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Judgment: approved by the Court for handing down | *Delivered:* **16/06/2004**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

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BETWEEN:

JOHN RINGLAND

Plaintiff

and

SOUTH EASTERN EDUCATION AND LIBRARY BOARD

Defendant

_____

McCOLLUM LJ

[1] The plaintiff, who is not legally represented and has presented his own case, brings this action against the defendant for damages for injury to his health and loss of his employment with the defendant which he alleges was caused by the negligence and breach of duty of the defendant, its servants and agents and also for damages for libel. In his statement of claim he relies on:

[i] failure to provide technical support between 1991 and1996 to replace Mr B Graham, a technician who retired in 1991

[ii] requiring the plaintiff to carry out repair work on electrical accessories and equipment and to carry out refurbishment work contrary to his terms of employment

[iii] failing to ensure the correct application of the appropriate disclipinary code

[iv] harassment by a threatening letter and a malicious telephone call relating to the plaintiff's retirement.

[v] libels allegedly contained in letters written by or on behalf of his employers.

Allegations against Mr Montgomery, a City and Guilds assessor and Mr Murray, a Department inspector had been withdrawn before the trial.

[2] The claims arise from events which occurred when the plaintiff was a lecturer in electrical installation and engineering in Lisburn College of Further and Higher Education, now known as Lisburn Institute ("the college").

[3] The case was conducted on the basis that if the plaintiff has any legal redress for the matters of which he is complaining, the defendants accept responsibility as employers to provide such redress as may be appropriate.

[4] The plaintiff's employment in the college commenced in 1970 and consisted of teaching electrical installation work. The course was under the auspices of City and Guilds and consisted of 80% practical training and 20% theory.

[5] Students were instructed in planning electrical work, preparing wiring diagrams, circuit diagrams and also the practical exercise of actual installation of electrical wiring.

[6] The plaintiff described it as a very wide ranging course with a high standard of work required and said that there could be a lot of danger involved because of potential contact with live electricity.

[7] He was a member of the Chartered Institute of Building Services Engineers, of which the Institute of Electrical Engineering was a part and the text book in use in the College was produced by the Institute of Electrical Engineering.

[8] The plaintiff's evidence was that the services of a technician were necessary for the proper conduct of his teaching duties. He worked in room B7 and the technician's task was to set out equipment in that workshop, to make sure that the benches were in safe working order, and that the socket outlets and the safety devices, switches and trips worked properly.

[9] The students had to complete 30 exercises in a 36 week period in each year of the three year course.

[10] The technician laid out the electrical equipment for the use of his students and gathered it together again at the end of classes. He was responsible for scrapping equipment which was no longer usable or to recycle it if that could be done.

[11] Second year students were allowed to work with live electricity and had to study the use of motors of which there were 4 or 5 different kinds. The student had to take them apart, re-assemble and run them and the technician would attend to demonstrate with the plaintiff how to run the motors which might have accounted for about one week of the students instruction. It was the technician's duty to check the motors and to repair them if necessary.

[12] There were also different kinds of lighting apparatus, the study of which was part of the syllabus.

[13] The recycling carried out by the technician saved on the purchase of new equipment and the plaintiff and the technician joined in preparing a list of what had to be re-ordered at the end of the year.

[14] The plaintiff said that he could not carry out his duties properly without the services of a technician and referred to the legal liability that he had under health and safety requirement and Electricity and Work Regulations.

[15] In October 1991 Mr Bertie Graham, the technician, retired and the plaintiff was told at a new technician would be appointed in January 1992. The plaintiff responded that he could carry on with his work for a couple of weeks in the absence of the technician.

[16] The plaintiff did not regard himself as under any obligation to do repair work and found it difficult to ensure that the stores were accessed for the production of equipment for the students' use and said this was not a part of his contract. The plaintiff said that from January 1991 to January 1996 when he left, "due to a heart attack", no technician had been appointed.

[17] As a result he said that the 298 students were not being properly tutored and the students suffered, particularly in the craft courses.

[18] The Departments of Electricity and Engineering were amalgamated and Mr McCambley took over the mechanical department.

[19] The plaintiff said that he often complained that he could not teach his pupils properly in the absence of a proper technician. However the new Principal of the college said that a technician was not needed.

[20] There was also a technician called Harry on the mechanical side but he left in 1992 also on the basis that he was not needed.

[21] When Mr McCambley took over the department the plaintiff told him that a new technician was needed for the craft courses and the academic course, which required some practical demonstrations.

[22] He admitted that he did not get on well with Mr McCambley. There was another technician who took over the electronics section but again when he left he was not replaced.

[23] Mr McCambley told the plaintiff that he should act as technician but he refused.

[24] Some electrical installation had to be done in room C5 and Mr McCambley had another teacher, Mr McLaughlin, carry out that work. The plaintiff complained in writing that there was a need to have a design certificate, a contractors' certificate, the identification of the contractor and the installation needed to be tested but says that his note was completely ignored. He refused to have anything to do with the work.

