

JUDGMENT : CARROLL J: High Court : Ireland. 7th July 1999.

1. The Plaintiff is a professor of economics and is head of the Department of Economics at University College Cork (UCC). He is seeking an injunction restraining the University from proceeding with a mediation process without his consent in proceedings in which Anthony Barlow, Martin Kenneally and Michael O'Suilleabhain are the Plaintiffs and Professor Fanning and UCC are Defendants. Mr Barlow and his co-plaintiffs, all of whom work in the Department of Economics initiated these proceedings in March 1998 alleging loss and damage in relation to their careers through the actions of Professor Fanning and the University.
2. A joint approach to the defence of this action was agreed between Professor Fanning and UCC. Professor Fanning claims it was agreed that neither would attempt to settle the proceedings without the consent of the other Defendant.
3. Both sides refer to a case review held on 5 January 1999 and minuted by Michael Farrell, the Administrative Secretary. The former President Dr Mortell retired and the new President, Professor Wrixon, took office on 26 January 1999. The Plaintiff claims that Professor Wrixon is hostile to him but this is denied. Clearly, the new President was anxious to explore whether the dispute could be amicably resolved, given that the case would run for a considerable time and the costs would be very large regardless of the outcome.
4. Just prior to a meeting of the Governing Body on 9 March 1999 a petition signed by twenty members of the staff asked the President and the Governing Body to appoint an independent mediator to seek an early resolution of the issues in dispute and to report to the President. The Governing Body authorised the President to act in the matter and he appointed a mediator. Professor Fanning took objection to the format but nevertheless attended the first mediation session 26 March 1999. Despite further protests on his part, he attended the second mediation session on 16 April 1999. The mediator asked for someone who knew universities and academic issues to assist her and the President appointed Professor O'Mahony and Mr Murphy.
5. The Plaintiff was informed on 6 May 1999 that the mediator intended to meet Professor O'Mahony and Mr Murphy during the week commencing the 17 May, to present a proposal on 24 May and to conclude the proceedings on 25 May.
6. On 14 May the Plaintiff's solicitor wrote saying that the Plaintiff would seek injunctive relief in default of agreement on the ground rules of the mediation. The Plaintiff says that he has no objection to mediation but that it must be with his consent. The mediation process, he says, is in breach of the joint defence agreement not to settle without the consent of both Defendants. The Plaintiff also claims that damages would not be an adequate remedy if a report is made to the Governing Body recommending settlement as the conduct of the current mediation process has already caused serious damage to his reputation and authority.
7. On the same day that the President and Mr Kelliher were swearing replying affidavits a notice of discontinuance in the Barlow proceedings was served on Professor Fanning. The Professor claims that this makes no difference and that UCC are still bound by their joint defence agreement and cannot settle without his consent.
8. This application is about stopping the mediation undertaken with a view to reconciling the differences between Mr Barlow and his co-plaintiff and Professor Fanning. The President says there is no question of compelling Professor Fanning to participate in the mediation process and to accept any resolution imposed by the mediator. He is free to participate or to decline. If he declines, the mediation process would not succeed and the authorities may have to litigate the issues.
9. In my view there is no fair issue to be tried. The Court will not grant an injunction restraining mediation when Professor Fanning himself may refuse to take part. I can see no justification for seeking to impose a legalistic framework on what is essentially an informal exploratory exercise to see if the dispute can be resolved. Professor Fanning is no longer a party to the action. His participation in the mediation process is required because he is the head of the Department in which the problem exists. If he refuses, the University will have to find some other solution. Even if there was some issue

as to whether the joint defence agreement survived the notice of discontinuance, I am of the opinion that no damage will result to the Plaintiff from holding mediation proceedings. The balance of convenience favours the University in seeking to resolve the dispute in the Department of Economics by a mediation procedure, if such is possible, rather than face prolonged and expensive litigation.

10. I refuse the application and reserve the costs to the trial judge.