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The High Court
Judgment delivered on the 5th day of
November 1987 by Mr Justice Barron at
Limerick.

PETER LOCKE

.v.

SOUTHERN HEALTH BOARD

The Applicant was at all material times an ambulance driver employed by the Respondents. He was appointed temporarily on the 1st January, 1979 and was made permanent on the 3rd August, 1979. He was originally attached to St. Catherine's Hospital, Tralee and when the Tralee General Hospital was opened on the 25th April, 1984 he was attached to that hospital. He is a married man with six children and lives approximately 150 yards from the hospital.

On the 18th May, 1984 the Applicant came on duty at 9 p.m. When he reported the Controller in charge was of the opinion that he was not fit to drive because he had taken alcohol. The Controller made arrangements for a substitute driver and advised the Applicant to go home. When he refused to do so the Controller telephoned to the ambulance supervisor for County Kerry, Mr. Niall Crowley, to inform him of the matter, but he was out. Meanwhile the Applicant had a shower and a cup of tea and by 11 p.m. the Controller in charge was satisfied that he was then fit to drive and he was reinstated. There were two calls on the ambulance service that night and the Applicant dealt with both of them. The Controller in charge made a report of the events of the evening to Mr. Crowley. The incident was subsequently investigated by

Mr. Brian Phelan, the Chief Ambulance Officer for the Board, who warned the Applicant verbally of the serious consequences of taking drink before coming on duty. He did not however specifically tell him that he would be dismissed in the event of a recurrence.

On the 25th January, 1985 the Applicant was again due to come on duty at 9 p.m. Sometime before this he telephoned to the Controller and asked for the telephone number of one of the other drivers. At about 9.05 p.m he again telephoned him and informed the Controller that he would be late coming on duty and asked for cover to be provided in the meantime. He ultimately arrived at 9.25 p.m. At this time the Controller on duty took the view that he was unfit to drive because he thought he had taken too much to drink. Alternative cover was again arranged and the Applicant advised to go home. Again he refused to go home and Mr. Crowley was sent for. Mr. Walsh the Administrator of the hospital was also sent for. Mr. Crowley apparently offered to do the Applicant's shift for him and when he refused the Applicant was suspended. It appears that he became aggressive and abusive and insisted upon remaining in the control room all night. There were no calls on the ambulance service that night. The following morning the Applicant apologised to Mr. Walsh for his conduct. Neither on this occasion nor on the previous occasion had there been any question of the Applicant driving a motor car while in the condition alleged against him.

The matter was fully investigated by the hospital authorities and the Applicant was suspended with effect from the 1st February, 1985 and finally dismissed with effect from the 14th of February, 1985. The Applicant appealed to the

Rights Commissioner and following a hearing before a Rights Commissioner, it was recommended that the Applicant should be re-employed without break of service with effect from the 28th of March, 1985 the period from his dismissal up to that date being regarded as a period of suspension. It was also recommended that he should be given a final warning.

Following upon this decision the Board agreed to abide by it. A meeting was called for the 27th March, 1985 at which representatives of the Board and of the Union and several of the drivers were present. The Personnel Officer of the Board, Mr. Long, was in the chair. It was agreed at this meeting that the Applicant would be taken back and that there would be no recriminations. This was confirmed to the Applicant by a letter dated the 4th April, 1985. It appears that at the meeting on the 27th of March, 1985 reference was made to the fact that the Applicant had a dossier on many of his colleagues, and that this was a bone of contention between him and his colleagues. However, the meeting was assured by the Applicant that he had no such dossier. It was left to Mr. Crowley to arrange the duty roster for the Applicant. He assured the meeting that he would fit him in.

A new rota system had been arranged during the period of the Applicant's suspension whereby the drivers were paired for duty. As a result the roster being full the Applicant was included as a relief driver for the other drivers as they took holiday periods in turn. Unfortunately the shifts which the Applicant was required to work as such relief driver coincided with the shifts upon which he had been working prior to his suspension. Although he was told on the 7th of May, 1985 to take his holidays he did not at that time appreciate that he