[25] Mr McCambley still insisted that he should act as technician.

[26] Following that Mr McCambley told the plaintiff that he had decided to turn another room into the new electrical workshop and to leave B7 as a classroom. The plaintiff was asked to dismantle B7 of all electrical parts and to get the students to help him to do it. He refused for the reasons that he was not a contractor but a teacher, that the students were not contractors but learners and that there was a health and safety issue involved. P2 was never completed as an electrical workshop.

[27] The plaintiff also found that first year students were working with live circuitry, which was illegal. A colleague, Mr McClune, with the help of some students, stripped room B7 and removed all the demonstration material from it and learning aids. The plaintiff had mounted the design of the complete electrical wiring for a house on a wall so the students could see it but it was taken off the wall and put on the ground.

[28] An incident occurred when Mr Lester came from room B5 to B7 because equipment in the former room was live and apparently the trip-switch had not functioned because of a wrong connection. A firm of contractors had to come to repair it. No accident or injury appears to have been caused by any of these matters complained of.

[29] According to the plaintiff, between 1992 and 1996 a good deal of work was done with the help of students that should not have been done. He said there was a lack of materials and a lack of books. Each student had to complete an assignment prepared by the joint industrial board and the terms of the assignment were contained in field evidence record books.

[30] In 1994, 1995 and 1996 the assignments arrived extremely late by as much as 28 weeks, arriving in January in one year and March in another year. The plaintiff complained about this. There was a change to accommodate the award of National Vocational Qualifications and instead of examinations assessments were substituted. There was a meeting about this issue and the plaintiff was told that there would be no examinations but the lecturer was required to assess the students. It was his duty to show the students what to

do, such as preparing a wiring system, and then the student was required to do it.

[31] A decision was made to hold examinations in about 1993 or 1994 but the assignments and appraisal also had to be carried out.

[32] Field evidence record books had to be completed. The first topic was Health and Safety and assignments were usually completed at each lesson and certified by the lecturer.

[33] The plaintiff was dissatisfied by the way in which instruction was carried out and felt that some students did not receive proper qualification which entitled them to the best employment. A serious issue arose about assignments during the academic year 1994–1995.

[34] According to the plaintiff the assignment should have arrived at the beginning of the students' first term but instead arrived in March 1995 which the plaintiff says was 28 weeks late for the third year students. First year assignments arrived 14 weeks late and second year assignments 15 weeks late.

[35] The assignments were designed by the City and Guilds Institute and a paper was provided setting out 25 assignments to be completed over the period between December 1994 and May 1995. When the assignments were made available to the students another document called the "Schedule of Evidence" was provided for the tutor. This contained guidance regarding the type of answers which could reasonably be expected from candidates.

[36] Being practical assignments the answers could vary but the Schedule of Evidence set out the basic requirement for dealing with each situation described in the assignment. In 1993 each candidate received a copy of the Schedule of Evident as well as his assignment paper. Apparently this was because the same number of Schedules of Evidence had been printed as assignments, but this was not regarded as the appropriate course and in the 1994-1995 Schedule of Evidence it was made clear that it had been prepared to offer guidance for tutors' attention only.

[37] The Schedule of Evidence commences with the following remarks:

> "This Schedule of Evidence has been prepared by a moderating committee in order to offer GUIDANCE FOR TUTORS ATTENTION ONLY regarding the type of answers which can reasonably be expected from a candidate in connection with each section of the assignments. It

should not be used as a prescriptive marking scheme."

[38] On 21 March 1995 Mr John Montgomery visited the college as a external verifier and including the following among his comments:

> "As can be seen from the action plan much work requires to be done before the course and those personnel involved comply with the requirements of the centre registration document and the `Standards'.
>
> I was disturbed to find, when I checked the City and Guilds 2360-101 assignments, a written copy of part of the Schedule of Evidence in the portfolio of one of the candidates (copies enclosed). I expressed by concern to Mr Ringland who is responsible for this part of the course and Mr McClune in his capacity as internal verifier.
>
> The college would need, as a matter of urgency, to identify the role UG Internal Verifier/Assessor, of each lecturer involved in the course."

[39] Mr McClune, who was internal verifier, issued a memorandum to Mr Ringland with copies to Mr McCambley, Mr Kilpatrick, Mr Dornan and Mr Law in the following terms:

> "I have been advised by the External Verifier for NVQ in Electrical Installation (Mr J Montgomery) that a serious breach of confidentiality may have occurred concerning the leakage of information contained within the Schedule of Evidence for the C& G Part I assignments.
>
> As you are aware the Schedule of Evidence supplied along with the assignments provides the teacher with possible solutions to the various sections of the assignments and as such is for the teachers use only.
>
> Whilst examining a first year trainee's partially completed assignment the External Verifier came across what he thinks is a handwritten version of the Schedule of Evidence for this years assignments and suspects that cheating is taking

> place within this group. The External Verifier has taken photographic evidence away with him for his own investigation.
>
> In the meantime we should carry out our own investigation into the matter to try to establish how, if that is the case, trainees have seen the Schedule of Evidence. It is imperative that this document remains in the possession of the teacher at all times and that trainees have no access to it.
>
> I will arrange a meeting with you to discuss what action should be taken."

