

NI BHEGLAIN

THE HIGH COURT

1977 No. 4117P.

BETWEEN:

MAIRE INIONN NI BHEGLAIN

Plaintiff

and

CITY OF DUBLIN VOCATIONAL EDUCATION COMMITTEE,
IRELAND AND THE ATTORNEY GENERAL

Defendants



JUDGMENT of Miss Justice Carroll delivered the 28th day of January 19

The Plaintiff was suspended from office as assistant head of the Department of Display and Interior Design in the College of Marketing, Parnell Square, from the 2nd May 1977 by resolution of the City of Dublin Vocational Education Committee ("V.E.C.") on the 29th April 1977 pursuant to section 7(1) of the Vocational Education (Amendment) Act 1944 ("the Act").

As a result of the suspension, it followed automatically pursuant to section 7(5) of the Act that no salary was or could be

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paid to the plaintiff from the 2nd May 1977. The reasons for her suspension were not communicated to her after the resolution, despite requests from her solicitor.

This action was commenced on the 25th August 1977 and, by coincidence, on the same day the Minister for Education ordered an inquiry pursuant to section 8 of the Act. The date of the inquiry was subsequently fixed for the 10th October 1977. On the 7th October 1977 the plaintiff had still not been informed of the grounds of her suspension and, at her request, the inquiry was adjourned sine die on that date. She has since pursued her claim in this action.

The plaintiff claims:

Firstly that the V.E.C. acted contrary to the principles of natural justice and constitutional justice in that the resolution suspending her was passed without notice to the plaintiff and without giving her an opportunity to make representations: and further that the reasons for suspension were not communicated to her afterwards;

Secondly that the V.E.C. failed to comply with the statutory

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requirements contained in section 7; and

Thirdly that her suspension is consequently void.

By consent, the question of damages has been left over for another time.

The plaintiff also claimed that section 7 of the Act was unconstitutional in that the V.E.C. in purported compliance with the section acted contrary to the principles of natural and constitutional justice.

This ground was dealt with at the conclusion of the plaintiff's case when I held that there was nothing inherent in the section which would prevent the application of principles of constitutional justice or the particular principles of natural justice appropriate to the circumstances of the case. (See Loftus v. The A.G. 1979 I.R. 2 (at 244) and East Donegal Co-Operative .v. A.G. 1970 I.R. 317 at 341).

The facts are as follows:-

In 1960 the plaintiff was appointed as a lecturer in shop and window display (Class III) in the School of Commerce and Retail Distribution (which subsequently became the College of Marketing). The principal, at all relevant times, was Miss Pauline Beirne and the

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assistant principal, at all relevant times, was Mr. Madden.

Mr. Madden as assistant principal was head of the Department of Display. The plaintiff as part of her delegated administrative duties from Mr. Madden carried out many duties appropriate to the head of this Department subject to Mr. Madden's overall direction. In the prospectuses for 1963/64 and 1964/65 she was described as head of the Department of Display and Mr. J. Creagh was described as assistant head of the Department of Display. However, I am satisfied that no such official posts then existed. Mr. Creagh was a lecturer appointed to the Department of Display shortly after the plaintiff.

In 1972 at a time when the school was in the process of re-organisation to become a Third Level Education Institution, the official post of assistant head of Display Department (Specialist Grade) was advertised. The plaintiff and Mr. Creagh applied and the plaintiff was appointed by resolution of the 20th July 1972 by the V.E.C., the appointment to take effect not earlier than the 1st September 1972.

According to her evidence, the plaintiff considered that she was

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being asked to teach students with inadequate equipment in inadequate premises and with inadequate assistance. She felt this to be dishonest to the students. When she referred to dishonesty in connection with the College, it appeared to me that she invariably intended to mean it in this sense. She considered that she was obstructed in every way in her efforts to teach the students to the standard she felt was required.

When she returned at the beginning of the academic year in September 1975 the plaintiff in evidence said it was obvious she was not in charge and that Mr. Creagh had assumed the duties of head. She asked Mr. Madden for confirmation that her position in the Department would be unchanged and she was told that it was. She also wanted recognition and pay for the work she was doing.

As she was not satisfied with the reassurances she was given, she withheld time-tables which she had prepared for that year. This was a duty which had been delegated to her for the four previous years. The reason she gave for withholding them was because she said all her work finished up in the wastepaper basket and the time-tables would suffer the same fate. She refused to reconsider her

decision and new time-tables had to be made out three days before classes began.

The incident was reported to the acting C.E.O. on the 30th October 1975.

By letter dated the 30th October 1975 Miss Beirne directed the plaintiff to resume normal duties as assistant head.

About this time, as part of the reorganisation of the College, the newly created post of head of Department of Display and Interior Design (Lecturer II category) was advertised. Both the plaintiff and Mr. Creagh applied and Mr. Creagh was appointed by resolution of the V.E.C. on the 4th December 1975. He took up duty on the 7th January 1976 by arrangement with the principal, Miss Beirne. This was normal procedure where an existing member of staff was appointed but no increase in salary was paid until sanction from the Department of Education was forthcoming. After sanction was given, salary was paid retrospectively to the date duties commenced.

Notwithstanding the appointment of Mr. Creagh as head of department, the plaintiff continued to communicate only with Mr. Madden.

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There followed a series of incidents and complaints involving the plaintiff. I have taken the view that where there is a conflict of evidence I should not decide whether all or any of these complaints were justified. This Court is concerned with whether the procedures followed were fair. But the fact that the complaints were made to Mr. Sheehan, the C.E.O., is relevant in that they were passed on to the V.E.C.

