

**THE HIGH COURT**

**[2023] IEHC 288  
[2022 NO. 4507P]**

**BETWEEN**

**THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL**

**PLAINTIFF**

**AND**

**ENOCH BURKE**

**DEFENDANT**

**JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 19th day of May 2023.**

1. Wilson's Hospital School (the School) is a co-educational boarding and day school in County Westmeath. This school is an incorporated charity.
2. The School is separate from The Board of Management of Wilson's Hospital School (the Board). Boards of management of schools have statutory functions. Section 24(3) of the Education Act 1998 (the 1998 Act) provides that: "A board shall appoint teachers and other staff, who are to be paid from monies provided by the Oireachtas, and may suspend or dismiss such teachers and staff, in accordance with procedures agreed from time to time between the Minister, the patron, recognised school management organisations and any recognised trade union and staff association representing teachers or other staff, as appropriate." Section 14(2) of the 1998 provides that each board has corporate personality.
3. The Board is responsible for teaching activities and the School operates the boarding facilities. The school principal is answerable to the Board. The principal acts as secretary to the Board and attends its meetings, but not as a member. The deputy principal is a non-voting member. The principal is also the Warden of the School and resides in the school. The School is associated with the Church of Ireland and has a resident Church of Ireland chaplain.
4. In this action the Board seeks a declaration that a decision on 22 August 2022 to put Enoch Burke, a teacher in the school, on paid administrative leave was lawful.
5. For the Board to succeed in this claim, evidence must establish that it acted in substantial accordance with contractual obligations to Enoch Burke in steps which resulted in its decision to suspend him.
6. These obligations are incidents of their employment relationship. They include an obligation to comply with rules of natural justice and fair procedures applicable to decision-making by employers and public administrative bodies charged with investigating and determining employment disciplinary issues. As the Board has a dual role as employer of Enoch Burke and as the body charged with making disciplinary decisions

relating to his employment contract, the rule which prohibits persons being judges in their own cause is not fully applicable.

7. The Board also seeks an injunction restraining Enoch Burke from trespassing on school premises and damages for trespass.
8. Enoch Burke attended in the school in defiance of the Board's decision to suspend him. His stance is that he was invalidly suspended and that he was there to teach. The Board obtained an interlocutory injunction which restrained him from attending at the school and from attempting to teach there. He refused to obey that injunction. He was imprisoned for contempt of court. He resumed disobedience following release from imprisonment.
9. Enoch Burke was dismissed from his employment by the Board on 19 January 2023 with effect from 21 April 2023. He has availed of a right to appeal this decision. If his dismissal is upheld, it will become effective.
10. Suspension by a board of teaching faculties on full pay pending resolution of disciplinary proceedings is an interim measure. Suspension continues until the appeal process specified in the employment contract is concluded, or until it is lifted. If Enoch Burke's suspension on 22 August 2022 was irregular, the Board could re-convene and make a fresh decision. The contractual power of the Board to suspend continues until dismissal becomes fully effective.
11. Any issue relating to regularity of the disciplinary hearing on 19 January 2023 or validity of the dismissal which followed that hearing is outside the scope of this action.
12. Ultimate resolution of disputes between Enoch Burke and the Board on whether he has been properly or fairly dismissed will depend upon the view of a court or tribunal on issues which are not before this Court. A number of potential outcomes are possible. One possibility is that Enoch Burke will be restored to his teaching post. Another possibility is that the decision of the Board to dismiss him will be upheld. Another possibility is that his refusal to obey court orders restraining him from entering school premises and other conduct will be treated as gross misconduct and that he will be suspended and dismissed by the Board on these grounds.
13. On the final day of the hearing of this action this Court expressed a provisional view that, irrespective of whether Enoch Burke's suspension was imposed in accordance with his contract of employment, he is not entitled to trespass on school premises. This issue was considered briefly in the judgment of Murphy J. in *Farrell v. Minister for Defence* (H.C. 10 July 1984, unreported).
14. It is appropriate to summarise this Court's conclusions immediately. The following matters are established by evidence:

- i. The school principal and Board acted in accordance with their obligations under Enoch Burke's employment contract in initiating and conducting the process which led to suspension of his employment as a teacher.
  - ii. Enoch Burke did not have consent of either the Board or the School to enter or remain within school buildings or grounds after he was suspended. He was asked to leave, and he refused to go. His repeated attendance on school premises was trespass. Any judicial finding that the Board broke the employment contract in suspending Enoch Burke cannot affect this conclusion. He has no right to enter school premises.
15. On the first day of trial of this action Enoch Burke was disorderly and in persistent contempt of court. He was excluded from further participation, except on condition that he undertake to comply with rulings of this Court. During the hearing he was repeatedly contacted and advised that he was welcome to resume participation if he gave this undertaking. He chose not to respond or to make his intentions clear. As a result of this lack of clarity, some evidence and arguments addressed issues which do not require to be decided.
16. As Enoch Burke's counterclaim has not been advanced, any claims which he makes in it must be dismissed. These include his claim for an injunction preventing continuation by the Board of his suspension.
17. This counterclaim also included claims for declarations that the disciplinary process conducted against him was an unlawful interference with constitutional rights and that a report prepared by the school principal was compiled in breach of natural justice and otherwise than in accordance with an administrative circular governing disciplinary sanctions.
18. Dismissal of the counterclaim operates as a final determination of all other issues capable of being raised in answer to the Board's claim. It is unnecessary for this Court to determine claims by Enoch Burke that the Board interfered with his constitutional rights.
19. The primary issue presented for determination in this litigation is whether the Board validly suspended employment of Enoch Burke as a teacher in Wilson's Hospital School on 22 August 2022. This suspension also terminated his permission to enter school premises.
20. A second issue which arises is whether the Board is entitled to a permanent injunction restraining Enoch Burke from entering school premises. If Enoch Burke's entry into school premises is trespass, the Board is entitled to assistance of the law to enforce its right to exclude him. The right engaged is that of the Board to prevent entry of unwanted intruders on premises under its control and to enjoy use of those premises without interference.
21. It is appropriate to deal with the second issue first. This is because entitlement to prevent trespass does not depend on the outcome of this Court's decision on whether Enoch

Burke's suspension involved a breach by the Board of obligations under his contract of employment.

22. Evidence presented to this Court demonstrates that mutual trust and confidence between the Board and Enoch Burke has broken down because of his actions. He defied the Board and the School by attending in school premises. He defied court orders.
23. While it is doubtful whether a court can ever order specific performance of an employment contract, what is certain is that no court will force an employer to provide work for an employee where this essential feature of an employment relationship is absent. Employees who engage in conduct which is calculated to destroy or seriously damage their employment relationships cannot expect courts to disregard such behaviour where this becomes relevant to any jurisdiction to grant discretionary relief.
24. Are employees who have been dismissed, suspended or "locked-out" by an employer entitled to go into their workplace without permission? The answer to this question has never been in doubt: "locked-out" employees are not entitled to "sit-in." They may not return to the workplace unless and until their employer accepts resumption of performance of their service as part of an employment relationship.
25. This may happen either by agreement between an employer and a previously excluded employee or because an employer has been compelled by law to reinstate, re-employ or take back an employee. This resumption carries with it permission to return to the workplace for the purpose of enabling an employee to perform duties of employment. This new permission operates prospectively and does not excuse past trespass. A judicial or quasi-judicial finding that an employee has been unfairly or wrongly dismissed, or suspended in breach of contract cannot, of itself, confer entitlement to re-enter the former workplace.
26. Employees involved in disputes with their employers often claim that they have "right" on their side. Their employers may have acted unfairly or in breach of contract. This does not mean that such employees are given a right to trespass on or cause nuisance to enjoyment of an employer's premises. Privileges and immunities conferred on employees and others by ss.10,11 and 12 of the Industrial Relations Act 1990 in respect of actions taken in contemplation or furtherance of a trade dispute which would otherwise be tortious or unlawful do not authorise or render immune from suit entry onto private property contrary to the will of an occupier. Any such entry constitutes trespass.
27. The legal authorities which relate to entitlement of contractual licensees to enter and remain on land have never been extended to give rights to employees who have been suspended, locked out or dismissed to enter their workplace. The reason for this is that a contract of employment is not capable of being performed where an employer refuses to provide work for an employee.
28. Attendance at a workplace by an employee who has been suspended, dismissed or locked-out can fulfil no employment-related purpose. No term could be implied into a

contract of employment which confers a right on any employee to enter a workplace in such circumstances.