[40] As a result a meeting was held in the Vice-Principal's office on Friday 12 May 1995 described as being a preliminary investigation under the terms of the disciplinary procedure for teachers of institutions of further education. The plaintiff attended that meeting.

[41] Subsequently what was described as a counselling meeting was held on 21 June 1995 in the Principal's office. The meeting lasted approximately 10 minutes and seems essentially to have consisted of a reprimand to Mr Ringland for allowing dissemination of the Schedule of Evidence among the students.

[42] It is not necessary for the court to resolve the differing approaches to the issue of the confidentiality of the Schedule of Evidence. It may be that the plaintiff's position could have been more sympathetically dealt with, but I am satisfied that the College staff acted at all times in good faith and that no member was motivated by any bias against the plaintiff.

[43] It was clear that the City and Guilds Institute took a strong view that the Schedule of Evidence should not be shown to the students and set out that requirement in the documents supplied. The college had no choice but to accept that view and its staff necessarily had to comply, whatever their personal views.

[44] However strongly, therefore, the plaintiff felt that showing the Schedule of Evidence to students was a useful short-cut to compensate for the lateness of the arrival of the assignments he was, nonetheless, in breach of a clear instruction and insofar as he remained unrepentant about that action there was bound to be a confrontation with senior staff members, who were rightly concerned about the attitude of City and Guilds.

[45] Indeed it is quite clear that the plaintiff still does not recognise that however tenable or understandable his view may have been it was in conflict

with clear instruction from the body laying down the procedure for the assignments and as such was liable to lead, at the very least, to conflict.

[46] There is no evidence whatever that the college or its officers had any reason to anticipate that the conflict would have any consequences for the health and welfare of the plaintiff who appears to have given a spirited and determined account of himself and his views and attitude.

[47] A further upset to the plaintiff occurred when Mr G Murray an electrical inspector for the Department of Education visited the college in December 1995 and furnished the following report on the plaintiff's teaching of a class:

> "The quality of Mr Ringland's teaching in electrical installation is unsatisfactory. Mr Ringland uses a restricted range of teaching approaches. In the class inspected, he read questions from an assignment booklet and failed to provide the students with sufficient information. This lesson lacked purpose and challenge; he provided few opportunities for the students to develop their knowledge and understanding of electrical installation practice. The students were not provided with any activities. They were unmotivated; only 3 of the 10 students participated in the lesson, the remainder did not make any written or oral contributions. The teacher's expectations were low and the students did not produce the standard of work of which they are capable. Relationships between Mr Ringland and the students are poor; he fails to encourage the students and to develop their confidence. Mr Ringland's planning is also poor; he does not prepare sufficient work to occupy the students in learning throughout the timetabled sessions. The class started 12 minutes late after morning break, and Mr Ringland terminated the class 5 minutes before the official finishing time.
>
> Mr Ringland needs to ensure that:-
>
> i. he identifies appropriate learning objectives for all lessons;
>
> ii. he plans and organises lessons to meet the objectives;

iii. he uses a range of teaching methods that promote learning among all students;

iv. his expectations of the pupils are commensurate with their abilities and in line with the requirements of the course; and

v. lessons occupy the time allocated on the college's timetable."

[48] The report was brought to the plaintiff's attention and on 8 January 1996 the Department of Education Northern Ireland sent him a copy of it indicating that a further inspection of his work would be carried out as part of the follow-up inspection process.

[49] It is clear that the plaintiff was under substantial stress at this stage. He may have suffered a heart attack and he did not return to his duties in January 1996.

[50] He remained off work until final retirement on 31 August 1996.

[51] An unfortunate exchange took place on 4 September when Mr Ellison, Clerk to the Board of Governors, telephoned him to protest at the fact that he had not sent notice of his resignation to the Board of Governors.

[52] There is no doubt that this incident caused further distress to Mr Ringland and resulted in an apology by Mr J B Fitzsimons, Chief Administrative Officer in a letter dated 23 September 1996. However it can have had no bearing on his decision to retire which had already been made and there is no evidence that it caused or contributed to any worsening of his stress thereafter.

[53] On behalf of the defendants Mr Montgomery who had acted as City and Guilds assessor gave evidence that in dealing with students of his own he would not have issued assignments until after Christmas as his students would have needed experience in practical work in the term preceding as well as studying the theoretical aspects of their work.

[54] He described finding the piece of paper in his students' papers which contained an extract from the Schedule of Evidence and indicated that he photocopied that and compiled a report already referred to.

[55] He said that that fact created concerns that perhaps the NVQ guidelines were not being followed.

