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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**12/11/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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WARD

v

McANULTY
(TRADING AS YELLOWLINE COACHES)

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SECURITY FOR COSTS APPLICATION

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Ms Ward appeared as Litigant in Person
Mr Quigley (instructed by Elliott Trainor Solicitors) for the Respondent

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Before: Keegan LCJ and Colton LJ

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COLTON LJ (*delivering the ex-tempore judgment of the court*)

[1] The court is dealing with an application by the respondent in this appeal for an order pursuant to Order 59 rule 10(5) of the Rules of the Court of Judicature (Northern Ireland) 1980 that the appellant give security for the respondent's costs of this appeal. The appeal relates to a decision of the Industrial Tribunal to dismiss the appellant's claim for public interest disclosure detriment, contrary to the Employment Rights (Northern Ireland) Order 1996. She was, however, successful in a claim for holiday pay, statutory sick pay and received an award in respect of the employer's failure to provide written particulars of employment.

[2] The respondent resists the appeal and argues that the notice of appeal discloses no ground of appeal with any reasonable prospect of success. The respondent points out that it has already incurred significant costs in resisting the claim before the Tribunal. The respondent is a family business and if it succeeds in the appeal, the costs will also be quite significant. They are currently estimated at £35,000, although the court has queried this amount in exchanges with counsel. In any event, the respondent says that it is unlikely to recover any costs from the

appellant should it succeed in the appeal which will cause further strain upon its finances.

[3] It is in that context that it brings this application for security of costs. The legal principles in this area are well-established. Order 59 rule 10(5) provides:

> "(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just."

[4] There are established categories of special circumstances, one of which is impecuniosity. As set out in the Supreme Court Practice 1999 ("the White Book") at 59/10/32:

> "It is the settled practice to require security for costs to be given by an appellant who would be unable through impecuniosity to pay the costs of the appeal if unsuccessful without proof of any other special circumstance. … The court may decline to order security where the insolvency or impecuniosity of the appellant arises from what he alleges is the wrongful act of the respondent. … But there is no absolute rule that security will be awarded when the appellant contends that his insolvency or impecuniosity has been caused by what he alleges to be wrongful acts committed by the respondents. The court has a discretion. The question is whether awarding security would amount to a denial of justice to the appellant. … In assessing this issue, the court takes into account the merits of the appeal."

[5] This principle has been applied in this jurisdiction. The respondent refers to the well-known judgment of Lord Justice Girvan in the case of *McAteer and Guram* [2010] NICA 16, where he says at para [6]:

> "The court will consider all the relevant circumstances including the merits of the appeal or the lack of them, the timing of the application for security, the balance of hardship (eg the appellant cannot afford security and would be barred from an appeal even though the outcome of the appeal will make or destroy him and the extent to which the appellant's impecuniosity is the result of the respondent's alleged wrongdoing). The principles which govern the award of security for costs at the Court of Appeal stage are wider and stricter than those applicable in relation to security for costs in a first instance trial. The court takes into account the fact that

> the appellant has already had a full trial in the court below and it is prima facie an injustice to a respondent to allow an appeal to the Court of Appeal to proceed without security for costs where the respondent will be unable to enforce against the appellant any order for costs. The court, however, retains a discretion. Obviously, if the appellant shows real grounds for questioning the correctness of the lower court's decision it may well be unjust to impose a security for costs which may have the consequence of depriving him of a real prospect of a successful appeal."

[6] Having set out the legal principles, we turn then to the particular facts of this case. The special circumstances in this case relied upon by the respondent, is that of impecuniosity. It is clear, and in fact it is accepted by the appellant that she would not be able to meet the costs of an unsuccessful appeal. There is no issue about that. We then must look at whether, in all the circumstances, we should make an order and, if so, the extent of any order. An important factor in the consideration of this must be the merits of the appeal and, in this regard, we remind ourselves that under Article 2 of the Industrial Tribunals (Northern Ireland) Order 1996, a party dissatisfied with a decision of the Industrial Tribunal can only appeal if he or she is dissatisfied on a point of law. It is important to remember that it is not the function of the Court of Appeal to rehear or relitigate matters that have been decided by the Industrial Tribunal. The role of the Court of Appeal in relation to appeals from Industrial Tribunals has been set out in the case of *Nesbitt v Pallett Centre Ltd* where the court said:

> "[60] A valuable formulation of the governing principles is contained in the judgment of Carswell LCJ in *Chief Constable of the Royal Ulster Constabulary v Sergeant A* [2000] NI 261 at 273:
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> > 'Before we turn to the evidence, we wish to make a number of observations about the way in which Tribunals should approach their task of evaluating evidence in the present type of case and how an appellate court treat their conclusions.
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> > 4. The Court of Appeal, which is not conducting a rehearing as on an appeal, is confined to considering questions of law arising from the case.
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> > 5. A Tribunal is entitled to draw its own inferences and reach its own conclusions, and

> however profoundly the appellate court may disagree with its view of the facts it will not upset its conclusions unless—
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> (a) there is no or no sufficient evidence to found them, which may occur when the inference or conclusion is based not on any facts but on speculation by the Tribunal (*Fire Brigades Union v Fraser* [1998] IRLR 697 at 699, per Lord Sutherland); or
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> (b) the primary facts do not justify the inference or conclusion drawn but lead irresistibly to the opposite conclusion, so that the conclusion reached may be regarded as perverse: *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14, per Viscount Simonds at 29 and Lord Radcliffe at 36.'