was merely a relief driver. On the 31st of May, 1985 which was a Friday he was rung up by Mr. Crowley and informed that he was starting at 8 a.m. the following Monday morning at Listowel Hospital. He went down to see Mr. Crowley and asked him on what authority he was being sent as a relief driver to Listowel when he was a permanent driver at Tralee. There is a dispute as to what happened at this meeting. However, the Applicant did attend for duty as he was directed. On Monday the 3rd of June, 1985 however he wrote to Mr. Long, indicating that he was suffering financial loss by being sent to Listowel and asking whether or not it was necessary for him to go. The letter was a long one and included allegations that nothing had been going right since the opening of the Tralee General Hospital and the closure of Saint Catherine's and that there were reports which were hidden and covered up. He said that he had spoken to Mr. Phelan the previous October and asked him to come to Tralee more often and was repeating this request. He said that the atmosphere was bad and that he had been made a scapegoat of by his supervisor.

On the following day Mr. Crowley wrote to Mr. Phelan in relation to what occurred on the 31st of May. This letter was as follows:

"Re: Requesting Mr. P. Locke - Ambulance Driver to take up holiday duty at Listowel Hospital on Monday 3rd June 1985.

Dear Mr. Phelan,

On Friday 31st May 1985 I requested Mr. P. Locke to take up holiday duty at Listowel District Hospital as

Mr. P. Barry was commencing holidays in line with the committed holidays for the ambulance personnel.

Mr. Locke came into my office on Friday 31st May and questioned my authority to send him to Listowel on holiday duty and he stated that he was appointed a permanent driver at the County Hospital Tralee.

Having discussed fully the re-employment of Mr. Locke with Mr. D. Long and Mr. T. Walsh on the 27th March 1985 reservations were expressed as to the attitude of Mr. Locke to his fellow workers and the ambulance service in general.

After that meeting I put Mr. Locke on holiday relief duty on a temporary basis with a view to assessing his performance on the job and to pair in with a driver when a vacancy arose.

I discussed the above proposal with Mr. J. Hillard shop steward and he agreed that it was a good proposal owing to the express reservations of the drivers. I also spoke to Mr. J. Hillard and Mr. E. O'Connor and they stated that the attitude of Mr. Locke since his re-employment leaves a lot to be desired.

The more serious aspect of this incident is that he tried in every way possible to provoke me into confrontation with him. He stated that I was victimising himself his wife and family and that he

should never have been suspended in relation to the first incident on the 25th January, 1985.

Yours faithfully,

N. CROWLEY
AMBULANCE SUPERVISER"

This incident on the 31st of May was investigated by the Board's Officers and a meeting was held with representatives of the Union and with the Applicant on the 13th of June, 1985. No action was taken following this meeting. On the 18th of June, 1985 Mr. Long, Mr. Crowley and Mr. Phelan were having a meeting at Killarney apparently to discuss the matter when a telephone call came for Mr. Phelan from Mr. Walsh, the Hospital Administrator. The purpose of this call was to forward to Mr. Phelan a complaint by the Matron of Listowel Hospital as to Mr. Locke's conduct towards two of the nurses employed at that hospital.

The evidence as to the events of the hospital in relation to these complaints is conflicting. The allegations are that the Applicant put his arm around one nurse in the hospital corridor and put his hands on the shoulder of a second nurse on two separate occasions, once as she was entering the ambulance ahead of him and on the second occasion in the treatment room. The first of the two allegations took place on the 17th June, 1985 and the last of them on the following day, the 18th of June, 1985. The complaint of the first nurse was that the conduct of the Applicant was unprofessional but it was not suggested that it was any form of sexual harassment. The second nurse was embarrassed by the Applicant's actions and was

not prepared to exonerate the Applicant from sexual harassment. Both nurses said that they were speaking about the matter to each other on the morning of the 18th June when the matron of the hospital entered the treatment room and asked them what they were talking about. The matron apparently took a serious view of the matter and made a report to Mr. Walsh. The matron accepted in evidence that she had made a contemporaneous statement in which she indicated that the complaints were made to her by the nurses on the 17th and that she had reported the matter on the following day. She gave evidence to the same effect which I regret cannot be reconciled with the evidence of the nurses or with the grounds given for the Applicant's suspension.