[56] He referred to a letter to Mr Ringland from Mr Catherine Ellis written on 6 July 1995 in the following terms:

> "Thank you for your recent letter which my colleague, Carmel O'Keeffe, has passed to me for reply. In answer to your questions,
>
> 1. The aim of the schedule of evidence is to offer guidance to tutors, whether or not they have been teaching the entire course, with respect to the kind of answers which they may expect from candidates for the assignments.
>
> 2. The schedule of evidence is not intended to be used by candidates, whether by direct access or otherwise. It is not, therefore, considered acceptable for candidates seeking guidance to be offered a sample answer to the assignment verbatim from the schedule, since this then obviates the need for the candidate to undertake any work or research to complete the assignment.
>
> 3. The syllabus pamphlet is a document freely available to all who choose to purchase it and is therefore accessible to candidates who wish to consult it. Direct quotation from the syllabus is acceptable, since candidates can consult it anyway.
>
> 4. The schedule of evidence is not identical to the syllabus, since it was written with direct reference to the questions in the assignment, whereas the syllabus outlines the areas of work which the candidate would be expected to cover throughout a course of study.
>
> 5. Whilst the assignments are part of the assessment strategy for the Part 1 Certificate in Electrical Installation Theory/Competences, they are also intended to be used as a learning vehicle. Consequently open discussion, in class time

> or otherwise, about the issues raised in the assignments is encouraged. However, a distinction should be made between discussion and direction from the tutor. Consequently, it would be unacceptable for a tutor to take an approach which said `this is how you should answer this question', but perfectly appropriate for the tutor to encourage candidates to think for themselves around a problem raised by the assignments, and to offer illustrative scenarios which might point them in the right direction for their own research and investigations. Tutors are therefore allowed to give guidance but not to spell out the answers to their candidates. Likewise, it is emphasised that the schedule of evidence is a guidance document only and tutors marking the assignments should not fail a candidate if the answer offered is not identical to the one suggested in the schedule. Allowance should always be made for local conditions, for the experience of the candidate and for any reasonable solution which may be put forward. You are reminded that the aim of the assignments is to assess the candidates' competence, and provided an answer given is not in contravention of statutory or non-statutory guidelines, and provided, of course, that the suggested solution is technically correct, then the candidate should be passed accordingly.
>
> I do hope that these points answer your questions."

[57] Mr Montgomery indicated that he agreed with the contents of the letter.

[58] Following his inspection he supplied his report and also wrote to Eileen Ross who set up a meeting with Mr McCambley and Mr Hugh White, City and Guilds Lead Verifier. The witness attended that meeting and said that those attending were really concerned about the situation regarding the handwritten copy of the Schedule of Evidence and felt it was necessary to point out the seriousness of the situation.

[59] Mr Andrew McClune who was a fellow lecturer at the college since 1983 confirmed that the services of the technician ceased in 1991. However his attitude was that his absence required more forward planning to make sure that things were available and that he was able to cope with the extra duties imposed by the absence of the technician. As he described it there was a little more work to do after the technician ceased working, but that the added burden was not excessive.

[60] On receipt of Mr Montgomery's report he produced the memo to Mr McClune with copies to other members of staff, already set out in paragraph [40] hereof.

[61] He explained the reference to "cheating" as indicating an initial thought that students had obtained access to the Schedule of Evidence without authorisation.

[62] A couple of days later he had a meeting with Mr Ringland and discussed how students might have seen the Schedule of Evidence.

[63] According to him Mr Ringland did not at that stage offer any view as to how the students had got possession of the Schedule of Evidence but it expressed the view that it was a possible help to the student and that Mr Ringland did not mind helping the student while using it.

[64] He explained the situation later to Mr McCambley who organised the later proceedings including the counselling session.

[65] He denied any plan or conspiracy to get rid of Mr Ringland or to harass him or cause him distress. So far as he was concerned Mr Ringland was a colleague and they worked together.

[66] Mr Ringland referred him to an internal memorandum dated 10 January 1996 in which Mr McClune referred to a number of issues which concerned him including the necessity to have a plastered block wall so that candidates could sit a retest at the college using the wall for testing, that a material store was required, that a technician needed to be assigned to workshop A2 to give a assistance when required and remove waste materials and that a caretaker needed to be assigned to workshop A2 to ensure that paper towel litter was cleared and there was adequate supply of soap and hand towels. However these seem to have been no more than routine suggestions for improvement of facilities

[67] Mr McReynolds also gave evidence. He was Principal at the relevant time from 1 January 1994.

[68] He also specifically denied any plot or plan to upset Mr Ringland and said he would not do anything like that.

[69] The termination of the employment of Mr Graham the technician took place as the result of discussions with the South Eastern Education and Library Board who took the view that the college had too many technicians and should use natural wastage to reduce the number and make the remaining technicians more multi-skilled. Mr Graham was not replaced.

[70] The mechanical engineering and electrical departments were amalgamated. The number of students had been reduced. Engineering demand was shrinking. The situation remains the same up to the present in relation to the services of a technician and there is no electrical technician employed.