29. Courts will not force an unwilling employer to allow that employee to enter or remain on premises as part of a demand to be permitted to continue to work there. Furthermore, courts are obliged to uphold the right of those who control premises to exclude trespassers.
30. Any right of Enoch Burke to enter the school premises is ancillary to his employment duties. Whether his suspension or dismissal were in breach of his contract of employment or not, the Board terminated his right to enter the school. He can only return if he succeeds in persuading the Board to take him back, or if he persuades a competent appellate authority to force the Board to take him back. His claim in this action for that type of remedy has been dismissed.
31. Trespass to land is a violation of the rights of a person who is either in actual occupation or entitled to immediate possession of that land. The former school principal gave evidence that the Board controls the school during the school day and that the School is in control outside of teaching hours. This gives the Board sufficient possession of school premises and facilities to maintain an action for trespass. The Board is entitled to damages for trespass and an injunction to restrain Enoch Burke from disrupting its possession of school property by entering or remaining on school premises and facilities without permission: see *Manchester Airport plc v. Dutton* [2000] Q.B. 133.
32. No discretionary considerations exist which could justify this Court in withholding an injunction to prevent trespass by Enoch Burke on school premises. The Board is entitled to a permanent injunction prohibiting him from entering on those premises. This prohibition will continue unless or until he is re-employed or reinstated as a teacher.
33. It is also appropriate to award the Board damages for trespass against Enoch Burke. There are significant aggravating features which make it proper to award more than nominal damages. These relate to continuing trespass and deliberate disruption caused by entering school premises during school hours. This Court is assessing damages for this trespass at €15,000. This award of damages is in addition to any daily fines currently being imposed for breaches of existing orders.
34. This Court has power to ensure that any necessary person is joined as a party to determine issues in dispute. The Board and school officers who demanded that Enoch Burke remove himself from school premises following his suspension acted on behalf of both the Board and the School. If necessary, this Court will make an order joining Wilson's Hospital School as a plaintiff in this action for trespass.
35. Did the Board comply with its contractual obligations to Enoch Burke in suspending him? The evidence establishes that answer to this question is "yes." The Board is entitled to a declaration that the decision on 22 August 2022 to put Enoch Burke on paid administrative leave was lawful.

36. Procedures dealing with suspension and dismissal of teachers are set out in Appendix 1 to Department of Education and Skills Circular 0049/2018 (the Circular). The Circular applies to professional competence issues and to general disciplinary matters. Its provisions override any terms which might otherwise be agreed or implied into contracts of employment of teachers.
37. Failure by a principal or a board of management or disciplinary appeal panel to adhere to procedures laid down by or to be implied from the terms of the Circular may result in an irregular decision to suspend or dismiss or a finding that damages for breach of contract should be awarded. Such failure may also be relevant to a finding in proceedings under the Unfair Dismissals Act 1977 that dismissal was unfair.
38. The Circular sets out powers and functions of school principals and boards of management and appellate bodies in the contractual disciplinary process. Boards of management making decisions to dismiss and suspend teachers act within a statutory remit under s.24(3) of the 1998 Act. The validity of some steps within this process may be challenged in judicial review or analogous proceedings. A decision which has not been challenged may become immune from challenge in nullification proceedings. The appropriate time for any such challenge will usually be at conclusion of any process which leads to a decision envisaged by the Circular.
39. Part 2 of the Circular sets out "General principles underlying these procedures." This states that: "Where circumstances warrant, a teacher may be placed on administrative leave with full pay pending an investigation, or pending the outcome of an investigation, a disciplinary hearing/meeting or the outcome of a disciplinary hearing/meeting."
40. The Circular envisages that the school principal will engage in an informal process with a teacher to resolve matters prior to invoking any formal disciplinary steps against a teacher. In general, a four-stage formal disciplinary procedure applies where issues arise as to whether a teacher's work or conduct meets required standards in areas other than those relating to professional competence.
41. This formal process moves from verbal warning, ("Stage 1") to written warning, ("Stage 2") and then to final written warning ("Stage 3"). The Circular goes on to outline "Stage 4" of the process: "If it is perceived that the poor work or conduct has continued after the final written warning has issued or the work or conduct issue is of a serious nature, a comprehensive report on the facts of the case will be prepared by the Principal and forwarded to the board of management. A copy will be given to the teacher."
42. The Circular then sets out the steps which a board of management must take upon receipt of the report prepared by the school principal as follows:
  - "The board of management will consider the matter and will seek the views of the teacher in writing on the report prepared by the principal. The board of management shall afford the teacher an opportunity to make a formal presentation of his/her case. The teacher should be given at least ten school days'

written notice of the meeting. The notice should state the purpose of the meeting and the specific nature of the complaint, and any supporting documentation will be furnished to the teacher. ...The teacher will be given an opportunity to respond and state his/her case fully and to challenge any evidence that is being relied on for a decision and be given an opportunity to respond. Having considered the response, the board of management will decide on the appropriate action to be taken. ...Where following the hearing it is decided that further disciplinary action is warranted the board of management may avail of any of the following options:

- deferral of an increment
- withdrawal of an increment or increments
- demotion (loss of post of responsibility)
- other disciplinary action short of suspension or dismissal
- suspension (for a limited period and/or for a specific purpose) with pay  
suspension (for a limited period and/or for a specific purpose) without pay
- dismissal.

The board of management will act reasonably in all cases when deciding on appropriate disciplinary action. The nature of the disciplinary action should be proportionate to the nature of the issue of work or conduct issue that has resulted in the sanction being imposed."

43. The Circular contains a number of paragraphs under a heading "Gross Misconduct." Their text reads as follows:

"In the cases of serious misconduct at work or a threat to health and safety to children or other personnel in the school the stages outlined above do not normally apply, and a teacher may be dismissed without recourse to the previous stages.

The following are some examples of gross misconduct offences for which any or each of stages 1 to 3 of the disciplinary procedure may not apply, depending on the gravity of the alleged offence: -

- Theft
- Deliberate damage to school property
- Fraud or deliberate falsification of documents
- Gross negligence or dereliction of duties

- Refusal to comply with legitimate instructions resulting in serious consequences
- Serious or persistent incapacity to perform duties due to being under the influence of alcohol, unprescribed drugs or misuse of prescription medication
- Serious breach of health and safety rules
- Serious abuse/misuse of the school's property/equipment
- Serious breaches of confidentiality
- Serious bullying, sexual harassment or harassment against an employee, student or other members of the school community
- Violent/disruptive behaviour
- Downloading/disseminating pornographic material from the internet
- Circulation of offensive, obscene or indecent e-mails or text messages.

Note: The above list is not exhaustive.

For the purposes of this section gross misconduct may also relate to an act which took place or allegedly took place outside the school where such act, or alleged act, gives rise to a serious concern on the part of the board of management in relation to the health and safety of students and/or staff of the school.

If there is an allegation of serious misconduct, the teacher may be suspended on full pay pending an investigation and the conclusion of any appeal process.

In the course of investigation the teacher concerned has the right to have the allegations brought to his/her attention and he/she has the right to respond to all allegations. If the investigation upholds a case of serious misconduct the normal consequence will be dismissal."

44. Section 24(3) of the 1998 Act provides that a decision on suspension of a teacher is a function reserved to the board of management of a school. This applies both to suspensions imposed for disciplinary reasons and to suspensions while an allegation of serious misconduct is being investigated and processed.
45. Suspension with pay may be imposed because it is appropriate that an employee does not work within the school while an investigation or disciplinary process which may lead to dismissal is taking place.



46. While there are judicial statements in some of the authorities which indicate that rules of natural justice do not apply to decisions to suspend an employee during an investigatory stage of disciplinary proceedings, these statements do not mean that such decisions are not capable of being subjected to judicial oversight.
47. An allegation of serious misconduct against a teacher need not come from the school principal. It may come from a parent, a member of the Garda Síochána, or a pupil. Receipt of a "Stage 4" report from a school principal is not a necessary precursor to initiate this element of the disciplinary process.
48. A board may need to consider whether suspension should be imposed on a teacher before an investigation of an allegation of serious misconduct has commenced or before a detailed report has been received. Sometimes it may be necessary for a board to suspend without giving a teacher an advance opportunity to make representations. The serious misconduct alleged may relate to an occurrence outside a school or in relation to incidents in a school outside teaching hours.
49. The provisions in the Circular relating to suspension with pay which is not imposed as a disciplinary measure do not expressly provide for a right of a teacher to be heard at this stage of the process. While a decision to suspend pending conclusion of a disciplinary process does not involve making any concluded finding of wrongdoing, a board of management will be aware that suspension is a serious step which may affect the professional standing of a teacher.
50. This type of suspension is an interim measure. A decision to suspend may be reviewed if there is a material change of circumstances. If a teacher requests a hearing or is given an opportunity to make submissions on whether suspension should be imposed or continued, then a board must duly consider any such request or submissions.
51. A board is obliged to take a view on whether suspension is appropriate. Suspension of a teacher may only be imposed after proper consideration and for a valid reason. In considering whether a suspension is valid, a court can examine whether material before a board is sufficient to support a valid decision to suspend and whether that material has been properly and fairly presented to that board.
52. A board must come to a decision on whether to suspend without arriving at any conclusion on the result of an investigation or disciplinary process. The disciplinary issue must be sufficiently serious as to be capable of amounting to gross misconduct meriting dismissal if the charge is proved. If a board could not reasonably conclude from materials presented for consideration that suspension is warranted, then a decision to suspend will not be valid.
53. Consideration of the nature and seriousness of allegations will usually be relevant to any decision on whether to impose suspension. A board which is considering whether to suspend a teacher will examine issues such as risk which a teacher's presence or conduct may pose to pupils or to maintenance of trust or proper discipline within the school.

