

THE HIGH COURT
CIRCUIT COURT APPEAL

[2017/27 CAT]

BETWEEN**TOWERBROOK LIMITED T/A CASTLE DURROW COUNTRY HOUSE HOTEL****APPELLANT****AND****EUGENE YOUNG****RESPONDENT****JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 16th day of July 2018**

1. This matter comes before the Court by way of an Appeal from the Order of the Circuit Court made by her Honour Judge L. Reynolds on the 28th July, 2016, whereby she upheld the decision of the Employment Appeals Tribunal (EAT) dated the 16th June, 2015. The EAT found that the Respondent had been unfairly dismissed by the Appellant and awarded the Respondent €32,178 in respect his claims brought under the Unfair Dismissals and Minimum Notice and Terms of Employment Acts.

2. The Respondent had taken a preliminary point of objection to this Appeal on the ground that no right of appeal lay from the order of the Circuit Court made on an appeal from the EAT. In *Commissioners of Irish Lights v. Sugg* [1994] E.L.R. 97, Morris J. decided that there was an appeal to the High Court, accordingly, counsel for the Respondent quite correctly withdrew the point.

3. Such an Appeal proceeds in this Court by way of a *de novo* hearing. Evidence was given by and on behalf of the Appellant and the Respondent. There were a number of matters in controversy between the parties which are dependant to a greater or lesser extent on whether or not the Respondent's dismissal was unfair, accordingly, it was agreed between the parties that that question should be determined as a preliminary issue.

Background

4. The Appellant is a limited liability company which operates a country house hotel at Castle Durrow Demesne, Castlevew, County Laois. The directors of the company are Mr. Peter Stokes and his wife. Mr. Stokes is also the managing director. He and his wife live in an apartment on the premises. Shortly after the acquisition of the property substantial renovation works were undertaken to convert use of the house and grounds into a hotel with facilities aimed at securing a share in the market for exclusive wedding venues. In carrying out the works the Appellant adopted a policy of employing local people where possible. One of those employed was the Respondent. He was engaged as a general handyman on foot of a written contract with a commencement date of the 14th February, 2000.

5. After completion of the renovation and conversion works the Respondent remained in the continuous employment of the Appellant until he was dismissed by letter dated the 22nd August, 2013. Throughout this period he reported directly to the managing director, Mr Stokes. The ground given for his dismissal was gross misconduct arising from the Respondent's aggressive behaviour and abuse towards Mr Stokes and the financial controller of the hotel, Ms. Naomi Shairp.

6. It is convenient at this juncture to make reference to certain background documents which are germane to the preliminary issue and which were made available to the Court, namely;

(a) The Respondent's contract of employment;

(b) The revised edition of the Appellant's Employee Handbook, receipt of which the Respondent acknowledged in writing on the 26th March, 2010; and,

(c) The Appellant's Disciplinary, Grievance Policy and Dignity at Work Policies.

7. The copy of the Respondent's contract of employment produced in evidence is neither dated nor signed; however, the commencement date and terms of the contract are not in issue. Provision is made for grievance and disciplinary matters, as to which the following terms are of particular relevance:

"The company requires employees to attend work regularly and punctually, fulfil their duties to an acceptable standard, conform to legally and socially acceptable standards and observe all safety and any other company regulations/standards.

In cases of gross misconduct, the company reserves the right to terminate your employment immediately. Infringement of a term of this contract or of established company rules can lead following an investigation, depending on the gravity of the breach, to an informal or formal warning, suspension with pay and/or transfer to other duties. Ultimately, persistent breaches or inadequate work performance can lead, following warnings, to dismissal. Please note that in cases of gross misconduct summary dismissal may result.

In the interest of fairness and to ensure the proper conduct of business, certain provisions to deal with matters of grievance and discipline are necessary. A comprehensive policy outlining the process of procedure to be followed will be explained to you. In all dismissal cases, full investigation will be carried out and an employee will have the opportunity to explain their case. If you have at any time a grievance or complaint that affects your work, you are encouraged to process this through the company grievance procedure." (emphasis added).

The Employee Handbook.

