THE COURT OF APPEAL

[2015 No. 92]

The President
Peart J.
Hogan J.

BETWEEN

MARY MCENEANEY

APPLICANT

AND

CAVAN AND MONAGHAN EDUCATION AND TRAINING BOARD

AND MARTIN O'BRIEN

RESPONDENTS

JUDGMENT of the President delivered on 2nd March 2016

1. This is an appeal against the judgment of the High Court (Kearns P.) delivered on 19th September 2014 and the subsequent order that was made consequential on the judgment on 29th January 2015. The High Court rejected the claim by Ms. McEneaney for judicial review by way of certiorari of an order that she be transferred from the school where she had been working in the employment of the Board from 1999 until 2013 to another school in County Cavan. She also seeks to review the decision made by the Board to place her on administrative leave in October 2013.

Background Facts
2. The plaintiff is a teacher of home economics and she began work with Monaghan VEC, the predecessor of the respondent Board, in 1999. She was made permanent in 2002. She worked at Largy College in Clones, County Monghan from 1999 until the events with which we are concerned in this appeal and which culminated in a decision made in August 2013 to transfer her. The Chief Executive Officer of Largy College, who is the other respondent, ordered that Ms. McEneaney should transfer to St. Mogues College, Bawnboy, County Cavan in circumstances that will be described.

3. In early 2013, the Principal of Largy College received a number of complaints from parents and pupils in the school about Ms. McEneaney. These complaints related, inter alia, to her behaviour during classes; her failure to cover the appropriate courses prescribed for State examinations and her absences. The Principal was also aware of other concerns about Ms. McEneaney's mental health from the previous year and earlier by reason of information that she had been given by the school Chaplain and also from her own personal knowledge. She told Ms. McEneaney about the complaints and gave her a copy of a circular published by the Department of Education and Science which is known as Circular 59/2009 that deals with the procedure in cases of disciplinary action in respect of teachers in vocational schools.

4. Because of the concerns that I mentioned, the Board referred Ms. McEneaney for a medical report. On 20th February 2013, the doctor reported that Ms. McEneaney was medically fit for work. The next development was a meeting of 22nd February 2013 between the representatives of the Board, including the school Principal, and the applicant and her trade union representatives. The representatives made clear their wish that this matter should be dealt with informally and the Board representatives were agreeable. The union suggested that the matter might be dealt with by having Ms. McEneaney participate in a team teaching approach. This was an expression that was understood by the various people at the meeting as referring to a particular system of assistance that would be available. The meeting adjourned for a time and Ms. McEneaney made clear to the union representative that she was not agreeable to this course. She also passed a note to one official that caused considerable alarm. She said in this note, among other things, that she was feeling suicidal at the time. Understandably, the meeting did not resume. The concern at that stage was that Ms. McEneaney would arrange for suitable medical treatment to be obtained and that was done. She was then out of work, certified as unfit by her own doctors until 19th March 2013. The Board again wanted confirmation from their medical referee, Dr. Ryan, as to the plaintiff's fitness for work, and he reported on 9th April 2013 that his opinion was that she was not fit at that stage, although I think that there might be some disagreement by Ms. McEneaney's doctors.

5. At a meeting on 17th June 2013 attended by the CEO of the Board, Mr. O'Brien, the applicant's representative requested that she be transferred from Largy College. She later herself confirmed that request at the meeting. Mr. O'Brien was sympathetic and said he would see if that could be arranged.

6. Dr. Ryan examined Ms. McEneaney again on 28th June 2013 and wrote on 9th July 2013 to the effect that she was not disabled from work. In his report, he referred to the possibility of a transfer and that she would need supports in her work.

7. At this stage, Ms. McEneaney withdrew her transfer request. A meeting was then arranged for 2nd August 2013 at which the Chief Executive outlined the choice between Ms. McEneaney's remaining at Largy College and facing an investigation or that she could transfer to Bawnboy which was a smaller school where her classes would be smaller and fewer and circumstances would be more congenial. On 7th August 2013, Ms. McEneaney sent a letter in which she refused to transfer, saying that she would remain at Largy College. A further meeting took place on 16th August 2013 at which Mr. O'Brien informed the applicant that remaining at Largy College was out of the question and that he was going to transfer her to Bawnboy. This he confirmed by letter of 17th August 2013 in which he referred to the duty of care on the Board to the students and pupils of Largy College, and indeed to Ms. McEneaney herself, that it was the Board's view that this was in her best interest. He said that support would be provided and that she would also be mentored in Bawnboy. He referred to Memorandum V7, clause 20.1 providing for a change of headquarters and he directed that her headquarters would change from Largy to Bawnboy.

