

THE HIGH COURT

1980 No. 5651P

BETWEEN

RUPERT J. W. RYDER

PLAINTIFF

AND

ST. JAMES' HOSPITAL BOARD
AND PROFESSOR IAN JESSE TEMPERLEY

DEFENDANTS

Judgment of Mr. Justice Barrington delivered the 29th day of
March 1984.

This is an unfortunate dispute as to which of two distinguished medical men is the head of the Department of Haematology at St. James' Hospital Dublin. At the present time the head of the Department of Haematology at St. James' Hospital has extra duties but no extra remuneration so that the dispute is one concerned primarily with status.

The Plaintiff claims that he is and was at all material times head of the Department of Haematology at St. James'. The first-name Defendants, who are the board of St. James' Hospital, dispute this claim.

The present proceedings were instituted on the 26th of June, 1980. After the institution of proceedings, the first-named Defendants, on the 5th of August, 1980, in purported exercise of their powers, offered the post of head of the Department of Haematology to Professor Ian J. Temperley and Professor Temperley accepted the appointment. Because Professor Temperley's appointment was subsequent to the institution of these proceedings he was not originally named as a Defendant. But I thought it proper to give him an opportunity to be heard and, at his request, he was added as a Defendant and took part in the proceedings.

Professor Temperley admits that when he accepted the post of head of the Department of Haematology at St. James' he knew of the rival claims of the Plaintiff Doctor Ryder. Indeed the Board of the Hospital in their letter of the 5th of August, 1980 offering the headship to Professor Temperley were totally candid about the difficulties of the situation. Their letter contains the following paragraphs:-

"You are aware that Doctor R. J. W. Ryder has an action pending in the High Court against the Board in which he is seeking, inter alia, an injunction restraining the Board from

"appointing any person other than he (sic) as head of the Department of Haematology and a declaration that he has been and still is an officer of the Board holding the office of Haematologist and as such is in charge of the Department of Haematology in St. James' Hospital. It is unlikely that there would be a decision of the Court before the end of this year. Should Doctor Ryder succeed in his action against the Board this could result in a change of status for the occupant of the head of Haematology services and it might result in the Board terminating your headship and it must fully reserve its right to do so.

Please confirm that you are prepared to accept an offer on these terms and in the full knowledge of the possible consequences."

Professor Temperley accepted the headship on these terms and, in the interests of the proper working of the Department of Haematology, a modus vivendi was arrived at between Professor Temperley and Doctor Ryder under which, without prejudice to the claims of either party, Doctor Ryder has accepted Professor Temperl

as the de facto head of the Department.

It may be proper to add that both Professor Temperley and Doctor Ryder are distinguished consultants and both are accepted by the Board of the Hospital as having the qualifications necessary for the headship of the Department. Indeed the Board of the Hospital would have accepted an arrangement under which the headship of the Department would have rotated between Doctor Ryder and Professor Temperley had the two doctors been able to agree on such an arrangement. In these circumstances the Court has to decide which of the two claimants is in law head of the Department of Haematology. This is a pure question of law which the Court has to work out in the light of the events which have happened. The decision to be made is a purely legal decision and the Court's judgment on this legal issue implies no decision as to the respective merits of Doctor Ryder and Professor Temperley as haematologists. The Court does not feel competent to express, and does not in fact express, any view on this latter subject.

BACKGROUND TO DISPUTE

The background to the present dispute is a complex one.

The Hospitals Federation and Amalgamation Act 1961 provided

machinery whereby seven voluntary hospitals in Dublin could form a federation and, ultimately, amalgamate. The hospitals referred to were the Adelaide Hospital, the Meath Hospital, Mercers Hospital, The National Childrens Hospital, The Royal City of Dublin Hospital, Sir Patrick Dun's Hospital, and Dr. Steven's Hospital.

