

IRELAND / JUDGMENT

Sheehy -v- Ryan [2008]

IESC 14 (09 April 2008)

[2008] IESC 14

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[2008] IESC 14 Supreme Court Record Number: 106/04 High Court Record Number : 2000 10338p
Date of Delivery: 09 April 2008 Court: Supreme Court Composition of Court: Geoghegan J.,
Kearns J., Finnegan J. Judgment by: Geoghegan J. Status of Judgment: Approved
Judgments by Result Concurring Geoghegan J. Appeal dismissed - affirm High Court Order
Kearns J., Finnegan J. THE SUPREME COURT No. 106/04 Geoghegan J. Kearns J. Finnegan
J. BETWEEN/ MARY SHEEHY Appellant/Plaintiff and LAURENCE RYAN AND JAMES
MORIARTY Respondents/Defendants JUDGMENT of Mr. Justice Geoghegan delivered the
9th day of April 2008 This is a rather sad dispute involving three successive bishops of
Kildare and Leighlin and a diocesan secretary. Although the litigation has engendered
considerable heat and a great deal of paper including elaborate written submissions to
this court on behalf of the appellant raising all kinds of issues, the reality is that both in
the High Court and on appeal in this court there was really only one issue to be
considered. The appellant/plaintiff was the diocesan secretary to whom I have referred.
The second-named respondent/defendant and the only other party to the proceedings for
the purposes of both the High Court hearing and the hearing of this appeal is the current
Bishop of Kildare and Leighlin. The first-named respondent/defendant is Bishop
Moriarty's immediate predecessor who is now deceased. Despite being named as
respondent on the notice of appeal, he is not, of course, in fact a party for the purposes of
the appeal and his personal representatives are not before the court. The single issue
relates to the terms of employment of the appellant. Specifically, it relates to one aspect of
those terms, that is to say, the tenure of her employment. The appellant's employment as
diocesan secretary was purported to be terminated by the service upon her of notice. It is
not in dispute that if her contract of employment was terminable upon service of

reasonable notice (which most contracts of employment are) the notice served in this case was reasonable. It is the appellant's case, however, that she was originally employed by the immediate predecessor of Bishop Ryan who was Bishop Lennon and that under the terms agreed between her and Bishop Lennon, her employment was to be "permanent and pensionable" an expression not actually forming part of any express contract of employment and at any rate an expression to which in these proceedings she and her legal advisers have assigned an incorrect meaning. That meaning strongly argued for by Mr. Gerard Hogan, S. C., her counsel, is that in the absence of some serious illness or misbehaviour she was entitled to remain in her position until she reached retirement age (not precisely defined) and that her contract could not be terminated by reasonable notice or otherwise against her will whether the purpose be redundancy or any other purpose. In support of this proposition, Mr. Hogan relied primarily on the speeches in the House of Lords in the case of *McClelland v. Northern Ireland General Health Services Board*

- [1957] 1 W. L. R. 594. I will be considering that case in some detail later on in the judgment. There is also some relevant Irish case law to which I will refer in due course. By way of general comment, however, at this stage, I would take the view that every contract of employment is different and that case law is of marginal assistance only in construing the terms of any given contract. In that sense, I accept the proposition of Mr. Hogan that there is nothing conceptually offensive to the law in the notion of a permanent non-terminable contract. But where there is not a precise written contract setting out precise terms or where there is some ambiguity as to the terms and the court has to determine on foot of evidence what the real contract is, the courts, undoubtedly, resort to guidance from other cases as to the proper approach to construction. In that sense, the case law is useful and can be properly considered. The High Court action to which this appeal relates was heard and determined by Carroll J. and she held that the contract of employment in this case was terminable on reasonable notice and that such reasonable notice had been given. She also accepted that there was genuine redundancy but that was a secondary decision. Independently of the redundancy issue altogether, she held against the plaintiff that the contract was terminable on reasonable notice. What this court has to consider now is whether the learned High Court judge misdirected herself in law in arriving at that conclusion. For this purpose, it is necessary to review the salient aspects of the evidence. The history of this employment begins in approximately July 1974. At that time, the appellant held a post described as "clerical officer" in Carlow Regional Technical College. She had been in that employment since 1971. Prior to taking up that employment, she was "Executive Officer" in the Central Bank of Ireland. Her evidence was that she changed jobs because her father was not in good health and she wanted to live near her home. The Central Bank agreed to keep her job open for her and indeed she had decided to return there when her father's health took a turn for the worse and she remained in the Regional Technical College though still with an understanding that she probably could return to the Central Bank. For the purpose of this litigation, her Central Bank position is not really relevant. What is put forward as being relevant, however, was her position in the Carlow

