Neutral Citation Number: [2006] IEHC 118

**THE HIGH COURT**

**RECORD NO. 2479 P/2005**

**BETWEEN**

**IRISH MUNICIPAL PUBLIC AND CIVIL TRADE UNION**
**AND**
**JEFFREY LEONARD, CAROLINE CRONIN, JOHN DOREY, AIDAN GALLAGHER, PAUL AHEARNE, MARK BYRNE, LIAM O'CONNOR, NEIL STEWART, KEVIN MARA, PAUL GINGELL, PATRICK LORDAN, JEROME LORDAN, PETER SERRADAS, ALAN CAUL, SENAN O'SHEA, DEREK DOYLE, DAVID DOWNES, LINDA HARDIMAN, DAVID SHEILS, PATRICK KEANE, GERRARD WEBB, AIDAN HOEY, JONATHAN PEARD, BRIAN COOMEY, MARK LOGAN, MICHAEL DEASY, MARTIN GREENE, THOMAS DAVIES, GARRETT LYONS, NEIL BROWNLEE, JOHN FURLONG, TURLOUGH O'NEILL, JOSEPH SMYTH, CHRISTOPHER McGONAGLE, BRIAN CONSGRAVE, NOEL MAHER, DIARMUID RYAN, DONAL COTTER, GEORGE O'HARA, DAVID KAVANAGH, AIDAN MURRAY, DONNACHA O'NEILL, ALAN KELLY, PETER GALLAGHER, SHAY O'RIORDAN, CONOR AHEARNE, THOMAS O'CONNOR, PAUL CORRIGAN, MARK BRADY, DEREK O'NEILL, HARRY BRADY, ROGER BOURKE, RUTH LITTLE, RAY KELLY, LIAM QUINN, ALAN QUIGLEY, STEPHEN CLANCY, MICHAEL FARRELL, EOIN PEARSON, ROBBIE REDMOND, PAUL ROWSE, RICHARD LEONARD, JOE REILLY, STEVE BUCHANAN**

**PLAINTIFFS**

**AND**
**RYANAIR LIMITED**

**DEFENDANT**

**Judgment of Miss Justice Laffoy delivered on 6th April, 2006.**

1. These proceedings, as counsel for the plaintiff put it, are part of a wider tableau involving the first plaintiff (the Union), which is a registered trade union with a negotiating licence, and the second to sixty-fourth plaintiffs (the Employees), who are commercial pilots employed by the defendant and are members of the Union, on the one hand, and the defendant, on the other hand, concerning, broadly speaking, the policy of the defendant not to engage in collective bargaining with any representative association or trade union on behalf of pilots. The proceedings were initiated by plenary summons which issued on 14th July, 2005. This application, on foot of a notice of motion which issued on 4th August, 2005, seeks orders against the Union and the Employees striking out the proceedings. Both O. 19, r. 28 of the Rules of the Superior Courts, 1986 and the inherent jurisdiction of the court are invoked. The grounds relied on are that the proceedings are unsustainable, frivolous and vexatious, disclose no cause of action against the defendant, and are an abuse of process. As regards the Union, there is a further ground that it has no *locus standi* to maintain the claims. By direction of the court, the plaintiff's statement of claim was delivered prior to the hearing of the application.

2. Both sides furnished comprehensive written submissions to the court outlining*, inter alia*, the jurisprudence on the circumstances in which the court will strike out proceedings at this stage. There was little divergence between the parties on the applicable principles of law, which are well established. Where the parties diverged, it seems to me, was in identifying the substantive issues raised on the plaintiffs' claim.

3. The factual basis of the plaintiffs' claim, as pleaded, is that, in November, 2004, the Union invited the defendant to enter into collective bargaining concerning, *inter alia*, the movement of pilots from aircraft of one type (Boeing 737-200) to another type (Boeing 737-800) and the training required for such movement, but the defendant declined the invitation. Subsequently, on various dates, the defendant wrote to pilots employed by it offering them conversion training at a cost to the defendant of €15,000. Each letter threatened the addressee with dismissal on the ground of redundancy should he or she fail to accept the offer within a given period. Further –

> (a) each letter included a condition that, if the defendant was compelled to engage in collective bargaining with any pilot association or trade union within five years of commencement of the conversion training, then the addressee would be liable to repay the full training costs to the defendant;
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> (b) some of the letters included a condition that, upon acceptance of the offer, the addressee was required to confirm that he had no claims against the defendant under the Industrial Relations Act, 2004 and to confirm that any claims made were withdrawn; and
>
> (c) some of the letters included an alternative offer whereby the addressee might pay the cost of conversion training in the amount of €15,000, thereby avoiding dismissal on the ground of redundancy and having to accept the conditions set out at (a) and (b).

