Neutral Citation Number: [2007] IEHC 432

THE HIGH COURT

[2007 No. 7066 P]

BETWEEN

VIDMANTAS STOSKUS

PLAINTIFF

AND
GOODE CONCRETE LIMITED

DEFENDANT

Judgment delivered by Ms. Justice Irvine on the 18th day of December 2007

1. By plenary summons dated 25th September, 2007 the plaintiff, a lorry driver employed by the defendant, instituted proceedings claiming a number of reliefs arising from the notification to him, by his employers, that he was to be subjected to a disciplinary process on 25th September, 2007. The thrust of the claim made by the plaintiff was to the effect that the procedures adopted by the defendant which ultimately led to his dismissal were in breach of the rules of natural justice and fair procedure.

2. By order of the High Court dated 25th day of September, 2007 the plaintiff obtained an interim injunction restraining the defendant, pending the hearing of an interlocutory injunction, from ceasing to pay his earnings.

3. The plaintiff's application for an interlocutory injunction was first returnable before the High Court on 15th October, 2007 and was ultimately heard by this court over two days concluding on 28th November, 2007.

4. By the time the plaintiff's application for interlocutory relief came on for hearing in the High Court the disciplinary hearing which was initially the subject matter of the plaintiff's concerns had in fact taken place and the defendant had purported to terminate the plaintiff's employment with effect from 11th October, 2007.

5. In the aforegoing circumstances the plaintiff's application at the interlocutory injunction hearing was confined to seeking a continuation of the order made by Butler J. on 25th September, 2007 restraining the defendants until the trial of the action, from ceasing to pay the plaintiff's salary . This relief was sought subject to the plaintiff's preparedness to undertake not to cross the threshold of the defendant's employment premises but to be ready at all times to carry out such work as might be demanded of him by his employers pending the trial of the action.

Brief Statement of the Facts.

6. For the purposes of the present application the court received from the respective parties a number of lengthy affidavits which were not confined to the dealings between the plaintiff and the defendant, but were directed to the management by the plaintiff 's solicitors of a significant amount of litigation brought by other employees of the defendant firm. The affidavits filed by the defendant in this respect were destined to suggest professional impropriety on the part of the plaintiff solicitor, firstly in relation to a failure to disclose a number of matters to the court on the application for the interim injunction and further to suggest that this litigation was part of some much greater plan to place the defendant company in a difficult position in terms of the costs of defending an onslaught of claims, in circumstances where the defendants had no prospect, even if successful, in recovering those costs as against the claimants.

7. The court has considered carefully the assertions made by the defendants and concludes that from the information furnished to the court by both sides that there was no impropriety in how the application for an interim injunction was sought. Further, the defendant's assertions that the fact that so many claims have been made to the Labour Relations Commission or the Equality Tribunal by their employees, represented by P.C. Moore and Company, evidences in some way a type of joint conspiracy on the part of the plaintiff's solicitors and those employees to damage the company is simply untenable. The existence of so many complaints is equally consistent with an inference that the defendant company has scant regard for the statutory rights of its employees when it comes to regulating their working conditions. For these reasons the court concludes that it should ignore the exchanges between the parties relating to matters beyond the facts of this particular case when reaching its conclusion on this application.

8. The plaintiff commenced his employment with the defendant company on 31st January, 2004. In January 2007 the plaintiff and some further twenty four employees of the defendant company made complaints to the Labour Relations Commission and the Equality Tribunal regarding their conditions of employment. These claims were initially listed for hearing on 8th October, 2007.

9. At some time in August 2007 the plaintiff was approached by his employers with an offer of €3,500 to settle his claim which was pending before the Equality Tribunal. This offer was rejected by the plaintiff.

10. On Wednesday 19th September 2007, the plaintiff was invited by the Human Resources Manager of the defendant company to attend a disciplinary meeting on Tuesday 25th September, 2007. It was indicated to the plaintiff that two incidents were to be investigated and that these had occurred on 7th and 14th of September, 2007. The plaintiff was told he could bring a colleague with him to the disciplinary hearing and was further advised that the outcome of the disciplinary hearing could lead to his dismissal.