The proposed amalgamation has not yet taken place and Mercers Hospital has since closed down. But the remaining hospitals in the group are now known as the Federated Dublin Voluntary Hospitals and the Act provided for the establishment of a Central Council of the Federated Dublin Voluntary Hospital which Central Council is a body corporate representative of the Boards of the various voluntary hospitals referred to.

One of the achievements of the Council was to rationalise laboratory support services for the various voluntary hospitals. We are here only concerned with haematology services, which were concentrated principally in the Department of Haematology at the Meath Hospital under the supervision of Professor Temperley.

The report of the Consultative Council on the general hospital service (PRL 154) which was presented to the Minister for Health in June 1968 recommended that the work of the general hospitals in Dublin

- 6 -

should be concentrated in four major hospital centres. One of the suggested centres was St. Kevin's Hospital then owned by the Dublin Health Authority and later owned by the Eastern Health Board. One of the attractions of St. Kevin's was that it stood on a site of some 50 acres and allowed room for new hospital buildings and laboratory facilities. The idea was that St. Kevin's Hospital would be taken over by a board jointly representative of the Federated Dublin Voluntary Hospitals and the Eastern Health Board. St. Kevin's Hospital would be re-named St. James and would become a major hospital centre providing medical and surgical services and teaching facilities including services then provided by St. Kevins and by a number of the constituent hospitals of the Federation.

The Minister for Health, in exercise of the powers conferred on him by the Health (Corporate Bodies) Act 1961 (No. 27 of 1961) set up the St. James' Hospital Board.

The board was to consist of 20 members appointed by the Minister of whom 10 were to be nominated by the Eastern Health Board and 10 nominated by the Central Council of the Federated Dublin Voluntary Hospitals. There was to be a chairman and a vice-chairman of the

Board. If the chairman had been, on appointment, a member of the Eastern Health Board the vice-chairmanship went to a member of the Central Council of the Federated Dublin Voluntary Hospitals and vice versa. The offices were to alternate between the two groups in succeeding years.

The functions of the Board are set out in paragraph 4 of the Order and are as follows:-

- "1. To conduct, maintain, manage and develop at the hospital heretofore known as St. Kevin's Hospital Dublin such hospital services as may from time to time be approved by the Minister.
- 2. To provide such facilities for the teaching of medical nursing and para-medical students and for the conduct of medical research as may from time to time be determined by the Minister after consultation with the board.
- 3. To provide such other services and facilities as may from time to time be approved by the Minister after consultation with the board."

Under the scheme of re-organisation the Minister was committed to build and provide for the Board of St. James' Hospital a new laboratory in the grounds of the old St. Kevin's Hospital.

The proposal to build the new laboratory is referred to in a letter from the Department of Health to the Planning and Development Officer of St. James' Hospital Board dated the 30th of October, 1974

which reads, in part, as follows:-

"I am directed by the Minister for Health to refer to your letter of the 11th of July 1974 and to the discussion held in this Department on the 31st of July 1974 concerning the provision of a central pathology laboratory at St. James' Hospital to serve the requirements of the Federated Voluntary Hospitals and St. James' Hospital. On the understanding that capital monies can be made available to meet the costs involved, I am to confirm that the Minister is prepared to approve of the provision of a laboratory on the "transfer" site at St. James' Hospital using the plans and production documentation prepared for the Cork Regional Hospital laboratory subject to the following - (3) Agreement by the Council of the Federated Dublin Voluntary Hospitals that the proposed laboratory will replace all their existing laboratories."

The old St. Kevin's Hospital was a very large hospital having almost as many beds as the Federated Dublin Voluntary Hospitals combined. But the majority of its patients were geriatric patients. The new scheme contemplated that St. Kevin's under, its new name of St. James', was to be turned into a general hospital and that the

geriatric patients were to be moved elsewhere. By 1979 Professor Temperley was working at St. James' as a Consultant Haematologist and was treating patients clinically in the hospital but was still relying on the back-up services of the Haematology Department in the Meath Hospital.