4. I have noted that counsel for the defendant took issue with some of the language used by the plaintiffs in pleading the facts, for example, the use of the word "threatened". Further, he asserted that what was alleged at (c) above was not a fair analysis of the relevant letters. The plaintiffs acknowledged that the offers in issue were made not only to the Employees, but also to pilots employed by the defendant who are members of the Union but are not party to these proceedings and pilots employed by the defendant who are not members of the Union.

5. The civil wrongs on the part of the defendant which the plaintiffs allege on the basis of those facts are: breach of the plaintiffs' constitutional right to freedom of association; breach of the plaintiffs' rights under the European Convention on Human Rights (the Convention); and commission of the torts of conspiracy, inducement of breach of contract, and intentional interference with the plaintiffs' contractual and commercial relations or the plaintiffs' economic and commercial interests by the defendant. It is pleaded that the plaintiffs have suffered loss, damage, inconvenience and expense in consequence of those wrongs.

6. The primary relief claimed by the plaintiffs is a declaration that the defendant's actions "in offering financial inducements to, and/or threatening to impose penalties upon, its employees with the object or effect of inducing the said employees to refrain from carrying on collective bargaining through a trade union, are unlawful and in breach of the constitutional and legal rights" of the plaintiffs. Following on from that, the plaintiffs claim an injunction restraining the defendant from acting in that manner. The plaintiffs claim damages for unjust attack on the plaintiffs' constitutional rights and also for the alleged tortious activity. The plaintiffs also claim, in the alternative, declarations that the law is incompatible with the State's obligations under the Convention, if the law fails either to render unlawful, or to provide an adequate remedy to prevent, the actions which the plaintiffs seek to impugn.

7. The principal ground on which the defendant contends that the plaintiffs' claim as outlined is not sustainable and must fail is an assertion that it does not disclose the infringement by the defendant of any legal right of any of the plaintiffs. In particular, while the defendant recognises that the Employees, as citizens, have, by virtue of Article 40.6.1(iii) of the Constitution a constitutional right to

form associations and unions, it was submitted that the established jurisprudence is that that provision does not oblige an employer to negotiate with an association or union: *Abbott & Whelan v. IT&GWU & Ors.*, the High Court (McWilliam J.), unreported, 2nd December, 1980; *Dublin Colleges of Academic Staff Association & Ors. v. City of Dublin VEC & Ors.*, the High Court (Hamilton J.), unreported, 31st July, 1981; and *Association of General Practitioners Ltd. v. The Minister for Health* [1995] 1 I.R. 382. Counsel for the defendant asserted that Convention does not confer any greater rights on an employee than the Constitution, relying on the decision of the European Court of Human Rights (ECHR)in *Wilson v. United Kingdom* [2002] 35 EHRR 523.

8. The plaintiffs' answer to those propositions was to agree that there is no constitutional imperative that the defendant negotiate with the Employees through the Union and to state that the plaintiffs are not seeking to establish that there is in these proceedings. However, counsel for the plaintiffs disagreed with the proposition that the Convention, as applied in *Wilson v. United Kingdom*, does not guarantee the rights which the plaintiffs contend for in these proceedings, that is to say, protection against an employer offering financial inducements to its employees and threatening to impose penalties upon such employees, or both, with the object or effect of inducing the employees to refrain from carrying on collective bargaining through a trade union. It is on the interpretation, and the application to the issues in the instant case, of the decision of the ECHR in *Wilson v. United Kingdom* that the parties diverge. As that decision is the kernel of the plaintiffs' case it is necessary to consider it in some depth.