11. The plaintiff approached his solicitors regarding the proposed disciplinary meeting and on Monday 24th September, 2007 they wrote to the defendants seeking certain information and assurances. In particular the plaintiff's solicitors sought a copy of his contract and wanted confirmation that the plaintiff was entitled to be legally represented. There were many other matters dealt with in the same letter including demands for translated statements from those who had made complaints against the plaintiff, lists of witnesses and confirmation that certain witnesses would attend the hearing. However, in the context of the ultimate submission made by counsel for the plaintiff these latter points are not of significance.

12. It should be stated in the course of this judgment that there was much debate in the affidavits as to the fluency of the plaintiff's English, he being a Lithuanian national. The defendants contended that the plaintiff had very good English and that on occasion he had acted as a translator for work colleagues who had poor English. On the other hand the plaintiff asserted that his fluency was not such that would render him fully equipped to deal with a disciplinary hearing and that he would be compromised by reason of this fact in the absence of legal representation at the disciplinary hearing.

13. In what can only be described as an extraordinary letter, but one which perhaps which can be partly explained by the defendants apparent frustration in dealing with ongoing claims by their employees, Ms. Orla Goode, on behalf of the defendant company replied by letter dated 25th September, 2007 to the effect that the plaintiff's solicitor had no *locus standi* in relation to the dispute and that their requests were of no relevance to the disciplinary proceedings. Ms. Goode in her letter advised the plaintiff solicitors that the

procedures to be adopted by the defendant company would comply with the provisions of natural justice and fair procedures and asserted that the Companies procedures were in line with the Code of Practice: Grievance and Disciplinary Procedures S.I. No 146 of 2000.

14. It is worth noting in this judgment that the plaintiff appears to have signed a contract of employment which is the first exhibit to the affidavit of Ms. Orla Goode dated 11th October, 2007 even though the court accepts that the plaintiff did not appear to recollect that he had signed such a contract and in any event had not been in a position to furnish the same to his solicitors in advance of the application for the interim injunction. Indeed if the plaintiff was not given a copy of his contract at the time it was signed it may well be the case that until such time as it was exhibited by Ms. Goode in her affidavit, the same was not in the plaintiff's possession.

15. The defendant's solicitors in their replying affidavit set out the nature of the two incidents which led to the disciplinary proceedings being brought against the plaintiff. The first incident apparently took place on 14th September, 2007 on which date it is alleged the plaintiff physically and verbally abused a Mr. Michael Carty and it is contended by the defendants that this was witnessed by a Mr. Colum Duffy. The second incident is alleged to have taken place on 17th September, 2007 when apparently due to alleged truculent behaviour on the part of the plaintiff to a Mr. Paul McWhite, a gateman at the premises of the Brooklands site in Cherry Orchard, Dublin that company terminated its business dealings with the defendant company.

16. As a result of further correspondence emanating from the plaintiff's solicitors, the disciplinary hearing was adjourned until 28th September, 2007. When the plaintiff did not attend, the meeting was re-scheduled for 3rd October, 2007. Notwithstanding the exchange of correspondence between the solicitors for the respective parties, the plaintiff duly attended the disciplinary meeting on 3rd October, 2007 and did so without any legal representation, notwithstanding his ongoing assertion that he was entitled to be represented by his solicitor. Neither did he bring any work colleague with him to the disciplinary hearing as he was entitled to do under the disciplinary code.

17. From the affidavits exchanged it appears that in circumstances where Mr. Paul McWhite was not available to give evidence that the disciplinary proceedings were confined to the incident of 14th September, 2007 on which occasion the plaintiff contends that he did not, as alleged by Mr. Carty, either physically or verbally abuse him.

18. At the conclusion of the disciplinary hearing, the plaintiff was invited, and this fact was made known to his solicitors, to provide a written statement of his case if he so wished by 5th October, 2007. No such statement was delivered and the plaintiff was duly dismissed by letter of 11th October, 2007.