At the end of February 1976 the plaintiff wrote to Mr. Madden to say that she would not be giving a class as scheduled but would give the pupils instruction in another subject. After an abortive meeting on the 1st March 1976 between the plaintiff and Miss Beirne, the plaintiff was required by letter in writing dated the 3rd March 1976 from Miss Beirne to give an undertaking to execute the official time-table. On the 12th March 1976 she signed the undertaking in the presence of the C.E.O., Mr. Sheehan.

In June 1976 Mr. Creagh formally complained about the plaintiff's behaviour to him.

On the 24th June 1976 Mr. Sheehan instructed the plaintiff to attend his office on the 7th July. She did not attend but a medical certificate was sent in by her sister to excuse her absence

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until the 13th July. She did not contact the C.E.O. on her return. On the 27th July Mr. Sheehan wrote to her and asked for an explanation but none was forthcoming. In evidence she said that she was on vacation from the 16th July to the 1st September and should not have been expected to attend.

At the commencement of the new academic year a meeting was held on the 27th September 1976 at the instigation of Miss Beirne in an attempt to restore oral communications between Mr. Creagh and the plaintiff. It was unsuccessful. The plaintiff refused to communicate orally with Mr. Creagh and refused to have any meetings with Miss Beirne or the C.E.O. unless she had witnesses present on her behalf corresponding to the number of witnesses they had.

On the 7th October 1976 the plaintiff had a meeting with Mr. Sheehan. He suggested sick leave. According to him, the plaintiff was carrying out no administrative duties at this time though she said herself that she did everything she was asked to do.

The case of the plaintiff came up for consideration at a meeting of the staff relations group on the 23rd November 1976. This group

was a sub-committee of the V.E.C. Their report recommended

"1. That Mr. John Creagh would act as head of Display and Design Department pending the sanction of the Department of Education for his appointment;

2. That Miss Maire Ni Bheolain be advised accordingly and required to give an undertaking of her acceptance of this position."

This report was adopted by the V.E.C. at its meeting on the 25th November 1976.

On the 2nd December 1976 Mr. Sheehan wrote to the plaintiff to advise her of the decision of the Committee and asked for a written undertaking indicating her acceptance of it. That letter crossed with the letter of the same date from the plaintiff to Mr. Sheehan requesting a transfer without loss of status or salary.

Mr. Sheehan replied to the plaintiff's letter on the 14th December 1976 saying her letter had been referred to the principal for observations and he would be in touch with her in due course. But no reply was received by him to his letter of the 2nd December.

On the 8th December 1976 Mr. Creagh complained in writing to

Miss Beirne about the plaintiff's behaviour. This was forwarded on the 15th December to Mr. Sheehan.

On the 14th December 1976 Mr. Sheehan again wrote to the plaintiff saying that as she had not responded to his letter of the 2nd December 1976 he requested her to forward by return the necessary written undertaking by her of her acceptance of the Committee's decision in the matter. He asked her to let him have the undertaking before Friday the 17th December 1976 in time for the December meeting of the V.E.C.

On the 17th December 1976 the plaintiff wrote to Mr. Sheehan denying that she did not accept Mr. Creagh as head of Display and Design Department. She said she failed to see what was required of her and asking that he would be more specific on the point. She also repeated her request for a transfer.

By letter of the 23rd December 1976 Mr. Sheehan wrote to the plaintiff asking her to attend at his office on the 3rd January 1977 at 10 a.m. She did not attend but sent a medical certificate covering the period of ten days from the 31st December 1976.

At the request of the C.E.O. a meeting took place with him on the

12th January 1976. The plaintiff brought a trade union representative, Mr. Miller, of the T.U.I. The plaintiff made accusations against Mr. Creagh about the manner of his appointment and about the V.E.C. and Mr. Sheehan, the C.E.O. The plaintiff continued in her attitude that she would not talk to Mr. Creagh and would only accept communications from him in writing.

Mr. Sheehan said he told the plaintiff in relation to her request for a transfer that a similar post was not available and asked her to suggest possible alternative postings. He told her her letter was not an adequate response to his letters in that she had not acknowledged Mr. Creagh's appointment by the Committee. He told her that the situation where she would not communicate with the head of her department other than in writing was intolerable.

I accept Mr. Sheehan's evidence that all of these matters were said to the plaintiff.

On the 20th January 1977 Mr. Sheehan wrote to the plaintiff referring to her request to be more specific about what was required of her, saying her letter of the 17th December did not adequately comply with his request in that it did not explicitly indicate her

acceptance of Mr. Creagh's appointment as having been made officially by the Committee. He enclosed a written undertaking which he asked her to sign and return it to him not later than the 26th January so that he could report its receipt to the V.E.C. at its monthly meeting on the 27th January.

The text of the undertaking is as follows:-

"A statement by Maire Ni Bheolain, Lecturer I, Assistant Head, Department of Display and Design, College of Marketing, Parnell Square, Dublin 1.

I hereby affirm my acceptance of the appointment by the City of Dublin Vocational Education Committee of Mr. John Creagh as head of the Department of Display and Design, at the College of Marketing. Accordingly I undertake to co-operate fully with him and all members of college staff in the conduct of courses therein, and in administrative matters related thereto, in accordance with my conditions of service.

I hereby withdraw unreservedly all allegations made by me against members of the City of Dublin Vocational Education Committee and its employees in relation both to the manner of appointment of Mr. Creagh to his post as head of Department and to the exercise of official powers or the performance of official functions generally by any or all of these persons."