[71] Mr Ross telephoned him about the Schedule of Evidence issued. Mr McCambley had possibly told him before that about it. He decided to have the matter fully investigated and Mr McCambley did that. The witness consulted the Human Relations section of the South Eastern Education and Library Board and asked what was the best way to proceed. He was told it was a fairly serious matter and formal warning was needed. Since Mr Ringland had 27 years' service and had just 2-3 years to go and had a clear record it was sufficient to ensure that he was prevented from doing the same thing in future. The witness decided to have a counselling session and tried to explain to Mr Ringland why he should make the Schedule of Evidence available to students. The object was persuasion rather than punishment.

[72] He said that Mr Ringland's attitude was that he did not accept the college's interpretation of the use of the Schedule of Evidence and that he felt free to interpret it in his own way.

[73] Mr McReynolds thought his colleagues might be able to persuade him during the following year and left the matter there. He did send a letter to the plaintiff.

[74] In January 1996 the plaintiff went off work and the witness learned as a result of a faxed message in August 1996 that the plaintiff had resigned.

[75] The witness was not aware that it was likely that Mr Ringland would go off work or would resign.

[76] The witness denied that any complaint had been made to him about reduction of technical assistance.

[77] Mr Ringland alleged to him in cross-examination that he had complained to Mr McCambley that he was under heavy pressure from the day he lost the technician.

[78] Mr Ringland did not put it to any of the defendant's witnesses that there was a campaign of harassment or that they were deliberately trying to make life more difficult for him, nor did he suggest that any of them had any reason to anticipate that his health might suffer as a result of his work load or the matters of dispute that had arisen.

[79] His cross-examination was very much on the basis of the extra duties which he had to perform in the absence of the technician, the correctness of his view on the use of the Schedule of Evidence, the upset caused to him by Mr Murray's report and also by the subsequent exchange about his retirement.

[80] The defendant's representatives had indicated to the plaintiff that formal proof was required of any medical evidence upon which he wished to rely but he did not adduce any medical evidence and in the absence of proof of the documentary evidence there is an absence of any material to prove to the court the nature of the health problem that caused the plaintiff to retire early from his engagement.

[81] On the basis of his evidence and his description of how he felt I do accept that he suffered a severe episode of mental and emotional stress and that this contributed to his inability to resume teaching duties after January 1996.

[82] However, the crucial question is whether his employers knew or ought to have known at any time prior to his ceasing work that his working conditions and the incidents that had occurred were liable to cause injury to his health.

[83] In my view nothing has been shown in relation to the conduct and demeanour of the plaintiff prior to his ceasing work that would have brought to the attention of his employers that his health was impaired or was being impaired by events at work. It appears to me that he presented a determined defence of his actions and showed resolution in presenting his point of view.

[84] There is no suggestion that there was any medical evidence available to the defendants or any of their servants or agents or that there was any indication from the plaintiff himself that he was suffering from stress. Indeed the position seems to have been that he was quite unaware himself that his health was under threat and when he experienced a deterioration in his health he thought himself that it was an attack of flu. It was only after the doctor did a blood test that the question of a heart attack was mentioned.

[85] The plaintiff says that he felt angry and frustrated and I accept this and accept that this may have been a factor in his health problems but I can find nothing to show that the defendants knew or ought to have know that this was the effect of what he had experienced at his work.

[86] It is quite clear that after January 1996 the plaintiff had made a decision that he would not return to work. This led eventually to the unfortunate exchange on the 4th September 1996 when Mr Ellison, Clerk to the Board of Governors, telephoned him to protest at the fact that he had not sent notice of his resignation to the Board of Governors.

[87] However, in my view while it may have caused distress to the plaintiff there is nothing at all to suggest that it caused any further deterioration in his health. His decision to retire had already been put into effect.

[88] It appears to have been the case that the long argument about the necessity to have a technician, the disagreement and disciplinary proceedings about giving students access to the Schedule of Evidence and the criticisms by Mr Murray all contributed to the plaintiff's state of mind and state of health at January 1996. However none of those matters was a foreseeable cause of injury or harm to the plaintiff. They were part and parcel of a normal range of difficulties and disagreements that might occur in any workplace. He can succeed only if he establishes that in his particular circumstances it was foreseeable that unless something was done to alter his situation his health would be liable to suffer and he might develop a stress related disease.

[89] However, there is a complete absence of any evidence that anyone at the college or anyone connected with the defendants was given any reason to believe that his health was deteriorating at that time or that he was liable to suffer any degree of stress.

[90] There is no evidence that he made any complaint about his health or about the effect of the various events which occurred and there is no suggestion that he received any medical advice or treatment or indeed that he consulted his doctor during the period leading up to the attack of ill health in January 1996.

[91] The principles relating to the circumstances which will give rise to a successful claim against an employer for stress related illness were considered and explained by Coleman J in the case of Walker v Northumberland County Council 1955 1 All ER 737. In that case the plaintiff was employed by the defendant local authority as an area social services officer from 1970 until December 1987. He was responsible for managing four teams of social services field workers in an area which had a high proportion of child care problems. In 1986 the plaintiff suffered a nervous breakdown because of the

stress and pressures of work and was off work for three months. Before he returned to work he discussed his position with his superior who agreed that some assistance should be provided to lessen the burden of the plaintiff's work. In the event when the plaintiff returned to work only very limited assistance was provided and he found that he had to clear the backlog of paperwork that had built up during his absence while the pending child care cases in his area were increasing at a considerable rate. Six months later he suffered a second mental breakdown and was forced to stop work permanently.

