

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee
against

CASE NO.
UD217/2007, MN138/2007

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Ms M. Sweeney
Mr. T. Kennelly

heard this claim at Cork on 6th November 2007 and 24th February, 7th and 8th May
and 14th July 2009

Representation:

Claimant : Ms Sile O'Kelly B L instructed by
Hayes, Solicitors, Lavery House, Earlsfort Terrace, Dublin 2

Respondent : Mr Marcus Dowling B L instructed by
Mason Hayes & Curran, Solicitors, South Bank House, Barrow Street, Dublin 4

The determination of the Tribunal was as follows:

This case initially came before the Tribunal in Cork on 6 November 2007. On that occasion the Tribunal was informed that an agreement had been reached and the case was withdrawn with liberty to re-enter up to 31 October 2008 to allow implementation of that agreement.

On 29 October 2008 an application on behalf of the claimant to extend that liberty up to 1 September 2009 was refused by a division of the Tribunal sitting in Dublin.

At the outset of the hearing on 24 February 2009 the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

A preliminary issue also arose as to the proper legal identity of the respondent in this case. Following submissions and contributions from the relevant parties the Tribunal found that neither the minister of Education and Science nor his/her department were the direct employers in this case.

Prior to the respondent's evidence it was submitted on their behalf that the Tribunal had no choice but to follow the judgement made by Murphy J in the High Court in the case of

Brid O'Dea-Vs-Muireann O'Brianin and Others (1992) I.L.R.M. It was the respondent's contention based on this case that once a religious order withdraws a nomination on one of its congregation from a school then the board of Management was obliged to terminate that member's employment. The respondent argued that this case was no different than the one cited above.

The claimant's side objected to that reasoning and emphasised the circumstances of this case were not similar to that High Court case.

Both parties subsequently furnished the Tribunal their separate submissions on this issue.

Respondent's Case

The provincial leader of the southwest province of the Order of Presentation Sisters wrote to the chairperson of the board of management of the respondent on 22 August 2006. That letter read as follows:

On behalf of the Presentation Congregation I write to inform you that we are withdrawing our nomination of XXXX (the claimant) to the teaching position, in the XXXX from 30th August 2006. It is not our intention to replace her with another sister.

We wish you every blessing for the new school year.

The provincial leader told the Tribunal that the effect of this letter was the claimant was no longer a teacher at that school as the board of management had to act on that withdrawal. This was in accordance with the custom and practice within the congregation.

On 29 August 2006 the chairperson in turn wrote to the claimant and among the letter's contents was the following:

At a board of management meeting held this evening, I was requested to write to you and to thank you for your service to the school since 1991 and to wish you every blessing for the future.

During cross-examination the witness outlined the background and circumstances that led her to withdraw the claimant's nomination. For some time interpersonal difficulties were issues at this school. Among those difficulties were formal grievances taken by the claimant against named members of staff including the principal and the chairperson of the board of management. These grievances were fully investigated under the grievance procedure and were not upheld. The witness who described the claimant as a good teacher with a good record was not saying that the claimant was responsible for interpersonal problems at the school. However, the claimant indicated several times that she was stressed at that school. By the summer of 2006 the claimant had been referred to medical practitioners and had declined an offer to take a career break. The witness then felt that it would be good if the claimant "had a period of rest".

This convent school was owned by the Order of Presentation Sisters and in that context that Order had a right to nominate members of their congregation onto the teaching staff of the school. Subject to the appropriate qualifications and approval from the relevant government department the board of management then appoints the nominated member onto its staff. A previous head of the congregation had nominated the claimant to this school in 1991 and she was subsequently appointed as an assistant teacher there. A Memorandum of Agreement to that effect was signed between the claimant and a representative on behalf of the management authority.

The provincial leader reasoned that since the Order has the power to nominate a member of their congregation to one of its schools it follows that the Order in the person of the head of the congregation has the authority, albeit implied, to withdraw that nomination. The witness exercised that power in a letter dated 22 August 2006 to the claimant. That letter read in part as follows:

.....as you have not agreed to take a career break ,as requested by the Leadership Team, I now confirm that in accordance with our constitutions number 79, and in light of the authority vested in me as Provincial leader, I am withdrawing you from the XXXX from August 30th 2006 and I am missioning you to a period of rest.