No reply was received to this letter and this was reported by Mr. Sheehan at the meeting of the V.E.C. on the 27th January 1977.

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It was agreed at that meeting that a decision be deferred pending sanction of Mr. Creagh's appointment by the Department of Education and her reply to the C.E.O's letter of the 20th January.

On the 3rd February 1977 Mr. Sheehan wrote to the plaintiff saying he had reported to the V.E.C. at its monthly meeting that no reply had been received from her and he said they continued to await her reply with concern. He also told her that the Department of Education had sanctioned Mr. Creagh's appointment as head of Display and Design Department. He urged her to furnish the undertaking without further delay.

This letter was sent by registered post but was returned undelivered by the post office. It was subsequently handed to her by Mr. Madden together with a covering letter of the 15th February 1977 from Mr. Sheehan requesting a reply by return so that he could report to the meeting of the staff relations group on the 17th February 1977. He further said his Committee viewed with concern her failure to reply to his earlier letter.

In the meantime, at the beginning of February, the plaintiff initiated a plan to get the students to work one day a week outside the

college and wrote to Mr. Madden on the 3rd February in connection with it.

On the 7th February 1977 the principal Miss Beirne wrote to her asking her to deal directly with Mr. Creagh.

On the 8th February Mr. Creagh wrote to her to call at his office. The plaintiff replied the same day saying she would not communicate with him except through the medium of writing.

On the 11th February Miss Beirne wrote to her insisting that she communicated verbally with Mr. Creagh and directing her to call on the 14th February to his office to discuss her memo and other departmental matters requiring attention. She drew her attention to the letter from Mr. Sheehan to her on the 20th January 1977 asking her to undertake to comply with all lawful orders conveyed to her verbally or in writing by senior staff so authorised, including Mr. Creagh.

On the 14th February 1977 the plaintiff replied to Miss Beirne saying she would not communicate verbally with Mr. Creagh.

On the 15th February 1977 Miss Beirne complained about the plaintiff to Mr. Sheehan saying she would not co-operate as assistant

head of Department of Design and Display and that she was not carrying out any duties apart from teaching 7½ hours per week.

On the 17th February 1977 the plaintiff replied to the C.E.O. Mr. Sheehan, explaining why his registered letter of the 3rd February was not delivered to her and saying that his previous letter was with the T.U.I. and they had undertaken to reply to him. She said she would forward to them the letter she had just received and hoped they would deal with it as quickly as possible.

At the meeting of the V.E.C. on the 24th February 1977 Mr. Sheehan reported that the undertakings had not yet been furnished and it was agreed to advise the plaintiff and the general secretary of the T.U.I. that unless the undertakings were received before the next monthly meeting the Committee would take appropriate action and in particular would consider her suspension from the service.

On the 4th March 1977 the C.E.O. wrote to the plaintiff saying the Committee expressed grave concern that she had failed to comply with the instructions in the letter of the 20th January in spite of the reminder of the 15th February. He informed her that unless he received the undertakings sought in those letters before the next

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monthly meeting of the Committee on the 24th March the Committee would take appropriate action and in particular would consider her suspension from the service.

On the 11th March 1977 the plaintiff replied to the C.E.O. in the following terms:

"I wish to inform you and your Committee that I always have, still do, and hope that I shall always be able to carry out my lawful duties in accordance with the conditions of my appointment. It certainly is my most earnest wish to do so, unfortunately, conditions imposed on me here, make it quite impossible to teach to the desired standard.

You are aware of this, of course."

In direct examination the plaintiff said with reference to this letter that she always did her duty and that she considered her duty was to teach students.

On the 23rd March 1977 Mr. Sheehan wrote to the general secretary of the T.U.I. enclosing a copy of the plaintiff's letter of the 11th March and saying it in no way satisfied his Committee's request for specific assurances. He said he must report at the meeting of the V.E.C. the following evening that the Committee's requirements had not

been met unless the T.U.I. could arrange that the plaintiff complied by signing the document and ensuring that he got it not later than 4.30 p.m. the following day, the 24th March.

At the meeting of the V.E.C. on the 24th March 1977 the undertaking had not been received. A decision was deferred until the April meeting of the Committee when the chairman agreed to discuss the matter with the President of the T.U.I. in the interim.

The plaintiff wrote to the C.E.O., Mr. Sheehan, on the 28th March saying that she had been told by the T.U.I. that he considered the word "hope" in her letter to him on the 23rd March 1977 to be ambiguous. She said she was rewriting the letter and trusted it now met with his approval. The letter was written in identical terms to her letter of the 23rd March with the omission of the word "hope". No reply was sent by the C.E.O. to this letter.

In his evidence Mr. Sheehan denied that he had told anyone in the T.U.I. that the word "hope" was ambiguous. He said the whole letter was still unacceptable.

All this time the plaintiff was still refusing to communicate verbally with Mr. Creagh.

On the 5th April 1977 a meeting was held in Mr. Creagh's office which was arranged through the good offices of the chairman of the V.E.C. with the President of the T.U.I. At the meeting were Mr. Madden, Mr. Creagh, Mr. Murphy of the T.U.I. and the plaintiff. Mr. Murphy told the plaintiff that it would be intolerable and impracticable to expect a Department to function by means of written communication only between the head and assistant head of a department. If she would not communicate, the Union would withdraw. The plaintiff then confirmed that she was prepared to abide by the Union's decision and that she was prepared to accept verbal communications from Mr. Creagh.