Regional Technical College. It was while the appellant was in that employment and in the context of her position in the college under the VEC that she was approached by the late Bishop Lennon. He knew nothing about her Central Bank involvement or in so far as he did, it is not relevant. In her evidence, the appellant explained that a priest of the diocese, a Fr. Kelly arranged a meeting between her and Bishop Lennon after he had informed her that Bishop Lennon was interested in procuring a secretary to assist him. The appellant had a number of meetings with the Bishop while she continued to be employed with the Carlow VEC. In the course of these discussions or negotiations, the appellant made it clear that she was not interested in a mere typing position as she had been accustomed to carrying out significant administrative work in the college. It seems clear from her answers that each party was being somewhat tentative as to what the nature of any proposed contract would be. The Bishop said that he had never had this kind of assistance before. He thought that as time passed the work would increase. Early on in her oral evidence in the High Court, the appellant, describing what Bishop Lennon said to her, said the following: "He said that he was conscious of my being in a permanent and pensionable post where I was working, in the Regional College. I did not mention to him the prospect I had of going back to the Central Bank. He said that he did not want me to be at any loss for having left there and that he would attach my pay rate to the salary scale I was on at the time and he would add twenty five per cent in view of the confidentiality and nature of the work. He was also conscious that I would not have any chance of career advancement as I might have if I was a priest serving there. Priests could go on to be bishops but I would not. In a later answer the appellant said that she had sought further reassurance from the Bishop and that he had reiterated that it was not intended that she should be at a loss for having moved and that she would be moving to an equally secure job permanent and pensionable." When asked what did she understand by that she said that her understanding was that "it was the equivalent to where I was in terms of a job for life, if I wanted, till my sixty-fifth birthday." When her counsel asked her about whether there had been any discussion about pension, the appellant said the following. 'He said he would put arrangements in place so that there would be a pension for me, he would set aside money in lieu of pension, because it would not come automatically as it would if I had remained on with the local authority.' It seems clear particularly from the later evidence that no precise arrangements relating to pension were ever agreed though there would have been clearly an understanding that some kind of reasonable pension arrangements would be put in place. It would not seem to me on the evidence that either Bishop Lennon or either of the later bishops ever agreed that the appellant was to have the same pension arrangements as she would have enjoyed if she had remained in the VEC. On foot of those relatively loose arrangements relating to her new job, the appellant took up position in the diocese on the 29th July, 1974. Initially, she was not diocesan secretary. She was simply secretary to Bishop Lennon and she remained in that position until 1977 when the Bishop appointed her diocesan secretary jointly with one of his priests. She was still diocesan secretary when Bishop Lennon retired on the 10th December, 1987. He was succeeded on that date by the first-named defendant, Bishop Ryan. The appellant was asked by her