The witness said that their congregation were bound by their own rules and constitution which were based on canon law. She added that the claimant had to comply with the instruments of the congregation by virtue of her membership of that congregation and her vows. However, the witness also accepted that their members were subjected to the laws of the State.

The patron of this school was the Roman Catholic Bishop of Cork and Ross. A priest who was familiar with this case and worked at the patron's office explained how the patron and the religious order operated when a nomination, withdrawal and vacancy arose in a school connected with those bodies. The bishop as patron had no authority to interfere with how the religious order was run. It was his understanding that religious personnel who were appointed to schools operated under a vow of obedience to their congregation. That vow however came under canon law jurisdiction. In giving his interpretation of the rules governing religious staff at schools the priest commented that such teachers were treated differently from other staff.

The witness acknowledged receiving a letter from the claimant in September 2006 relating to her removal from the respondent. The view from the patron's office to this case was that all was correct in the manner of the claimant's removal from the school. That office did not regard this removal as a dismissal of the claimant. The effect of that withdrawal was that the claimant was to return to the Order. The claimant's issues were with her superior and the board of management.

Claimant's Case

The claimant qualified as a primary school teacher in 1975. Prior to her nomination and appointment as an assistant teacher in 1991 at the respondent she had held several teaching positions in other schools. As a nun and a teacher the witness came under both clerical rules and lawful authority. The former obliged her to take, among other things, a vow of obedience to her religious superiors while the latter subjected her to the terms and conditions of her employment. Her cessation of employment with the respondent in August 2006 was a result of the divergence from these two parallel roles.

The witness gave a lengthy and detailed account of her experiences at the school with particular emphasis on her relationship with its management and some of the staff. References were made to grievance procedures, mediation, meetings, and other related issues.

The claimant expressed displeasure at the respondent's interference in her medical affairs. She attended a medical practitioner on 14 March 2006 and neither required treatment then nor needed subsequent treatment. It was the claimant's contention that in this instance the school acted contrary

to the relevant conditions as set under the department's circular 10 of 2005. However that doctor wrote to the board of management in early May recommending that she take a career break "in view of her occupational related illness". The witness, however, stated her stress was caused by the respondent's lack of attention and action in addressing her ongoing concerns at work. In a response to a complaint from the claimant the doctor explained that he was approached by the board of management suggesting that she take a career break.

The notion of a career break was raised again in July 2006 when the claimant and the provincial leader met. This was "not a friendly, nice meeting" as the provincial leader insisted the claimant take a career break. The witness made it clear to her listener that she was not interested in taking such a break. Besides, it was past the date for such applications. From this impasse between these two women the provincial leader wrote to the claimant on 22 August. That letter informed the claimant that her nomination to the school was being withdrawn. The provincial leader wrote to the chairperson of the board of management on the same day advising her that the nomination of the claimant to a teaching position at the school has been withdrawn. The witness told her religious superior that she did not agree with that decision.

According to the claimant her vow of obedience to her religious order was predicated on dialogue and consultation. Neither of these two conditions were fulfilled. The witness also understood that in order for this instruction to be valid and meaningful there had to be a grave reason for it as defined by canon law. There was none. The claimant was also obliged to follow her own conscience and, in this case, it too objected to the provincial leader's decision. She accepted that the provincial leader had a right to ask her to take a "period of rest" and that she in turn had a right to refuse. A vow of obedience did not mean she had to follow the religious order's instructions in all circumstances. The claimant felt duty bound both in conscience and in action to oppose "the injustice done to her".

In that regard the claimant made a decision to attend school in her teaching capacity and told the provincial leader that she was not giving up her job. The school was due to reopen on 31 August 2006 and the claimant went there the day before to prepare her classroom for that event. She was shocked to find that the tables and chairs had been removed from that room and had been placed elsewhere. When she returned to her residence that afternoon the claimant was greeted by a letter from the chairperson. The contents of that letter amounted to a termination of her employment at the school. The claimant responded in kind writing to the chairperson questioning her treatment. She wrote among other things:

I hold you personally responsible for the damage you have caused me and I will expose the "behind the scenes" job that was done.

She also stated she would attend school the following day.