There was no complaint thereafter that she refused to talk to Mr. Creagh.

On the 19th April 1977 Mr. Creagh sent a draft document to members of his staff described as the entry for the Design Department in the next prospectus (1977/78). In the covering letter he asked the members of his staff to study it carefully and let him know in writing of any amendment which they felt would improve the range of courses offered and the content.

The plaintiff replied in writing on the 21st April 1977. In her memo she has nineteen detailed comments, many of which can be described as sarcastic. The comments, in my opinion, were not intended to be helpful. She concludes with the following paragraph 20

" I consider this document to be a waste of time and money. It is beautifully vague and intentionally so in my opinion, so as to encourage time wasting, lack of instruction and all the other abuses against which I am and always have been opposed. I base my opinion on knowledge and observations over the 17 years. The only way that any improvement can be made is by removing the cause or causes of the obstruction, stagnation, back-sliding and down-grading of the courses, namely the principal and her most devoted disciple Mr. Creagh. His complete lack of ability, initiative, and all the characteristics needed for the post he has secured for himself, make him unsuitable for such a position. For proof, if needed, make a genuine and thorough examination of the work of this Department since his final appointment in July 1975 up to today, Thursday April 21st 1977."

In her evidence the plaintiff said that she would write the comments out exactly the same today if the same conditions were prevailing and she said that she thought paragraph 20 was very accurate.

On receipt of this Mr. Creagh wrote to Mr. Sheehan on the 25th April 1977 requesting that the plaintiff be transferred. His request was endorsed by Miss Beirne.

On the 25th April 1977 the staff relations group met and agreed to recommend the suspension of the plaintiff from her service. At the meeting of the V.E.C. on the 28th April 1977 it was agreed to suspend the plaintiff with effect from the 2nd May. The Committee directed that the Department of Education be requested to carry out a speedy inquiry and that a monthly report on the situation be made to the Committee.

It is important to determine what information the V.E.C. and the staff relations group had before them at each of the meetings leading up to and culminating in the meeting of the V.E.C. on the 29th April 1977. Mr. Sheehan, the C.E.O. was the only person to give evidence in relation to this.

I fully accept his account.

Mr. Sheehan said that at each meeting he gave an oral report.

At the meeting of the staff relations group which held a meeting on the 20th and 27th January 1977, he had prepared a memo dated the 19th January 1977 for that meeting which was circulated to the members.

At the meeting of the V.E.C. on the 24th February 1977 the

Committee regarded the situation and several reports going back to November 1976. They considered the efficient working of the school. They failed to understand why there was so much difficulty in obtaining an undertaking which they felt was reasonable and took it as an indication that she would not co-operate.

At the next V.E.C. meeting on the 24th March 1977 it was agreed to contact the T.U.I.

At the meeting of the staff relations group on the 24th April 1977 Mr. Sheehan drew attention to the Memo by the plaintiff to Mr. Creagh. The documents which the staff relations group considered were the letter from Mr. Creagh to the members of the staff, the draft prospectus, the plaintiff's reply to the prospectus, and Miss Beirne's endorsement of Mr. Creagh's request for the plaintiff's transfer. Mr. Sheehan said his distinct recollection was that the members concerned expressed dismay and consternation. They were very incensed that efforts to arrive at a happy outcome appeared not to be getting the attention they deserved. He said he was giving a free description as he could not recall verbatim the words that were said.

In cross-examination he was asked did he circulate the plaintiff's memo and he said he did not recall, but most probably, he would have read excerpts and given a synopsis. He said he made it clear to the staff relations group that the Committee was not in a position to offer a transfer. There was no post of that nature available at any other College. Mr. Sheehan said that for his part it seemed to him that the verbal undertaking given by the plaintiff on the 4th April appeared to be contravened and ignored and there was no basis on which he could recommend a continuation of negotiations in the matter. He was asked what discussion took place about the manner in which the plaintiff performed her duties. He said he did not recall any detailed discussion of the duties of the plaintiff but the words used by the staff relations group were that they understood that there was a continuing non-performance of her lawful duties. He said the discussion took probably 15 to 20 minutes. He recalled a number of documents being asked for, looked at and read. A report of that meeting went to the V.E.C.

At the meeting of the V.E.C. on the 28th April 1977 there was a reiteration of the views of the staff relations group. There was some

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questioning as to what had been happening since the previous V.E.C. meeting. Mr. Sheehan said he replied as he did earlier. He reported to the meeting that he did not see any basis for continuing negotiation in the matter and that the Committee should implement the provisions of the Act on the grounds that manifestly there was misconduct in relation to her office and failure to perform satisfactorily the duties of her post. These were the grounds he saw and he recommended them to the V.E.C.

In cross-examination Mr. Sheehan said that although he had formed an opinion himself he did not communicate that opinion to the staff relations group or to the V.E.C. at the beginning of the meetings. He let discussion take place first. He said that his recommendation would have a considerable influence but that there was no question of springing an opinion upon them. The V.E.C. did not have the text of the actual undertakings given by the plaintiff in her two letters but they were told the substance of them. He read out the relevant portions of the Act. The Committee considered the matter in the light of the report made and in the light of the Act and they took the decision in recognition of the Statute. There was no vote because it was an unanimous decision.

Following the decision of the V.E.C., the plaintiff was written to by Mr. Sheehan on the 29th April 1977 informing her of her suspension as and from the 2nd May. She was not told the specific grounds on which the suspension was based.