Meanwhile Dr. Ryder, who also enjoyed the rank of Consultant, had been employed for many years as Haematologist first to the Dublin Health Authority, then to the Eastern Health Board and finally, he claims, to St. James' Hospital Board. He was responsible for the discipline of Haematology practised in a laboratory on the top floor of Hospital No. 7 in the old St. Kevin's complex. He was the only haematologist employed there but he had seven or more technical assistants working under him.

Matters came to a head when, in the year 1980, the new Pathology laboratory built by the Department of Health for St. James' Hospital Board was completed and the time arrived for the various specialist services, of which haematology was one, to move in. The Haematological Department situated at the Meath Hospital was larger than the one situated at the top of Hospital No. 7 in the St. Kevin's complex and employed more qualified medical staff. On

the other hand Dr. Ryder claimed that he was Haematologist to the St. James' Hospital Board and that his old laboratory was situated on the St. James' site and that he and his assistants were merely being "translocated" from the old laboratory at the top of Hospital No. 7 to the new Pathology laboratory whereas the laboratory at the Meath Hospital was being closed down and replaced. In support of this contention he referred to the letter from the Department of Health dated the 30th of October, 1974 (the relevant portion of which is quoted above) and to a further letter addressed to him dated the 12th of September, 1978 from the office of the Hospital Administrator at St. James' Hospital. This letter is addressed to Dr. Ryder as "Consultant Haematologist St. James' Hospital and the relevant paragraph reads as follows:-

"At a meeting of the Executive Committee of the Hospital, held on the 17th of July 1978, a committee consisting of the following was selected to resolve difficulties arising from the translocation of the Haematology Department to the new Pathology laboratory".

Dr. Ryder attaches significance to the word "translocation" and also to the words "Haematology Department". Dr. Ryder's contention

is that he is the Head of the Haematology Department which has been "translocated" from an old laboratory to a new one.

Dr. Ryder admits that the laboratory is new but denies that the Department of Haematology is new. The Defendants on the other hand claim that there is a new, fused, or amalgamated Department of Haematology at St. James', that the headship of this Department was vacant and that they were entitled to appoint a new head to the new Department of Haematology.

The problem in the Department of Haematology was only one of many transition problems which the Board had to cope with. The Board was prepared to accept a compromise arrangement under which the headship of the Department of Haematology would alternate between Professor Temperley and Dr. Ryder. Professor Temperley was prepared to accept this compromise but Dr. Ryder was not. Finally the Board decided to set up a team of medical assessors of high international repute to recommend a candidate for the position of head of the Department of Haematology. Dr. Ryder, being of the opinion that he already was head of the Department of Haematology, refused to apply for the position, and when the Defendant hospital proceeded to set up the Board of Assessors Dr. Ryder instituted these

proceedings. The first named Defendants persisted in setting up the Board of Assessors. In the event Professor Temperley was the only candidate with sufficient qualifications to apply for the position. The Board of Assessors recommended him, and the Board of the Hospital appointed him as head of the department.

I now turn to examine the basis on which Dr. Ryder claims that he, and not Professor Temperley, is the head of the department.

THE PLAINTIFF'S POSITION

To understand the Plaintiff's position it is necessary to go back for many years.

In the year 1967 the Local Appointment's Commission invited applications to the "Office of Haematologist, Dublin Health Authority" in accordance with the provision of a document bearing the reference number LA4/11/59. It is not necessary here to set out the qualifications required of candidates. Suffice it to say that they had to be highly qualified medical practitioners who had specialised in haematology.

The document noted that certain "particulars of the office" had been "furnished to the Local Appointments Commissioners". The duties of the office are set out at paragraph 7 of the document. Among the duties are the following:-

- "ii. To act when required as Consultant in his speciality to other members of the medical staff of the Health Authority.