counsel did she have any further discussion in relation to her terms and conditions with Dr. Ryan. She said that he approached her and apologised that he had not been in touch with her “sooner about my remaining on” . In this context she continued her answer as follows: “I had raised a query with Bishop Lennon about whether he would be happy to have me stay even though I knew my job was permanent. (The ‘he’ in that answer clearly referred to Bishop Ryan.) Bishop Lennon evidently said something to him, I did not know this until after but Bishop Ryan approached me and he said that he was taking it for granted that I would be remaining on and he might have been different from Bishop Lennon but he was sure we would get on. It was with Bishop Lennon he spoke about my salary. At that time, I had not been accepting the increments because I was staying in the house because the Bishop’s housekeeper had been ill and it was a help to her. Bishop Ryan said that I should be on very much more, so he increased what I was actually in receipt of to a higher level.” I would comment at this point that it is not without relevance that despite her alleged conviction that she had a “job for life” in the diocese, the appellant, nevertheless, displayed some concern as to whether she would be allowed remain on with Bishop Ryan. Not only does that indicate some element of insecurity in the mind of the appellant but such feelings of insecurity were wholly understandable. The appellant would have understood well that she was not employed by a company. She was employed initially by a bishop. He was her only employer. She would have understandably lacked confidence as to whether Bishop Ryan who after all would be a brand new employer would take her on. Furthermore, even though on paper she may have enjoyed an increased remuneration under Bishop Ryan, it seems clear as the evidence runs on that the salary she was actually drawing was considerably less than the salary which she alleges she was entitled to and that this was so even after she ceased to live in the Bishop’s house. When asked what her starting salary was in 1974, the appellant said “I think it was £150 a month” . She was then asked what was her salary at the end of July 2002? She answered “roughly, €45,000 per annum . She was then asked whether she had any reason to obtain confirmation of her terms of employment from Dr. Ryan and she explained that she did not have any reason when he started but she then said the following: “Subsequently I became very conscious that there was no record of my terms of employment in the diocese in the archive and I asked Bishop Lennon if he would produce a document that could be left there. He was doing that when he died. I gave the draft to Bishop Ryan...” Unfortunately, what was said after that was drowned out as far as the stenographer was concerned. This draft document coming from Bishop Lennon is the document on which the appellant places most reliance in this case. I do not think it necessary to set out the document in full and it was at any rate only a draft. I will, however, cite the more relevant parts. The draft commenced as follows: “In July 1974, I engaged Mary C. Sheehy as my secretary. During the previous month I had preliminary discussions with her and outlined the conditions of employment. At the time she had a permanent post in the Regional College, Carlow and I was concerned that she should not be at any loss for accepting my offer. Conditions offered.

1. Salary – to be linked with the salary of her existing post in the Regional College and with the annual increments of that post.
2. Pension – provision to be made.” The other terms were headed “Hours” “Holidays” “Duties” . A significant feature of the draft document is that the numbering was changed so as to add in as the second term and condition “ Pension ”. Pension was clearly not in the mind of the Bishop when he worked on his original draft. It might be well if I stated at this point in the judgment, though I will expand on it later, that in my view, it was open on the evidence for the trial judge to hold that neither the original conversations between Bishop Lennon and the appellant or the draft document, for what it is worth given that it was written long after the events, should be interpreted as meaning that she would have a contractual right to a “job for life” or until pensionable age. What the evidence does establish is that Bishop Lennon was concerned to convey that he appreciated that the appellant had a “ permanent ” post in the Regional College in the sense that it was not freelance, casual or temporary and that the appellant would not suffer in terms of salary. It was understood there would be a pension but that was somewhat left in the air. Bishop Lennon died before the so called draft could become a completed document as the draft had been given to Bishop Ryan for his perusal. The next development was that Bishop Ryan prepared his own draft document. The terms of that document were produced in full at the hearing before Carroll J. It provided for a number of matters but in relation to the issues relevant to this action, it provided that pay was to be linked to the incremental salary scale attached to the senior administrative position which the appellant held at Carlow RTC with an additional twenty five per cent in recognition of responsibilities and confidentiality attaching to the post. As far as pension was concerned, it simply stated “provision to be made with a sum added each year by employer” . It went on to indicate that she would continue as diocesan secretary linked to grade VII VEC employees. There was nothing to indicate that the agreement could not be terminated upon reasonable notice. The proposed pension arrangements bore no relationship to the VEC post. Apparently, a pension fund known as Fund Forty Nine which was originally intended to provide accommodation in his retirement for Bishop Lennon and his housekeeper was, following on Bishop Lennon’s death in January 1990 allocated for the sole purpose of providing a pension/lump sum for the appellant. When asked by her own counsel whether she was in fact in receipt of the pay provided for in that document, her answer was as follows: “No I do not think I was receiving the amount. It is the amount to which I was entitled, but my position was that I was happy to have enough to live once my status was identifiable outside of the diocese if I were looking for employment.” Subsequently, it appears that the appellant became concerned about the pension fund. Although the pension arrangements, as they normally do, contemplated retirement at sixty five, that fact alone could not possibly give rise to an implied term prohibiting premature termination. As the evidence went on, it became clear that Bishop Ryan made various attempts to procure the appellant’s agreement to less costly arrangements both in terms of salary and pension. It is not necessary to go into these in any detail. All of this uncertainty however indicates that there was no special contractual term whether express or implied