The Minister was also informed by Mr. Sheehan by letter dated the 29th April 1977 of the suspension "on grounds of failure to perform satisfactorily the duties of her office and misconduct in relation thereto as provided in section 7(1) of the Vocational Education (Amendment) Act 1944". The basis for the decision was not stated. Mr. Sheehan requested that an inquiry be held as soon as possible.

The plaintiff's solicitor wrote on the 3rd May 1977 and on the 12th May 1977 requesting details. These were refused by Mr. Sheehan by letter dated the 18th May 1977. He said that the V.E.C. awaited the initiation of an inquiry by the Department and in the circumstance his Committee was not in a position "to correspond further in the matter with any third party".

This attitude was persisted in in further correspondence.

The V.E.C. endeavoured to get the Minister to expedite the inquiry, including sending a telegram on the 3rd June 1977. On the

10th June 1977 the Minister wrote asking for details in order to determine his attitude to the suspension. Mr. Sheehan prepared a report detailing complaints against the plaintiff since October 1975 culminating in the memo by the plaintiff to Mr. Creagh's circular. This was not sent to the Minister until the 4th July 1977.

The Minister made an order on the 25th August 1977 under the Act directing a local inquiry to be held. On the 20th September 1977 the date of the inquiry was fixed for the 10th October 1977.

As stated earlier the plaintiff still had not received specific details of the basis for the suspension by the 7th October 1977 and at her request the inquiry was then adjourned sine die.

The relevant portions of the Act are as follows:-

Section 7(1). Whenever in respect of the holder of an office under a Vocational Education Committee, there is, in the opinion of such Committee or of the Minister, reason to believe that such holder has failed to perform satisfactorily the duties of such office or has misconducted himself in relation to such office or is otherwise unfit to hold such office, such Committee or the Minister (as the case may be) may suspend such holder from the performance of the duties of such office while

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such alleged failure, misconduct, or unfitness is being inquired into and the disciplinary action (if any) to be taken in regard thereto is being determined and such inquiry shall be held as soon as conveniently may be after the date of the suspension.

Sub-section (2). Whenever a Vocational Education Committee suspend a person under this section, such Committee shall forthwith report the suspension and the reasons therefor to the Minister.

Sub-section (3). The Minister may terminate a suspension under this section and every such suspension shall continue until so determined.

Sub-section (5). The holder of an office who is suspended under this section shall not be paid any remuneration in respect of such office during the continuance of his suspension and, upon the termination of his suspension, the remuneration which he would, had he not been suspended, have been paid during the period of suspension shall be wholly or partly forfeited, or paid to him, or otherwise disposed of, as the Minister shall direct

Section 8(1). For the purposes of this section, the following shall be the statutory grounds for the removal of the holder of an office from such office, that is to say:-

- (a) unfitness of such holder for such office,
- (b) the fact that such holder has refused to obey or carry into effect any order lawfully given to him as the holder of such office, or has otherwise misconducted himself in such office,

and, in this section, the expression "statutory grounds for removal from office" shall be construed accordingly.

Sub-section (2). Where the Minister is satisfied as a result of a local inquiry that any of the statutory grounds for removal from office exists as regards the holder of an office, the Minister may, by order, remove such holder from such office.

Sub-section (3). Where the Minister is satisfied that the holder of an office has failed to perform satisfactorily the duties of such office and is of opinion that he is unfit to hold such office, the Minister may -

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(a) send by registered post to such holder at the principal office of the Vocational Education Committee under which he holds such office a notice stating the said opinion, and

(b) on the day on which he sends the notice, send by registered post a copy thereof to the said Vocational Education Committee

and if the Minister after the expiration of fourteen days from the day on which he sends the notice and the copy thereof and after consideration of the representations (if any) made to him by such holder or the Vocational Education Committee, remains of the said opinion, he may by order remove such holder from such office.

The plaintiff contends that the fair procedures as guaranteed by the Constitution must be applied by the V.E.C. in operating section 7, and in particular they were bound to observe the requirements of natural justice by giving notice to the plaintiff in advance of the meeting at which the resolution to suspend was passed and giving her an opportunity to make submissions to the Committee. It was not claimed that she would be entitled to a right to be present at the

meeting.

The defendants contend that these steps were not necessary and that the plaintiff's rights were safeguarded by the subsequent inquiry which had to be held at which the principles of natural justice would have to be observed; it is only at this stage where a decision is made that the requirement, *audi alterem partem*, must be observed. They claimed that non-payment of salary was not a decisive act.

It is my opinion that sections 7 and 8 must be construed together. Suspension under section 7 cannot be looked at in isolation. It must be looked at in the light of the inquiry which under section 8 must follow and which must be held as soon as conveniently may be after the date of the suspension.

The interpretation of sections 7 and 8 were dealt with in the case of Collins .v. The C.C.V.E.C. (Murphy, J., delivered the 27th May 1982). Mr. Justice Murphy held that the inquiry under section 7(1) was not an inquiry by the V.E.C. but rather an inquiry by order of the Minister. He held that section 7(1) imposed a duty on the Minister to hold an inquiry. I agree with this. There is a

whole process commencing with suspension by the V.E.C. leading either to termination of the suspension by the Minister or an inquiry initiated by the Minister leading to a final decision by the Minister.