54. The chain of events which resulted in disciplinary proceedings and suspension of Enoch Burke began in May 2022. Arrangements were being made in the school to facilitate a pupil who wished to change gender identity. Meetings had taken place between this pupil and one of their parents and members of staff.
55. On 9 May 2022 the school principal, Niamh McShane, sent an email to teachers advising that this social transition would be implemented the following day and of the proposed change of name and mode of reference to this pupil.
56. Enoch Burke objected to this course in emails sent on the morning of 10 May 2022. He wanted to know if parents of students had been informed of this development and complained that "...students in this school are being forced to accept this situation." He stated that it was "...wrong that this belief system would be forced upon students, and I will be taking this further. It is an abuse of children and their constitutional rights." Niamh McShane responded with a request that he make an appointment to see her if he was not willing to include this pupil in his classroom.
57. The term staff meeting took place in the school that afternoon. Enoch Burke interrupted this meeting in an agitated manner. He stated that the principal's e-mail had made a demand to staff and that he was challenging this. He asserted that this was not right, was child endangerment and was contrary to the ethos of the school.
58. Niamh McShane requested Enoch Burke to stop this intervention. She told him that he should make an appointment to see her. He continued to speak. He made references to the Church, transgenderism, forcing ideas on people and demanding that teachers do things they should not have to do. He eventually desisted after another teacher requested that he allow the meeting to proceed in accordance with its agenda.
59. Niamh McShane met with Enoch Burke on 18 May 2022. John Galligan, who was deputy principal of the school, also attended this meeting. The purpose was to discuss what Enoch Burke had stated at the staff meeting. She wanted to find an area of compromise which would accommodate Enoch Burke's personal beliefs, the needs of the student and the inclusive ethos of the school. Niamh McShane and John Galligan were concerned about how Enoch Burke would interact when dealing with this student.
60. At this meeting Enoch Burke voiced opposition to what he termed "transgenderism" and stated that this was against his religious beliefs. He was asked how he would interact with the student in the corridor or taking a roll call or on a school trip and whether he would call the student by their new name. He avoided giving a direct answer to this query. He stated repeatedly: "I am a professional. My professionalism is not in question."
61. Following this meeting, Niamh McShane wrote to Enoch Burke by email on 27 May 2022. The main points of her letter were that the welfare of students in the school was paramount; that the right of persons to be called by a name of their choosing in accordance with their preferred gender was a recognised right. She referred to the ethos of the school and its obligations under the Equal status Act 2000. Her letter advised

Enoch Burke that "...I expect that you will communicate with this student in accordance with the wishes of the student and the student's parents."

62. Enoch Burke responded later that day with an email which stated as Follows:

"On Monday 9 May you emailed all staff requesting that they address a student with a new name and referred to the student using 'they' rather than the '( )' used up to that point. You told us that the same demand would be made of all classmates of the student.

In the staff meeting the next day on Tuesday and also the meeting you requested last week on Wednesday 19 May I explained to you clearly where I stand on the matter."

63. The decision of the board to suspend Enoch Burke followed incidents which took place in the school on 21 June 2022.

64. A religious service in the school chapel was scheduled for the evening of 21 June 2022. This was to be followed by a dinner in the school dining room. These events were arranged to celebrate the 260th anniversary of the founding of the school and to thank friends of the school for their contributions and help. Those in attendance in the chapel included boys from the final year who intended to make a presentation to a retired housemaster at the altar after the service. Invited guests included past and present staff, parents and others associated with the school. At least five members of the Board were among the attendees.