that the normal principle of termination by reasonable notice could not be applied. Eventually, the appellant was told she was being made redundant. This was at the end of Bishop Ryan's period of office and just before he was replaced by Bishop Moriarty. The appellant persisted in her contention that she had a "job for life" by which she meant a job until pensionable age and not terminable prematurely, or possibly at all or certainly at least only if there was some gross misbehaviour or incapacity. Carroll J. in her judgment made the following basic finding: "Based on the evidence before me, in my opinion the plaintiff was offered a permanent and pensionable job by Bishop Lennon. There was no express or implied added condition or promise that it would be for life or until age sixty five. Her previous employment with the VEC, while permanent and pensionable, was not a job for life." As I have already indicated, there was, in my view, ample evidence to support that finding by the learned trial judge. The judge in fact went on to point out that the appellant had chosen a common law remedy. She could have initiated proceedings under the Unfair Dismissals Act, 1967 or under the Redundancy Payments Act. The trial judge then said that the position at common law is that an employer is entitled to dismiss an employee for any reason or no reason on giving reasonable notice. I would slightly qualify that by saying that it does depend on the contract but in the absence of clear terms to the contrary which are unambiguous and unequivocal, that clearly is the position. The trial judge then gave a useful review of the Irish and English case law. In *Walsh v. Dublin Health Board* 98 I. L. T. R. 82 Budd J. interpreted a so-called permanent job as meaning a job indefinite in duration but subject to dismissal on reasonable notice. The same view was taken by McCracken J. in *Dooley v. Great Southern Hotel*

[2001] E. L. R. 340 which is also referred to in the judgment. The only case that could arguably support the appellant's contention is the judgment of Costello J. in *Grehan v. North Eastern Health Board*

[1989] I. R. 422. But that was a very exceptional case which specifically provided that the employment of a medical practitioner would terminate on reaching the age of seventy years and on the basis of the particular contract of employment pertaining in that case it was held that premature termination was not permissible. Carroll J. quite rightly rejected that case as governing this case. I now turn to the Northern Ireland case which went to the House of Lords and which is finally referred to in the judgment of Carroll J. This is *McClelland v. Northern Ireland General Health Services Board* cited above. As I have already mentioned this was the case particularly relied on by Mr. Hogan and I intend to treat of it in some more detail. In the House of Lords report there is a short head note which is worth quoting. "In 1948 the Northern Ireland General Health Services Board advertised, inviting applications for posts as senior clerks, the appointments being expressed to be 'permanent and pensionable'. The appellant, having applied, was appointed and was shown the terms and conditions of service. These contained a clause providing for the dismissal of officers for 'gross misconduct' or if they proved 'inefficient and unfit to merit continued employment'. There was also a provision for dismissal on failure to take or to honour the oath of allegiance and another related to termination of