8. This is intended for the use of employees as a general information and reference guide to the Appellant's practices, policies and

procedures; it also sets out the Appellant's mission statement. Employees who have concerns about their treatment are encouraged to communicate these to the manager of the HR department. The stated philosophy governing the treatment of employees requires that they be treated "...with respect and dignity". [emphasis added]

9. Specific provision is made in respect of 'unacceptable' behaviours including bullying and harassment and for the procedures to be adopted and followed in the event of a complaint. Provision is also made for the imposition of disciplinary sanctions the nature of which are dependent on the gravity of the subject matter of the complaint. In this regard "A complaint of harassment/bullying may, following investigation, lead to disciplinary action through the appropriate disciplinary procedures". The text goes on to provide that failure by any member of staff to comply with the provisions of the policy would render the individual liable to disciplinary action. [emphasis added]

10. A comprehensive statement on bullying and harassment in the workplace, including a definition of what constitutes bullying and the forms of harassment and bullying deemed unacceptable are exemplified as are the procedures to be adopted in the event of complaint. Employees are assured that all complaints with regard to such matters will be subject to "an independent investigation carried out by a senior manager..." and that any such investigation will be "...thorough, impartial and objective." [emphasis added].

Dignity at Work Policy

11. In addition to the Employee Handbook, the Appellant drew up separate and specific policies to deal with dignity at work, grievance and disciplinary procedures. The Dignity at Work Policy declares that "...the dignity of each employee is both recognized and respected" and that behaviors such as bullying or harassment 'will not be tolerated'. Harassment is defined as including verbal, written or physical harassment which includes jostling, shoving "or any form of assault". Behavior which constitutes bullying includes verbal abuse, whether by shouting or insulting remarks, non-verbal abuse, whether by gestures or by the written word in whatever form and, finally, physical abuse, whether by actual bodily contact or the shaking of fists in a threatening manner. [emphasis added]

Grievance Policy

12. The stated object of the Appellant's grievance policy is to find solutions where workplace problems arise in connection with any aspect of work. Where misunderstandings or concerns arise formal and informal procedures are identified to deal with these. The formal grievance procedures are separated into three stages the last of which involves a decision by the managing director which is "the final stage of the internal procedure." The reference to internal procedure would seem to suggest that an external procedure of some sort was contemplated where necessary or appropriate though that is not expressly provided for. [emphasis added].

Disciplinary Policy

13. Finally, the disciplinary policy commits the Appellant to ensuring that when disciplinary action may have to be considered "any decision will only be taken through the application of fair procedures. This document sets out the disciplinary procedures and how they are applied. The conduct of the employee is identified as one of many matters which may lead to disciplinary action. Irrespective of which of these or any combination of matters gives rise to complaint "an employee's right to natural justice and fair procedures will be upheld at all times" and that "it will be applied fairly and consistently to all." How these objectives are to be achieved in circumstances where the managing director is the complainant or object of a complaint are not addressed. [emphasis added].

14. This policy categorises the behaviour which may lead to disciplinary sanction, namely (i) misconduct, (ii) incompatibility and (iii) gross misconduct. The formal disciplinary sanctions involve a number of stages the last of which, stage 4, is dismissal. In this regard it is stated "a dismissal decision will in all cases only be taken after an investigation has been completed". The Appellant has the right during the course of an investigation to suspend the employee with pay. Dismissal can occur in situations of serious misconduct without recourse to any of the previous parts of the disciplinary process. [emphasis added]

15. Behaviors considered to be examples of gross misconduct are identified including "assault on another member of staff or management". [emphasis added] Summary dismissal with or without notice or pay in lieu of notice are stated to be potential consequences following an investigation of a complaint of gross misconduct. If the decision is to dismiss then the employee has a right of appeal which has to be exercised within ten days of the decision. In every instance the employee is afforded the right of having a colleague in attendance. Any such appeal is to be heard and determined by the managing director, though the procedure for such an appeal is not specified.

16. A perusal of the employee's handbook and the relevant sections of the policies already referred to above discloses that no express provision is made for holding a disciplinary hearing to consider the conclusion of an investigation into a complaint before the imposition of a disciplinary sanction.

