

BETWEEN:

KEVIN M. P. McCONNELL

Plaintiff

and

NATIONAL ENGINEERING AND ELECTRICAL TRADE
UNION, IGNATIUS J. MONOLEY AND THOMAS WHITE

Defendants

NOT TO BE
PHOTOCOPIED

Judgment delivered by the President of the High Court on the
22nd day of July 1986

NOT
FOR
LOAN

This is an application brought by the Plaintiff for an order,
pending the hearing of the action herein;

- (1) Restraining the Defendants or any of them from exercising
or purporting to exercise or nominating any person other than
the Plaintiff to exercise any of the functions of the office
of General Secretary (Financial) of the first-named Defendant,
and
- (2) Restraining the National Executive Council of the first-named
Defendant herein from considering, or discussing or acting upon
or in relation to a resolution of the Resident Executive Council
of the first-named Defendant dated the 21st day of May 1986
purporting to suspend the Plaintiff from office as General
Secretary (Financial) of the first-named Defendant before the
matters giving rise to such resolution shall have been heard
and adjudicated upon by the Resident Executive Council of the
first-named Defendant at a meeting specially convened for the

purpose of hearing and adjudicating upon the same.

The application was grounded on the affidavit of the Plaintiff herein sworn on the 14th day of July 1986 and by leave of the court affidavits on behalf of the Defendant were filed in court at the hearing of the application.

These affidavits consisted of affidavits from the second and third-named Defendants and one Harry Donovan and one Finbar Dargan, all of which affidavits were sworn on the 18th day of July.

All these affidavits referred to for facts which are, in my opinion, irrelevant to the determination of the Plaintiff's application herein and I do not propose to deal with such facts in the course of this judgment.

It appears to me that the facts relevant to the Plaintiff's application herein as appears in the said affidavits are:-

1. The Plaintiff is the General Secretary (Financial) of the first-named Defendant, the National Engineering and Electrical Trade Union (hereinafter referred to "the Union").
2. The second-named Defendant is the General Secretary (Industrial) of the Union and the third-named Defendant is the Assistant General Secretary of "the Union".
3. When the National Executive Council of "the Union" is not in session, the affairs of "the Union" are under the control of the Resident Executive Council, subject of course to the rules of "the Union".
4. Employees working in the Headquarters of "the Union" are members of the Irish Distributive and Administrative Trade Union and on the 9th day of May 1986 the employees commenced strike action in connection with a dispute with "the Union", which strike continued

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until the 27th day of May 1986 and during the duration of such strike pickets were placed on the Headquarters of "the Union" by such employees.

5. The Plaintiff refused to pass the staff with pickets during the duration of the strike and alleges that during the course of the said strike he conducted all the Union business from his home.
6. At a meeting held on the 11th day of May 1986, the Resident Executive Council of "the Union" decided that all full time officials were to report for work during the dispute with the Irish Distributive and Administrative Trade Union.
7. The Plaintiff was not present at such meeting and by letter dated the 12th day of May 1986 from the second-named Defendant he was informed that:-

"The R.E.C. at their meeting on Sunday, 11th May 1986 decided that all full time officials were to report for work during the present dispute with the Irish Distributive and Administrative Trade Union. Any officials failing to carry out this directive will result in their salary not being paid to them.

You are hereby advised that you are to open the Financial Office during the hours set down in the Rules and to be present to conduct all the financial business of the Union."

8. The Plaintiff refused to pass the picket, did not comply with the directive received by him from the second-named Defendant communicating the decision of the Resident Executive Council but alleges that he was available at all times to conduct the business of the Union.
9. An ordinary meeting of the Resident Executive Council of the Union was held on Wednesday, 21st day of May 1986 and in the view of the Plaintiff's failure to comply with the directive contained

in the letter dated the 12th day of May 1986 purported summarily to suspend him from office without pay under the provisions of Rule 22 of the said Rules.

10. The Plaintiff had received notice of the said meeting, received a copy of the Agenda but did not attend such meeting. The agenda as supplied to the Plaintiff did not contain any notification of the intention of the Resident Executive Council to consider the question of the Plaintiff's suspension from office without pay.
11. By letter dated the 22nd day of May 1986 from the second-named Defendant, the Plaintiff was informed as follows:-

"The R.E.C. at their meeting on 21st May 1986 decided to invoke Rule 22.

Suspension of General Officers on full time officials
Page 43 nothing in this rule shall be construed to prevent the R.E.C. from summarily suspending without pay any officer or full time official for gross insubordination in respect of orders or instructions properly given to him by the R.E.C.