- "iii. To be responsible for the operation of the Blood Transfusion Service in St. Kevin's Hospital.

- v. To be responsible for the training of technical staffs of his department.

- viii. To co-operate with the senior Pathologist and other appropriate medical officers in all matters relating to the performance of their duties. "

Dr. Ryder, who was then doing research in Boston, was the successful candidate and was offered the appointment. By letter dated October, 17th 1967 he wrote looking for clarification on certain points "before I accept appointment to this post". Among the queries he raised was the following:-

- 3. "I note the Haematologist is "to be responsible for the training of the technical staffs of his department" I shall be glad if you would tell me of the provisions made for staffing the haematology laboratory, including the number of the staff of each grade, and if such staff will be assigned to

the haematology laboratory on a permanent or a temporary basis."

On the 20th of December 1967 Mr. Elliot, who was senior Administrative Officer, Personnel Services, with the Dublin Health Authority replied to Dr. Ryder's letter and, dealing with the query concerning staffing, said:-

"It is intended that, on appointment of the Haematologist, staff selected for the Department shall remain there unless released for other assignment in furtherance of any training or other programme that may be considered with the Head of the Department and agreed. Promotion could, of course, also necessitate a change."

Dr. Ryder accepted the appointment and was appointed as "Haematologist Dublin Health Authority" with effect from the 1st of August, 1968. He served his probationary period satisfactorily and in due course was made permanent.

The original document issued by the Local Appointments Commission bearing the reference number LA4/11/59 provided that the officer should hold office under Part 2 of the Local Government Act 1941, as amended by Part 3 of the Local Government Act 1946 and Part 2 of the Local Government Act 1955.

Counsel for the Plaintiff submitted that the effect of the appointment was therefore to confer upon Dr. Ryder a certain status from which he could only be removed in accordance with the procedures set out in those Acts. That status, Counsel submitted, was Haematologist to the Dublin Health Authority. It was also clear, Counsel submitted, from the passages quoted from the document LA4/11/59 and from Mr. Elliot's letter of the 20th December, 1967 that Dr. Ryder was on appointment, to be "the Haematologist", to the Dublin Health Authority; that he was to be responsible for training the technical staff of "the Department" (of Haematology) and that he was to be the "head of the Department".

At all material times Dr. Ryder remained the only haematologist in the employ of the Dublin Health Authority. The Plaintiff's Counsel do not deny that it was competent for the Dublin Health Authority to appoint other haematologists but they submit that it was not competent for the Dublin Health Authority to make any appointment which would infringe Dr. Ryder's status as Haematologist to the Dublin Health Authority and Head of the Department of Haematology at St. Kevin's.

In due course the functions of the Dublin Health Authority were

transferred to the Eastern Health Board and the Officers of the former Dublin Health Authority were, in accordance with the provisions of Clause 9 of the third schedule to the Health Act 1970 transferred to the service of the Eastern Health Board.

Prior to transfer the Officers of the Dublin Health Authority (including the Plaintiff) received a letter dated 26th March, 1971 from the Secretary to the Dublin Health Authority. The first two paragraphs of the letter were as follows:-

"The functions of the Dublin Health Authority will be transferred to the Eastern Health Board with effect from 1st April, 1971 under the provisions of the Health Act 1970. I wish, therefore to notify you that you will become an Officer of the Eastern Health Board from that date and for the purposes of any enactment relating to superannuation your office under the Dublin Health Authority shall be deemed not to have been abolished.

Your transfer to the Eastern Health Board will be on your existing terms as to remuneration and your duties will be analagous to those which you are required to discharge as an Officer of the Dublin Health Authority. It is not intended that

"any Officer shall suffer a worsening of conditions because of transfer."

There was no other Haematologist employed by the Eastern Health Board and the effect of the transfer was, the Plaintiff submits, to make the Plaintiff Haematologist to the Eastern Health Board and to retain his position as head of the Department of Haematology at St. Kevins. The Plaintiff became an Officer of the Eastern Health Board and enjoyed the protection from removal given by Section 23 of the Health Act 1970.