[92] Dealing with the first breakdown at page 752 Coleman J said:

> "Moreover, there can in my judgment be no doubt on the evidence that by 1985 at the latest it was reasonably foreseeable to Mr Davison, given the information which I have held that he then had, that by reason of stress of work there was in general some risk that Mr Walker might sustain a mental breakdown of some sort in consequence of his work. That said, how great was the reasonably foreseeable risk? Was the risk of incidence of illness so slight as to be in all the circumstances negligible or was it a materially substantial risk? There is no evidence that the council had hitherto encountered mental illness in any other of its area officers or that area officers with heavy workloads or other in middle management in the social services as distinct from fieldworkers were particularly vulnerable to stress-induced mental illness. Accordingly, the question is whether it ought to have been foreseen that Mr Walker was exposed to a risk of mental illness materially higher than that which would ordinarily affect a social services middle manager in his position with a really heavy workload. For if the foreseeable risk were not materially greater than that there would not, as a matter of reasonable conduct, be any basis upon which the council's duty to act arose.
>
> It is therefore necessary to ask whether, prior to his first breakdown in 1986, there was anything in Mr Walker's conduct or any information abut his work which out to have alerted the council, and in particular Mr Davison, to the fact that Mr Walker was reaching breaking point or at least was subject to a materially greater than ordinary risk of mental breakdown."

[93] The learned judged concluded:

> "On the whole of the evidence I am not persuaded that before the first illness Mr Davison ought to have appreciated that Mr Walker was not only dissatisfied and frustrated because his area could not provide the service, but was at materially greater risk of stress-induced mental illness than an area manger team leader, thought that he would have been able to do Mr Walker's job of area manager, although for reasons unconnected with the workload, he would not have considered taking it. He was then 58. That certainly does not suggest that the work appeared to him to be unmanageable or likely to endanger his health. He had a closer acquaintance with the problems of the area than Mr Davison.
>
> I therefore consider that before the 1986 illness it was not reasonably foreseeable to the council that the workload to which Mr Walker was exposed gave rise to a material risk of mental illness."

[94] Subsequently the Court of Appeal in England in the case of Hatton v Sutherland and other cases considered four conjoined appeals all of which dealt with the question of the liability of an employer for an employees psychiatric illness caused by stress at work.

[95] In that case reported at 2002 2 All ER 1 at 14 Hale LJ quoted with approval Coleman J's remarks in Walker's case (supra). Accordingly the question is whether it ought to have been foreseen that Mr Walker was exposed to a risk of mental illness materially higher than that which would ordinarily affect a social services middle manager in his position with a really heavy workload. Hale LJ went on to say at paragraph 27 page 14:

> "More important are the *signs from the employee himself*. Here again, it is important to distinguish between signs of stress and signs of impending harm to health. Stress is merely the mechanism which may but usually does not lead to damage to health. *Walker's* case is an obvious illustration: Mr Walker was a highly conscientious and seriously overworked manager of a social work area office with a heavy and emotionally demanding case load of child abuse cases. Yet although he complained and asked for help and for extra leave, the judge held that his first

> mental breakdown was not foreseeable. There was, however, liability when he returned to work with a promise of extra help which did not materialise and experienced a second breakdown only a few months later. If the employee or his doctor makes it plain that unless something is done to help there is a clear risk of a breakdown in mental or physical health, then the employer will have to think what can be done about it."

[96] She concluded at paragraph 31 on the issue of the legal principles "but in view of the many difficulties of knowing when and why a particular person will go over the edge from pressure to stress and from stress to injury to health the indications must be plain enough for any reasonable employer to realise that he should do something about it."

[97] In one of the four appeals considered under the heading of Hatton v Sutherland (supra), that of Barbour v Somerset County Council the plaintiff appealed the decision of the Court of Appeal which had allowed the appeal of the defendant. I delayed giving judgement until the result of that appeal became known. However it does not establish any new principle that is of assistance to the plaintiff.