9. In *Wilson* the ECHR was concerned with a number of different factual scenarios, but for present purposes it is sufficient to outline the facts of Mr. Wilson's application. He was a journalist with the Daily Mail and a member of the National Union of Journalists. In 1989 he received a letter from his employer informing him that the employer had given notice to the NUJ that it did not intend to negotiate a new collective bargaining agreement or recognise it as a negotiating body in the future. Instead, salaries would be reviewed annually on an individual basis. Mr. Wilson was informed that if he signed a new contract before 1st January, 1990, he would be awarded a 4.5% wage increase backdated. He refused to sign a new contract because he objected to its provisions prohibiting trade union activity during working hours and removing his right to be represented by the union and the rights of the union to negotiate with management and be consulted on and agree changes to terms and conditions of employment. In subsequent years, Mr. Wilson's salary increased, but it was never raised to the same level as that of employees who had accepted personal contracts. After 1990 the employer continued to deal with the NUJ on health and safety issues, but did not recognise the union for any other purpose. Mr. Wilson applied to the Industrial Tribunal complaining that the requirement to sign the personal contract and lose union rights, or accept a lower pay rise, was contrary to a statutory provision in the United Kingdom. He was successful before the Industrial Tribunal, unsuccessful on an appeal to the Employment Appeal Tribunal, and successful on a further appeal to the Court of Appeal. Ultimately, the decision of the Court of Appeal was reversed by the House of Lords, following which the application to the Industrial Tribunal was withdrawn on the basis that it could not succeed.

10. At the relevant time, in the United Kingdom, collective bargaining was a wholly voluntary process and there was no legislation in place which inhibited the freedom of employers to recognise or de-recognise trade unions for the purposes of collective bargaining.

11. The applicants alleged violations of several articles of the Convention. However, for present purposes, only Article 11 is relevant. It provides, in part, as follows:

> "1. Everyone has the right to freedom of peaceful assembly and freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society … for the protection of the rights and freedoms of others. …"

12. Counsel for the defendant relied on the statement of general principles set out by the ECHR in paras. 41 and 42 of the judgment. In those paragraphs the Court stated as follows:

> "41. The Court observes at the outset that although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights. In the present case, the matters about which the applicants complain – principally, the employer's de-recognition of the unions for collective-bargaining purposes and offers of more favourable conditions of employment to employees agreeing not to be represented by the unions – did not involve direct intervention by the State. The responsibility of the United Kingdom would, however, be engaged if these matters resulted in a failure on its part to secure under domestic law the rights set forth in Article 11 of the Convention
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> 42. The Court reiterates that Article 11.1 presents trade union freedom as one form or a special aspect of freedom of association … . The words 'for the protection of his interests' in Article 11.1 are not redundant, and the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must permit and make possible. A trade union must thus be free to strive for the protection of its members' interests, and the individual members have a right, in order to protect their interests, that the trade union should be heard. Article 11 does not, however, secure any particular treatment of trade unions or their members and leaves each State a free choice of the means to be used to secure the right to be heard …"

13. Counsel for the defendant laid particular emphasis on what the court said about collective bargaining, when considering the application of the general principles to the cases before it. In para. 44 the Court stated:

> "However, the Court has consistently held that although collective bargaining may be one of the ways by which trade unions may be enabled to protect their members' interests, it is not indispensable for the effective enjoyment of trade union freedom. Compulsory collective bargaining would impose on members an obligation to conduct negotiations with trade unions. The court has not yet been prepared to hold that the freedom of a trade union to make its voice heard extends to imposing on an employer an obligation to recognise a trade union. The union and its members must however be free, in one way or another, to seek to persuade the employer to listen to what it has to say on behalf of its members. In view of the sensitive character of the social and political issues involved in achieving a proper balance between the competing interests and the wide degree of divergence between the domestic systems in this field, the Contracting States enjoy a wide margin of appreciation as to how trade union freedom may be secured …"

14. Counsel for the defendant stated the position of the defendant as being that the defendant is prepared to listen to the Union but will not negotiate with the Union. He submitted that the ECHR has held that an employee has no right under the Convention to force his employer to negotiate through a trade union. Therefore, there is a fatal flaw in the plaintiffs' case, in that the defendant is not infringing any right of the plaintiffs, so that the whole underpinning of the case falls away. The defendant also submitted that the Convention rights asserted by the plaintiffs, insofar as they exist, impose an obligation on the State, not on the defendant, and that

calling them in aid in these proceedings is misconceived.

15. It is necessary to digress at this point to consider the relevant statute law in this jurisdiction. Section 2 of the Industrial Relations (Amendment) Act, 2001 (the Act of 2001) as amended by the Industrial Relations (Miscellaneous Provisions) Act, 2004 (the Act of 2004) provides as follows:

> "(1) Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union or excepted body, the Court may investigate a trade dispute where the Court is satisfied that –
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> > (a) it is not the practice of the employer to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are party to the trade dispute and the internal dispute resolution procedures (if any) normally used by the parties have failed to resolve the dispute, …"

16. The "Court", in s. 2(1) means the Labour Court. The defendant contends that the existence of this provisions fulfils the State's obligations because it affords access to the Labour Court to resolve a dispute where the employer does not engage in collective bargaining directly with its employees. The defendant's position is that it does so engage.

