

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD1156/2007

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. S. Mahon

Members: Mr. B. O'Carroll  
Mr. J. LeCumbre

heard this appeal at Longford on 18 July, 17 & 18 December 2008  
and 1 April 2009

#### **Representation:**

Claimant:

Mr. Gordon Duffy B.L. instructed by Mr. Ken Smith,  
Ken Smith & Co. Solicitors, Suite 1, Merrion House,  
1-3 Lower Fitzwilliam Street, Dublin 2

Respondent:

Mr. Tom Mallon B.L. instructed by Mr. Liam Riordan,  
Mason Hayes & Curran, South Bank House,  
Barrow Street, Dublin 4

The determination of the Tribunal was as follows:

#### **BACKGROUND:**

The Chairman of the Board of Management ("the Chairman") indicated that he had been appointed approximately six years previously as Chairman of the respondent, which operates a four teacher National School with 83 pupils. The Board of Management ("the Board") is comprised of eight people made up of two Community Representatives, two elected Parents Representatives, two Appointees of the Patron, the Principal and a Teachers Representative who is selected by the Principal.

The claimant had been a teacher at the school since 1965 and had been appointed as Principal in 1996. Counsel for the Respondent opened to the Tribunal various correspondence commencing

with a letter dated 29<sup>th</sup> June 2005 from a teacher in the School. It was clear from the Chairman's evidence that relations between the Principal and the Board had broken down some years prior to the letter dated the 29<sup>th</sup> June 2005. Essentially this letter is the commencement of the correspondence relating to the first complaint against the Principal considered by the Board. Throughout the consideration of the first complaint the Chairman was in receipt of advice. Upon the first complaint being considered the Board issued a letter dated 26<sup>th</sup> October 2005 by way of a formal warning to the Principal. The Board found that the Principal failed to provide information requested by the Chairman and failed to respond to correspondence from the Chairman.

Counsel for the Respondent then opened a series of correspondence commencing with a letter dated 12<sup>th</sup> January 2006. In brief, this phase of the evidence related to two letters sent by two parents of two pupils and essentially this comprises the second complaint investigated by the Board. In response to the correspondence the Board instructed the Chairman to write to the Principal and a copy of the draft letter sent was opened to the Tribunal (incorrectly dated 12<sup>th</sup> January 2006). The letter was sent on the 7<sup>th</sup> of February 2006. There followed various other correspondence ultimately resting with the Board issuing a letter dated 15<sup>th</sup> May 2006 advising that it was "now issuing a final warning" to the Principal.

The third complaint ran in tandem with the second complaint and the correspondence commenced with the letter from the Chairman to the Principal dated the 17<sup>th</sup> May 2006. It related to an allegation that the Principal failed to keep the Board of Management informed regarding 7 ½ hours learning support which was not made known to the Board or taken up by the Principal.

The investigation of this complaint was suspended pending complaints of bullying/harassment being commenced by the three other teachers in the School. The Principal was the object of each complaint. The bullying/harassment procedure was invoked by the various complainant teachers and ultimately referred for mediation by a Mediator. The Mediator reported to the Board that he was unable to find a basis for a resolution and he recommended that the Board deal with the issues involved. The bullying/harassment complaints process commenced in or about the 19<sup>th</sup> of May 2006. On the 15<sup>th</sup> of August 2006 the Chairman wrote to the Principal advising, "The bullying/harassment cases taken by the staff have been substantiated. The issue of disciplinary action is now being considered".

At the same time as the bullying/harassment complaints were made by the three teachers, the Principal also lodged a complaint and initiated a grievance procedure against the Chairman and the Board. The correspondence dealing with this process was opened to the Tribunal. The Board of Management engaged an independent Tribunal (IT) to investigate the allegations made by the Principal against the Chairman and the Board. IT considered the matter and reported its findings to the Board dated 28<sup>th</sup> July 2006. IT found that the grievances of the Principal were not substantiated and consequently were rejected. The Board wrote to the Principal on the 22<sup>nd</sup> of August 2006 having concluded that the bullying/harassment of the three teachers constituted misconduct on the part of the Principal. The Board advised that they had issued the Principal with a formal written warning (and went on to allude to the two complaints, despite the fact that there was a finding only in respect of one of the complaints dealt with in the letter of the 26<sup>th</sup> October 2005). Also the Board referred to the second complaint which resulted in the Chairman writing to the Principal dated 15<sup>th</sup> May 2006 by way of a "final warning" to her. In view of the two previous warnings and because of their finding of bullying/harassment the Board concluded that the employment relationship was irreparably destroyed and the Board advised the Principal that it had decided to seek the consent of the patron to facilitate the Principal's dismissal. Pending the outcome of the patron's decision in the matter the Principal was placed on administrative leave