19. At all stages in this action, the plaintiff has maintained that the disciplinary proceedings were in effect "trumped up" because he failed to accept his employers offer to settle his claim pending before the Equality Tribunal. Whilst the plaintiff denies any misconduct which would entitle his employers to dismiss him, his principal concern in this action is to establish that the process whereby he was dismissed was fundamentally unfair and that his employers in failing to allow him have legal representation to cross examine those making assertions against him, at his disciplinary hearing amounted to a breach of natural justice.

20. In the course of the hearing of the interlocutory injunction, particularly having regard to the limited nature of the relief sought at the interlocutory hearing, i.e. an order that the court continue to oblige the defendant to pay the plaintiff's salary until the trial to the action, subject to undertakings herein before referred to, the court requested counsel for the plaintiff to indicate what reliefs he would be seeking at the trial of the action if he established that the procedures adopted by the defendants were wanting in natural justice and fair procedures. As a result of this intervention the court was advised:

> (1) That this was not a claim for wrongful dismissal.
>
> (2) That the plaintiff's sole remedy would be one confined to seeking declaratory relief regarding the invalidity of the dismissal due to the failure on the part of the defendant to accord to the plaintiff natural justice and fair procedures.
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> (3) That damages might be sought in respect of the wrongful infliction of emotional suffering.
>
> (4) That in no circumstances would the plaintiff be contending for reinstatement of his position or seek to continue in the defendant's employment.

21. From the foregoing it appears to this Court that, even though the plaintiff may well be contending that the termination of his employment was invalid, the net effect of which determination ought to be that the plaintiff remains in the defendant's employment, he is, *de facto*, accepting that the contractual relationship between the parties cannot be restored.

22. For the aforegoing reasons, if the plaintiff is successful in this action the difference it will make to him is that he will have no shadow of misconduct clouding his C.V. when he seeks alternative employment. Further, in the event of any references being sought from the defendant by the plaintiff's future potential employers, that no reference can be made to his employment having concluded as a result of any disciplinary issue. Clearly, the plaintiff will also retain the right to pursue other remedies against the defendant, including perhaps a claim for unfair dismissal.

Legal issues

23. The court has to consider firstly the principles which apply to proceedings wherein an interlocutory injunction is sought. In terms of proof the standard to be met by the plaintiff very much depends upon whether the relief which he is seeking is prohibitiatory or mandatory in nature. It is certainly long established since the decision of the House of Lords in *American Cyanamid v. Ethicom Limited* [1975] A.C. 396 that, in common law applications for an interlocutory injunction restraining various activities, the test the court must consider is whether the plaintiff has established "that there is a serious question to be tried". However, in more recent cases, particularly where plaintiffs have sought mandatory relief in relation to an employment contract the courts have determined that the employee concerned must establish "a strong case" in order to obtain interlocutory relief. One such decision is that of Clarke J. in *Bergin v. Galway Clinic Doughiska Limited* (Unreported, High Court 2nd November, 2007). In that case the learned trial judge held as follows:

> "In any case in which an employee seeks to prevent a dismissal or a process leading to a dismissal, as a matter of common law, and in whatever terms the claim is couched, the employee concerned is seeking what is, in substance, a mandatory injunction which has the effect of necessarily continuing his contract of employment even though the employer might otherwise be entitled to terminate it. In those circumstances it is necessary for the employee concerned to establish a strong case in order to obtain interlocutory relief."

24. The same test was applied by Fennelly J. in *Maha Lingam v. Health Service Executive (ex tempore* judgment of 4th October, 2005) where in referring to the general principles to be applied the learned trial judge advised as follows:

> "The second is that the implication of an application of the present sort is that in substance what the plaintiff/appellant is seeking is a mandatory interlocutory injunction and 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 an 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 and that he is likely to succeed at the hearing of the action. So it is not sufficient for him simply to show a *prima facie* case, and in particular the courts have been slow to grant interlocutory injunctions to enforce contracts of employment."