Next the Minister by the St. James' Board (Establishment) Order 1971 (S. I. No. 187 of 1971) established the St. James' Hospital Board. Regulation 23 of this Statutory Instrument empowered the Board to appoint officers but the Plaintiff did not immediately transfer to the new Board. Clearly the Board had many delicate staffing problems to resolve and the Plaintiff was clearly concerned to retain his status in the new arrangements.

On the 10th November, 1972 the Plaintiff wrote to the Chief Executive Officer of the Eastern Health Board a letter in the following terms:-

"I was appointed Haematologist in a permanent capacity to the

"Dublin Health Authority with effect from 1st August 1968. I enclose a copy of the details of this office.

With regard to the coming together of the laboratories of the Federated Dublin Voluntary Hospitals and the former St. Kevin's Hospital the details are still obscure and I am naturally reluctant at this stage to apply formally for an appointment to St. James' Hospital.

Rather than commit myself to an ill-defined situation I should prefer to be seconded to St. James' Hospital in the first instance and defer formal application until the situation becomes clearer. I therefore wish to apply for secondment to St. James' Hospital for a period of two years".

On the 20th December, 1972 Dr. Ryder received a reply from the Personnel Officer of the Eastern Health Board in the following terms:-

"Dear Dr. Ryder,

The Chief Executive Officer has asked me to refer to your letter to him on the 10th November, 1972, regarding the coming together of the laboratories of the Federated Dublin Voluntary Hospitals and the former St. Kevin's Hospital. The position is, that you are, in effect, on secondment to St. James' Hospital Board

"although still an officer of this Board and for the reasons mentioned in your own letter and from the information at present available, there is no immediate prospect of finalising the arrangements for the future of the laboratories. In the circumstances it is not considered necessary to make a formal secondment for a stated period.

You may take it that the matter will be reviewed in the near future and that your position as an Officer of the Board will, of course, be kept in mind in any such review."

Meanwhile the Administrative Officers of the St. James' Hospital Board and the Eastern Health Board found it convenient to pay staff working on the site at the St. James' Hospital with cheques drawn on St. James' Hospital Board. However the Administrator of St. James' Hospital wrote to Hospital Personnel on the 2nd May, 1973, pointing out that this was merely an accountancy arrangement and that:-

"This accountancy change, however, does not, in any way, affect or modify the status of Personnel who may have not formally transferred their services to the new Board, whether or not they have received an invitation to do so."

Eventually on the 17th April 1978 Dr. Ryder received a letter

from the Hospital Administrator at St. James' Hospital offering him a position in the service of the Board. The letter was in the following terms:-

"Dear Dr. Ryder,

I refer to your appointment in St. James' Hospital and to the fact that you are an Officer of the Eastern Health Board.

The St. James' Hospital Board was established as an autonomous statutory body in July 1971 by Ministerial Order made under the provisions of the Health (Corporate Bodies) Act 1961. The Hospital Board was charged with the responsibility of managing and developing the hospital formerly known as St. Kevin's.

The Hospital Board from its inception sought to have a staff - officers and employees - unified under its own authority. To achieve this aim appointments/employments were offered to the vast majority of staff providing services in the hospital. Since 1971 the vast majority of posts had been filled either by persons who accepted transfers from the service of the Health Board or who have been directly recruited by the Hospital Board.

The Hospital Board now invites you to accept a transfer

"to its service in your present substantive post and on the conditions attaching to that post. I should make it clear that your existing superannuation entitlements (which are governed either by The Local Government Superannuation Act 1956 or the Revised Superannuation Scheme 1977) will be preserved.