17. It is also apparent from the correspondence which ensued after his dismissal that when objection was taken to the complaints against the Respondent being determined by one of the complainants, namely, Mr. Stokes, the position adopted by the Appellant was that there was nobody else in a higher position to deal with the matter and that in any event the managing director was entitled to investigate and determine any complaint, including his own.

18. It would seem to follow from the wording of these policies that the person to whom an appeal may be made by an employee aggrieved by a decision of the managing director is to the same person. It is hardly surprising therefore that the Respondent's enquiry as to how he might appeal his dismissal went unanswered

19. Whatever maybe said about the Appellant's proposition in general, in circumstances where the behaviour which formed the basis for the complaints of gross misconduct arose as a direct and immediate consequence of verbal abuse and assault which it was claimed had been perpetrated on him, the Respondent took the view that it was entirely inappropriate that the alleged perpetrator, Mr Stokes, should investigate and determine not only the outcome of Ms Shaip's complaint but also his own complaint.

Background Events; 4th June 2013

20. The 2013 June bank holiday weekend was a busy one for the hotel and had generated a considerable amount of rubbish which was brought outside and deposited to the rear of the hotel in the vicinity of the kitchen. One of the Respondent's duties was to remove the rubbish for collection; another was to bring food prepared in the hotel kitchen to Bramley's Café, Abbeyleix, a premises also owned by the Appellant. On the morning of the 4th June the food had to be delivered to the café by 9.45 am.

21. In order to minimize disturbing hotel guests the staff were prohibited from collecting and removing rubbish from the vicinity of the kitchen before 11 am. The Respondent was aware of this requirement. The conundrum with which the Respondent was faced on the morning of the 4th June arose from the inability to load the company car with the food for Bramley's due to the presence of rubbish which had been deposited in the vicinity of the kitchen door. Finding himself in what he described as 'a no win' situation the Respondent opted to remove the rubbish with the assistance of a fellow employee Mr. Donal Fitzpatrick.

22. Despite best efforts to keep noise to a minimum it was loud enough to be heard by Mr. Stokes who went to investigate the cause. He was annoyed. When he arrived in the area and found Mr. Fitzpatrick and the Respondent removing the rubbish he remonstrated with the Respondent for breach of house rules in a way which left no doubt for the cause of his displeasure. That this resulted in an altercation between the two is not in question though precisely what happened during the course of the exchanges was hotly contested.

23. On his account Mr. Stokes was annoyed by this activity. He accepted that an argument had ensued in the course which he had wagged his finger and may have poked or jabbed the Respondent in the chest. The Respondent, who was shouting, started to push him with a beer keg he was carrying back towards a low wall behind which were the stairs leading to the basement entrance of the kitchen. In order to diffuse what had developed into an explosive situation he decided to leave the scene.

24. On the Respondent's account, Mr. Stokes was very cross when he arrived on the scene and started to shout using foul expletives. He wanted to know what the Respondent thought he was doing at that hour of the morning when guests were trying to sleep and then punched the Respondent in the chest adding injury to the verbal abuse. The Respondent accepted that he became very vexed by this behaviour and retaliated by shouting back and demanding an apology from Mr Stokes. When none was forthcoming he 'downed tools' and said he was not going to make the delivery to Bramley's Café. However, he disputed the suggestion that he had pushed Mr. Stokes with a beer keg though did accept that he had raised it up in front of his chest in an effort to defend himself before Mr Stokes left the scene.

25. It is common case that shortly after the altercation the Respondent called Mr. Stokes and asked to talk with him. They agreed to meet in the hotel laundry room, located about 100 metres from the main premises. Mr. Stokes was accompanied to the meeting by the Appellant's financial controller, Ms. Shaip. The Respondent was in a very agitated state at the meeting, pacing up and down, shouting that he had been punched and demanding an apology; again none was forthcoming. Mr. Stokes told the Respondent to go home and calm down. When asked for the keys of the company car he threw them on the floor and left in a huff.

26. A few hours later the Respondent phoned Ms. Shaip enquiring if he had been sacked. She responded by telling him that he had not been dismissed but merely sent home to cool down. Later that same evening the Respondent phoned Mr. Stokes to arrange a further meeting. He was told to come into work the next morning as usual and that they would discuss what had transpired to try and sort matters out.