with full pay. Also the Board advised the Principal of her entitlements under the “Maynooth Statutes”. This process was concluded and affirmed the decision of the Board. By way of letter dated the 22<sup>nd</sup> August 2006 the Chairman, on behalf of the Board, notified the Principal that the Board were terminating her employment with immediate effect. That concluded the evidence of the Chairman. Counsel for the Principal cross-examined the Chairman.

Under cross examination the Chairman confirmed that the Principal commenced as a teacher in or about 1965 and was appointed Principal of the School in 1996. He confirmed that prior to 2005 he was unaware of any findings of misconduct. He further confirmed that there were no formal disciplinary rules in place at the time of the complaints. He was referred to the Working Together Procedures and Policies for Positive Staff Relations Guidelines. The guidelines were opened and put to the Chairman. The Chairman responded that in his opinion the Board was working within the parameters of this policy document.

The Chairman accepted that in respect of the two complaints detailed in the letter from him dated 26<sup>th</sup> October 2005 that the Principal was “acquitted” in respect of complaint number one. Also it was put to the witness that he should have just telephoned the Principal about certain of these matters. The Chairman advised that from a previous occasion he had been told not to phone the Principal outside school hours. It was put to him that it would have been preferable if he had phoned her during the daytime and in this respect he was referred to the Working Together Guidelines.

In respect of the second complaint which resulted in the final warning issuing by letter dated 15<sup>th</sup> May 2006 Counsel for the Principal enquired of the Chairman as to why he considered the letters from the parents as formal letters of complaint. He considered them formal letters of complaint because the parents had previously contacted the Principal and other members of the Board and he had advised them to try and resolve matters directly with the Principal. The Chairman gave evidence that the first contact from the parents was approximately three to four months before the written complaint. He did not write to the Principal regarding the verbal complaints as he was legally advised to tell the parent to contact the Principal. The Chairman advised the Tribunal that these were not “normal circumstances”. Informal contact had ceased between the Chairman and the Principal.

Counsel for the Principal opened the Board of Management handbook and referred in particular to the complaints procedure set out therein at appendix 50. The Chairman was adamant that he was familiar with the procedure set out therein and that he and the Board had complied with the procedure. The letters of complaint from the parents were received in or about December 2005 but the Principal was not notified of them until the 7<sup>th</sup> of February 2006. The procedure laid down in the handbook was that the Principal should have been notified within five days. The second issue which arose in the cross examination regarding the letters from the parents was whether or not these letters constituted formal complaints or were simple expressions of anxiety. The Chairman was adamant that the complaints procedure set out in appendix 50 was impossible to achieve. It was, he suggested, not mandatory but rather best practice. The Chairman was faced with wider problems and was seeking advice from the School Managers Association and also his legal advisors regarding the complaints and other matters. He was not a professional Chairperson and was simply a layperson. Counsel for the Principal advised and the witness confirmed that the letter of the 7<sup>th</sup> of February 2006 was a formal charge of misconduct against the Principal. Also he acknowledged that it made no reference to the sanction that the Principal may face. Again the Principal in cross-examination made reference to “all the different problems and complaints with the Principal”. Counsel enquired as to whether or not the Board, prior to sending its letter

of the 26<sup>th</sup> October 2005, considered any other sanction. The Chairman said they did not. Counsel pointed out to him their obligation to do so under the Working Together Agreement.