[98] The case is reported at 2004 I C R at 457 and in the leading speech by Lord Walker of Gestingthorpe he said :

> "63 The Court of Appeal's composite judgment (on the county council's appeal and the three appeals heard with it) begins with three sections: introduction; background considerations; and the law. Mr Barber rightly directed hardly any criticism towards these. The exposition and commentary in this part of the judgment is a valuable contribution to the development of the law (although your Lordships have heard no argument on the section dealing with apportionment and quantification of damage, and I think it better to express no view on those topics).
>
> 64 In particular the Court of Appeal [2002] ICR 613, 618, para 5 has recognised that although injury which takes the form of psychiatric illness is no different in principle (for a primary victim) than physical illness or injury, the causes of mental illnesses `will often be complex and depend upon the interaction between the patient's personality

and a number of factors in the patient's life. It is not easy to predict who will fall victim, how, why or when.' This uncertainty has two important consequences. First, the reaction of some of Mr Barber's colleagues - `We are all overworked, and your workload is no worse than anyone else's' – is entirely understandable, but ultimately irrelevant. Overworked people have different capacities for absorbing stress, and different breaking-points. Hence (and this is the second point) the importance of what the employee tells the employer. Senior employees – especially professionals such as teachers – will usually have quite strong inhibitions against complaining about overwork and stress, even if it is becoming a threat to their health. Personal and professional pride, loyalty to the head teacher and to colleagues, and the wish not to add to their problems and work load, may all influence a teacher not to complain but to soldier on in the hope that things will soon get a little better.

65 The Court of Appeal set out its view on this point, at pp 626-627, para 29:

> `But when considering what the reasonable employer should make of the information which is available to him, from whatever source, what assumptions is he entitled to make about his employee and to what extent he is [sic] bound to probe further into what he is told? *Unless he knows of some particular problem or vulnerability, an employer is usually entitled to assume that his employee is up to the normal pressures of the job.* It is only if there is something specific about the job or the employee or the combination of the two that he has to think harder. But thinking harder does not necessarily mean that he has to make searching or intrusive inquiries. *Generally he is entitled to take what he is told by or on behalf of the employee at face value.* If he is

> concerned he may suggest that the employee consults his own doctor or an occupational health service. But he should not without a very good reason seek the employee's permission to obtain further information from his medical advisers. Otherwise he would risk unacceptable invasions of his employee's privacy.'

This is, I think, useful practical guidance, but it must be read as that, and not as having anything like statutory force. Every case will depend on its own facts and the well known statement of Swanwick J in *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776, 1783 remains the best statement of general principle:

> `the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risk, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience

> they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent.'"

[99] One of the great problems in this case is that there is no medical evidence whatever and no direct evidence that the plaintiff either exhibited any signs of health damaging stress nor did he complain at any time that his health was being affected by the various circumstances experienced by him at work.

[100] He did complain about conditions at work and had many suggestions for ways in which the management of his department could be improved. But I can find no evidence of a statement by him to any colleague that his health was being impaired by his working conditions or by the various events which I have set out.

[101] As I interpret his evidence he was not himself aware that his health was suffering to such an extent that a stress related illness might occur.

[102] It appears to have been the letter of 8 January 1996 with the enclosed report from Mr Murray that was the immediate factor which caused his attack of ill health in January 1996. The plaintiff describes his reaction as follows:

> "I was angry; I couldn't take any more; I felt unwell and thought I had flu. After 27 years of teaching for which I was very well qualified I would have thought that retraining would have been offered if they thought they knew better than me. Mr Murray had never taught electrical installation and admitted that it was not his area of interest."

[103] The plaintiff described his feelings further as "when I left in January 1996 I thought I had flu the doctor did a blood test suggested I had a heart attack. The City Hospital checked up on me. I was so angry and frustrated."

[104] The plaintiff did not return to work after January 1996 and so it was only after he had stopped work that the symptoms of stress appear to have manifested themselves but there is no evidence as to the extent of the illness from which he suffered then or whether there were any pre-existing symptoms or appearances of stress and no medical opinion as to the cause of his condition or its severity.

[105] The plaintiff had exhibited some medical notes and records as part of the written material which he produced in the case. The defendants have objected to that material being regarded as evidence and indeed it has not been verified by any witness. However I have looked at it, since the plaintiff is unrepresented, in case there should be anything in it that might, if put in evidence, be helpful to his case.

[106] However there is nothing to suggest that he consulted any doctor about his mental or emotional health prior to January 1996 and accordingly there is no material provided from which one could infer that his employers should have known of his condition.

[107] It was only after he had stopped work that the symptoms of stress appear to have been diagnosed but I have no evidence as to the extent of the illness from which he suffered, no medical opinion as to its cause or its severity. Obviously, by that time there was nothing his employers could do in relation to his working conditions that would have helped.

[108] There is therefore no evidence whatever that anyone in the defendant's employ who had any responsibility for the working conditions of the plaintiff was aware that those conditions or the various matters which had arisen and which may well have caused him a degree of stress or mental suffering were having the effect of causing a stress related illness.

[109] The lack of such evidence is fatal to the plaintiff's claim having regard to the principles laid down in Hatton v Sutherland , Walker v Northumberland County Council and Barber v Somerset County Council (supra). During the course of what was sometimes quite comprehensive cross-examination of the defendant's witnesses the plaintiff did not put it to any individual witness that he had observed or experienced any sign of stress on the part of the plaintiff or any likelihood that the plaintiff's capacity to work was affected by the matters of dispute that had arisen.