Events of June 5th

27. The Respondent came into work as usual at 8 am. Mr. Stokes was not on the premises. He had had to leave early in order to attend an urgent appointment, a fact then unknown to the Respondent. Whatever the reason for his absence that morning, it had a negative impact on the Respondent. At approximately 10 am he went to the office of Ms. Shaip. He was looking for keys to the stock room. His demeanour was described by Ms Shaip as 'agitated', however, he was not shouting as he had been the previous day. She said he complained of chest bruising in the area where he claimed he had been punched. He attempted to remove his shirt so that he could show the bruising. She was alone in the office and was frightened by the Respondent's behaviour. The Respondent agreed that he was upset and had tried to show Ms Shaip the bruising; however, he disputed the suggestion that his behaviour caused her to be frightened, quite the contrary, he said she was verbally abusive and used expletives when telling him to leave her office.

28. After the Respondent left the office Ms Shaip phoned Mr. Stokes to report what had transpired and told him that this has caused her to be frightened and upset. Following the call Mr. Stokes phoned the Respondent. He gave an instruction to the Respondent that he was not to go near Ms. Shaip and that he was to leave the premises. He did as he was instructed but not before he called to the local police station to make a complaint that he had been assaulted. Later that day he wrote a letter to Mr. Stokes which he sent by fax.

29. The content of the letter is material to the issue under consideration and reads:

"Dear Peter,

I had hoped to meet you this morning, in order to discuss, the incident that occurred yesterday, whereby you physically assaulted me. I telephoned you yesterday evening in order to arrange this meeting. I have worked for you for the past sixteen years and would like to think we could clear the air, and sort this matter out.

I spoke to Naomi this morning and understand that following my conversation with her, she spoke to you, and as a result, I received a call from you asking me to leave the premises. I am very disappointed and upset that you will not meet with me or make any effort to sort things out.

I would appreciate if you would clarify what the position is, am I to return to work tomorrow? Are you prepared to meet with me? If not, why?

I would appreciate if you could provide me with a copy of the terms and conditions of my employment, a copy of the company's grievance procedure, and bullying/harassment policy.

If I do not hear from you and/or Naomi, I will have no option but to seek legal advice.

Yours sincerely,

Eugene Young."

On the same day Mr. Stokes wrote to the Respondent as follows:

"Dear Eugene

Suspension with pay

Following recent incidents, I am writing to advise you that you are suspended on full pay pending an investigation and we will be in touch regarding a formal meeting on Monday morning 10th June, 2013.

Yours sincerely,

Peter Stokes."

This was followed up on the 6th June :

Meeting Monday 10th June, 2013 at 10 am.

You are required to attend a disciplinary hearing, as per the organisation's formal disciplinary procedures (copy attached).

The meeting is arranged for Monday 10th June, 2013 at 10 am. It will be held in my office. Both myself and Naomi will be in attendance at the meeting. You are advised that you may bring a colleague to this meeting with you. You will be provided an opportunity to respond to allegations concerning your abusive behavior and to present any mitigating circumstances or evidence you have in this regard.

Please confirm that you will be able to attend this meeting.

Yours sincerely

Peter Stokes."

No acknowledgement or mention was made in either of these letters to the Respondent's letter of the 5th June notwithstanding that it had been received by the Appellant via fax on that date, nor was a satisfactory explanation proffered for the omission during the hearing of the Appeal.

30. Whatever the reason, the failure to take the Respondent up on his invitation to try and sort out the issues which had arisen led rapidly to the development of entrenched positions which ultimately resulted in dismissal. I was left with the distinct impression that had a little common sense and humility been brought to bear on matters the outcome might very well have been different and this entire litigation avoided. Indeed, it was undoubtedly the Respondent's belief that had his request for a meeting been reciprocated by Mr Stokes the differences between them would have been resolved and he would have remained in the employment of the Appellant. He considered himself to have built up a good relationship with Mr Stokes during his years of service.