There were no pupils in her empty classroom on 31 August. The claimant who stayed in that room for most of the day was told by the principal and others that she no longer had a job at the school. The claimant contacted the Department of Education and an official informed her that as yet a substitute teacher had not been formally appointed to replace her. That situation soon changed as a substitute teacher took up duties. It emerged that the chair of the board of management contacted the department on 28 August regarding a replacement for the claimant, which the claimant was unhappy with because the board did not meet until the 29 August when it was decided to "thank" the claimant for her service. The claimant also attended her classroom on 1 September when some staff visited her. She also contacted the department in early September and

outlined her situation to them. An official from that department stated, *inter alia*

Under section 24 of the Education Act, the Board of Management of a school has responsibility for the recruitment, selection, appointment, discipline and dismissal of teachers and, in carrying out these functions, the board does not act as agent of the Minister.

Each teacher is employed under a contract of employment with the Board of Management and the Department is not a party to that contract...

This Department had no role in the decision made by the Presentation congregation or the board of Management to end your appointment as a teacher.... Consequently any issues relating to your employment in the school should be addressed to the Patron and/or the board of Management.

In the absence of further instruction from the Board of Management it is not possible to re-instate you to the Department payroll.

In response to the claimant's letter to their office a spokesperson for the Patron stated that her matters should be addressed to the Presentation Sisters and/or the Board of Management. The chairperson of the Board of Management replied to the claimant in a letter dated 12 October 2006. She explained that since a nominee starts on the staff without the usual interview or appointment process then such nominees are therefore treated differently than non-nominated staff. The letter also contained the following: *It is accepted, around the country, that in circumstances such as yours, the appointment and contractual arrangement are therefore different and, in particular, the continuation of a member of the Trustees on the staff is subject to and conditional on the continuing nomination of that member to the staff by the Trustees.* That letter ended informing the claimant that the Department had authorised the Board to fill the vacancy that had arisen due to her departure.

The claimant wrote a lengthy letter dated 31 August 2006 to the Provincial Leader stating her case. The witness reminded the recipient that if she withdrew her nomination from the school then it was her wish to keep her job as a lay teacher. That information was not given to the board of Management. The claimant continued: *I now hold you personally responsible for the loss of my employment, loss of salary and pension.* She urgently asked the Provincial Leader to rectify this situation and added that she intended to pursue her quest for justice. The letter ended by restating that her contract was with the Board *"and you took my job from me"*

Three further witnesses gave brief evidence on the claimant's behalf. An official from the Irish National Teachers Association outlined several scenarios in relation to the claimant's pension situation. The assistant general secretary of that organisation said she was not aware of any reference to the removal of a teacher in a convent and monastery school under section 24. 7 (i)-(iii) of the Educational Act 1998. That witness also referred to appendix 30 of the Catholic Managers handbook where it states:

- 1. A Board of Management is forbidden to dismiss a teacher or to give notice of dismissal until the matter has been referred to the Patron, so that he teacher, if she/he wishes, may make an appeal to the Patron in his/her defence (Maynooth Statute 262:4)*

The witness acknowledged, however, that religious orders transferred their members from one school to another. She described that movement as an in house matter.

A psychotherapist who became acquainted with and maintained a professional relationship with the

claimant since 2004 explained the contents of a report she wrote and submitted on that relationship. This witness said that the claimant was at a loss to understand why the respondent had dismissed her.

Majority Determination

This case had several strands to it. The claimant was a nun attached to the Presentation Order and was also a qualified and experienced national schoolteacher. Her employer was a board of management of a school. The respondent appointed her and based that appointment on a nomination from its trustees who were a religious order of which the claimant was a member. When that order withdrew that nomination the respondent felt obliged to terminate her employment.

An unusual feature of this case was that respondent relied almost exclusively on a legal defence and there was the absence of witnesses for the respondent. That absence allowed most of the claimant's evidence to go uncontested.

Based solely on the evidence and the circumstances of her dismissal it was common case among all concerned that this dismissal was unfair. The Tribunal cannot disagree with that view. However before making its findings the Tribunal needed to address and consider this case in a wider context than the case itself and the Unfair Dismissals Acts.