25. Similar sentiments to those of Clarke J. and Fennelly J. referred to above were also embraced by Laffoy J. in K*urt Naujoks v. National Institute of Bioprocessing Research and Training Limited* [2007] 18 E.L.R. 25, where once again the learned trial judge determined that in order for the plaintiff to obtain a mandatory interlocutory injunction he was obliged to show that he had a "strong case" to be made at the hearing of the action.

26. On behalf of the plaintiff it was submitted that the relief sought by the plaintiff was not truly mandatory in nature given that the interlocutory relief sought was confined to an order restraining the defendants from ceasing to pay the plaintiff's salary pending the hearing of the action.

27. Whilst the relief sought by the plaintiff is framed as prohibitory in nature, the plaintiff is in effect seeking mandatory relief as he is asking the court to require the defendant perform an obligation i.e. the payment of salary, which obligation only exists in the context of an ongoing contractual relationship between the parties. In addition, the plaintiffs undertaking to be available to carry out such work as may be required by the defendant, pending the hearing of the action, is consistent with an acknowledgement that until the hearing of the action and having regard to his continued salary payments, that he too must be ready to perform the contract of employment between the parties. The Court therefore concludes that the onus of proof on the Plaintiff at this interlocutory hearing is to establish that he has a "strong" case to make at the hearing of the action.

28. For these reasons the court must consider whether or not the plaintiff has established that he has a strong case in support of his contention that his contract of employment was unlawfully terminated on 11th October, 2007 by the use of an unfair procedure which did not afford him appropriate rights of natural justice and in particular by reason of the defendants failure to permit him to be legally represented at the disciplinary hearing.

29. The two most significant features of this case as far as this court are concerned are firstly the fact that the Plaintiff in this case appears to have signed a written contract of employment which incorporates the disciplinary procedure to be applied in the event of any alleged misconduct arising. The other equally significant feature of this claim is the nature of the relief which will be sought by the Plaintiff at the hearing of the action and in particular the acceptance by him that he harbours no claim for reinstatement or a continuation of the employment contract at the date of the trial of the action. The consequence of the plaintiff establishing a want of natural justice and fair procedures automatically means that the contract of employment from a legal perspective remains in being. Hence, it is normal for a plaintiff in circumstances such as are present in a case of this nature to continue to contend for a right of re-instatement at the trial of the action even if they acknowledge that it is unlikely that re-instatement will be directed and that the matter is more likely to be dealt with by way of damages. However, in this specific case the plaintiff has de facto accepted that he will not seek re-instatement and will confine himself to the declaratory relief in the terms earlier advised.

30. It is undoubtedly the case that the plaintiff signed a contract to which there is annexed a disciplinary procedure. The disciplinary procedure is exhibited as the first exhibit to the affidavit of Ms. Orla Goode sworn on 11th October, 2007. The disciplinary procedure at clause 2.4 provides:-

> "At all stages the employees will have the right to be accompanied during any disciplinary meetings by a fellow employee but not any other person or body unconnected with the company."

32. The plaintiff seems to have signed his contract of employment with the defendants on 7th June, 2004 and committed himself by its express terms to abide by this disciplinary procedure as part of his contract. *Prima facie* his rights in relation to the conduct of a disciplinary hearing should be a matter of private law and defined by the contract between the parties.

33. Ms. Goode, in her aforementioned affidavit a para. 37 refers to a letter written by the Managing Director, Mr. Peter Goode to the plaintiffs solicitor dated 24th September, 2007 wherein it was contended that:-

> "You should further note that our procedures are in line with the code of practice: grievance and disciplinary procedures (SI No. 146 of 2000) Industrial Relations Act, 1990 and all steps necessary to ensure a fair and just process will take place."

34. The Industrial Relations Act, 1990 set up the Labour Relations Commission. One of the functions of the Commission as specified in s. 25 of the Act was stated to include the offer of guidance on codes of practice and help to resolve disputes. The Commission was also charged with preparing codes of practice concerning industrial relations to be submitted to the Minister. A Code of Practice on Grievance and Disciplinary Procedures was prepared by the Labour Relations Commission and submitted to the Minister and this code of practice is set forth in S.I. No. 146 of 2000. At Schedule I to the said Statutory Instrument, the purpose of the code is stated to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures.