This approach is of long standing, being traceable to decisions of this court such as *McConnell v Police Authority for Northern Ireland* [1997] NI 253.

[61] Thus, in appeals to this court in which the *Edwards v Bairstow* principles apply, the threshold to be overcome is an elevated one. It reflects the distinctive roles of first instance Tribunal and appellate court. It is also harmonious with another, discrete stream of jurisprudence involving the well-established principle noted in the recent judgment of this court in *Kerr v Jamison* [2019] NICA 48 at [35]:

> 'Where invited to review findings of primary fact or inferences, the appellate court will attribute weight to the consideration that the trial judge was able to hear and see a witness and was thus advantaged in matters such as assessment of demeanour, consistency and credibility … the appellate court will not overturn the judge's findings and conclusions merely because it might have decided differently …'

> Next the judgment refers to *Heaney v McAvoy* [2018] NICA 4 at [17]-[19], as applied in another recent decision of this court, *Herron v Bank of Scotland* [2018] NICA 11, at [24] concluding at [37]:
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> > 'To paraphrase, reticence on the part of an appellate court will normally be at its strongest in cases where the appeal is based to a material extent on first instance findings based on the oral evidence of parties and witnesses.'"

[7] We have considered carefully the grounds of appeal in this case. Having done so, we take the view that they essentially amount to a challenge to factual findings of the Tribunal. It is clear from the judgment of the Tribunal that the law was carefully and properly set out in paras [25]-[35]. It then goes on to make factual findings in the context of the legal principles which have been set out. We consider having regard to the grounds of appeal and having carefully read the initial judgment of the Tribunal and the reconsideration request judgment that the merits in this case are weak. We note that the grounds requesting consideration are, in essence, almost identical to the grounds of appeal that have been set out in this case. Those grounds have been fully dealt with in the reconsideration judgment. Having considered the grounds, we do not see that they show a real basis for questioning the correctness of the Tribunal's decision.

[8] We note the submissions of the appellant. She has drawn our attention to the well-known case of *Unison* [2017] UKSC 51, and to various judgments of the European Court of Human Rights which deal with access to justice. She is right to say that the court must be alert and careful to ensure that people are not denied access to justice because of lack of means. However, what must be appreciated in this case is that she has not been denied access to justice. There already has been a full hearing following a very lengthy case management process. The appellant has the benefit of a written judgment. She also sought reconsideration of the matter and as a result of that reconsideration a further decision has been issued by the Tribunal. Therefore, we are dealing with access to the Court of Appeal in circumstances where the court is in a position to assess the merits of the case and may make an order under Order 59 if it feels it just to do so.

[9] The principle underlying Order 59 is to protect respondents such as this being exposed to substantial legal costs in circumstances where it has already incurred costs at first instance and where it is facing an unmeritorious appeal. To repeat Girvan LJ:

> "The court takes into account the fact that the appellant has already had a full trial in the court below and it is prima facie an injustice to a respondent to allow an appeal to the Court of Appeal to proceed without security for

> costs where the respondent will be unable to enforce against the appellant any order for costs."

[10] Having considered all the circumstances of this case, we have come to the view that this is an appropriate case for an order for security of costs. However, we must also bear in mind that any order we make must be proportionate. We are exercising a discretion. We have to take into account all the circumstances of the case. We have set out the circumstances which have led to our decision to make an order. We note in passing that the appellant is entitled to a sum of just in excess of £2,000 by reason of the matters in which she was successful. We express the view that it is somewhat surprising that that money has not been paid to the appellant. It should have been paid by now. That matter is not under appeal. It is a matter of course for the appellant what she wants to do with that money, but we would expect that that money will be paid to the appellant forthwith.

[11] We have decided that the appropriate figure which the appellant should provide by way of security is one of £5,000. We therefore make an order pursuant to Order 59 rule 10(5) that the appellant gives security for the respondent's costs of this appeal in the sum of £5,000. That sum of £5,000 is to be lodged in court within 28 days. The appeal will be stayed until security is given in accordance with this order. If the £5,000 is lodged within the 28 days, we will allocate a date for the hearing and give any necessary directions in preparation for the hearing.