Fair procedures are required where decisions are made affecting rights or imposing liabilities. I have no doubt that fair procedures must be operated at all times when sections 7 and 8 are being applied. Under section 7(5) there is provision that no remuneration should be paid during the continuance of the suspension. There is no discretion given to the V.E.C. or to the Minister to pay all or part of the salary during suspension. This provision affects in an immediate way the plaintiff's constitutional right to earn a livelihood. It affects her ability to provide for her day to day maintenance. Suspension therefore involves an immediate interference with the plaintiff's constitutional rights.

The three proofs mentioned by Mr. Justice Henchy in The State (Gleeson) .v. The Minister for Defence 1976 I.R. 280 at 295 have been satisfied in my opinion. These proofs are

"First, the application in the circumstances of the case

"of a specified constitutional right, either express or implied; secondly, that the decision or decisive process in question has infringed that right; and thirdly, that he stands aggrieved by that infringement".

It was not argued that the provision for non-payment of salary was unconstitutional per se.

The provision for non-payment of salary must affect the criteria for judging whether fair procedures have been applied. What might be fair in the context of full salary being paid during suspension might not be fair when nothing is paid: e.g. the provision that the inquiry should be held as soon as conveniently may be after the date of suspension must be interpreted as imposing a duty to hold an inquiry as quickly as possible because no money can be paid to the person suspended. It cannot be construed as meaning that the convenience of the Minister or the convenience of the V.E.C. can delay the inquiry (though the convenience of the person suspended could delay it).

The seriousness of the consequences of suspension even in the short period envisaged by the Act also raises the question of whether the particular principle of natural justice, audi alterem partem, should

apply to the suspension procedure as an integral part of the fair procedures required by the Constitution, and if so, the extent of this requirement. No point arose in relation to the other principle of natural justice, *nemo iudex in causa sua*.

The question of natural justice and suspension under section 7 of the Act arose in the case of Collins .v. C.C.V.E.C. In that case the C.C.V.E.C. issued a strict order to Mr. Collins to convene a meeting of senior staff and warning him in general terms of the serious consequences of failing to obey. He refused to do so and the meeting was convened by the C.E.O. Mr. Collins declined to attend and relied on reasons given the previous May. Mr. Collins was not informed by the C.C.V.E.C. that they intended to consider suspension. He was not invited to attend the meeting and he was not afforded an opportunity to express any further views. It was held that on the documentary evidence and the undisputed facts, the C.C.V.E.C. had before it sufficient evidence on which they could, without any additional oral or other inquiry, form the appropriate statutory opinion as they purported to do. Mr. Justice Murphy held that neither the rules of natural justice nor any requirement of fair play called fo

any further notice to or submission from Mr. Collins. It was conceded in that case that the Tribunal was bound to apply the principles of natural justice qualified to this extent that it was only those particular principles of natural justice which were appropriate to all the circumstances of the case which were applicable thereto.

It seems to me that the Collins case does not establish that the requirement of natural justice, audi alterem partem, must apply to the suspension process in all cases; it applies only in so far as it may be appropriate in the circumstances. In the Collins case the requirement was not applied at all.

In my opinion the basic principle is that fair procedures guaranteed by the Constitution must be applied. But constitutional justice is not synonymous with natural justice. In the State (Gleeson) .v. The Minister for Defence (1976 I.R. 280) Mr. Justice Henchy referring to the judgment of the Court in McDonald .v. Bord na gCon (1965 I.R. 217 at 242) states at pages 294/295 as follows:-

"What was being stressed there was that, while the common-law concept of natural justice is usually taken to comprehend no more than what is encompassed by the maxims nemo iudex in sua causa and audi alteram partem, the requirements of what was there called "constitutional justice" and is

"sometimes called "constitutional due process" cover a wider field. That is unquestionably so. The necessary implementation of express or necessarily implied constitutional guarantees means that decisive acts and procedures may be impugned for a wide variety of reasons depending on the circumstances of the case; for instance, because justice was not administered in public; or the decision was given by an unconstitutional tribunal; or the decision applied an unconstitutional law; or the accused was deprived of a fair, competent and impartial jury; or the person affected received unjustifiably unequal treatment; or the evidence was obtained in a manner not constitutionally permissible".

Therefore in my opinion the obligation to apply fair procedures may or may not include the obligation to give the person affected an opportunity to make representations prior to the decision to suspend being taken.

What these fair procedures are, must be judged in the context of a full hearing to follow as soon as conveniently may be after the suspension.

The plaintiff claims to be entitled as part of the fair procedures guaranteed by the Constitution to notice of the resolution and a right to make representations to the meeting that suspended her.

In relation to suspension it seems to me that no such general

rule can be laid down.

I am of opinion that where the constitutional rights of another person are concerned (particularly if a young person is involved) prudence may demand that the V.E.C. should suspend immediately without communication or warning (e.g. in the case of an allegation of gross misconduct by a teacher to a student or an allegation of drug pushing by a teacher), and in my opinion they would be justified in so doing.

Such a decision would be similar to a decision made by the schoolmaster in the State (Smullen) .v. Duffy & ors. (Finlay, P., 21 Mar. 1980) where two schoolboys were suspended from school one of whom was not interviewed in advance. The learned President described the decision as a minimum responsible decision for a school teacher with obligations to maintain discipline and safety within his school.

In less serious cases, however, it seems to me that suspension without some form of advance warning would be a denial of fair procedures. If there is a possibility that some simple explanation sought in advance would obviate the necessity for suspension, then, in my opinion, there should be communication with

the person involved. If there is danger of suspension being invoked if a continuous course of conduct is persisted in then, in my opinion, fair procedures would dictate that a warning should be given so that the person has an opportunity to desist.

