myriad of other documentation which the plaintiff mentioned during the course of the application. Neither the court nor the defendants have a duty to divine from a long narrative of alleged grievances in the ASC, causes of action or some procedure which will assist the plaintiff to have those grievances aired or resolved to his satisfaction.

16. The plaintiff has rights but those rights bring responsibilities. In this case the plaintiff has the duty to deliver a statement of claim in accordance with the RSC. The plaintiff at the hearing of this application showed his ability when pressed by the court to identify the points which he wished to make. Suffice to say at the moment that the court rejects any attempt by the plaintiff now to seek damages for assault or defamation in these proceedings.

17. The plaintiff made very serious general allegations in the ASC. He mentioned that there were contrived or false complaints made in December 2006 and in the period from 4th May, 2007 to September 2008 without setting out the words used, when they were uttered or the name of those who used those words or who heard those words. He contended that he has been denied justice but appears blissfully unaware of the rights of others. He has made general allegations of the most serious nature against fellow citizens whose names and reputations require vindication too.

### **The dismissal and the EAT**

18. The plaintiff was asked by this court on two occasions to identify the name of his employer. He did not say that he did not know the name of the employer but merely stated that he never got the terms and conditions of his employment in accordance with the Terms of Employment Information ("TEI") Acts. He assiduously avoided the question posed by the court about the name of his employer. He submitted that his application to the EAT should be disregarded when s. 15 of the Unfair Dismissals Act is considered by reason of the failure of his employer to comply with the TEI Acts.

19. A failure by an employer to comply with a statutory provision does not take away from that employer's other obligations and rights including those arising under S. 15 of the Unfair Dismissals Act.

20. The court clarifies that it was not admitted by the first named defendant that the plaintiff had not received the information required under the TEI Acts but the court takes the allegation made by the Plaintiff at its highest for the plaintiff's claim when determining an application such as is before the court now.

21. Counsel for the defendants submitted that the pleadings as originally framed and more recently amended concerned the plaintiff's dismissal. This is undoubtedly the case and is further evidenced by the facts alleged in the application to the EAT. The plaintiff commenced the process and attended a hearing of the tribunal although he has expressed grave concerns about its operation. The plaintiff himself opted to proceed by way of an application to the EAT and in doing so, he triggered the operation of s. 15 (2) of the Unfair Dismissals Act, 1977. The law as enacted by the Oireachtas and which this court is obliged to uphold means that the plaintiff's claim for wrongful dismissal at common law may not now be pursued.

22. The plaintiff further submitted that the court should alter the law given the elapse of time since 1977 and 1993 while considering his version of the operation of that provision in his case. The court is not empowered to change the legislation as the plaintiff has sought.

23. The plaintiff also argued that he ought to be able to challenge the composition of an EAT. He alluded to the challenges available to the accused and the prosecution for jury panel membership in criminal trials. Even if there was merit in any part of this argument, it is not a matter which the defendants can do anything about. In short it is not a matter which is *justiciable* between the plaintiff and the defendants.

24. The plaintiff informed the court that he recently issued separate proceedings which appear to concern the conduct of the EAT. Those proceedings which were not opened to the court, may or may not be the appropriate way for the plaintiff to proceed but the court is firmly of the view that the plaintiff's grievance about the composition of the EAT is not a matter which this court in these proceedings can determine.

#### **Mechanism for invoking section 15 (2) of the Unfair Dismissals Act**

25. Counsel for the defendants expressed a desire to be as fair as possible to the plaintiff in regard to his submissions for this application. The court has no hesitation in accepting that o. 19 (28) of the RSC which provides that any pleading may be struck out on the grounds that it discloses no reasonable cause of action, is an appropriate rule to be considered by the court in this instance. Furthermore, the court has an inherent jurisdiction to strike out proceedings where it is clear that the plaintiff's claim cannot succeed on the facts accepted or put forward by the plaintiff.

26. The plaintiff took serious issue with the phrase "*frivolous or vexatious*" and considerable time was spent at the hearing of this application by counsel for the defendants to explain the legal as opposed to the ordinary meaning of those words in that phrase. As Barron J. in *Farley v. Ireland and Others* (unreported judgment of 1st of May 1997) outlined:-

*"So far as the legality of the matter is concerned frivolous and vexatious are legal terms, they are not pejorative in any sense or possibly in the sense that Mr. Farley may think they are. It is merely a question of saying that so far as the plaintiff is concerned if he has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly, it is a hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious. And again one cannot change the principles of law to suit the merits of a particular case and to some extent I think Mr. Farley may be asking us to do that."*

*The reality of this case is that he says that the law did not protect the interests of his children. My colleagues have pointed out that the law did do that. It is the manner perhaps in which the law was administered which has resulted in what happened. I would say that no individual step has caused all the problems which Mr. Farley has faced, one step led to another and this cumulative effect has resulted in what occurred. But it seems to me that the situation now is that there is no remedy and regretfully I must agree that the appeal should be refused."*

The foregoing remains a succinct explanation of "*frivolous and vexatious*". It was given in quite a sad case concerning the alleged wrongful award of custody of two girls to a neglectful spouse who resided abroad.

#### **Tortious interference leading to loss of livelihood**

27. The court has considered the plaintiff's submissions that there may be a claim for "*tortious*" (sic) interference with his right to a livelihood in addition to a claim for wrongful dismissal. In the circumstances as outlined in the prolix ASC and giving as much leeway as possible to the plaintiff, the court fails to understand how his claims arising from his dismissal can now be cast into another cause of action called "*tortious*" (sic) interference with the right to a livelihood. The plaintiff originally had the option of pursuing a cause of action arising from his alleged wrongful dismissal at common law but he chose to proceed by way of an application to the EAT which commenced hearing his claim. Nothing that the plaintiff has pleaded in the ASC or submitted in court satisfies this court that there is some other tort or common law cause of action now open to the plaintiff.

28. The legislation provides that the plaintiff has no right to recover damages at common law for wrongful dismissal once the EAT has commenced hearing his claim. Therefore the court also finds that the plaintiff's case concerning his dismissal in this court must fail. It is clear that the plaintiff's claim cannot succeed and will lead to no possible good.

29. The court finds that the defendants have established that the plaintiff's claims in these proceedings are bound to fail even if the plaintiff's allegations in the ASC or those sought to be elaborated upon by him at the hearing of this motion were proven by the plaintiff at trial. Moreover allowing these proceedings to progress further will not afford any tangible benefit to the plaintiff.

30. The court also clarifies that it does not have the inquisitorial powers which the plaintiff might like it to have at this stage. The administration of justice in the courts is adversarial except where the Oireachtas otherwise provides. This court does not have the right to set up an enquiry into the plaintiff's long series of complaints about his employment and dismissal.

31. Therefore the plaintiff's claims as against the defendants in these proceedings will be struck out.