65. The Church of Ireland Bishop of Kilmore officiated at the service. Enoch Burke interrupted the service as it was drawing to a close and delivered an address to the congregation.

66. Enoch Burke asserted that the school principal had made a "demand" that staff accept what he termed "transgenderism," and that he would not and could not accept "transgenderism" as it was against his beliefs and the teaching of all Christian churches. He requested that "teachers, who are charged with the spiritual development of children be able to work by their Christian beliefs." He requested that Niamh McShane withdraw her "demand" and suggested that the founder of the School would not approve of these developments.

67. He ignored a request by the school chaplain to desist. He was interrupted by the Bishop who concluded the service. While he was speaking, pupils who were due to make the presentation to the retired housemaster walked out of the chapel in protest at his remarks. Their presentation had to be rearranged on the school steps.

68. After a dinner which followed the service Enoch Burke interrupted the school principal while she was socialising with guests on two occasions. He interacted with her in a manner which she and others who were present considered inappropriate. He was agitated and repeated his request that she withdraw her "demand" or "request." He was prevented by other attendees from engaging in any further dialogue with her.

69. The school principal reflected on these events. When she returned from her annual holidays at the beginning of August 2022, she prepared a report for the Board. This report set out what had happened and initiated the disciplinary process. She took the view that Enoch Burke's behaviour as set out in the report was gross misconduct. She decided to invoke Stage 4 of the disciplinary process. Her report set out the reasons as to why she considered it appropriate to proceed straight to Stage 4.
70. The effect of this decision was procedural. The matter was brought directly to the Board.
71. This Court agrees with the submission on behalf of the Board that contractual validity of the principal's decision falls to be evaluated by reference to rules governing decision-making in public law: see paras. 24, 28, 29 and 30 of the judgment of Baroness Hale of Richmond DPSC in *Braganza v. BP Shipping Ltd (The British Unity)* [2015] ICR 449; [2015] UKSC 17, quoted with approval by Coulston LJ in *Gregg v. North West Anglia Foundation Trust* [2019] ICR 1279; [2019] EWCA Civ 387 at paras. 97 and 98.
72. This decision was made in good faith, and it was rational. It was consistent with the contractual purpose of provisions of the Circular which set out what could constitute gross misconduct by a teacher. The school principal took relevant considerations into account. Enoch Burke's conduct which was the subject of her complaint was capable of being considered as amounting to "gross misconduct."
73. The principal's report contained nothing which could invalidate any subsequent action by the Board. It set out in detail her account of what happened. She was not passing a judgment on Enoch Burke's behaviour. It remained to be seen whether he disagreed with her account and whether the Board would conclude that any conduct proved against him amounted to gross misbehaviour. The report demonstrated that he had a case to answer.
74. The school principal was fully within her rights in expressing her view on Enoch Burke's behaviour in this report. She was entitled to express a view that his behaviour at the staff meeting and his public challenge to "a reasonable and legitimate instruction to staff" ... "may amount to gross misconduct." She was entitled to explain to the Board in detail the reasons why she considered Enoch Burke's behaviour should be regarded as gross misconduct.
75. Her report concluded by drawing the attention of the Board to her "...serious concerns about how Mr Burke may act in the school in future in circumstances where he has stated his personal views on transgenderism in the school and at a public event after the school term had ended. These concerns extend to the student concerned and the entire student body." She was entitled to draw the attention of the Board to her concern about risks associated with Enoch Burke's future conduct.
76. Niamh McShane handed a copy of her report to the chairman of the Board on 15 August 2022. She also forwarded a copy to Enoch Burke. A meeting of the Board took place later that day. During that meeting the chairman read out most of this report. The document was not circulated to the other members of the Board.