Counsel for the respondent argued strongly that it had to act the way it did due to the particular circumstances of this case. No other option was open to the board of management but to terminate the claimant's employment once it was informed that her nomination was withdrawn by her religious superior. The respondent insisted that it was permissible for religious orders to act in a manner contrary to the law of the land. This permission was well established in case law and continues to enjoy constitutional approval. The courts have allowed religious orders to openly discriminate in circumstances where such discrimination would not ordinarily be lawful. Such orders must be allowed to run their own affairs in their own interests. Counsel referred to a number of High Court cases, in particular the O'Dea case where the following passage was highlighted from the judge comments:

If the trustee exercised or even purported to exercise the power undoubtedly conferred on her by the articles of management to withdraw the nomination of the teacher proposed by her, it is accepted by all parties that the board of management and the minister have no option but to conform with that direction.

So that the challenge here is, as it must be, a challenge by the plaintiff to the purported exercise by the trustee....

According to the respondent the Tribunal is bound to follow the earlier judgments of the High Court and therefore dismiss this claim.

The respondent also maintained that the corollary of section 7 (i)-(iii) must be taken into account in that if a religious order has the authority to nominate and the school is obliged to appoint that nominee, subject to other conditions, it follows that the school must dismiss the relevant person when that nomination is withdrawn.

In rebutting that submission counsel for the claimant indicated that the O'Dea case was not

particularly relevant in this case due to it differing circumstances. As part of their submission counsel wrote:

...it is clear from the judgement (in the O'Dea case) that if the school in that case had dismissed the Plaintiff, the school acknowledged in its correspondence that it would have been obliged to exercise fair procedures, and the device of requesting the Plaintiff's Order to transfer her was a method of avoiding that.

Counsel further notes the comment on this case that reads:

While this might be seen as an example of an exemption from a law of generality based on the congregation's right to self-government, this point is not discussed in this judgement.

The thrust of their case is that the law of the land should apply to this case. The Tribunal has to take into account the rules governing all teachers under the Education Act 1998, the rules for national schools, the management members handbook, the various circulars issued by the department of Education and Science and the claimant's contract of employment.

This division of the Tribunal was faced on the one hand with compelling evidence of an unfair dismissal under the Unfair Dismissals Acts, and on the other hand with a persuasive and well-argued case on why it cannot make that finding.

Having considered the entire evidence and the various submissions the majority find that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds.

According to those Acts the dismissal of an employee shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal. This dismissal was wholly unjustified in all the circumstances. In reaching its majority decision the Tribunal not only considered all the circumstances of this case it also had regard to the contrasting submissions.

The majority puts greater weight and importance on the fact of dismissal in this case than on other factors. The background to the claimant's dismissal is of lesser concern than the absence of proper procedures applied in this case. Indeed the manner in which the claimant was treated at the time of her dismissal was grossly undeserved, hugely disrespectful, and is a source of shame on those who carried it out.

The Tribunal cannot overlook or ignore the fact that the claimant had a contract of employment with the respondent. That contract was terminated by the respondent without any consultation with the claimant. Even had the instruction from the claimant's religious superior been relevant the board of management neglected to refer the case to the school's patron to allow the claimant to appeal that dismissal. Furthermore, the Tribunal does not accept that the respondent had to act in the manner it did when the provincial leader withdrew that nomination. The Tribunal is also concerned that the board of management or at least certain people on that board appeared to be acting in conjunction with Provincial leader to remove the claimant from the school. It seemed that each side in this untidy situation looked elsewhere when challenged on it by the claimant.

The Tribunal by a majority decision orders the reinstatement of the claimant under the Unfair Dismissals Acts, 1997 to 2007 back into the position she held prior to her unfair dismissal.

Dissenting Determination of Ms. M Sweeney

The current case is one of the more challenging cases to come before the Tribunal given the complex relationship that exists between the Religious Order, the Claimant, a member of the religious Order and the Board of Management (BOM) her employer. The respondent relied almost exclusively on a legal defence to support their actions.

It is accepted that the Claimant Sr. Maria, is a member of the religious Order and was a member at the time of the termination of employment by the BOM, on foot of a direction by the Trustees, to withdraw her nomination to a teaching post, a power they believe they have, under the provisions of the Education Act, 1998, Appendix D Sec 7 (i)-(iii). As a nun XXXX is subject to two codes/sets of rules. The relationship between these is complex and not always clear.

It must be stated that it was common case between the parties that the claimant was an excellent teacher and that there was no substantive reason for her termination other than the withdrawal of the nomination by the religious Order, XXXX.