Other Background Matters

31. There were other issues between the parties with which the Court is not presently concerned; however, I think it pertinent to observe that the background to the ensuing correspondence included a complaint made by the Respondent to Gardaí that he had been the subject matter of an assault by Mr. Stokes. Suffice it to say that there was a delay in the investigation of the alleged assault which resulted in a complaint being made by the Respondent to the Garda Síochána Ombudsman Commission. The complaint was investigated and resulted in a finding that there had been a breach by the investigating officer of the Garda Síochána (Discipline) Regulations. This finding was communicated to the Respondent by letter dated 13th October, 2014.

32. When regard is had to the Appellant's dignity at work, disciplinary and grievance policies, the Respondent's allegation of verbal and physical abuse is patently material to the issue under consideration. In this regard, medical evidence was introduced in the form of a report, dated 12th December, 2013, which was provided for the assistance of the Court by the Respondent's GP. According to the report Dr. Sheehan examined the Respondent two days after the alleged assault. At consultation, she recorded the following account of the initiating event as follows "...he [the Respondent] told me that his boss had shouted at him, thumped him on the chest and poked him with his finger three or four times". Dr. Sheehan carried out a clinical examination of the Respondent at which she found an area of chest bruising measuring seven by five centimetres. In her opinion the findings were consistent with injury two days previously.

Conclusion; Events of the 4th and 5th June; Verbal and Physical Abuse

33. I had an opportunity during the hearing to observe the demeanour of the witnesses. Subject to what follows concerning Mr Fitzpatrick, I am satisfied that each gave what they believed to be honest and truthful evidence. It is not disputed that there was an altercation on the 4th June or that this was followed by a meeting in the laundry room or that on the same evening the Respondent phoned Mr. Stokes during which it was agreed that they would meet the next day to see if they could sort matters out.

Conflict of Evidence

34. There was a conflict of evidence as to precisely what had occurred during the initial altercation, the subsequent meeting in the laundry room, and whether or not a specific time had been agreed for the meeting the following day. For the reasons already indicated it is clear that Mr Stokes was not in the hotel the following morning and that an exchange took place between the Respondent and Ms. Shaip in her office after which she reported what had transpired to Mr Stokes and that he then phoned the Respondent and told him to leave the premises. Whether or not the exchange in the office had upset Ms. Shaip and whether or not she had been verbally abusive towards the Respondent was in issue.

35. Mr. Fitzpatrick gave evidence at the hearing in relation to the initial altercation. He remains in the employment of the Appellant. It was evident from his testimony that when initially approached to ascertain what he had seen and heard at the time his position was that he did not want to get involved, a position he maintained in the course of subsequent investigations. I formed a distinct impression that he was an unwilling witness. Such as it was I found his evidence to be of little assistance in resolving the conflict as to what had been said or what had occurred during the initial altercation.

36. With regard to the conflict on the evidence concerning the events of the 4th and 5th June, 2013, I prefer the evidence of the Respondent which I found to be more convincing and more likely to be correct for the following reasons: (a) Mr. Stokes was undoubtedly annoyed by the noise which had been created by the removal of the rubbish, (b) the Respondent admits that he was angry, vexed and upset by the way in which Mr. Stokes had remonstrated with him (c) his response is consistent with the verbal and physical abuse to which he says he was subjected as, indeed, was his subsequent behaviour, firstly, in the laundry room when the apology he had called for was not forthcoming and secondly, the next morning when there was a no show by Mr Stokes. I am fortified in the view to which I have come by the prompt complaint of an alleged assault made by the Respondent to the Gardaí as well as by the findings and opinion of his GP contained in her report of the 12th December, 2013.

Decision

37. For all these reasons I am satisfied and the Court finds that the Respondent was subjected to verbal and physical abuse which was neither justified nor excused by the breach of an instruction not to remove rubbish before 11 am, particularly in circumstances where it was necessary to remove the rubbish if the Respondent was to deliver provisions to Bramley's Café by 9.45 am. In reaching

this conclusion the Court is not overlooking the behaviour of the Respondent which in any given case may be taken into account by the EAT or the Court as the case maybe when considering a claim for unfair dismissal. However, in the circumstances of this case I am satisfied explosive though it was that the Respondent's behaviour was a natural and consistent response to Mr Stokes' behaviour towards him, behaviour which the Appellant's policies categorised as being 'unacceptable' and which would not be 'tolerated'.