If it is your intention to accept the offer of appointment on to the St. James' Hospital Board, it will be necessary for you to submit formal notice of resignation to the Chief Officer of the Eastern Health Board. For your convenience I attach:-

- (a) Formal notice of acceptance of the offer of appointment under the Hospital Board
- (b) Formal notice of resignation from the Eastern Health Board.

When completed, the two forms should be returned to me.

Yours sincerely"

Dr. Ryder duly signed the form resigning as an Officer of the Eastern Health Board and accepting appointment as an Officer of St. James' Hospital Board and sent both back to Mr. Hogan the St. James' Board Hospital Administrator.

The draft form of acceptance of the appointment under the

St. James' Hospital Board was in the following form:-

"I hereby accept the offer of appointment as a permanent and pensionable officer, in my present rank and on my existing conditions, with effect from mid-day 13th May 1978."

To this Dr. Ryder added prior to signing the following words ("to be taken in conjunction with accompanying letter").

The accompanying letter was addressed to the Hospital Administrator Mr. Hogan and was in the following form:-

"Dear Mr. Hogan,

Thank you for your letter of 17th April 1978. I hereby accept a transfer to the service of the St. James' Hospital Board in my present substantive post on the understanding that my terms or conditions of employment will not in any way be worsened - in particular that I shall retain in their entirety all my present rights and privileges, that I shall not suffer any loss or impairment of remuneration status or prospects, and that I shall continue to be in charge of the Department of Haematology so that I may discharge the duties of my statutory appointment as detailed in the Local Appointments Committee circular L.A.4/11/59 I should be grateful if you would acknowledge this.

"Yours sincerely".

In fact Dr. Ryder received no formal acknowledgement to this letter but his Counsel submit that no acknowledgement was necessary, as the Board's letter of the 17th April, 1978 was an offer to accept a transfer to its service "in your present substantive post and on the conditions attaching to that post" and that Dr. Ryder had, by filling in the appropriate forms and returning them with his covering letter, accepted that offer.

CONCLUSION

Counsel for the hospital however submit that Dr. Ryder's covering letter was in effect a refusal of the Boards offer and the making of a counter offer which the Board did not accept.

In any event it is surprising that the Board should not have acknowledged Dr. Ryder's letter. Dr. Ryder during 1978 received administrative circulars from the Board addressed to "the head of each department" and he also received Income Tax Forms which indicated that his employer was St. James' Hospital Board. It therefore came as a surprise to him to discover, many months later, that Mr. Hogan had never sent to the Eastern Health Board Dr. Ryder's letter of resignation and that there is no minute of the Board formally appointing him to any office in their service.

However, Counsel agree that the issue between the Plaintiff and the Defendants cannot turn on any one of the matters referred to in the previous paragraph. Counsel for the Board accepts that Mr. Hogan had authority to write the letter of the 17th of April 1978 offering Dr. Ryder "a transfer to its service in your present substantive post and on the conditions attaching to that post". The issue turns upon whether Dr. Ryder's letter of the 13th of May 1978 was an acceptance of the Board's offer or a refusal of that offer with a counter offer.

In my view Dr. Ryder was in succession Haematologist to the Dublin Health Authority and the Eastern Health Board and was head of the Department of Haematology which they administered. It follows therefore that he would not be retaining "his present substantive post" if he had to work under another Haematologist or if he ceased to be head of the Department of Haematology. I accept Mr. Listons' submission that the issue is one of status. In his letter of the 13th of May 1978 Dr. Ryder added nothing new but merely described the incidents of the status which he already held. It therefore appears to me that Dr. Ryder's letter of the 13th of May 1978 enclosing his formal resignation from the Eastern Health Board and his acceptance of

the Board's offer is properly regarded as a letter accepting the Board's offer contained in Mr. Hogan's letter of the 17th of April 1978.

Under these circumstances it appears to me that the Plaintiff is entitled as against each of the Defendants to the declarations sought at paragraphs 1, 2, and 3 of the Claim on his amended Statement of Claim.

du Bg
24/3/84