77. The Board did not engage in any substantive consideration of the content of this report on 15 August 2022. The Board held advice that members should not discuss the detail at that stage. The Board decided to arrange a disciplinary hearing on 14 September 2022 and that the chairman would correspond with Enoch Burke. The Board also decided to hold a hearing on 22 August 2022 for the purpose of deciding whether it would place Enoch Burke on administrative leave until the disciplinary hearing. Enoch Burke was invited to attend.
78. A new school year was about to start. The members of the Board could not but have been aware that Enoch Burke had instigated incidents in the school chapel and dining room on 21 June 2022 and they were now aware of the detail from the principal's report. There was obvious cause for concern about how Enoch Burke would behave in the school with reference to the subject matter of the disciplinary process. The Board had a duty to consider whether to suspend Enoch Burke pending conclusion of this process.
79. It was submitted on behalf of the Board that it had no obligation to give Enoch Burke a right to make representations prior to suspending him. It is unnecessary to express a concluded view on this submission. Enoch Burke was given an opportunity to make representations to the Board at the meeting on 22 August 2022.
80. The issue of whether the terms of the Circular envisage that a board of management can validly treat any actions by a teacher as capable of amounting to "gross misconduct" is an issue of construction of the employment contract. Could that conduct, if established, reasonably be considered as coming within "gross misconduct" as envisaged by the Circular?
81. The conduct of Enoch Burke, which was the subject of Niamh McShane's complaint, if proved, was capable of amounting to "gross misconduct" within the Circular. This was obvious from the material put before the Board on 15 August 2022. It was not necessary for the Board to conduct any examination of the basis on which it could exercise its powers.
82. The Board acted properly in making its decisions on 15 August 2022. These decisions convened meetings as part of the disciplinary process. These procedural steps did not involve any disciplinary determination adverse to Enoch Burke.
83. The attendance of the school principal at this Board meeting did not affect the validity of these decisions. Her only role in attending the meeting was to function as secretary of the Board. She did not intervene in the meeting. She was not involved in the subsequent decision to suspend Enoch Burke. She did not attend the meeting on 22 August 2022 and had left the school at that stage.
84. If the school principal had been a Board member, she would have been entitled to participate in proceedings relating to decisions at the meeting on 15 August 2022 affecting Enoch Burke. Fixing of dates for disciplinary and suspension hearings were

procedural steps. If there was a debate in the Board as to whether to convene a meeting to consider suspending Enoch Burke, she could give her view.

85. It does not necessarily follow that attendance by a school principal at, or participation in, a meeting which decides on a preliminary step of arranging another meeting to consider suspending a teacher should be regarded as a contravention of the rule of natural justice which prohibits the presenter of the case against that teacher from involvement in disciplinary decision-making. A board might properly solicit the view of a school principal on that issue.
86. Following the Board meeting on 15 August 2022, its chairman corresponded with Enoch Burke. His letter dated 16 August 2022 enclosed a further copy of the principal's report. This was described in the chairman's letter as containing "very serious allegations about you which, if substantiated, might constitute serious misconduct on your part." This letter also advised Enoch Burke of the date, time, and location of the proposed disciplinary hearing and of his rights. Enoch Burke was invited to state his views in writing on the allegations made against him in advance of that hearing.
87. John Galligan and Freda Malone gave evidence of what happened at the Board meeting on 22 August 2022. The meeting took place in the school. It was attended by Enoch Burke and his sister. Enoch Burke knew the purpose of the meeting which was confined to the issue of whether he should be suspended with pay pending the outcome of the dismissal process.
88. Bodies entrusted by law with decision-making powers are sometimes confronted with challenging and obstructive behaviour by participants. These decision-makers are frequently lay people who do not have powers of judges or legal expertise. They are entitled to police their own procedures.
89. Judicial oversight of the way these bodies conduct themselves is concerned with ensuring procedural fairness. Was a person before the decision-maker given a fair opportunity to present their case? Was there pre-judgment? Was the hearing conducted fairly? Was a decision made on rational grounds? Were irrelevancies taken into consideration?
90. Participants in these decision-making processes have a duty to cooperate with decision-makers. This rule applies to employment disciplinary processes. There is an implied term to this effect in employment contracts. Cooperation is necessary to give agreed disciplinary procedures efficacy. Participants must present their cases without engaging in disruptive tactics. They must respect and adhere to procedural rulings of those who preside.
91. When a court is asked to examine whether a decision made during such a hearing is valid it may become necessary to look at conduct of both the decision-maker and of the person who claims that the decision should be treated as invalid. A participant in a hearing who engages in disruptive tactics or refuses to address the purpose of that

hearing may expect that a court asked to review regularity of that hearing will make appropriate allowances in deciding whether a hearing was conducted in a fair manner.