employment by reason of permanent ill-health or infirmity. There was no provision for dismissal in other circumstances. It was, however, provided that “permanent officers”, who wished to terminate their employment with the Board, must give one month’s notice. In 1953, the Board purported to terminate the appellant’s employment on six month’s notice on the ground of redundancy of staff and without any suggestion of misconduct or inefficiency on her part.” What happened in the three courts is interesting. In the High Court of Northern Ireland, Curran J. dismissed the action on the grounds that the appellant was a Civil Servant, and as such, held office during the pleasure of the Crown. The case then went to the Court of Appeal of Northern Ireland and before that court it was conceded by both parties that the finding of Curran J. was clearly incorrect as the plaintiff was not in fact a civil servant. The Court of Appeal, however, divided. Lord MacDermott LCJ and Black LJ held that in the context of the contract “permanent” employment was to be contrasted with employment which was transient or linked to some particular occasion or performance of some special task, and did not connote that the employment would endure for life and that six month’s notice was proper notice and that accordingly, the employment was validly terminated. Porter L. J. dissented and took the opposite view. On further appeal to the House of Lords, however, the House reversed the Court of Appeal, Lord Oaksey, Lord Goddard and Lord Evershed holding that on the true construction of the terms and conditions of service, the express powers of the Board to dismiss an officer were comprehensive and exhaustive and no further power could be employed, accordingly, the service had not been validly terminated. The two dissenting Law Lords however, Lord Tucker and Lord Keith of Avonholm agreed with the majority view of the Court of Appeal of Northern Ireland. Having carefully read and considered the opinions of the three Law Lords in the majority and without considering whether I prefer the dissenting opinions and/or the judgment of Lord MacDermott, I have come to the conclusion that that decision does not give any comfort to the appellant in this case. Lord Oaksey made it clear that the question at issue depended entirely upon the construction of the contract. He said that the word “permanent” must be construed in the light of its context. In favouring the allowing of the appeal he based his judgment on the particular terms of the contract which allowed for termination. He did not, therefore, consider that the rule which would relate to a general hiring for an indefinite time and which entitled an employer to terminate on giving reasonable notice applied in that case. Lord Goddard made it clear that in his view the question at issue depended on the true construction of the particular clause 12 of the conditions of employment. That set out certain circumstances in which dismissal, reduction in rank or termination of employment was permitted and he concluded it was comprehensive. However, he also said that an advertisement offering permanent employment did not, in his opinion, mean that employment for life was being offered. In fact he said the following: “It is an offer, I think, of general as distinct from merely temporary employment, that is, that the person employed would be on the general staff with an expectation that apart from misconduct or inability to perform the duties of his office the employment would continue for an indefinite period. But apart from a special condition, in my opinion, a general

employment is always liable to be determined by reasonable notice. Nor do I think that because a person is offered pensionable employment the employer thereby necessarily engages to retain the employee in his service long enough to enable him to earn a pension.” However, he went on to hold that on the particular terms which applied in that case, premature termination was not permissible. Lord Evershed was also of the view that the word “permanent” would not of itself be sufficient to import the notion of a life appointment. Nevertheless, he took the view that on the particular conditions which applied in that case viewed as a whole and intended to be truly comprehensive there was not a right to terminate other than the expressed rights specifically provided for in the clauses. In this particular case, there is no written contract of that kind which has to be construed. What constitutes the contract is the mixture of express oral terms and implied terms. I am satisfied that the general rule applied that the agreement could be terminated on reasonable notice. The only other matter which I think fit to comment on is the provisions relating to dismissal in the Vocational Education Act, 1930 as these were partly relied on by Mr. Hogan. The relevant provisions of section 23 are cited in the judgment of the learned High Court judge read as follows: “(1) Subject to the provisions of this section, every vocational education committee shall appoint a chief executive officer and such other officers and servants as it shall from time to time think necessary for the due performance of its powers and duties under this Act.

- (4) A vocational education committee may dismiss any servant of such committee and, with the approval of the Minister, remove any officer of such committee.” It is not necessary to go into these provisions in any detail. Nor is it necessary to consider whether the appellant was an officer or a servant when employed by the Vocational Education Committee. The mere fact that she had the grade of clerical officer does not mean she was an officer. I would be inclined to the view that she was probably a servant but in either event her employment is capable of being terminated and as put to her in cross-examination, I do not know of any provision which would prevent termination by the VEC on grounds of redundancy. However, reasons do not have to be given if general employments are terminated on reasonable notice. Mr. Hogan placed some reliance also on the terms of section 27 of the 1930 Act. That, however, relates to removal of an officer or servant of the VEC by the Minister and not by the employer. I do not think that it has any relevance to this case. I am satisfied that the learned High Court judge was correct in her view that this was an employment agreement terminable on reasonable notice. I would, accordingly, dismiss the appeal. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/ie/cases/IESC/2008/S14.html>

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