Whatever the truth of the allegations the hospital authorities acted upon them immediately. A notice of suspension dated the 19th June, 1985 was served on the Applicant. The material part of the notice was as follows:

"Because there is reason to believe that he has misconducted himself in relation to his duties as ambulance driver

- (a) by causing a confrontation with his supervisor on 31st May 1985 and by adopting an aggressive and threatening attitude towards his supervisor on that occasion and
- (b) by unprofessional behaviour in his approach to two nurses at Listowel District Hospital on the 17th and 18th June 1985

Mr. Peter Locke is hereby suspended without pay with immediate effect from the performance of his duties as ambulance driver while the alleged misconduct is being

enquired into and any disciplinary action to be taken in regard thereto is being determined."

Accompanying this notice was a letter to Mr. Locke which was in the following terms

"Dear Mr. Locke,

I am enclosing herewith a certified true copy of an Order of the Chief Executive Officer suspending you from the performance of your duties as ambulance driver without pay and with immediate effect. You will note the reasons for the suspension as contained in the Order.

The incident with the ambulance supervisor on the 31st May 1985 has already been investigated by the Board. With regard to the incidents involving two nurses at Listowel District Hospital, it is alleged as follows:-

- (a) At about 6.30 p.m. on the 17th June 1985 you were approached by Nurse E. Healy in the hospital main corridor as Nurse Healy wished to give you details of an ambulance call. As she spoke to you, it is alleged that you placed your two arms around Nurse Healy. The nurse was both shocked and embarrassed by your action and she reported the matter to the matron the following morning.
- (b) That shortly after the above incident as Nurse Myra Walsh was walking with you from the hospital entrance towards the ambulance you placed both your hands on her shoulders until you had reached the ambulance. Nurse Walsh was unhappy and embarrassed at your action which she

considered to be overfamiliar and unprofessional. Nurse Walsh reported the matter to the matron the following morning.

It is further alleged that on the morning of the 18th June, 1985 while Nurse Walsh was in the treatment room with another nurse you walked in placed your hands on her shoulders and said "Are we going out again tonight"? Nurse Walsh was further embarrassed and unhappy about this incident.

The Chief Executive Officer has asked that you would kindly let me have your observations on the incidents involving the nurses at Listowel District Hospital. On hearing from you, the position of your employment with the Board will then be considered by the Chief Executive Officer.

Yours sincerely.

DENIS LONG
PERSONNEL OFFICER"

As can be seen from the terms of this letter the incident on the 31st of May 1985 had been fully investigated and apparently would not have resulted in any action in the nature of a suspension. So far as the allegations in relation to the two nurses are concerned I accept their evidence that the incidents occurred. Nurse Walsh did not remember that the second incident involving her was accompanied by speech so that aspect of the allegation remains unproved.

Following the suspension of the Applicant the Applicant was represented by his solicitor who made representations on

his behalf but notwithstanding these representations the Applicant was finally dismissed on the 4th October, 1985 having received a formal notice of intention to dismiss him on the 2nd of September, 1985.

The Board's case for dismissal is easily stated. It suggests that the Applicant was lucky to be reinstated following the hearing of his case by the Rights Commissioner and that following the events of the 31st May, 1985 and the 17th and 18th June, 1985 his dismissal was automatic, especially having regard to the warning given to him on his reinstatement in March, 1985. The Applicant maintains that he has been victimised. He makes the case that when he was sent to Listowel Hospital that the matron of that hospital was told to keep a special eye on him. In essence he submits that the incidents involving the two nurses were trivial incidents and were deliberately blown up by the matron and by the Board. He also submits that the meeting which took place in Killarney on the 18th June, 1985 was a meeting for the purpose of trying to see whether or not there was sufficient grounds to dismiss him. He maintained also that he was being treated differently from the other drivers who had been in breach of their duties. He referred to several incidents which he said merited warnings but which were not investigated. He also referred to the case of a driver who was convicted of a drink driving offence committed while coming on duty and who was given a different job when he lost his licence.

From the evidence as a whole including the documents which have been proved in evidence, I am satisfied that the reason for the dismissal of the Applicant is more complex than the simplistic reasons given by the Respondents. The Applicant

tended in the course of the hearing before me, during which he was not legally represented, to make many and repeated attacks on the officials of the Board and others associated with the case. The allegations relating to other incidents which went unpunished were part of this overall conduct. I am satisfied that all such attacks and allegations are totally unfounded and unjustified save for the incident in relation to the driver who lost his licence which is accepted by the Board as being true. The Applicant was himself involved in a road traffic accident while driving his ambulance on the 28th of April, 1984. Although no one suggested that he was in any way to blame for this accident he appears to have been unnecessarily on the defensive in relation to it and furnished on the 22nd of May, 1984 an exculpatory statement in relation to it. It may well be that the seeds of the present case lie in the Applicant's attitude to that event.