35. The code itself at s. 3 records the necessity to ensure that disciplinary matters are dealt with in accordance with the principles of natural justice and fairness. At clause 6 of the general principles the code sets out, depending on the organisation, the matters which ought to be satisfied so as to ensure compliance with the principles of natural justice and fair procedures and these include:-

> "That the employee concerned is given the opportunity to respond fully to any such allegations or complaints:
>
> That the employee concerned is given the opportunity to avail of the right to be represented during the procedure."

36. Whilst there is an assertion at paragraph 13 of the Plaintiff's grounding Affidavit that he was entitled to a procedure which conformed with the aforementioned code there was no argument in the course of the interlocutory hearing as to whether the clause within the plaintiff's contract which allowed him the right to be accompanied by a fellow employee did, as contended by the defendant, meet the standards advised in the code of practice referred to in S.I. 146 of 2000. The court notes that nowhere in the

code is it specified that the right to be represented includes a right to be represented through a lawyer as is contended for in this case.

37. It appears to this court that whilst the plaintiff may have an arguable case that he was entitled, as a matter of natural justice and fair procedures, to legal representation at his disciplinary hearing, the court concludes that the plaintiff's case does not amount to a "good arguable case" and is certainly not one which is "strong" such as would support his application for what this Court believes is truly mandatory relief. In the opinion of this court the plaintiff's claim is no more than merely stateable.

38. To be successful in arguing his case at trial the plaintiff will effectively have to prove that every employee threatened with potential dismissal has a right to legal representation at his disciplinary hearing, irrespective of any contractual provision which provides for lesser representation such as representation through a colleague or trades union representative. On the plaintiff's submission, no company could oblige its employee to sign up to a contract of employment incorporating a code which would provide for anything other than full legal representation in the event of disciplinary proceedings being instituted that might lead to their dismissal. In this respect the plaintiff's assertion that he was not afforded natural justice and fair procedures by reasons of the absence of a right to legal representation places his demands for natural justice at a higher threshold than that provided for in the code of practice contained in S.I. No. 146/2000.

39. If the plaintiff had not signed a contract of employment or had signed a contract of employment which was silent as to the disciplinary procedure to be followed in a case of alleged misconduct, then the plaintiff might be in a stronger position to contend that the rules of natural justice and fair procedures should be implied into the agreement so as to entitle him, in the context of his nationality, ability to speak English and other factors to have a right to legal representation.

40. Many of the cases relied upon by the plaintiff are not supportive of the forceful assertion made by the plaintiff that he was entitled, as a matter of natural and constitutional justice to legal representation at his disciplinary hearing. In this respect reliance upon the decision in *Maguire v. Ardagh* [2002] I.R. p 704, having regard to the fact of this case, is, in this court's opinion, misplaced.

41. What *Maguire v. Ardagh* was concerned with were the rights of natural justice and fair procedures to be accorded to an individual subjected to scrutiny at a public inquiry. The court in that judgment made it clear that the sub-committee conducting that inquiry was obliged in such circumstances to afford natural and constitutional justice to those against whom adverse findings might be made. The decision of Hardiman J. as is relied upon by the plaintiff *Maguire v Ardagh* related to public law issues which cannot be applied to issues of private law which in this case intimately concern a code of conduct incorporated into the plaintiff's contract of employment which has express conditions relating to the disciplinary procedure.

42. Having regard to the contractual provisions between the plaintiff and the defendant in this case, the legal position which arises is distinguishable from the facts of a number of the cases opened to the court on behalf of the plaintiff. In *Flanagan v. U.C.D.* [1988] 1 I.R. 724 what was impugned was the disciplinary procedure operated by the university in respect of a post graduate student who was disciplined for alleged plagiarism. The court in that case roundly criticised many aspects of the disciplinary procedure adopted by the college including the failure of the college to give the applicant details in writing regarding the precise charges made against her, the delegation to an independent expert of the decision as to whether or not the applicant was guilty or not guilty of plagiarism and also in their failure to allow the applicant to be represented. However, that case is distinguishable from the facts of the present case firstly having regard to the fact that the plaintiff had not signed up to any disciplinary code as a student of UCD which confined her to rules which gave her no automatic right to legal representation. Further, the disciplinary charges were viewed by Barron J. as being akin to a charge of cheating which he considered to be the most serious academic breach of discipline possible thereby influencing the court to conclude that she was entitled to a procedure fairly close to the approach that might be adopted by a court deciding a similar issue.