8. By letter of 21st August 2013, solicitors for Ms. McEneaney wrote seeking that Mr. O'Brien would rescind the decision. On 23rd August 2013, the High Court granted leave to bring judicial review proceedings. On 13th September 2013, the Board wrote, confirming that Ms. McEneaney would be placed on administrative leave and then clarified the situation on 25th October 2013 in respect of the leave, saying that it was not related to the outcome of the judicial review proceedings.

9. In the result, the applicant brought her application for judicial review by way of certiorari, firstly, in respect of the order to transfer from Largy College, Clones to St. Mogues, Bawnboy, and, secondly, in respect of the decision to put her on administrative leave. That had arisen when Ms. McEneaney refused to transfer from Largy. By that stage, the Board had appointed a different home economics teacher for the year 2013/2014.

10. The Chief Executive informed Ms. McEneaney that she was going to be transferred to Bawnboy, notwithstanding her stated desire to remain in Largy. He indicated that he was doing so for a trial period of one year, in the first instance, and that it was open to her to apply for a return to Largy in due course.

The High Court Judgment

11. Kearns P. refused the relief sought by the applicant. In his judgment, he held that she was entitled to assume that Circular 59/2009 would operate to the maximum extent practicable. The process never got beyond the informal stage which was the first of several stages envisaged by the circular. That was because of Ms. McEneaney's conduct, her decisions and her changes of mind. He held that Ms. McEneaney had collapsed the process at the February 2013 meeting.

12. In July and August 2013, the Board had an unresolved significant problem in the events that had happened, taking account of the circumstances that had taken place up to date including the medical developments, the meetings and the transfer request. Instead of returning to Circular 59/2009 and adopting or continuing with the subsequent stages of the disciplinary process, the Board made its decision about the transfer and subsequently placed Ms. McEneaney on administrative leave with full pay.

13. The judge held that Circular 59 was not prescriptive of application in all circumstances. The document itself envisaged that not all circumstances could be anticipated. The circumstances of the case included the serious nature of the problem which included the information that was contained in the affidavits relating to concerns of the Chaplain and colleagues of the applicant at Largy College.

14. The court held that Memorandum V7 at clause 20 allowed the teachers' headquarters to be changed. The judge held that the decisions as to transfer on administrative leave were not taken as a penalty imposed on Ms. McEneaney. It was permissible to place a teacher, such as Ms. McEneaney, on administrative leave with full pay when circumstances required. In this case, the circumstances warranted that course because the decisions were not punitive and represented no more than good administration.

15. The judge finally concluded that it was a great pity that Ms. McEneaney had not adopted the informal mode of disposing of the problem in this case and the sensible solutions that had been adopted by the Board, but instead had elected to remain in Largy College and turn down the offer of a transfer to a less demanding environment for a teacher and with the supports that were available to her.

Circular 59/2009 and Memorandum V7

16. Before considering the appeal, it is necessary to refer to Circular 59/2009 and Memorandum V7. The Circular was circulated in September 2009 by the Department of Education and Science. It is entitled "Revised Procedures for Suspension and Dismissal of Teachers" and it represents a scheme that was agreed by vocational education committees, teacher unions and the Department. The scheme provides for two separate strands to deal with professional competence issues and those relating to work, conduct and matters other than professional competence.

17. Dealing with general principles, the document says that the essential elements had procedures for dealing with disciplinary issues must be rational and fair, the basis for action should be clear, the range of penalties well-defined and there should be an appeal mechanism. Two paragraphs deserve quotation:

> "Every effort will be made by the Principal to address alleged or perceived shortcomings in work and conduct through informal means without invoking the formal disciplinary procedure."
>
> "Where circumstances warrant, a teacher may be placed on administrative leave with full pay pending an investigation, or pending the outcome of an investigation, a disciplinary hearing/meeting or the outcome of the disciplinary hearing/meeting."

18. 16A: The section dealing with procedures relating to teachers experiencing professional competence issues records that the process "must recognise the reality the professional competence issues are often of a transient nature and may have their origin in issues of personal or professional nature which are of relatively short time duration." Parental complaints are to be addressed by the Principal in the first instance. These matters should be dealt with in stages going from informal to formal "which may at the end of the process have recourse to disciplinary action".