This situation arose against a background that there were serious interpersonal issues in the school. These were the subject of a Mediation process in 2003 and from that stemmed a number of concerns which led to the claimant lodging a formal grievance some time later, under the Working together: Procedures and policies for positive staff relations which culminated in a hearing by an Independent tribunal, who issued its report dated June 17th 2006, which found her grievances to be not proved.

It is also clear that the claimant, in evidence and in correspondence with her employer and/or their legal representatives from 12/12/2005 raised almost continuously the levels of stress she was suffering due to the difficulties she was experiencing and her frustration with the grievance process and the lack of concern for her well being. Issues arose in relation to how the outcome of the claimant's medical examination was followed up and this raises serious questions of impropriety in procedure, regardless of good intention, on the part of some or all of the BOM.

It was against this background that the Provincial Leader wrote to the claimant on 22/8/06 as follows:

“I write to acknowledge receipt of your letter, dated 18th. August 2006, informing me that you are not in a position to take a career break. Further to my letters of July 11, 24, 28 and August 11 and as you have not agreed to take a career break, as requested by the leadership Team, I now confirm that in accordance with our Constitutions number 79, and in light of the authority vested in me as provincial leader, I am withdrawing you from the primary School in Bandon from August 30th. 2006 and I am missioning you to a period of rest.

I also wish to let you know that I am writing to the Board of Management, today, informing them that on behalf of the Congregation, I am withdrawing your nomination to the school.

I realise this has been a difficult time for you so when you have had an opportunity to rest, we will meet and discern further with you.”

The question before the Tribunal is what was the effect of the withdrawal of the nomination of the claimant to her teaching position by her Order?

The Education Act, 1998, Appendix D, Section 7 (i) gives the Religious Order power to have a

suitably qualified member of the Order nominated as a teacher and appointed by the BOM. It is clear that the BOM's hands are tied, they must appoint as per section 7 (1) to a school.

The respondent argues that the Religious Order have a corollary right to withdraw the nomination and that the BOM must also act on that direction and terminate the employment. The respondent argues that this termination is not subject to the normal Disciplinary rules for termination of a Teachers employment and does not amount to an unfair dismissal.

It must be noted that while the Order withdrew the nomination giving rise to the termination of employment, they are not a party in this case; nevertheless, they are central to the decisions and actions of the BOM. Considerable evidence was provided by the Provincial Leader, XXXX, in relation to the decision. She confirmed in evidence that she and her leadership team, had taken the decision, within the rules of the order to "mission" the claimant XXXX to rest and had written to the BOM withdrawing her nomination from her teaching position. She further confirmed that there was a practice of transferring members of the order from one position to another to meet the congregation's needs, including from one school to another. Discussion/consultation took place with the claimant on various options and the final decision to withdraw her nomination left the claimant unhappy and not accepting the decision.

The claimant in her evidence confirmed that during her 30 plus years of teaching she had been nominated by her Order and appointed to teaching roles on previous occasions to other schools and that subsequently her nomination had been withdrawn and her employment terminated and she was transferred/nominated to another school, but the difference in the instant case was that she did not agree to the transfer.

The procedure for the appointment of a teacher under Appendix D, Section 7 (1) is outside the normal process for appointment of lay teachers – response to advertisement, interview, selection and so on.

Evidence was given by several witnesses including the Asst. General Secretary, INTO, that the practice was established for religious Orders to nominate and to withdraw nominations and transfer members from one school to another. The BOM would appoint/terminate employment this was sanctioned by the DES without demur from the INTO.

The claimant was fully aware and had been subject to this practice and understood the impact of its operation; that her tenure in position was dependant on the nomination of her Order which nomination could be withdrawn by her Order and that the BOM would then act on that direction by terminating her employment with the school.

The interaction between the two codes was raised several times during the hearing. I find the Judgment of Murphy J. in Brid O'Dea v Muireann O'Briain, & Ors being the Board of Management for the time being of St. Lois High School and Fiona Fullam and the Minister Education, Ireland and the Attorney general High Court 1991 Murphy J 22nd October 1991 no. 13035p (1992 ILRM 364) ("the O'Dea Case") to be Persuasive in this question.