38. For the sake of completeness, I should mention that CCTV footage taken from a camera located in the vicinity of the altercation was viewed but not kept. The explanation offered for this was that all recording is automatically deleted after a certain period of time. If that was so it is surprising that no contemporaneous note was made of the footage content especially against the background decision of June 6th to invoke the formal disciplinary procedure arising from the events of the 4th and 5th. In the event I am driven to the conclusion that had the viewed footage been in any way corroborative of Mr Stokes' account of what had transpired during the initial altercation it is highly likely such would have been retained/copied or a contemporaneous note made of it.

39. It is also abundantly clear from the content of the Respondent's faxed letter of June 5th, faxed and received by the Appellant on the same day, that he committed to writing a serious allegation of physical assault. Also evident from the correspondence which followed there was no attempt by Mr Stokes or by solicitors instructed to act on behalf of the Appellant to acknowledge or otherwise deal with that allegation. Finally, it would appear from later correspondence that Mr. Stokes may not have initially informed the Appellant's solicitors that the Respondent had made an allegation of assault against him as early as the 5th June.

40. In this regard the Respondent's solicitors wrote to the Appellant's solicitors on the 11th June, 2013, claiming that the Respondent had been assaulted by Mr. Stokes and advised that a complaint to that effect had been made to An Garda Síochána. Absent a reply, the Respondent's solicitors wrote again on the 18th June, and enclosed a copy of the letter of the 11th with a request for a response. This came by way of a letter dated the 21st June, 2013, in which it was stated that *"...it is also remarkable that your client made no claim of assault in any of the earlier correspondence sent from your firm. The action on the part of your client no less than the manner in which the correspondence was transmitted to us is nothing short of bizarre"*.

Ensuing Correspondence; Positions adopted by the Parties

41. It is not intended to otherwise summarise the content of the correspondence which passed between the solicitors leading up to the Respondent's dismissal. Suffice it to say that the position adopted by the Appellant was as stated earlier, namely, one of entitlement on the part of the managing director to investigate hear and determine not only the complaint made by Ms. Shairp but also his own complaint. In its submissions to the Court the Appellant relied on a number of authorities in support of this proposition which I have considered. See *Mooney v. An Post* [1998] 4 I.R. 288; *Shortt v. Royal Liver Assurance Ltd* [2008] IEHC 332; *Elmes & Anor v. Vedanta Lisheen Mining Ltd & Ors* [2014] IEHC 73; *O'Leary v. An Post* [2016] IEHC 237 and a decision of the Employment Appeals Tribunal in *Moore v. Notts Hotel and Resort Ltd* case no. UD 27/204 given the 17th May, 2005.

42. Having regard to the terms of the Appellants grievance, dignity and disciplinary policies the contention made in submissions on behalf of the Respondent's was that in the particular circumstances of the case the managing director should not have involved himself in conducting the investigation, making a determination and imposing a disciplinary sanction on foot of his own complaint particularly in circumstances where he himself was the subject matter of a complaint of assault by the Respondent. In this regard the attention of the Court was drawn to the High Court decision and judgement of Keane J. in *Mooney* which was upheld on appeal by the Supreme Court in the same case.

The Law

43. Insofar as the decision of the Supreme Court in *Mooney* enunciates the legal principals to be applied by an employer to the investigation and determination of a complaint and the imposition of a disciplinary sanction on an employee, the Court is bound by that decision and notes from the subsequent authorities to which it has been referred the way it which it has been followed and applied.