17. Returning to the decision of the ECHR in the *Wilson* case, counsel for the plaintiffs focused on paras. 47 and 48 of the judgment which he pointed out set out the basis on which the applicants succeeded against the United Kingdom. To put those paragraphs in context, it is necessary to consider paras. 45 and 46. In para. 45 the Court observed that there were other measures available to a trade union to further its members' interests, for example, strike action. The essence of a voluntary system of collective bargaining is that it must be possible for a trade union, which is not recognised by an employer, to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining with it on the issues which the union believes are important to its members. The Court continued in para. 46 as follows:

> "46. Furthermore, it is of the essence of the right to join a trade union for the protection of their interests that employees should be free to instruct or permit the union to make representations to their employer or to take action in support of their interests on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union, for the protection of their interests, becomes illusory. It is the role of the State to ensure that trade union members are not prevented or restrained from using their union to represent them in attempts to regulate their relations with their employers."

18. In paras. 47 and 48 the Court stated as follows:

> "47. In the present case, it was open to the employers to seek to pre-empt any protest on the part of the unions or their members against the imposition of limits on voluntary collective bargaining, by offering those employees who acquiesced in the termination of collective bargaining substantial pay rises, which were not provided to those who refused to sign contracts accepting the end of union representation. The corollary of this was that United Kingdom law permitted employers to treat less favourably employees who were not prepared to renounce a freedom that was an essential feature of union membership. Such conduct constituted a disincentive or restraint on the use by employees of union membership to protect their interests. However, as the House of Lords' judgment made clear, domestic law did not prohibit the employer from offering an inducement to employees who relinquish the right to union representation, even if the aim and outcome of the exercise was to bring an end to collective bargaining and thus substantially reduce the authority of the union, as long as the employer did not act with the purpose of preventing or deterring the individual employee simply from being a member of a trade union.
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> 48. Under United Kingdom law at the relevant time it was, therefore, possible for an employer effectively to undermine or frustrate a trade union's ability to strive for the protection of its members' interests. … [The Court] considers that by permitting employers to use financial incentives to induce employees to surrender important union rights, the respondent has failed in its positive obligation to secure the enjoyment of the rights under article 11 of the Convention. This failure amounted to a violation of article 11, as regards both the applicant trade unions and the individual applicants."

19. Counsel for the plaintiffs submitted that the factual circumstances in the instant case are exactly analogous to the circumstances which the ECHR found to be a breach of article 11 of the Convention in the *Wilson* case. So what the plaintiffs are asserting, and the wording of the primary declaratory relief which they seek reflects this, is an entitlement to enforce the type of right enforced by the ECHR in the *Wilson* case. It was submitted that it is at least arguable that the plaintiffs are entitled to do so. However, the plaintiffs' argument goes further. It embraces the effect of the European Convention on Human Rights Act, 2003 (the Act of 2003). Section 2 of that Act provides that, in interpreting and applying any statutory provision or rule of law, which includes common law, a court shall, insofar as is possible, do so in a manner compatible with the State's obligations under the Convention provisions. If the course of conduct on the part of the defendant, which the plaintiffs seek to impugn, is contrary to the Convention, the plaintiffs state that Irish law must be construed so as to outlaw that course of conduct. Section 4 of the Act of 2003 requires that judicial notice be taken of the Convention provisions and of judgments of the ECHR. Counsel for the plaintiffs stated that the plaintiffs propose to argue that the constitutional right to form associations and unions must now be extended to encompass the rights and protections afforded by the ECHR in the *Wilson* case. Further, although it has not done so already, in relation to the alternative relief seeking declarations of incompatibility, the plaintiffs propose giving notice of the proceedings to the Attorney General in accordance with s. 6 of the Act of 2003. Counsel for the plaintiffs recognised that the substantive arguments which the plaintiffs propose to advance are novel; indeed counsel described them as being at "the cutting edge of Convention jurisprudence".