19. 16B: In regard to matters other than professional competence, a very similar approach is adopted. Matters proceed again from informal to formal with the clear intention that issues should be dealt with at the lowest level and with the least formality so as one would expect it is hoped that problems will be dealt with expeditiously and informally. This section envisages help being provided to a teacher who is having problems other than issues of professional competence. Attention is to be given to whether a shortcoming is due to personal, health domestic circumstances and help is to be given where possible. It is only if a "teacher's work or conduct does not meet the required standards despite informal intervention as set out above the matter will be dealt with under the following disciplinary procedure." Stage 1 is a verbal warning and the matter then becomes more serious in stages.

20. 16C: Memorandum V7 is a document concerning the terms of appointment of a teacher in a school operated by a vocational education committee. There are provisions concerning a proposal for appointment, the advertising of the position, qualifications and other features. Clause 20 of this document is headed 'Headquarters, Travelling and Maintenance Allowances'. This provides that a teacher shall have definite headquarters, which is relevant to travelling and maintenance allowances, inter-alia. Subclause (vii) provides as follows: –

> "Before the headquarters of a teacher is changed from one centre to another, the alteration shall be discussed with the teacher in the first instance and shall not take effect until reasonable notice has been given."

The Cases Cited

Becker v. Duggan [2009] 4 I.R. 1
21. Facts: The applicant sought an order of certiorari quashing the decision of the respondent, determining that the procedures employed by the interview board were not unfair and upholding the decision of the Board of management not to appoint the applicant to the posts applied for. The applicant submitted that the refusal by the respondent to direct replies to certain letters written by her and his refusal to direct documentation sought by the applicant to be furnished to her in advance of the appeal amounted to a denial of fair procedures and natural justice, particularly in light of the fact that she had taken issue with the agreed summary from the interview board of what transpired at her interview and challenged the accuracy of same.

22. Held by O'Neill J. in granting certiorari: that in the circumstances of this case, natural justice and fair procedures required that the applicant should have had access to the written notes made by the members of the interview board prior to the appeal. The failure by the respondent to direct the disclosure of such documentation and his failure to take any steps to test the veracity of the contentions made by either side amounted to a breach of natural justice and fair procedures.

Browne v. The Board of Management of Rathfarnham Parish National School [2008] 1 I.R. 70
23. The applicant had applied to the first respondent for a position as Principal of the school it managed. The applicant applied to the High Court on the 3rd March 2005 and was granted leave by the High Court (Hanna J.) to apply for, inter alia, an order of certiorari quashing a decision of the first respondent made on the 30th November 2004, whereby it nominated the notice party for appointment to the post of Principal. That decision was subject to approval by the second respondent and sanction by the third respondent, which approval and sanction had not been forthcoming until the 28th January 2005 and 1st February 2005, respectively. The applicant contended that the appropriate procedures, as set out in the rules of procedure for boards of management of national schools made pursuant to s. 23 of the Act of 1998, had not been complied with in relation to the appointment of the notice party. The respondents contended, inter alia, that the applicant was out of time in making the application and that the decision was not amenable to relief by way of judicial review and that the rules were merely directory and not mandatory.

24. Held by the High Court (Quirke J.), in granting the relief sought:

> (i) That the decision to nominate the notice party for appointment was not a decision which was solely and exclusively derived from an individual contract made in private law, but was made pursuant to the exercise of a power conferred upon the first respondent pursuant to the provisions of s. 23 of the Act of 1998 under the rules of procedure. Beirne v. Commissioner of An Garda Síochána [1993] I.L.R.M. 1, Geoghegan v. Institute of Chartered Accountants in Ireland [1995] 3 I.R. 86; Irish Refining plc v. Commissioner of Valuation [1990] 1 I.R. 568, and Rafferty v. Bus Éireann [1997] 2 I. R. 484 considered. Becker v. St. Dominic's Secondary School [2005] IEHC 169, (Unreported, High Court, Peart J. 14th April 2005) distinguished.
>
> (ii) That the intention of the rules of procedure made pursuant to s. 23 of the Act of 1998 was not to accommodate the administrative convenience of the first respondent but to provide a fair selection process for candidates which required the application of specific fair procedures in the appointment of principal teachers and in applying those procedures, the first respondent was required to exercise its functions judicially.
>
> (iii) That whilst the rules did not form part of a statute and could not be construed as such, they comprised rules of procedure authorised by statute and formed part of a statutory regime.
>
> (iv) That the requirement imposed by s. 23 of the Act of 1998 that the first respondent should apply agreed procedures to the appointment of principals was mandatory, having regard to the statutory scheme as a whole and the meaning, intention and objective of the Act of 1998, including its preamble.
>
> (v) That, as the second respondent's approval had been suspended until the 28th January, 2005 and the third respondent did not sanction the appointment until the 1st February, 2005, the grounds for relief did not arise until then and the applicant had acted promptly in seeking leave thereafter.