"The reality is that the plaintiff's position as a teacher involved dual responsibilities. She was subject to and had the benefit of two codes or two regimes. In so far as she was a member of the teaching staff of the school, she was to some extent subordinate to the board of management and answerable to them. But she was also a member of a religious community and subject to and with the benefit of their code of conduct and their regulations. As I see it, there is

no guarantee that the two codes of conduct would reconcile or mesh one with the other. Undoubtedly, it is recognized by the defendants (particularly by the board of management in their letter of January last) that they would have to conform to particular standards if and in so far as they were considering the removal or disciplining of a member of the teaching staff of the school. But it is equally clear that different regulations and different considerations apply in so far as a religious superior is dealing with a member of his or her community.

I know of no reason to accept or assume that the rules of constitutional justice or fair play which have evolved so clearly over so many years would apply to a decision made by a religious superior in relation to a member of his or her community. The task which such a superior is performing is wholly different from that of an employer or a person exercising a quasi-judicial function and endeavouring to ascertain the truth of particular allegations or endeavouring to form an opinion in relation to disputed facts. It seems to me, though it is not as of yet a matter of expert evidence, that a religious superior exercises his or her authority for a variety of different reasons or different purposes. It may be a matter of discipline, or it may have a religious purpose. It may be that it is to inculcate humility or obedience or to advance the interests of the religious order, whereas a lay tribunal would have as its purpose the ascertainment of truth and the vindication of the rights of the parties who are subject to its decision.

It does not seem to me that there is any basis for believing that similar considerations apply to decisions made by religious superior in relation to members of their communities. The power given to the religious superior seems to be absolute or virtually absolute and subject only to the condition precedent that consultation should be held. But of course, the religious superior is in no way bound by representations or submissions made to him or her. As I say, that is the particular power to give a particular direction. However, the constitution of the community must also be read in the context, as has been pointed out, that the members of a community of this nature have agreed to bind themselves by agreements or solemn vows of poverty and obedience and chastity. It seems to me that the vow of obedience is the converse of the absolute power of direction. It is the agreement, the unequivocal agreement, to accept orders that are given. To that extent it is unlikely and improbable that if was ever intended that the exercise by a religious superior of his or her powers to make orders could be subject to review by any other standard or by any other tribunal.

I have said and I now repeat that a decision on that matter must be postponed until the hearing of this action. I merely express the view that there are obviously serious difficulties in the plaintiff succeeding in the action. However, that is not to dismiss entirely the possibility that that would happen. Not only the facts require further consideration but it is proper to say that matters of complicated law can only be adjudicated on finally at the full hearing.” (1992 ILRM 364 - Page 369/370)

The Order, in the O’Dea case, had been asked to withdraw the nomination of Sr. O’Dea in order to avoid the necessity of the BOM having to utilise the normal procedures for the removal of a member of the teaching staff. Evidence of a direct request from the BOM to the trustees was not provided in this case. However the Trustees were informed by the BOM see the Independent Tribunal set up under stage 4 Grievance Procedure “Footnote: 1. Sr. X, who was Acting Chairperson of the Board of Management for a short period while the Chairperson was abroad, told the Tribunal that the Board had sent a copy of certain correspondence to the Provincial of XXXX. She claimed that this was done out of concern for XXXX.” (Page 5 of Report/Page 56 Claimants correspondence). The BOM also requested two meetings with the Trustees to inform them of the situation pertaining in the school in Feb ’06 and June ’06.

The claimant's legal submission in the O'Dea case states that "*a similar device is being used in this case*" however unwittingly on the claimant's representative's part they seem to accept the similarity between the cases. The inference is that the withdrawal of the nomination by the Trustees would obviate the need for the BOM in this case to go through the general procedures for the removal of a teacher.

The O'Dea case was an interlocutory injunction case, but as set out above, paragraph 18, in relation to the interaction between the two I find Murphy J to be persuasive in this case. Murphy J went on to say

"Whilst relief is sought against the other parties (the board of management and the minister) there is no substance to that claim unless and until the plaintiff succeeds against the trustee. If the trustee exercised or even purported to exercise the power undoubtedly conferred on her by the articles of management to withdraw the nomination of the teacher proposed by her, it is accepted by all parties that the board of management and the minister have no option but to conform with that direction." ([1992] ILRM page 368)

For the reasons set out above my determination is – that the decision to withdraw XXXX nomination by her religious superiors, when communicated to the BOM left the BOM with "*no option but to conform with that direction*" by termination of XXXX employment, without recourse to the normal procedures for the removal of a teacher. Therefore, the BOM has no case to answer under the Unfair Dismissal Acts 1977 – 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)