92. At the meeting of the Board on 22 August 2022 Enoch Burke was invited to make his case on why he should or should not be suspended. The Board gave him an opportunity to address this issue over a period of 35 minutes. He did not avail of this opportunity. Instead, he insisted on raising issues which were not relevant to the purpose of the meeting.
93. He was aware from the content of the school principal's report that there was a serious concern about his future conduct if he was permitted to teach in the school. He knew that the issue of whether he was prepared to obey the direction on how he should behave in the school in relation to pupils who had been facilitated in changing in gender identity was likely to be central to any decision to suspend.
94. He repeatedly attempted to side-track the process into a discussion on the validity of the disciplinary process. He raised matters relating to the Board meeting of 15 August 2022. He queried whether the wording of the school principal's report and the letter advising him of the disciplinary meeting alleged gross misconduct.
95. The Board was entitled to require that he confine himself to making submissions on why it would be inappropriate to suspend him. It was not obliged to entertain submissions which challenged the basis on which it was proceeding. His contractual right to due process at hearings did not include a right to make a submission on those issues at that meeting.
96. Beyond stating that that he had an unblemished teaching record and a good character and went beyond the call of duty in his dedication and that suspension would affect his reputation, Enoch Burke did not address the issue of why he should not be suspended. In particular, he did not address whether he would comply with the school principal's direction. The discussion never got to the stage where that issue was discussed.
97. The chairman of the Board eventually intervened to terminate the hearing. Enoch Burke then stated that he intended to get to the issue of why he should not be suspended.
98. The employment contract does not envisage that this Court may usurp the power of the Board to make rational and justifiable decisions on procedural matters. Judicial oversight in this area is confined to examining whether any decision of the Board was rational and within ambit of powers conferred on it by the Circular. These powers include power to regulate its procedures. The law gives the Board a margin of appreciation in its exercise of this power.
99. The Board provided Enoch Burke with a reasonable opportunity to state his case on why he should not be suspended. He chose not to avail of that opportunity. He ignored requests to address this issue. He was the author of his own misfortune. The eventual decision to curtail his further participation in the hearing was rational and justifiable.

100. The Board deliberated on whether Enoch Burke should be suspended. This was fully discussed. There was no pre-judgment of the result. Comments made by individual members of the Board during interchanges with Enoch Burke during the hearing which preceded this discussion cannot be considered as evidence of pre-judgment.
101. The Board arrived at a consensus decision that Enoch Burke should be suspended because of concern that if he were permitted to teach, he would engage in a repeat of his behaviour and that this would be damaging in the school. This decision and the reasoning of the Board was conveyed to Enoch Burke by letter dated 24 August 2022.
102. There is no evidence that that any relevant matter was not duly considered or that any irrelevant matter was considered by the Board in arriving at this decision. The Board was restricted because of legal advice that members could not discuss the substance of the allegations. However, the decision-makers knew enough about the allegations and the relevant issues to make a valid decision on whether to suspend Enoch Burke.
103. Considering what the Board knew about Enoch Burke's actions in the school towards the end of the previous academic year and his behaviour at the Board meeting, apprehension that he would engage in harmful and disruptive conduct if permitted to teach in the school was rational and reasonable. The Board was entitled to consider that Enoch Burke did not address the issue of how he would behave in the school.
104. One final matter arises. During legal submissions, an issue was raised as to relevance to these proceedings of behaviour of Enoch Burke after 22 August 2022.
105. Subsequent behaviour by Enoch Burke is relevant to injunctive relief and damages for trespass. However, such behaviour can have no bearing on whether the Board acted properly on 22 August 2022. The Board was restricted to considering what was known at the time it made its decision to suspend him.
106. This Court's provisional view on costs is that costs of the Board in this action should be paid by Enoch Burke. Costs should be awarded to the successful party. This award of costs should include any costs in the cause or reserved costs of interim and interlocutory orders and of other applications which have been left over for the trial judge to decide on. It should also include any costs of the Board relating to compliance with court directions as to exchange of witness statements, legal submissions, and discovery. This Court proposes to make no order as to the costs of the Board on the counterclaim, beyond such costs as are properly allowable for any notice for particulars and the reply and defence to counterclaim.
107. If either of the parties to this action wishes to make any submissions as to why the proposed order should not be made, this Court should be advised within 28 days and a date will be fixed for a costs hearing. It may also be necessary to list the matter as the permanent injunction replaces the interlocutory order. There will be liberty to apply for purposes relating to enforcement.