20. In replying to the plaintiffs' submissions, counsel for the defendant pointed to the difference between the state of the law in the United Kingdom at the time of the events under consideration in the ECHR and the current state of the law in this jurisdiction. He submitted that what the State must do is to ensure that the concept of collective bargaining is not lost and he suggested that that is what the Acts of 2001 and 2004 do. However, as will appear from what I will say later, the application of s. 2 of the Act of 2001, as amended, to the issues between the parties is in dispute in other proceedings between the parties. He also submitted that, while paras. 47 and 48 of the judgment in the *Wilson* case may seem helpful to the plaintiff on a superficial basis, this is to misunderstand the principles laid down by the ECHR. He submitted that the *Wilson* judgment does not establish any right on which the plaintiffs can found their case.

21. It is well settled that the jurisdiction which the defendant has invoked on this application is to be used sparingly and only in clear cases. In relation to the core issue in the plaintiffs' case, whether they are entitled to a declaration that the defendant's conduct is unlawful and in breach of their constitutional and legal rights in reliance on the decision of the ECHR in the *Wilson* case and the changes wrought in domestic law by the Act of 2003, the outcome of this application depends on whether the court is satisfied that

the plaintiffs' case on this issue must fail. In addressing that question, I think it is prudent to bear in mind the observations of Keane J., as he then was, in *Irish Permanent Building Society v. Caldwell* [1979] I.L.R.M. 273, where, arguing that the plaintiff had no locus standi to maintain the action, the defendants sought to have the plaintiff's claim dismissed under O. 19, r. 28. Keane J. stated at p. 276:

> "The question I have to decide is as to whether the proceedings should be struck *out in limine* at this stage. It has been said on high authority that the procedure sought to be invoked in the present case should not be applied 'to an action involving serious investigation of ancient law and questions of general importance': *per* Cozens-Hardy M.R. in *Dyson v. Attorney General* [1911] 1 K.B. 410 at 414. The issues raised by the present proceedings involve difficult questions as to the relationship of the present Constitution to pre-existing law concerning the assertion of public rights by a person other than the Attorney General … I am not satisfied that, on an application of this nature, the High Court should finally determine the difficult and complex question of law involved."

22. The instant case certainly involves the investigation of questions of general importance in the context of recent changes in domestic law, which raise issues as to the impact of the State's international obligations on its domestic law. Given that context, in my view, it is impossible to conclude that the plaintiffs' claim must fail. Apart from that, and notwithstanding the comprehensiveness and thoroughness of the submissions made on behalf of the parties, I am not satisfied that the novel and difficult questions of law raised should be determined on an application of this nature.

23. While that conclusion effectively deals with some of the other points raised by the defendant, for the sake of completeness, I would make the following further observations.

24. First, in relation to the core issue, it cannot be said with certainty that the Union lacks locus standi, because, if the plaintiffs' arguments based on the decision of the ECHR in the *Wilson* case are sustainable, it is certainly arguable that the Union has standing to enforce the protection recognised in that decision in the domestic courts. Moreover, it is implicit in s. 6 of the Act of 2003 that the issue of a declaration of incompatibility can be litigated in *inter partes* litigation.

25. Secondly, insofar as the plaintiffs' claim is founded on economic torts, the defendant made a number of specific points. In relation to the claim for damages for conspiracy, it was submitted that an actionable conspiracy has not been pleaded by the plaintiffs in the statement of claim. That is so. But counsel for the plaintiffs stated that the conspiracy alleged is between the defendant and its executives. He submitted that there is authority for the proposition that where a statement of a claim admits of amendment which might save the action, the action should not be dismissed (*Sun Fat Chan v. Osserus Limited* [1992] 1 I.R. 425). A point was also taken in relation to the claim for damages for inducement of breach of contract, it being asserted that the relationship between the Union and its members was not a contractual relationship. No authority was cited for that proposition and I am not satisfied that it is correct. In relation to the other economic torts, counsel for the defendant referred the court to the observations of Murphy J. in *Bula Limited v. Tara Mines Limited* (No. 2) [1987] I.R. 95 (at p. 100 *et seq*.) in relation to what he referred to as "a category of innominate tort which may be referred to an unlawful interference with economic interests", his view being that to seek such relief was "to press the law to the limit of its existing frontiers if not indeed to new ones". In relation to the generality of the economic torts, as I understand the argument advanced on behalf of the plaintiffs, it is that, whatever the impact of the decision of the ECHR in the *Wilson* case and the enactment of the Act of 2003 is, it bears on the plaintiffs' legal rights at common law as well as their rights under the Constitution and under statute. Therefore, in my view, the claims based on common law must come under the umbrella of the conclusion that it is not clear that the plaintiffs' claim must fail.