The R.E.C. decided that this was the case in your refusal to report for work as directed and conveyed to you by registered post in a letter dated the 12th of May 1986. You are hereby notified that you are suspended without pay and your conduct is being reported to the National Executive Council."

12. On the 27th day of May 1986, the Plaintiff wrote to each member of the Resident Executive Council suggesting a meeting of the members of the Resident Executive Council to take place on the 28th day of May 1986 to deal with the matters referred to in the said letter and his solicitor wrote to the solicitors of the Union on the 6th day of June 1986 and received the reply thereto dated

the 13th day of June 1986.

13. By letter dated the 13th day of June 1986 written by the second-named Defendant to the Plaintiff, the second-named Defendant informed the Plaintiff that:-

"The N.E.C. noted at its meeting held on the 30th May 1986 that by a decision of the R.E.C. you were suspended from office and that Brother T. White be installed on a temporary basis as Acting General Secretary (Financial).

The N.E.C. also resolved that you be given the opportunity to hear the complaint grounding your suspension in accordance with Rule 22 and that you be afforded every opportunity to answer this complaint.

The meeting of the N.E.C. being convened for this purpose will be held on the 21st day of June 1986 at 11.30 a.m. and I would request that you attend this meeting to hear the complaint grounding your suspension, and to answer the same, and make any submission to the N.E.C. that you may wish to put forward.

Please let me know immediately if you require any further information or details at this stage."

14. The Plaintiff did not attend the meeting on the 21st day of June 1986 and by letter dated the 26th day of June 1986 was informed by the second-named Defendant that:-

"Further to my letter of the 13th June and subsequent exchange of letters between yourself and the under-signed, the N.E.C. met on Saturday, 21st of June 1986 in accordance with the terms of the letter of the 13th June 1986.

As you were not in attendance they decided to reconvene themselves by way of a requisition signed by six members to hold a further meeting on Wednesday, 2nd July at 11.30 a.m. at head-office. They also resolved to give you a further opportunity to hear the complaints grounding your suspension in accordance with Rule 22 and that you be afforded every opportunity to answer this complaint.

I would request you to attend this meeting to hear the complaint grounding your suspension and to answer same and make submissions to the N.E.C. that you may wish to put forward.

Please let me know immediately if you require any further mention or details at this stage."

15. The Plaintiff did not attend the said meeting and on the 8th day of July 1986 the second-named Defendant wrote to him as follows:-

"Further to my letter of the 26th June 1986 the N.E.C. met on Saturday, 2nd July 1986. As you were not in attendance they decided to reconvene themselves by way of a requisition signed by six members to hold a further meeting on Saturday, 19th July 1986 at 11.30 a.m. at Headoffice. They also resolved to give you a final opportunity to hear the complaints grounding your suspension in accordance with Rule 22 and that you be afforded every opportunity to answer this complaint.

I would request you to attend this meeting to hear the complaint grounding your suspension and to answer same and make submissions to the N.E.C. that you may wish to put forward.

Please let me know immediately if you require any further information or details at this stage."

Apparently the reason why the Plaintiff did not attend the meetings of the National Executive Council and respond to their invitation to make submissions to them is, as appears from Paragraph 17 of his affidavit, he believes that under the rules of "the Union" the matters at issue are properly matters to be determined by the Resident Executive Council.

He further says that at each meeting of the Resident Executive Council since the 21st day of May 1986 attempts by members of the Resident Executive Council to raise the said matters have been stifled by the second and third-named Defendants who have indicated that the matter is out of the hands of the Resident Executive Council and is being dealt with by the National Executive Council.

As further appears from his said affidavit he disputes the validity of the election of certain members of the National Executive Council.

In the last paragraph of his affidavit, the Plaintiff summarises his complaint when he states that:-

"In purporting to suspend me as aforesaid the Resident Executive Council wrongfully purported to rely on a new edition to Rule 22 appearing on Page 43 of the Rule Book. I say that the relevant part of the said rule appears on Page 42 of the said book and by reason of such part I am entitled to written notice of any complaint prior to any proposal to suspend me, which I did not receive, that it is incumbent on the said Council to hear me in regard to such complaint before deciding on it, and that in any event there is no power in the said part of the said rule to suspend me without pay as has been purported to be done. By reason thereof I seek to have any complaint against me properly considered by the said Resident Executive

Council, and that the National Executive Council be restrained from considering any such complaint beforehand."