Carr v Minister for Education and Science and City of Limerick Vocational Education Committee [2001] 2 ILRM 272
25. The applicant was appointed by the second named respondent ('the VEC') as Principal to a post-primary school in 1970. Her appointment was governed by a written contract and also the provisions of The Vocational Education Act 1930, as amended by The Vocational Education (Amendment) Act 1944. The school of which the applicant was the Principal was closed down in 1976. However, this did not bring her employment to an end as there were statutory limitations on her removal. Her contract did, however, provide that she could be transferred as principal to another school within the respondent's jurisdiction. Prior to the closure of the school the applicant had been suspended from duty pursuant to s. 7 of the Vocational Education (Amendment) Act 1944.

26. In 1980, the applicant was informed by the VEC that the first named respondent (the Minister) had decided to terminate that suspension and that the applicant should be paid the remuneration withheld. Following the removal of the suspension, the VEC adopted the attitude that, as the school had been closed down they could simply employ the applicant as an ordinary teacher, but pay her the salary she would have received as Principal. The applicant did not report for duty on a specified date and so the VEC treated her as having repudiated her contract. Accordingly, it refused to pay her from that point on.

27. Proceedings were instituted by the applicant which went to the Supreme Court. Finlay C.J. in that court pointed out that in accordance with the terms of her contract, the applicant could only be given the position of an ordinary teacher if her work as Principal was deemed unsatisfactory. It followed, therefore, that the applicant's contract had not been lawfully terminated. Finlay C.J. noted that if it was impossible for the VEC to offer the applicant an equivalent job as Principal, then, with the consent of the Minister, she could be made redundant.

28. Following this decision, the VEC and the Minister exchanged numerous letters whereby the VEC attempted to acquire the Minister's consent for the removal of the applicant from her position as Principal. The VEC sought to equate the Supreme Court's decision that the consent of the Minister was necessary to remove the applicant from her position with the power vested in the Minister to remove an officer pursuant to s. 23(4) of the Vocational Education Act 1930. The Minister replied that in order to remove the applicant, pursuant to s. 23(4) of that Act, a reason had to be given. The Minister also advised the VEC to write to the applicant to warn her that no equivalent suitable position existed for her and that if she was unwilling to take up some alternative position she would be removed from office. The VEC responded by letter and set out its reasons for requesting the removal of the applicant. The

VEC also informed the Minister that it had attempted on numerous occasions to consult with the applicant but had been largely unsuccessful. The Minister responded by saying that before he would give his approval for the removal of the applicant she should be informed of what was proposed, the reasons for it and be invited to make submissions. Eventually the respondents agreed to appoint a facilitator with the task of entering into negotiations with the applicant in an attempt to reach an agreed solution. It was accepted that the applicant had, to this point, ignored all overtures made by the VEC to reach such a solution. That facilitator made numerous efforts to contact the applicant but was unsuccessful and he concluded that the applicant's co-operation was never likely to be forthcoming. The Minister wrote to the applicant saying that he would be forced to suspend the applicant's salary under the provisions of s. 7 of the Vocational Education (Amendment) Act 1944 if she refused to make herself available for discussions. When the applicant did not reply to this letter, the Minister suspended payment of her salary.

29. The applicant was granted an order of certiorari by Morris P. in the High Court on 25th August 1999, quashing a decision made by both respondents purporting to suspend payment of her salary. The High Court also made a declaratory order to this effect and an order that all arrears of salary be paid to the applicant. The respondents appealed.

30. Held by the Supreme Court (Geoghegan J; Keane C.J., McGuinness, Hardiman and Fennelly JJ concurring) in dismissing the appeal and affirming the order of the High Court:

> (1) S. 7 of the Vocational Education (Amendment) Act 1944 did not give the Minister power to suspend payment of salary on the grounds of unreasonable behaviour or otherwise. To rely on a statutory power to suspend salary it was necessary to point to a statutory power which expressly permitted it. Furthermore the Minister could not attempt to assert a common law right to suspend the applicant's salary as at all material times he attempted to rely on a statutory power to do so.
>
> (2) In any event, it was difficult to see how a common law right to direct the withholding of salary could arise. As the salary of the applicant was paid by the VEC, albeit funded by the Minister, he could not avail of any contractual rights which might be available to an employer.
>
> (3) This was not a suitable case for the court to exercise its discretion to refuse to grant the orders of certiorari and mandamus sought. Unlike cases where an order for certiorari had been refused because the applicant was guilty of procedural unreasonableness in this case the applicant was guilty of, at most, substantive unreasonableness. The decision to suspend payment of salary had no conceivable statutory basis and so it was not a suitable case for the court to exercise its discretion to refuse the orders sought. Aherne v. Minister for Industry and Commerce (No. 2) [1991] 1 I.R. 462 and State (Abenglen Properties Ltd) v. Dublin Corporation [1984] I.R. 381; [1982] ILRM 590 distinguished.
>
> (4) As the applicant was in a contractual relationship with the VEC, she had an implied obligation to enter discussions with it as to alternative arrangements for her employment. The applicant was in breach of her contract as she had not done this. However, as this was not pleaded in the statement of opposition it could not act as an answer to the application at hand. Furthermore, the nature of the case was such as to make it an inappropriate case for the court to exercise its discretion to refuse the orders sought. Miles v. Wakefield Metropolitan District Council [1987] 1 AC 539 considered.
>
> Per curiam: The dismissal of the appeal and affirmation of the order of the High Court would not preclude the VEC from instituting an action for damages for breach of contract against the applicant. Furthermore the earlier decision of the Supreme Court was to be followed in that the applicant could be made redundant by the VEC it if first obtained the consent of the Minister.

The Appeal

31. The essence of the appeal is helpfully summarised in the written submissions in four propositions. First, it was submitted that the Board cannot rely on complaints about Ms. McEneaney's competence in order to justify the decisions to transfer her and to place her on administrative leave because Circular 59/2009 has not been implemented. It has statutory effect and the Board was obliged to implement it in respect of such complaints. Secondly, neither can the Board rely on Ms. McEneaney's health because the Board's own doctor certified her fit to work on 9th July 2013. Thirdly, Memorandum V7, para. 20 does not entitle the Board to transfer a teacher; moreover, it should never be invoked to deal with complaints which are within Circular 59/2009. Fourthly, the decisions were in breach of Ms. McEneaney's right to fair procedures.

32. The appellant argues that Circular 59/2009 has statutory force. The circular arose out of discussions that took place between Vocational Education Committees, the teacher unions and the Department of Education & Science as a result of which revised procedures in relation to professional competence issues and general disciplinary matters were agreed. The circular was notified to Vocational Education Committees in September 2009. The background is stated at the opening paragraph where it is noted that the provisions of s. 24 of the Education Act 1998 ("the 1998 Act") did not apply to teachers in schools established by Vocational Education Committees. That section provided for the publication of agreed procedures. However, the situation is now that the Education (Amendment) Act 2012 amended the 1998 Act by substituting a new s. 24 for the original one. As thus amended, s. 24 of the 1998 Act now includes Vocational Education Committee schools. The point is made, therefore, that the circular was originally excluded from this statutory character, but then when the new s. 24 was applied, it had to be deemed to be included.

33. This seems to be a somewhat questionable proposition, but I do not think it makes a great deal of difference one way or the other. The fact is that the Principal of Largy College presented Ms. McEneaney with a copy of Circular 59/2009, clearly with the intention of putting it into effect or beginning that process and Ms. McEneaney was entitled to assume that this is the scheme that the Board was adopting for use in her case. The President of the High Court held that Ms. McEneaney had a legitimate expectation that this circular would apply. In the circumstances, since it is accepted that the circular is the applicable document, then it seems to me that one must begin by assuming that this is the case. Even if it could be debated as to whether the circular is in fact applicable, or was at the time, I do not see how the Board could or would seek to avoid its application.

34. For what it is worth, it seems to me that one is on unsafe legal ground in saying that there was statutory authority for the Circular in vocational schools. The scheme in the 2009 Circular was published with the express knowledge and against the background that section 24 of the 1998 Act did not apply to such schools at the time. However, it is submitted that when the new version of section was introduced following the enactment of the 2012 Act, this had the effect of making the non-statutory scheme statutory. I do not see how that logic can be approved. My view is that the new section 24, as applied by section 6 of the 2012 Act, envisages schemes that are going to be approved and agreed in the future, but it does not clothe those that are already in existence with retrospective statutory effect.