26. I have already alluded to the fact that there are separate proceedings, initiated by the defendant, in existence in relation to the rights and obligations of the parties under the Act of 2001, as amended by the Act of 2004, which have arisen as follows:

> (1) As is pleaded in the statement of claim in these proceedings, on 22nd November, 2004 the Union referred the dispute between the defendant and the members of the Union employed by the defendant to the Labour Court under the Act of 2001. In the defendant's grounding affidavit it is averred that it does not accept that there was a trade dispute between it and the Union or that the Union is entitled to intermeddle in its affairs. The defendant maintains that the Labour Court has no jurisdiction to carry out an investigation under the Act of 2001, as amended. Following a "purported" preliminary hearing the Labour Court decided that it did have jurisdiction. That decision is the subject of judicial review proceedings, which were decided in favour of the plaintiffs in this Court, that decision now being under appeal to the Supreme Court.
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> (2) The statement of claim also discloses that by applications variously dated, the Union, on behalf and with the consent of all of the Employees and also on behalf and with the consent of fifteen other members of the Union who are not plaintiffs in these proceedings, referred victimisation claims to the Labour Relations Commission under the Act of 2004. In the defendants' grounding affidavit, it is averred that the defendant rejects the allegations of victimisation as being unfounded and without merit and also maintains that the Rights Commissioner has no jurisdiction to carry out the investigation requested by the Union. After a "purported" preliminary hearing, the Rights Commissioner decided that he or she did have jurisdiction and that decision is the subject of judicial review proceedings which are pending in this Court.

27. It is the contention of the defendant that the prosecution of these proceedings by the plaintiffs, in addition to the pursuit of their claims under the Act of 2001 and the Act of 2004, which are the subject of judicial review applications which are pending, is an abuse of process. The defendant contends that the issues sought to be raised in these proceedings are the same issues as have been raised by the plaintiffs before the Labour Court and the Labour Relations Commission. Further, it contends that, in prosecuting these proceedings, the plaintiffs are attempting to hold the defendant to ransom.

28. As the two recent decisions of the Supreme Court cited by the defendant (*Carroll v. Ryan & Ors*. [2003] 1 I.R. 309; and *A.A. v. The Medical Council & Ors.* [2003] 4 I.R. 302) illustrate, repeated actions concerning the same subject matter may constitute an abuse of process and what is sometimes referred to as the rule in *Henderson v. Henderson* (1843) 3 Hare 100 is part of Irish law. The rule is that the bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse, if the court is satisfied, the onus of proof being on the party alleging abuse, that the claim or defence should have been raised in earlier proceedings, if it was to be raised at all.

29. The plaintiffs' answer was that these proceedings are not a duplication of the proceedings before the Labour Court or the Labour Relations Commission. They made the point that, as the jurisdiction of each body is strongly contested by the defendant in the judicial review proceedings, the claims before those bodies may not proceed if the defendant is ultimately successful. That point, in my view, highlights a certain inconsistency on the part of the defendant, which was also apparent in the reliance of the defendant on the existence of the Act of 2001 and the Act of 2004 as distinguishing the circumstances of the dispute between the parties from the situation under consideration in the *Wilson* case. The plaintiffs also disputed that the issues in these proceedings are the same as the

issues which will be determined by the other bodies. For instance, it was submitted that the task of the Labour Court is to examine the overall circumstances and to decide whether the course of action taken by the defendant was "reasonable". The outcome will be a determination as to the resolution of the trade dispute between the parties. It does not have power to, and will not, pronounce on the legality or otherwise of the defendant's actions nor will it be able to grant reliefs by way of declaration injunction or damages, to redress any illegality. The plaintiffs also made the point that, as a precondition to initiating proceedings against the State before the ECHR, they have to exhaust all domestic remedies. I agree with counsel for the defendant that, as a matter of logic, this factor cannot prevent proceedings which should otherwise be struck out from being struck out.

30. Having regard to what the plaintiffs are trying to achieve in these proceedings and what they will be able to achieve if, following the determination of the pending judicial review applications, they are able to pursue the claims before the Labour Court and the Labour Relations Commission, I have come to the conclusion that the plaintiffs are not misusing or abusing the process of the court by prosecuting these proceedings, in addition to pursuing the claims before the Labour Court and the Labour Relations Commission. These proceedings raise fundamental issues against a background of a significant change in the law since the coming into operation of the Act of 2003. In my view, they cannot be characterised as either vexatious or frivolous or as an abuse of process.

31. Accordingly, the defendant's application is dismissed.