

THE HIGH COURT

[2016 No. 3518P]

BETWEEN

PATRICIA O'LEARY DARCY

PLAINTIFF

AND

LISDOONVARNA FAILTE LTD. T/A COIS CEIM CRÈCHE

DEFENDANTS

JUDGMENT of Mr. Justice Paul Gilligan on the 12th day of May, 2016.

1. The plaintiff in these proceedings was the manager of the defendant's crèche in Lisdoonvarna, taking up employment there in 2008. The crèche caters for approximately sixty-five children and eleven childcare workers are employed, some of whom are part-time. The plaintiff was paid a salary of €36,000 per annum, subject to a contract of employment.
2. The defendant body is entirely voluntary and is dependant on assistance from Pobal and payments made by parents of the children who avail of the crèche facilities.
3. The plaintiff reported to a Mr. Pat Haugh who is a member of the board.
4. In 2014 – 2015 a number of situations arose which culminated in the dismissal of the plaintiff by the defendant on the 13th of April, 2016.
5. I do not consider it necessary for the purpose of this application to recite each particular event but suffice to say that despite actual situations occurring the plaintiff offers explanations which are not accepted by the defendant and thus many aspects of the actual transactions and their aftermath are disputed. In 2014 the plaintiff increased the wages of a number of the workers in the crèche by €1.00 per hour and her own wages by an amount of €1.87 per hour. The defendant board says that this increase was never discussed with them and they were unaware of its taking place. The plaintiff says that she had discussed the matter with a previous board and some of the staff were threatening to leave unless they obtained a pay rise. The pay rise in fact went unnoticed until difficulties arose with the Revenue Commissioners in relation to the payment of PAYE/PRSI. I believe it is fair to say that while the €1.00 per hour may not have seemed a significant amount at the time it became significant with its accumulation and the knock-on effect for the payment to the Revenue Commissioners of PAYE/PRSI. The plaintiff makes the case that in fact this aspect of matters was clarified and she cannot understand how it could remain in contention.
6. In the latter part of 2015 the plaintiff asked Mr. Haugh to come to her house and she made a disclosure to him that she had diverted a sum of money from the defendant in the region of €2,000.00 to herself and it is accepted that the manner in which this was done was that there were monies due to a supplier of goods to the crèche, and that the plaintiff inserted her own name as payee and cashed the cheque, but placed the name of the Company who was to be paid on the cheque stubs in the crèche cheque book. She explained that at the time she was suffering financial difficulties. There is a factual dispute as regards what occurred between the plaintiff and Mr. Haugh, with him alleging that the plaintiff asked him not to report the matter to the Board or she would be sacked and the plaintiff saying that it was Mr. Haugh who offered to protect her and that again this matter was smoothed over and the plaintiff cannot understand how it could now come back into contention.
7. The defendants were having difficulty reconciling certain other financial aspects in respect of the administration of the crèche and they began to seek assistance of the plaintiff and *inter alia* asked her for explanations in respect of certain matters. The plaintiff had the facility of a cheque book which she was entitled to utilise for monies involved in running the crèche and she also had the benefit of an account in a nearby supermarket. In one instance, certain receipts produced showed the purchase of groceries at locations very far removed from the location of the crèche and the defendants were requesting further details. The plaintiff failed to attend a meeting with the Chairman and the Board on the 25th of February, 2016, and matters culminated in the defendant board directing a formal investigation and the plaintiff being suspended on full pay on the 25th of February, 2016.
8. Having carried out the investigation the defendants produced what they described as a draft report of the 8th April, 2016, which raised nine issues and referred in general terms to the various matters that had been investigated and each concluded with words to the effect of "conclusions and findings to date". The draft report of the 8th April, 2016, was delivered to the plaintiff at approximately 8:45pm on that evening and it was suggested that she attend the following Monday at 6pm for the purpose of explaining her situation and her position in relation to the various matters as raised.
9. The plaintiff consulted solicitors who sought an adjournment of seven days to the following Monday but the Board rejected this application and instead granted an adjournment to the following Wednesday. The plaintiff and her solicitors indicated in correspondence that this did not give them sufficient time to deal with the various matters as raised and the plaintiff and her solicitors were put on notice that no further arrangements could be made to accommodate her and it was suggested that if she wished to provide her version of events and explanation she should attend at the meeting to be held on the 13th April, 2016.
10. Neither the plaintiff nor her solicitor attended at the meeting which proceeded in her absence and she was dismissed.
11. There are strong issues of trust and confidence and reputational damage pertaining in this unfortunate matter.
12. The plaintiff seeks in effect to have the pre-existing status quo put back in place whereby she would remain on in the employment of the defendants but on suspension and she would be paid her salary pending the determination of the proceedings.

13. If the plaintiff is unsuccessful in her application as regards fair procedures she is entitled to appeal the decision to dismiss her and if unsuccessful she is entitled to maintain an action for wrongful dismissal pursuant to the Workplace Relations Act, 2015.

14. The issues to be decided by the court on this application are:

1. Does the plaintiff raise a serious issue to be tried and make out a strong case that is likely to succeed at the trial of the action, taking into account that she is seeking a mandatory order;
2. Are damages an adequate remedy;
3. Where does the balance of convenience lie between the parties, taking into consideration the issues of trust and confidence and reputational damage;

15. While there may be an issue to be tried as between the parties I am not satisfied on the affidavit evidence and the submissions as offered on behalf of both parties that the plaintiff makes out a strong case that is likely to succeed at the trial of the action. As regards damages, if she is successful then it would appear subject to the views of the trial judge that she would be entitled to revert to the position which pertained at the time of her suspension and damages would be an adequate remedy. In my view the balance of convenience, particularly having regard to the issue of trust and confidence and taking into account the aspect of reputational damage between the parties, lies in favour of the defendant.

16. I consider it appropriate that the action be case managed and with the cooperation of both parties a hearing date will be made available in early course.

17. Accordingly, the reliefs as sought by the plaintiff on this interlocutory application are denied.