35. Another point which arises is what it means to have statutory effect. The section, whether the old or the new, provides for the agreement of disciplinary procedures following negotiations between the relevant stakeholder parties. Clearly, that authorises the process of agreement, and when agreement has been reached, the implementation of the procedures as agreed. I do not see it as requiring absolute adherence to every particular element of the procedures, but perhaps that is a misunderstanding on my part. I see it as authorising the process of agreement and as clothing the subsequent product in the form of a disciplinary process with statutory authority in general terms. But such agreements as are reached and are applicable at any particular time are to be enforced in accordance with their own terms as I see it.

36. This first point, therefore, as to whether the circular has statutory effect, I think is incorrect, but it do not think that that makes any difference because it is clearly a process that was intended to apply to Vocational schools, and not only that, it was invoked by the Board in this specific case.

37. The next topic addressed in the written submissions is whether the Board was entitled to ignore the circular because of the behaviour of Ms. McEneaney and this begins with the submissions that "Kearns P. erred in holding, in effect, that the appellant's behaviour excused the respondent from complying with Circular 59/2009". I do not think that that is what Kearns P. decided.

38. I think that Kearns P. held that the process never proceeded beyond the informal stage. That came about in the particular circumstances that I have outlined. There was, in the first place, the series of complaints presented by the Principal to Ms. McEneaney at the time when she first spoke to her in January 2013. The Principal was also concerned, for reasons that I have mentioned (which are set out in detail in her affidavit and that of Mr. O'Brien) with Ms. McEneaney's health and that was the reason for the reference to Dr. Ryan for a report that the Board wanted. In her statement of grounds, Ms. McEneaney complains about that on the basis that it was medicalising the problem, but I do not agree with that. In my view, there was ample basis for the Board to be concerned with the question of Ms. McEneaney's mental health and the background information to justify that is contained in the affidavits, particularly in that of Ms. Sharon Magennis, the Principal of Largy College.

39. This really is the essence of the case as I see it. I do not agree that Kearns P. decided that the Board was entitled to or did in fact abandon the procedure in Circular 59/2009 by reason of the behaviour of Ms. McEneaney. The actual procedure is that the matter should be dealt with at the lowest level practicable or possible. The process envisages going from informal resolution through a series of steps, ultimately to a formal hearing, and that is the conclusion of the process subject to a right of appeal that is also provided in the scheme outlined in the circular. It will appear that the precise steps envisaged, even in regard to the informal process, could be criticised as not being exactly in conformity with the paragraphs in the circular, but that is not a case that is made on Ms. McEneaney's behalf and so I do not have to consider it.

40. The essence of the case, accordingly, is that what began as a disciplinary process very soon translated into a concern about Ms. McEneaney's mental health. That happened in the first place because of the knowledge that Ms. Magennis had about prior events to the actual five complaints that came in during January 2013 and which she presented to Ms. McEneaney. In fact, those concerns were assuaged by the report of Dr. Ryan that came in on 20th February 2013. Then there was the meeting of 27th February 2013 which resurrected all the anxieties, and indeed deepened them, because of the reference by Ms. McEneaney to suicide. It is clear that at this stage, the concerns of everybody at the meeting were that Ms. McEneaney should get proper treatment and arrangements were made on the spot that she would contact her doctor and the parties were ultimately satisfied that she had actually made an appointment. Further progress was accordingly stayed at that point.

41. Therefore, at the end of the 27th February 2013 meeting, there was a dramatic development. It was not actually at the end of the meeting – there was an intermission during which Ms. McEneaney was considering the situation and in which she was communicating her disagreement with the team teaching suggestion to the trade union representatives who were acting on her behalf and who had put forward that proposal. She was very unhappy with that and rejected it. But then came the communication about her own state of mental health and suicidal ideation. The meeting was accordingly interrupted or even abandoned, but the process of informal resolution of the case was not stopped at that point. Indeed, it is entirely legitimate to look at the situation at that point as being not a disciplinary matter at all, but entirely a human relations problem that was now confronting the Board as Ms. McEneaney's employers.