[110] In his cross-examination of Mr McReynolds the plaintiff made the case that he had complained to Mr McCambley, who now lives in America, that he was under heavy pressure from the day he lost the technician and he repeated this suggestion in the course of his closing submissions. He also made a general allegation that Mr McCambley was aware of the "difficulties" but by that I take him to mean the difficulties that had arisen at work, since the plaintiff did not suggest that he had ever discussed his state of health with Mr McCambley.

[111] There is no evidence:

a. that the plaintiff took any time off work prior to January 1996;

b. that he ever consulted a doctor prior to that time or produced any note from his doctor indicating that he was suffering from stress; or
c. that he had any idea himself that he might be developing a stress related illness.

[112] The nature of the plaintiff's remarks to Mr McCambley or of the latter's state of knowledge falls far short of what would be required to establish that Mr McCambley knew or ought to have known that the plaintiff was liable to develop a stress related illness as the result of his working conditions.

[113] The plaintiff therefore has failed to satisfy the court that his employers were negligent in failing to take steps to prevent him developing a stress related illness since there is no evidence before the court that the defendants or any servant or agent of theirs knew or ought to have known that the plaintiff was liable to develop such an illness. By the time they were receiving certificates to the effect that he was suffering from stress he had already stopped work and had decided to seek early retirement. He did not return to work subsequently, and there is no evidence which could give rise to an inference that any event subsequent to January affected his health.

[114] I am satisfied that while at times there may have been a degree of frustration on the part of the plaintiff's colleagues with his attitude, which may have had the consequence that some of the exchanges which took place were less than cordial nonetheless their behaviour was at all times proper and there was no intentional action directed at harming the plaintiff. The actions of his fellow lecturers and the Principal and Vice-Principal were bona fide efforts to deal with the ordinary kind of difficulties that can arise in any establishment and I reject any suggestion that there was a conspiracy on the part of any number of those persons or an intention on the part of any of them as individuals to harass the plaintiff. I am satisfied that the decision not to replace the electrical technician was on economic grounds and seen as a proper course to follow. I do not accept that the absence of a technician imposed an unreasonable burden on the plaintiff. Accordingly the plaintiff's claim on this ground must fail.

The plaintiff's claim for libel

[115] The plaintiff has alleged that a number of the letters and memoranda refer to him and are defamatory. By their amended Defence, delivered on 19 May 2003 the defendant has pleaded that the plaintiff's claims of libel and slander are statute barred. Since the three year period of limitation for libel is an absolute bar to the success of the cause of action the plaintiff cannot succeed on the basis of any libel published on or before 29 October 1995, three years before the issue of his writ of summons. He does not dispute that the only defamatory matter published after that date on which he relies is a letter

from Mr McCambley to Miss Ross dated 8 November 1995 to which I shall later refer.

[116] Publication after that date must be construed in the light of all extrinsic facts likely to be known to the reader which in the light of previous publications outside the limitation period and the state of knowledge of the reader could cause that person to construe the document as defamatory and all related material including all of the facts and allegations ,whenever made or occurring, can be looked at to determine whether the publication within the limitation period may be defamatory.

[117] The publication relied upon by the plaintiff and made within the limitation period is that of Mr Maurice McCambley Head of Department of Technical Studies at the college to Miss Eleanor Ross, which is as follows:

> "Further to your letter of 4 September 1995 and our recent telephone conversation I can confirm the following:
>
> 1. that the incidence of candidates having direct access to the Schedule of Evidence for Part 1 2360 assignments has been considered in accordance with the SEELB Disciplinary Procedure for Teachers in Institutions of FE.
>
> 2. that in future where CGLI 2360-101 assignments are used to cover the evidence requirements of the Level II NVQ standards, they will be subject to internal verification prior to the visit of the Verifying Assessor/External Verifier for the scheme.
>
> I trust that you will find the latter point acceptable as a measure for maintaining satisfactory assessment standards and procedures in this case.
>
> Should you require anything further then please do not hesitate to contact me again.
>
> May I take this opportunity to wish you well in your post as Regional Manager for City & Guilds Northern Ireland, and I look forward to meeting you at some point."

[119] It is reasonable to assume that Miss Ross and any other likely reader of Mr McCambley's letter such as a typist, secretary or colleague was aware of the background and circumstances that had led to the letter. However it is apparent that, whatever the state of the reader's knowledge, the letter contains no defamatory material relating to the plaintiff. There is no reference to him, nor can the letter be construed as making any comment on his actions. The fact that it is part of a series of communications does not have the result that what has passed before is incorporated into its contents, unless some allegation is repeated, explicitly or impliedly, which is not the case. To constitute a libel there must be a defamatory statement by the defendant in the publication on which the plaintiff is able to rely. (Astaire v Campling [1966 1 WLR 34])

[120] I make no judgement on whether any of the previous publications may have been defamatory as any claim in respect of any of them is statute barred. To provide a cause of action for the plaintiff arising from them within the period of the Statute he would have to establish that the letter referred to constituted a republication of the material complained of, and in my view the words of the letter are incapable of having that effect.

[121] Accordingly the plaintiff's action for libel and slander must fail, and I dismiss it.

[122] There must therefore be judgement for the defendant.