Rule 22 of the rules of the Union, inter alia, provides that:-

Suspension of general officers or full time officials. Where any complaint is made to the N.E.C. or R.E.C. that any general officer or full time official is not satisfactorily discharging the duties for which he was appointed or that his conduct may bring the Union into disrepute and where in the opinion of either the N.E.C. or the R.E.C. there is a basis for such complaint the N.E.C. or the R.E.C. shall reduce such complaint to writing and shall so soon there afterwards may be reasonable and practicable, deliver to the General Officer or full time official a written copy of the said complaint so reduced to writing, together with a summons to appear before the R.E.C. either at its next meeting or at a meeting specially convened for the purpose of hearing and adjudicating upon the matters and submissions brought before it by the complainant and the replies or answers adduced in explanation, extenuation or defence by the general officer or full time official. The R.E.C. may on the hearing of such complaint and on the hearing of the matters offered in explanation, extenuation or defence by the general officer or full time official, on his behalf, decide on the matter as between the parties and adjudicate thereon in such manner as they shall deem meet and just and it shall be competent for the R.E.C. if they find the complaint to be well founded to

- (a) impose a fine not exceeding £20
- (b) suspend immediately the party charged with or without pay.

The question of re-instatement or removal from office shall be determined by resolution of the N.E.C. which determination shall be final. In the event of any such officer being so removed, the N.E.C. shall cause full particulars of their decision to be forwarded to all branches. Nothing in this rule shall be construed to prevent the R.E.C. from summarily suspending without pay any general officer or full time official found to have been guilty of mis-appropriation of Union funds or of gross insubordination in respect of orders or instructions properly given by the N.E.C. or R.E.C. to any general officer or full time official in accordance with these rules."

In the Endorsement of Claim on the plenary summons issued on behalf of the Plaintiff in this case, the Plaintiff's claim in addition to the relief already referred to.

A declaration that the resolution of the Resident Executive Council of the first-named Defendant dated the 21st day of May 1986 purporting to suspend the Plaintiff from office as General Secretary (Financial) of the first-named Defendant was and is null and void.

Before the Plaintiff is entitled to obtain the relief which he seeks in this application he must satisfy me as to:-

- (1) The likelihood of his success in the proceedings which he has issued,
- (2) The balance of convenience being in favour of the granting rather than the withholding of the injunction and
- (3) The fact that damages are not an adequate remedy.

A Court should not interfere in the internal workings of any organisation or association, if the activities of that organisation or association is carried out in accordance with the rules of the said

organisation or association and that the the principles of natural justice are adhered.

The Plaintiff relies on the earlier portion of Rule 1 which provides for the manner in which complains against a general officer or full time official are to be dealt with and alleges that the rule was not complied with in regard to his purported suspension without pay by the Resident Executive Council and that the principles of natural justice were not adhered to.

The Respondents rely on the last sentence in the Rule which provides that:-

"Nothing in this Rule should be construed to prevent the R.E.C. from summarily suspending without pay any general officer or full time official found to have been guilty of mis-appropriation of Union funds or of gross insubordination in respect of orders or instructions properly given by the N.E.C. or R.E.C. to any general officer or full time official in accordance with these Rules."

They allege that he was in breach of the direction of the R.E.C. to report for work at the times provided for in the rules in breach of the clear direction given to him by letter dated the 12th day of May 1986 and that they were entitled to suspend him summarily without pay for such breach in accordance with the said Rule.

It is quite clear that the procedure laid down in the said Rule, leaving aside for the moment consideration of the last sentence thereof, accords with the requirements of natural justice and if the R.E.C. had complied therewith the Plaintiff would have no justifiable ground for complaint and indeed through his Counsel he so accepts.

This procedure, however, was not followed in this instance but the R.E.C. relied on the provisions of the last sentence in the relevant rule to justify their action in summarily suspending the Plaintiff without pay for alleged gross insubordination.

- From reconsideration of the relevant rule, it seems to me that this rule was designed to cover two categories of complaint, namely,
- (1) a complaint made that any general officer or full time official is not satisfactorily discharging the duties for which he was appointed or that his conduct was likely to bring the Union into disrepute, and
 - (2) where the complaint that the general officer or full time official was guilty of misappropriation of Union funds or of gross insubordination in respect of orders or instructions properly given by the N.E.C. or R.E.C.

It is quite clear that the R.E.C. or N.E.C. should have power to deal with such latter complaints was a matter of urgency and that the procedure for dealing with the other type of complaints was not appropriate.