42. Next, was the certification by Ms. McEneaney's own doctors of her unfitness for work and that was entirely understandable. Equally clear and equally understandable was the Board's concern that it should get its own confirmation as to her fitness for work. Notwithstanding that, Ms. McEneaney's doctors were satisfied as to her capacity. During the period between the March certification of fitness by Ms. McEneaney's doctors and the July confirmation by Dr. Ryan, to whom she was referred once again by the Board, there was her request for a transfer. Mr. O'Brien, the CEO, was not immediately able to confirm that this would happen because he did not know if it would be possible. He was, however, sympathetic, as he explained, and was looking into the matter. On any view, this is still the informal resolution, but what I think is reasonably unclear is as to just what was being informally resolved. It seems to me to be entirely arguable that the situation had now moved from a disciplinary question, which is what began at the outset, to a medical problem of concern about Ms. McEneaney's mental health, and so it could be argued that Circular 59/2009 had now got nothing to do with the case. Alternatively, and this seems to me to be the correct analysis, the process was still continuing along the mode of informal resolution. Nothing had happened to remove that situation from the approach that had originally been adopted.

43. Therefore, to sum up, Circular 59/2009 was the procedure in question. The informal approach was adopted – that was by agreement all round. Ms. McEneaney's trade union representatives had expressly sought that that approach would govern how matters proceeded and they made that request at the 27th February 2013 meeting. That meeting had simply been interrupted by the dramatic events that took place and nothing had happened to put an end to the matter. However, the situation had now changed from being a disciplinary one, or a teaching competence one, to a concern about Ms. McEneaney's health and what was going to be done about that and whether she could be certified.

44. When Dr. Ryan reverted on 27th July 2013 he certified that Ms. McEneaney was fit for work. Even then, however, he raised the possibility of a transfer and how she would need to have supports available to her to carry out her work [check terms of letter]. The Board at this stage was still looking at the question of transfer and Mr. O'Brien, the CEO, had to look to replacing Ms. McEneaney in Largy College. When he found a vacancy in Bawnboy, this seemed ideal because it was a much smaller school and the teaching load in respect of hours of classes and numbers of pupils was much less. He was also in a position to arrange for mentoring to be available for Ms. McEneaney.

45. At the time when Ms. McEneaney then changed her mind and said she did not want a transfer, events had now moved on and it is clear that Mr. O'Brien was now firmly of the view that a transfer was entirely the appropriate step to take. He explained to Ms. McEneaney that this was for a year, in the first instance, and was not a permanent matter and that the situation could be reviewed after a year and she could apply to go back to Largy [check in affidavit of Mr. O'Brien].

46. It is clear, therefore, that Mr. O'Brien and the Board were satisfied that the appropriate step to take was to transfer Ms. McEneaney to Bawnboy. Obviously, as July and August came along, they had arrangements made for another teacher to come to Largy College instead of Ms. McEneaney. That was a satisfactory situation from the school's point of view because of the frequency of the complaints. These complaints were not just confined to the five people whose specific complaints had been notified back in January because the affidavits disclose how parents were asking who was going to be teaching home economics and were indicating their dissatisfaction if it turned out that Ms. McEneaney was going to be teaching their children. The point is that the matter that originally began as a complaint that was going to be dealt with on a disciplinary basis was handled at first in accordance with the informal process and it is entirely true, as Kearns P. found, that it never went beyond that. I am not sure that one needs to explain that it was frustrated by Ms. McEneaney's conduct, behaviour and her change of mind. It seems to me that the process was indeed continuing at an informal level and remained in that condition. The parties treated it as such, and it may be that, ultimately, the situation had simply gone too far in regard to the proposal which was originally the request for a transfer for it to be turned back.

47. In the circumstances, therefore, I do not think it is legitimate for the appellant to complain that Circular 59 was abandoned. Specifically, I think that the criticism that the High Court decided that Circular 59 was dispensed with because of the behaviour of Ms. McEneaney is not a correct characterisation of what Kearns P. decided. In my view, on the facts, as available to the High Court, there was ample basis for what the High Court actually found, which was that the informal procedure did proceed, but that the arrangements or the process was collapsed by reason of the behaviour of Ms. McEneaney is hard to fault. I would put it differently; I would say that the informal procedure never came to an end, but actually proceeded right to the decision by Mr. O'Brien to transfer Ms. McEneaney from Largy to Bawboy. What actually happened, therefore, was that the original complaint became something quite different which was then handled by Mr. O'Brien on the Board in a proper and reasonable administrative fashion.

48. Accordingly, I look at it in two ways. First, I say that Kearns P. was correct in finding that the informal procedure did not continue as the parties had thought it would because of the suicide ideation in the first place by Ms. McEneaney, and second, by her request for a transfer, and third, by her reversal of position on that. It is difficult to disagree with the trial judge's conclusions, but I would look at it also, or by way of alternative, namely, that it started out as a potential disciplinary matter that was going to be dealt with, ideally by an informal process, but then it became a human resources matter of concern about the employee's health.