But the V.E.C. does not have to go on giving warning after warning or opportunity to improve time and time again. There comes a point when a decision has to be made.

If it can fairly be said that the person suspended knew or ought to have known that the act or conduct which led to the suspension could, in all the circumstances, have that result (either because of prior warnings or because the act per se was blatantly provocative) then in my opinion there is no breach of constitutional guarantees, as for example in the Collins case where the plaintiff blatantly refused to carry out his duty.

If a warning should have been but was not given, then in such a case, if the V.E.C. considered a resolution to suspend without communicating in advance with the person concerned, fair procedures could not be said to have been followed. In this instance the requirements of natural justice would come into play. The V.E.C. would be bound to tell the person involved that they were considering

suspension and allow him to advance an explanation.

In applying these principles to the present case I am of the following opinion.

The evidence discloses that there was an intolerable situation existing in the college due to the plaintiff's refusal to accept Mr. Creagh as head of department, manifested by a refusal to talk to him. The plaintiff was told on the 2nd December 1976 that the V.E.C. required her to acknowledge Mr. Creagh as head. Much emphasis was placed by the plaintiff's counsel on the fact that the V.E.C. decision on the 27th November 1976 was that Mr. Creagh would act as head pending sanction. I am satisfied that he acted and was entitled to act as head from the 7th January 1976 following his appointment on the 4th December 1975.

In my opinion the plaintiff was being ingenuous when she said in her letter of the 17th December 1976 that she failed to see what was required of her. It must have been or should have been obvious to her that her conduct in refusing to communicate verbally with Mr. Creagh and her general attitude to him was at the root of the problem.

However, the V.E.C. were specific. The written acknowledgement drafted by Mr. Sheehan spelt it out. She was, inter alia, to accept the appointment of Mr. Creagh and undertake to co-operate with him and all other staff in the conduct of courses and administration matters. The plaintiff never signed this document and substituted two other letters which talked about doing her duty (which she interpreted as teaching) but never got down to the basic cause of all the trouble - her failure to work and co-operate in the normal way with Mr. Creagh as head. This is what was meant by accepting him as head and I believe the plaintiff knew this well.

Incidentally, I cannot understand why such emphasis was placed by the V.E.C. on written acknowledgements and signed undertakings. It seems to me that it would have been sufficient for the V.E.C. to inform the plaintiff what they required her to do or to cease doing in order to carry out her duties properly. The signing of a document solved nothing unless it was matched by performance.

The V.E.C. considered the matter at their meetings in November and December 1976 and in January, February and March 1977. They sent messages that they were concerned and that they might suspend.

There was no hasty decision. The plaintiff brought her Union in. Finally, due to her Union representative telling her she would have to communicate verbally with Mr. Creagh, she agreed on the 5th April to do so.

I am of opinion that after this date if she had behaved as outlined in the undertaking and communicated with Mr. Creagh normally, acknowledged by her behaviour and attitude to him that he was head, co-operated in running the Department with him and with other staff, that would have been the end of it. According to Mr. Sheehan, the V.E.C. were prepared to wait and see. Instead, in answer to his circular asking for suggestions which would improve the content, the plaintiff wrote a bitter personal attack on Mr. Creagh and his ability to act as Head of Department.

In my opinion, based on Mr. Sheehan's evidence, the plaintiff was suspended because she wrote this document after the V.E.C. had tried for five months to achieve a working relationship between the plaintiff and Mr. Creagh which, if it could not be described as harmonious, at least could be said to be a state of truce. The document written by the plaintiff was, as Mr. Sheehan put it, a

declaration of war.

In my opinion, the plaintiff in writing this document threw down the gauntlet yet again to Mr. Creagh. She ought to have been aware that this single incident could not have been overlooked following her intolerable behaviour over the previous year.

In my opinion, this document coming so soon after the long struggle to get the plaintiff to talk to Mr. Creagh and treat him as Head of Department, provided sufficient grounds for the immediate suspension of the plaintiff without the necessity of asking for an explanation of the contents of the memo or for any further communications with the plaintiff in relation thereto.

The V.E.C. had, in my opinion, met all the requirements of fair play in their approach to the continuing disruptive behaviour of the plaintiff over the previous year.

I therefore hold that the V.E.C. were not bound to give notice to the plaintiff in advance of the meeting at which the resolution to suspend was passed or to give her an opportunity to make submission to the Committee.

It is however, necessary to consider what happened after the suspension.

Section 7(2) provides that the Committee should forthwith report the suspension and the reason therefor to the Minister. The section is silent about whether the person suspended should be informed. It seems to me beyond question that the basic requirements of fair play require that someone suspended should immediately be told the exact reasons why. The person suspended must know the actual grounds of suspension in order to prepare for the inquiry which must follow quickly. Another reason why this information should be given is that it should be open to the person concerned to approach the Minister to ask him to terminate the suspension under the power given to him by sub-section (3). It might be that where a suspension has been made, there is an acceptable explanation for the conduct warranting the suspension and the Minister may terminate the suspension immediately and restore the salary. The whole affair is thus concluded without the formality, delay and expense of an inquiry. It must be part of the overall procedure that this channel of communication is open. If the person suspended does not know the specific reasons therefor, the possibility of persuading the Minister to terminate the suspension is prevented.

Once the V.E.C. had passed the resolution they were bound to report the suspension to the Minister. As far as their express statutory duties are concerned they are functus officio but it cannot be said that they are absolved from further action. It is clearly contemplated by the two sections that they must take part in the inquiry and furnish all relevant information to the officer appointed by the Minister.