In respect of the decision to dismiss and the letter from the Board dated the 22<sup>nd</sup> August 2006 Counsel for the Principal enquired as to whether or not the Board invited the Principal to make any other comments about the decision being considered i.e. dismissal. The Chairman accepted that it would have been fair to allow her to make some representations or special plea given that they had made a finding of her being guilty of the bullying/harassment. The Chairman accepted that there was no facility to appeal the findings of misconduct (in any of the 4 instances). At least there was no appeal process provided for under the Board of Management book. The Chairman set out that this was not a normal set of circumstances. There was a complete breakdown in relations prior to the initial complaint from the teacher in June 2005. There had been previous issues regarding another teacher, which had not been concluded. The Chairman advised that the Board had sought help from the Principals union and the School Managers Association and suggested that there were a "whole range of issues beyond what we are dealing with". Counsel put it to the Chairman that there were four complaints in one year leading to a dismissal. This in the context of there being no findings of fault against her for the previous 40 years. The Chairman did not accept that she had an unblemished career nor did he accept that four complaints in one year was odd. The cross examination concluded and Counsel for the Respondent advised the Tribunal and put it to the witness that there were a number of Board meetings heard before they issued the letter of the 22<sup>nd</sup> August 2006 where all parties were heard. The Chairman gave evidence that reinstatement was not possible as there were problems with parents, teachers and the Board. No normal relations would exist.

The Tribunal enquired of the Chairman as to whether or not the Board had considered another alternative to dismissal. The Chairman advised that they were never advised of any other option and in particular they were not advised of demotion. He was of the view that reinstatement was not an option.

The next witness was one of the teachers who had made a complaint about non-assignment of classes and bullying/harassment; he was also a member of the Board. Nothing in particular turned on his evidence other than he confirmed that there was a full exchange of views before the Board meeting. He advised the Tribunal that he absented himself from the Board meetings considering the various matters. The next witness for the Respondent was another teacher. Again nothing in particular turned on her evidence.

The Respondent's case effectively concluded at that point but the issue of the minutes of the meetings of the Board of Directors was left open and in this respect the Principal reserved her position to cross examine the Chairman on the content of the minutes.

The hearing resumed on the 1<sup>st</sup> of April 2009 and the Chairman was recalled in respect of various matters arising out of the minutes. In particular Counsel for the Principal opened the minutes of the meeting of the 21<sup>st</sup> of October 2003. The relevant extract was: "during a discussion on complaints procedures not being followed the Chairman stated that he had no trust or confidence in the Principle (sic)." The Principal responded by stating that she had no confidence in the Board and was critical of the Board for not giving her its full support. The Principal also stated that recommendations previously given to her were not done in accordance with School Rules and procedures and therefore had no legal standing. Both the Chairman and Principal asked that these comments be included in the minutes".

Counsel for the Principal questioned the Chairman as to how he could sit impartially in subsequent hearings involving the Principal given that she had no trust or confidence in her.

Counsel for the Principal also opened the minutes of the meeting on the 21<sup>st</sup> of October 2005. The chairman was questioned as to whether or not the imposition of the twelve-month sanction was proportionate or appropriate and inquired as to why there was no record of the submissions from the trade union. The Chairman confirmed that to his recollection there was no subsequent meeting to that of the 21<sup>st</sup> of October 2005. It may very well be that he had contacted each of the members of the Board and the consensus was that he seek legal advice. He got legal advice.

Counsel for the Principal also opened the minutes of the 9<sup>th</sup> of March 2006 and in particular enquired as to how the minutes did not give a specific authorisation to the invocation of the disciplinary procedure. He also opened the minutes of the meeting of the 24<sup>th</sup> of June 2006 and put to the Chairman that the school was dysfunctional.

Counsel for the Principal also opened the minutes of the 1<sup>st</sup> of August 2006 and in particular focused on the proposal put forward by the Principal to essentially move on and let bygones be bygones. She proposed that the school prepare a school plan. This was not acceptable to the Chairman or the Board as it was not fair. This offered no resolution to the complaints of the other teachers and the suggestion of a school plan had been proposed by the Board from 1988 onwards and was resisted by the Principal.

Counsel also opened the minutes of the 22<sup>nd</sup> of August 2006 and focused on the wording “no option but to seek the patrons approval for dismissal...” Counsel enquired as to whether or not any consideration was given to re-training or sending the Principal on a course or some such alternative. The witness had no recollection of it. There was no re-examination of the chairman regarding the points raised.

Counsel for the Principal called a colleague of the Principal who was teaching in the school for a period from September 2003 to June 2005. However, the witness did not offer any evidence of any assistance to the Tribunal. Counsel then called the Principal who gave various background information. She qualified as a teacher in 1965. In 1974 three local schools consolidated to form the Respondent school she was the Principal of the combined school from the 1<sup>st</sup> of September 1996 to the date of her dismissal. In that time she was never found guilty or sanctioned and no inspector ever found her guilty or sanctioned her and no inspector ever found any fault with her.