Memorandum V7

49. In this regard, again, the appellant submits that the memorandum is not authority for the transfer. It seems to me that the Board had authority to transfer a teacher from one school to another in its jurisdiction provided that was done in a reasonable fashion and giving notice to the teacher concerned. If the matter was a punishment, the situation of course would be different, but I do not think it can be in any way suggested, reasonably, that this was a punishment. I think that all the information in the affidavits in the case quite the contrary. My view, accordingly, is that the Board had authority, as employer, to transfer a teacher from one school to another depending on its own requirements. Secondly, think that Memorandum V7, clause 20 does contain the relevant power for this purpose. Thirdly, I do not agree with the point that Circular 59 is inconsistent with Memorandum V7, clause 20 because this was not a disciplinary procedure at all.

50. The question is ultimately whether the Board was entitled to disregard its doctor's opinion that the appellant was fit to work. On this issue, it seems to me that Mr. O'Brien and the Board had a decision to make. Part of that decision was based on the information given by Dr. Ryan in his various reports, but the Board's concern about Ms. McEneaney's mental health did not have to be completely resolved by Dr. Ryan's report in July 2013. That report [subject to checking] was conditional to a degree on supports being available and it did refer to a transfer.

51. In addition, the Board was aware, through Ms. Magennis's information from her own knowledge and from what she had been told by the Chaplain reflecting colleagues' information, that there was indeed solid reason for being worried about Ms. McEneaney and her capacity to continue working in Largy College. The Principal was also very concerned, and I think that this was another legitimate part of the background, about the attitude of parents just at that time to Ms. McEneaney. This is not to say that the Board or Ms. Magennis was assuming that Ms. McEneaney was guilty of any of the charges that were made against her. However, the situation was somewhat tense because parents were expressing unwillingness to have their children be in the school for the next school year if Ms. McEneaney was teaching them. So, there was going to be a situation where complaints were in existence and were being dealt with, whether informally or more formally and there were additional reasons for thinking that parents and their children were going to be somewhat hostile or at least suspicious of Ms. McEneaney.

52. Whatever the truth of the allegations, in those circumstances, I find it hard to see how anybody could think that it was unreasonable to consider a transfer to a more congenial situation where Ms. McEneaney would find it a lot easier to carry on her work and would be able to do so with considerable assistance and with a substantially reduced workload and consequent stress, and she would be doing so without having the baleful and suspicious eyes of unhappy parents who knew of previous or other complaints.

53. It follows, therefore, that the mere fact that Dr. Ryan had certified Ms. McEneaney, whether he did so conditionally or otherwise, was not the end of the matter as far as the Board was concerned.

Conclusions

54. The events giving rise to this case began as an investigatory response to complaints which was intended to be pursued under the procedure in Circular 59/2009. However, the process ceased to be disciplinary and instead it became a human relations matter in which management and the teacher's union worked together to find a solution. Ultimately, the Chief Executive Officer of the Board made a decision that was within his power and that he felt was in the interest of Ms. McEneaney and of the schools in his jurisdiction. Ms. McEneaney's insistence on rigid adherence to the disciplinary procedure is misconceived because it fails to take account of the alteration of course of the process that occurred following the meeting and events of late February 2013.

55. In my judgment, the High Court was correct in the conclusion it reached that this was not a case for interference by the courts by way of judicial review in the decision of the Chief Executive Officer to transfer Ms. McEneaney. That was a reasonable decision that was justified in the circumstances. There was ample basis for making the decision. It was within the capacity of the CEO to exercise that jurisdiction. The decision was reasonably and rationally made and there is no basis for certiorari.

56. Kearns P. concluded his judgment with an expression of regret that Ms. McEneaney had embarked on the process of litigation rather than accepting the helping hands that were offered to her. It was indeed an unfortunate and, if I may so, an eccentric choice. She had resented being referred to a doctor in the first instance because she thought that was medicalising the problem; I do not agree. I think that the Board was amply justified in seeking medical advice on the teacher's condition at that stage and might perhaps have been criticised for proceeding without getting medical assistance in circumstances where the Board and the Principal of the school were apprised of significant information to alert them to the issue concerning Ms. McEneaney's mental health at that time. I think that the problem is not that the Board medicalised it, but rather that Ms. McEneaney perhaps refused to accept that there was

a medical element of significance in the case and she instead sought to legalise a problem that could have been disposed of in a different manner, and in my view should have been dealt with otherwise than legally.

57. I would dismiss the appeal by Ms. McEneaney