This procedure involved a number of steps as set out in the Rule namely

- (1) a complaint to the N.E.C. or R.E.C.
- (2) a consideration of the said complaint and a determination that there is a basis for the complaint
- (3) the reduction of such complaint into writing
- (4) the delivery to the general officer or the full time official of a written copy of the complaint so reduced to writing together with a summons to appear before the R.E.C. either at his next meeting or at a meeting specially convened for the purpose of hearing and adjudicating upon the matters and

- submissions brought before it by the complainant
- (5) the opportunity to the general officer or full time official to reply to the said complaint and
 - (6) a meeting of the R.E.C. to consider same.

In compliance with the rule obviously would take some time and the N.E.C. or the R.E.C. must of necessity be empowered to deal with such matters summarily and expeditiously and not be required to follow the detailed and elaborate procedure laid down in the rule for complaints for dealing with complaints other than complaints of misappropriation of Union funds or of gross insubordination.

By virtue of the terms of the last sentence of the rule, the R.E.C., when dealing with complaints of misappropriation of Union funds or of gross insubordination, are freed from the obligation to comply with the requirement set forth in the earlier portion of the rule. Because of the seriousness of such matters and the necessity to deal with them quickly, it is only right that this should be so.

However, the matter does not end there. The suspension without pay of a general officer or full time official found to have been guilty of misappropriation of Union funds or of gross insubordination is a serious matter and while the R.E.C. is freed of its obligation to comply with the requirements of the earlier portion of the rule they are in no way freed from their obligation to comply with the requirements of natural justice in their consideration of the matter.

They are only entitled to suspend without pay a general officer or full time official after he has been found guilty of misappropriation of Union funds or of gross insubordination in respect of orders or

instructions properly given to him.

The use of the words "found to have been guilty of" in the Rule implies that there must be consideration given by the R.E.C. to the complaint and a finding by them that the general officer or full time official concerned was guilty of gross insubordination.

There must be a consideration of the complaint and a finding of guilt by the guilty on the part of the general officer or full time official by the R.E.C.

The enquiry must be conducted in accordance with the principles of natural justice. Natural justice requires that the party charged namely, the full time official or general officer be informed that the enquiry is being held by the R.E.C., that he be informed of the nature of the complaint against him and that he be afforded an opportunity of answering such complaint.

The manner in which this is done must depend on the circumstances of each case. In the instant case, it is not contested that the Plaintiff was not informed of the intention of the R.E.C. to consider his suspension, that he was not informed of the nature of the complaint against him or that he was not afforded an opportunity of dealing with such complaint before the R.E.C. made its decision to suspend him without pay.

Consequently, there was in my view a clear breach of the requirements of the requirements of natural justice in the consideration of the matter by the R.E.C. and there is a very strong likelihood that the Plaintiff will succeed in his action for a declaration of the resolution of the R.E.C. suspending him without pay is null and void.

The situation thereby created is not and cannot be rectified

by the fact that the N.E.C. resolved that he be given the opportunity to hear the complaint grounding his suspension and by affording him every opportunity to answer this complaint. It is the resolution of the R.E.C. to suspend him without pay which he challenges in this case and if his challenge is successful, the question of his re-instatement by the N.E.C. does not arise.

On being of the view that there is a strong probability of the Plaintiff being successful in such challenge to the validity of the decision of the R.E.C. to suspend the Plaintiff without pay, I am satisfied that the balance of convenience lies in favour of the granting of the injunction sought at 2 herein rather than the refusal thereof.

I am further satisfied that having regard to the nature of the Plaintiff's employment with "the Union" and the procedure attached thereto, that damages would not be an adequate remedy. It is true that he could be compensated in damages for loss of salary between the date of his suspension without pay but I am satisfied that damages would not be an adequate compensation for the damage to his prestige and standing which would undoubtedly occur if he were to continue to be suspended without pay with its implication that he had been found guilty of gross insubordination.

With regard to the injunction sought at (1) however, I am satisfied that pending the hearing of the action I cannot make an order rescinding the order made by the R.E.C. suspending the Plaintiff without pay.

That being so, it is essential that the financial affairs of "the Union" be dealt with pending the hearing of the action and it would be wrong for me to interfere with the arrangements with regard

thereto, already made by "the Union".

In this instance, the balance of convenience obviously lies in favour of refusing this injunction rather than in granting the application.

I will refuse the injunction sought at (1), but grant that sought at (2).

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