43. Similarly, in *Gallagher v. The Revenue Commissioners* [1995] 1 I.L.R.M. 241, the court was asked to review the procedure adopted by the defendants prior to suspending the plaintiff for allegedly understating the value of vehicles seized, thus causing a loss of revenue to the State. The plaintiff opted for an oral inquiry. The first named defendant refused to permit him legal representation or to allow him to see in advance the statements of the other customs officers who had investigated the case against him. In addition, the first named defendant refused to furnish to the plaintiff the transcript of interviews which the customs officers had with him. Whilst Blayney J. held that the plaintiff was entitled to legal representation at the inquiry, once again this was not a case where there was any contractual agreement between the parties as to the disciplinary code to be operated in the event of an inquiry being required.

44. Whilst it is not for this court to seek to determine the ultimate result of this action the court nonetheless notes the strong case that exists for the contention that the plaintiff had no automatic right to legal representation as per the decision of Finlay C.J. in *O'Neill v. Iarnrod Eireann* [1988] I.R. 724, where in dealing with disciplinary procedures implemented by the defendant when enquiring into an alleged offence on the part of the plaintiff, a food and beverage manager in the employment of Iarnród Éireann, the court held as follows:

> "On the papers before the court it does not appear to be disputed by the applicant who has supplied to the court an extract from the staff relations scheme, which apparently applies in this case, that the provisions of that scheme permit at the hearing of an inquiry into the disciplinary offence the person being enquired into to be accompanied, if he so desires, by a spokesman who shall either be a fellow employee or a representative of his trade union."

45. Similarly in *Aziz v. Midland Health Board*, Barr J (9th December 1994) the court was asked to review the procedures adopted by the Health Board which led to its decision to suspend the applicant from his position as medical registrar at Tullamore General Hospital. One of the complaints made by the Plaintiff concerned the defendant's failure to allow the applicants solicitor attend one of the meetings conducted in the course of the inquiry. Regarding whether or not there was a general right to legal representation at a quasi judicial disciplinary hearing Barr J. concluded that there was no such right.

46. Having regard to the aforementioned decisions and to all of those decisions relied upon by both of the parties in this application court concludes that the plaintiff has not established a strong case so as to justify a mandatory order. In reaching this conclusion the court also has considered the fact that the plaintiff did have the benefit of legal advice prior to attending at the disciplinary hearing which ultimately took place on 3rd October, 2007. In addition, the Plaintiff had a right to be accompanied by a colleague of his choice which right he declined to avail of. Further, the court notes that the defendants advised the plaintiff as to his right to make a written statement prior to an ultimate decision being made at the conclusion of the oral hearing and of which fact the plaintiff's solicitors were appraised.

47. Lest the court be wrong regarding the strength of the case which the plaintiff needs to establish to obtain a mandatory

interlocutory injunction the court has also considered whether the balance of justice and convenience in this case is in favour of granting the reliefs sought.

48. In this regard it is relevant to state again that the plaintiff will not, at the trial of the action, seek reinstatement but apparently will confine his relief to a declaration that the procedures adopted by the defendants at the time of his dismissal were wanting in natural justice and fair procedures. The court was also advised that the plaintiff may seek damages limited to the infliction of emotional suffering. In these circumstances, where the plaintiff effectively accepts that as of the date of the trial of the action that his relationship with his employers will cease in any event, the court does not believe that the balance of justice and convenience justifies the continuation of the relationship between the parties by obliging the employer to pay the plaintiffs salary albeit that the plaintiff must hold himself free to provides services for the defendant, should the defendant so wish, pending a trial of the action. To grant the injunction sought would merely postpone the time at which the plaintiff will in any event have to seek alternative employment.