The Principal gave evidence of a breakdown in relations between herself and the Chairman, which necessitated a protocol being put in place regarding future contact. She was taken through the various complaints which were investigated.

In respect of the first complaint from the Chairman she could not understand this complaint in view of the fact that the complainant was taken on by her, at the urging of the former chairman, exclusively for learning support and he was to remain in that position, according to her, until he retired.

In respect of the second complaint this was broken down between the two different parents. The Principal took issue with describing them as complaints and also thought there were many inaccuracies in the letter from one of those parents. Also issue was taken with the delay and the fact that the parents did not attend the meeting in March 2006. Also the Principal gave evidence that it was not her function to appoint or decide on resource hours. This was a matter for the

Special Education Needs Officer. Further she gave evidence that she was not advised of an appeal from the decision of the Board regarding these complaints.

In respect of the third complaint the witness did not accept any responsibility. In her opinion the Department caused the confusion. Further, she was never advised who the Complainant was.

She was not aware of any other complaints and the disrespect/discourtesy complained of by the Chairman related to a letter that she got during her summer holidays.

In respect of the fourth complaint, which essentially constituted the bullying and harassment complaint by her colleagues, the Principal gave evidence that she never refused to meet. She was confronted by three teachers at her door who told her they wanted a meeting within four days. She cooperated as well as she could and suggested a later date but that was not acceptable. They subsequently gave her a further letter. She complained of the fact that her union would not represent her as the complainants were also members of the same union and her solicitor was not allowed to attend. The meeting itself was "loud" and she was not allowed to cross-examine the complainants at the first meeting. On occasion her brother in law intervened on her behalf. Ultimately she was advised of the decision and of the Maynooth Statutes. She was not advised of the procedures regarding the conduct of the appeal (if that is what it was). The letter from the patron clearly stated that it was not a rehearing of the case. When the matter came before the committee appointed by the patron under the Maynooth Statutes she was represented by two Union Representatives. Issue was taken with the fact that copies of the minutes were not given to her Representatives and matters that pre-dated the incidents complained of were contained on the file in the possession of the committee for their consideration. The committee refused to exclude matters prior to the relevant period. The Principal was not aware of the content of the file and never saw what it was that the committee considered nor was she given an opportunity to challenge the committee's decision. That being said her representatives did not seek an adjournment in order to enable the application for a copy of the minutes to be furnished and also a copy of the file to be furnished.

Various other evidence was given regarding members of the Board of Management calling to the principals' house on or about the 25<sup>th</sup> of August 2006 but nothing in particular turned on it.

Regarding the invocation of the Maynooth Statutes the Principal gave evidence that she was not afforded an opportunity to make submissions regarding the penalty being imposed. She did not accept there was a complete breakdown in the school and did not accept there were problems. She gave evidence that if the Chairman thought there were problems he should have contacted the Department of Education.

The Principal gave evidence that she was seeking reinstatement and she gave evidence of the fact that she felt she could still work with her colleagues, as the allegations were unfounded.

In respect of her salary the principal gave evidence that she was on a full pension and had received a full gratuity. The pension was applied for in November 2007, as was the gratuity. The gratuity constituted one and a half years salary and the pension was a half of her salary. The payment of the pension was backdated to the date of dismissal, namely the 26<sup>th</sup> of June 2007. She gave evidence that as a pensioner in the public sector she was not entitled to work full time as a teacher. She had applied for some work. She had not applied for any permanent posts. She thought that she applied for two jobs, both of which were maternity leave positions.

Counsel for the Respondent cross-examined the principal. Issue was taken with her “careful reply” that she had not been found guilty or sanctioned. It was also put to her that she had made complaints about other teachers and that her relationship with the other staff was dysfunctional. The principal did not accept this assertion. The Principal gave evidence that she felt that she was not getting justice or fair play from the Board. She felt that the Board was not supporting her as Principal and that the Chairman was not loyal. She accepted under cross-examination that trust and confidence had broken down since approximately 2003. She rejected Counsel for the Respondents suggestion that the relationship between the Principal and the other teachers could be fixed on the basis that she did not make any false allegations and that the allegations made were not based on facts.