44. On my view of the evidence it is significant in the context of this case that the application of the rules of natural and constitutional justice, which include the entitlement of an employee to the benefit of fair procedures, to be informed of the charge or complaint against him and to be given an opportunity to respond and make submissions, are broadly incorporated into the Appellant's grievance, disciplinary and dignity policies. These commit the Appellant at all times to uphold the employee's right to natural justice and fair procedures, to apply same fairly and consistently to all and where it arises to dismiss only after an 'independent,' 'thorough,' 'impartial' and 'objective' investigation has been completed. [emphasis added]

45. The judgement of Keane J. in *Mooney* is particularly apposite to the circumstances of this case. While recognising the two great central principles – *audi alterem partem* and *nemo iudex in causa sua* cannot be applied in a uniform fashion to every set of facts, and certainly not in a way which would result in an employer never being able to dismiss an employee, his Lordship went on to state that *"...where, however, natural justice requires a hearing by an impartial tribunal before an employee is dismissed, the presence on the Tribunal of someone who has hitherto been in a prosecuting role may be a violation of the principle: see Connolly v. McConnell [1983] IR 172 and O'Donoghue v. Veterinary Council [1975] IR 398."*

If ever there was a case where natural justice required or called for the adoption of such an approach surely this was one such.

46. Acknowledging that the Appellant made it clear to his solicitors that the Respondent was entitled to know the nature of the complaints against him, was entitled to be accompanied by a colleague, but not by a solicitor, and was entitled to make submissions to the intended disciplinary meeting, it is nevertheless hardly surprising that the Respondent objected to the Appellant's investigative and disciplinary process being conducted by the person who he considered had subjected him to verbal and physical abuse.

47. That the Appellant recognised in the particular circumstances which pertained the appropriateness of adopting an independent course of action necessitated by the principles to which it had by its policies committed itself is manifest by its response to a proposal advanced by the Respondent's solicitors in a letter dated the 3rd July, 2013. It was suggested that an independent third party (to be agreed) should be appointed for the purposes of trying to resolve all matters in issue between the parties and that this should be done in the absence of solicitors.

48. The Appellant's solicitors responded by letter dated the 17th July, 2013, agreeing to the proposal in principle subject to certain conditions being met, one of which involved the Respondent making a financial contribution towards the cost involved; on the face of it not an entirely unreasonable condition. However, I am satisfied given the Respondent's strained financial circumstances, arising in part from his suspension without pay since the 18th of the previous month that the Appellant knew by insisting on the imposition of this condition that it would likely prove problematical for the Respondent and so it transpired. In my judgement this betrayed a lack of bona fides on the part of the Appellant in the apparent acceptance of the proposition.

49. In reaching this conclusion I am fortified by the Appellant's unwillingness to waive the condition for that reason when requested. As subsequent events demonstrate I am satisfied that the Appellant was determined to maintain control of the process and the cost involved. Indeed if there had been a genuine commitment to reaching an amicable solution the waiver of the fiscal contribution would have been a very small price to pay.

50. Instead, the Appellant made it clear that in the event the Respondent failed to attend the investigation meeting scheduled for 11am on 22nd August, 2013, his absence would be construed as a failure to cooperate in the investigation and disciplinary process and that the meeting would proceed in his absence. This response to the Respondent's stated unwillingness for the reasons given to agree to the Appellant's fiscal conditions was received by him as a breach of the very policies to which his employer had committed itself.

51. By letter dated the 21st August, 2013, the Respondent's solicitors made it clear that the proposed meeting constituted a failure to conduct the investigation/disciplinary process with due regard to the particular circumstances of the case and meant that the Respondent would not be in attendance at the meeting. Notwithstanding, the meeting proceeded in his absence at which a decision was taken to dismiss.

Ruling

52. On the findings made and for the reasons given I am satisfied and the Court finds that the investigative/disciplinary meeting which resulted in the dismissal of the Respondent was fundamentally flawed and contrary to the principals of natural justice to which the Appellant expressly committed itself by the policies which it had adopted, conducted as it was by the Appellant's managing director into his own complaint and that of Ms Shairp against a background where the behaviour giving rise to the complaints on foot of which the Respondent was found to be guilty of gross misconduct arose directly as a consequence of verbal and physical abuse to which he had been subjected by the managing director.

53. On the evidence as to what transpired at the meeting I am satisfied and Court finds that the investigation and ultimate decision making process involved was neither independent, thorough, impartial nor objective as it had to be if it was to comply with the policies which the Appellant had adopted. Accordingly, the Court will affirm the Order of the Circuit Court upholding the decision of the EAT that the Respondent was unfairly dismissed. The Court will so Order.