They have a duty to play whatever part is required of them in relation to the fair procedures which must be applied. Counsel for the V.E.C. submitted that once the resolution was passed and the report furnished it was the Minister's responsibility after that. It was his responsibility to initiate the inquiry and to furnish information to the person suspended.

The Minister is not a party to this action and therefore has not had an opportunity of saying whether he agrees or disagrees with the proposition that it is his duty to furnish the plaintiff with all information in relation to the suspension, in time and with sufficient detail to enable her to prepare her side of the case for the inquiry. The statutory provisions relating to the holding of

a local inquiry are contained in sections 105 to 107 of the Vocational Education Act 1930. These sections are at this point.

The proposition advanced on behalf of the V.E.C. is that the present procedure is to be cumbersome and unworkable. The constitutional principle of fair procedures should not be interpreted as favouring an indirect method over a direct and simple method. What position should there be in using the Minister as a conduit pipe? If a person complains to the Minister that inadequate particulars have been furnished, should the Minister be expected to get further particulars and forward them to the plaintiff? Common sense suggests that the V.E.C. as prosecutor in the inquiry should furnish the suspended particulars of the acts complained of if the suspension is grounded. Any request for particulars or for further and better particulars, should be dealt with by the V.E.C. Failure to produce or answer them should be dealt with at the inquiry. If the requirements do not require them to be given, the inquiry cannot proceed until the question has been resolved.

Therefore, it appears to me that the V.E.C. have been in breach of the requirements of both constitutional and natural justice by failing to furnish the plaintiff with adequate particulars (a) to enable her to make representations to the Minister immediately following on the suspension and (b) to enable her to prepare her case for the inquiry to be held on the 10th October 1977.

In relation to the breach of statutory duty, I consider that the letter written to the Minister on the day following the suspension was not in compliance with the statutory requirement contained in section 7(2). The actual wording of the letter was as follows:-

"My Committee at its meeting of April 28th 1977 suspended Miss Maire Ni Bheolain, assistant head, Display and Design Department, College of Marketing, 18 Parnell Square, from its service with effect as and from Monday May 22nd 1977 on grounds of failure to perform satisfactorily the duties of her office and misconduct in relation thereto as provided in section 7(1) of the Vocational Education (Amendment) Act 1944.

Miss Maire Ni Bheolain has been advised accordingly (copy letter attached).

My Committee, in imposing suspension, requested that the inquiry related thereto be held as soon as possible."

This letter did not set out the reasons required by section 7(2). It set out the statutory grounds for suspension but did not give the reasons. In my opinion the sub-section does not envisage merely

formal notice without any information. It requires the reasons to be given.

Section 7(3) provides that the Minister may terminate a suspension under this section and every such suspension shall continue until so terminated. It must have been envisaged that the Minister would get the statutory report and on that alone he could decide to terminate a suspension. Or alternatively, having considered the statutory report in conjunction with representations made by the person suspended, he could decide to terminate the suspension. It clearly would not be possible to reach any decision if the report only contained a statement that the person had been suspended on statutory grounds. Therefore, the V.E.C. were in breach of their statutory duty under section 7(2).

The plaintiff is entitled to a declaration that the V.E.C. failed to observe the requirements of natural and constitutional justice following her suspension in failing to furnish her immediately with details of the specific acts and reasons on which suspension on the statutory grounds was based.

The plaintiff is also entitled to a declaration that the V.E.C.

were in breach of their statutory duty under section 7(2) of the Act in failing to inform the Minister of the specific acts and reasons on which the suspension was based.

The plaintiff is not entitled to a declaration that the suspension is null and void and contrary to law. The V.E.C. were not in breach of any requirements of natural or constitutional justice prior to the suspension and accordingly such suspension is valid.

One further matter remains to be dealt with. At the conclusion of the plaintiff's case, I was asked for a direction for a non-suit by Counsel for the V.E.C. on the grounds that the requirements of natural and constitutional justice did not apply to the suspensory process and further that there was no breach of statutory duty by the V.E.C.

I refused the application and said I would give my reasons later.

At the time the reasons on which the suspension had been based were not known to the plaintiff or to the Court. I could not exclude the possibility that the requirements of natural justice (namely notice to the plaintiff of the meeting and an opportunity to make representations) applied to the suspension. Having heard all the evidence and being now in a position to judge all the circumstances

of the case, I am of opinion that the requirements of natural justice as particularised by the plaintiff did not apply in respect of the decision to suspend.

I was of opinion then, as I am now, that the requirements of natural justice did require information to be given to the plaintiff immediately following the suspension in respect of the reasons therefor.

Constitutional justice is not synonymous with natural justice though it may at times embrace it. It requires fair procedure where rights are affected. I was of opinion at the conclusion of the plaintiff's case, as I am now, that the requirement of fair procedures applies to the suspensory process. However, I am of opinion now that these requirements were not breached prior to the suspension. They were, however, breached afterwards by failing to give the requested information to the plaintiff.

In relation to the allegation of breach of statutory duty, the letter written by Mr. Sheehan to the Minister following the suspension had not been proved at the conclusion of the plaintiff's case. However, there was proof that the plaintiff had asked for a

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copy of the report required by sub-section (3). This request had been refused by the V.E.C. I considered that this refusal shifted the onus on to the defendants to prove that sub-section (2) had been complied with. In fact, the V.E.C. failed to discharge this onus. The letter was later proved and, as stated, I have held that it did not fulfil the requirements of the section.

Approved
Walter Connell