## **SUBMISSIONS**

Counsel for the Respondent made submissions to the Tribunal that the evidence showed a complete breakdown between the Board and the Principal. The Board were comprised essentially of laypersons and that the school involved was a very small school, in a very small community. He submitted that there was no reality to a restoration of relationships and in particular in circumstances where the Applicant does not accept her own fault. He referred us to the minutes of the meeting of the 18<sup>th</sup> of December 2002 and in particular the Chairman’s then observation that the Applicant was undermining the Board. He submitted to the Tribunal that the absolute breakdown in the relationship between the Board and the Principal constituted “some other substantial reason” such as to render the dismissal fair. He further submitted that the procedure adopted was appropriate in the circumstances. In respect of the Maynooth Statue procedure he submitted that this is not a process that is open to challenge, as it is not a de novo process. It is an internal review and not an appeal.

He further submitted that if we were against him on the argument advanced regarding the fairness of the dismissal he submitted that it would be inconceivable for the Applicant to be reinstated. In the alternative to re-instatement or re-engagement compensation is not appropriate in circumstances where the Applicant suffered no loss. She was entitled to draw her pension and did so as and from November 2007 and the pension payments were backdated to the date of dismissal.

Counsel for the Principal accepted that there was extensive evidence regarding difficulties in the working relationship. However, the Respondent failed in numerous respects and he summarised them as follows:

1. Did not consider an alternative finding to dismissal e.g. implement the suggested school plan or retrain the applicant or send her on a Management Course. No evidence was adduced at any stage by the Respondent of such consideration.
2. It was not made clear and is still not clear as to whether the Applicant was entitled to appeal the finding against her of misconduct. This is an unfair process.
3. The Maynooth process was not an effective Appeal process. If it is an Appeal then it is not a proper process as envisaged by Statutory Instrument 146/2000. He submitted it was a

fundamental flaw in the entire process that there was no real Appeal from the decisions of the Board.

4. He submitted that the prescribed disciplinary procedures were not complied with regarding the following:
  - A. Time limits
  - B. Procedures – no proper investigation.
  - C. No authorisation from the Board.
  - D. Numerous significant omissions from the minutes as to the matters considered by the Board.
  - E. Applicant not allowed to cross-examine complainants.
  - F. Did not properly consider an alternative to dismissal.
5. It was submitted that all of these failings in the implementation of the disciplinary procedures are expressly required under the “Working Together Procedures”.
6. Generally, and in view of the content of the minutes of the 21<sup>st</sup> of October 2003, there is a perception of bias and impartiality. The Chairman clearly had no trust or confidence in the Principal and the complaints heard by the Chairman must be considered in a fair and objective manner. He only excused himself from considering one of the complaints.
7. Counsel for the Applicant submitted that the Board should have handed over the entire matter to an outside authority.
8. In respect of the Maynooth Process same appears to have taken account of matters not pertinent to the initial investigation and finding and further breached fair procedures by not furnishing the Principal with copies of the minutes and or the file being considered by the committee.

## **DECISION**

The Tribunal having considered all the evidence and the submissions of Counsel on behalf of both parties have in the first instance determined that reinstatement was not an appropriate remedy given the obvious and unfortunate breakdown in relations between the parties. Further, re-engagement was not considered a viable option.

It is the decision of the Tribunal that the Respondent, despite its best efforts, embarked on a process that was fundamentally flawed from the outset. It is clear from the minutes of the meeting of the Board of Directors on the 21<sup>st</sup> of October 2003 that relations between the Board and, in particular, the Chairman of the Board and the Principal had broken down. The initial complaints which came before the Board for consideration and upon which the finding of misconduct was made were not of such seriousness as to warrant a formal finding of misconduct. Such a finding of misconduct was disproportionate and probably arrived at in very difficult circumstances. However difficult the circumstances that existed within the workplace, these circumstances, which we do not propose to detail but which were clearly apparent throughout the course of the evidence, should not have coloured the manner in which the Board dealt with the initial complaints of misconduct. This flaw was perpetuated in the manner in which the Board subsequently dealt with the further complaints. As such the decision of the Tribunal is that the dismissal was unfair in all the circumstances.



However, the Applicant had contributed significantly to the difficulties. Her behaviour was unreasonable and contributed to the breakdown in relations. Taking this into account the Tribunal has awarded a sum of €55,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)