49. Further, given that trust and confidence appears to broken down to the extent that the Plaintiff will not seek re instatement at trial, the court views the undertaking being given by the plaintiff to provide services as may be demanded of him by employers in the period up to trial as being one unlikely to benefit the defendants whilst being one which simultaneously precludes the plaintiff from seeking to obtain new employment.

50. It is easy to see why the court in certain circumstances would grant an employee an injunction of the nature sought at this interlocutory hearing on the basis of the undertakings being tendered. This is what happened in *Fennelly v. Assicurazioni* a decision of Costello J. of 12th March, 1985. In that case however, the plaintiff who had given up a permanent and pensionable position in An Garda Síochána and who had taken up the position of a claims handler with the defendant was allegedly made redundant by reason of a fall off in the defendants business. The plaintiff alleged that he had a twelve year fixed contract and sought an injunction restraining his dismissal pending the hearing of the action. Costello J. granted an interlocutory injunction requiring the defendant to pay the plaintiff salary until the trial of the action, but did so fortified by the fact that the plaintiff seemed to have documentary evidence supporting his assertion that he had a contractual right to a twelve year fixed contract. Costello J. was impressed by the fact that the Plaintiff had given up a permanent position in An Garda Síochána to take up employment with the Defendant and concluded that this was strong evidence that he was given such a contractual terms by his employers. Further, in that case, Costello J. clearly believed that there was a real prospect of the plaintiff continuing in employment with his employer if he was successful at the trial of the action, unlike in the present case where the plaintiff accepts that irrespective of the outcome he will not continue to work for the Defendant.

51. A similar injunction was granted in *Doyle v. Grangeford Precast Concrete Limited* [1998] E.L.R. 260. In that case the plaintiff, who had been employed as a safety officer by the defendant some months after he had agreed terms of employment, received a letter setting out the purported terms and conditions pertaining to his employment which he believed had not been included at the time of the original agreement and consequently refused to sign his letter of appointment. The defendant then purported to terminate his employment and the plaintiff sought an interlocutory injunction which was ultimately dealt with by O'Donovan J. on appeal in the High Court. Even though the Court held that there may well have been a breakdown of trust and confidence between the parties it nonetheless granted an Interlocutory Injunction restraining the Defendant from ceasing to pay the Plaintiff's salary pending the hearing of the action. Whilst the Court in that case determined that the likelihood was that, even if the plaintiff was successful at the hearing, his remedy was likely to lie in damages rather than reinstatement there still remained a claim for re instatement and /or damages in lieu thereof.

52. What was also significant in that case was the statement by O'Donovan J. that he was satisfied that the plaintiff would be "somewhat stricken in his financial circumstances were he to await the outcome of the trial of this action without any salary". This is a statement somewhat akin to that recorded by Costello J. in *Fennelly v. Assicurazioni* where the trial judge referred to the fact that the plaintiff, if an injunction were not granted, would "be left without a salary and nothing to live on" pending the hearing of the action. Similar comments were made by Laffoy J. in *Curt Naujoks v. National Institute of Bio Processing Research and Training Limited* [2007] 18 E.L.R. 25, where the trial judge referred to the plaintiff as having made out a strong case that, if the injunction were not granted, he would suffer irreparable loss, both financial and reputational, because of the nature of the position at issue, his age, his prospects of finding alternative employment, his family circumstances and the fact that he had relocated from Munich to take up the position, the subject matter of the injunction.

53. The Affidavits in the present case do not contain the relevant details which would allow the court make a similar pronouncement in the present case which fact further weakens the Plaintiffs claim on the issue as to whether the balance of justice and convenience favours the granting of the relief sought. This is particularly so given that contractual dealings between the parties will in any event be at an end at the conclusion of the trial. It is clear that the plaintiff will have to seek alternative employment either now or at latest following the trial of this action and the court believes that this process should commence with immediate effect and should not be deferred on the terms sought.

54. For all of the aforementioned reasons the court refuses the plaintiff's application.