I cannot totally rule out the Applicant's contention that the matron of Listowel Hospital was warned about him. In cross-examination he accused her of entering his room at the hospital without authority on three separate occasions. She denied this but did admit that she might have done so on one occasion. She seemed to me to have been unnecessarily on the defensive in relation to this cross-examination. There is also the statement by the matron that the nurses complained to her on the evening of the 17th June which cannot be true having regard to the evidence. The matron has no longer any recollection of these events, although she still thought that the matter had been reported to her on the evening of the 17th. I am satisfied that she did what she thought to be her duty. It was however an over-reaction and on the probabilities

I believe that this was because she had been told specifically about the Applicant's previous suspension. The incidents with the two nurses certainly occurred, but I am quite satisfied that there was no attempt to harass either of them. The reaction to his conduct was in large measure a result of his own character. He is self assertive and sees himself as always being in the right. If another driver had been involved, neither nurse would have given the matter another thought.

The events surrounding the meeting of the 18th June have been given a sinister connotation by the Applicant. To understand the allegation it is necessary to consider the presence of Mr. Crowley at this meeting. It was submitted on behalf of the Applicant that following these events Mr. Crowley resigned. It is denied that he did so although it is admitted that it was suggested to him on the 6th of June, 1985 that he should take some time off. Certainly when the letter of the 19th of June, 1985 was written and copies were sent to the various officials of the Board no copy was sent to Mr. Crowley as ambulance supervisor but a copy was sent to Mr. E. O'Connor, acting ambulance supervisor. Further, the Applicant's solicitor gave evidence that at a meeting with representatives of the Board he was led to believe that Mr. Crowley had resigned.

It seems to me on the probabilities that Mr. Crowley was on leave on the 18th June and that his opinion was being sought as to whether or not he could continue to work with the Applicant. Reference was made in the evidence to the fact that there had been minor incidents from 1979 onwards involving the Applicant and Mr. Crowley and that Mr. Crowley was afraid of the former's temper. It was common case that he felt himself

unable to control the Applicant by reason of a personality clash. It seems probable that this clash was behind the fact that Mr. Crowley was not at work on the 18th and the reason for the meeting. His allegations in relation to the alleged confrontation on the 31st May, 1985 had already been considered and there was no real reason why he should be consulted again by his superiors.

Another aspect of this personality clash is apparent in the letter of the 4th of June, 1985 written by Mr. Crowley to Mr. Phelan. It is quite clear from that letter that there were other matters of complaint against the Applicant. The third paragraph of that letter harps back to the reservations expressed as to the attitude of the Applicant to his fellow workers and the ambulance service in general at the meeting of the 27th March, 1985. Presumably this is a reference back to the dossier in particular. There is also the reference in the fifth paragraph that the attitude of Mr. Locke since his re-employment left a lot to be desired. There is the more serious allegation contained in the last paragraph that the Applicant had sought to provoke the writer of the letter into confrontation. Finally, the fourth paragraph of the letter to the effect that Mr. Locke was put on relief duty on a temporary basis with a view to assessing his performance on the job seems to be in complete contradiction of the agreement on the 27th of March, 1985 that he was to be fitted in and that there were to be no recriminations. In my view it is nonsense to suggest that he was being tried on a temporary basis with a view to assessing his performance when in effect he had been a driver since 1979 without any complaints having been made.

Looking back on the earlier events it seems that this clash had an effect on the consequences of such events. There

seems to have been no good reason why Mr. Crowley could not have dealt with the incident of the 24th January, 1985 without calling in Mr. Walsh. So even on the date of the original suspension there was this circumstance which was not raised as a ground for the Board's actions. The recommendation of the Rights Commissioner was as has already been indicated and assurance that this recommendation would be implemented was given at the meeting on the 27th of March, 1985. At that meeting, I am satisfied that the Applicant was told in essence that there would be no recriminations and that he would be re-employed as before. He was not so re-employed and this led irrevocably to the events of the 31st of May, 1985. I accept that the Applicant questioned the authority of Mr. Crowley to act as he did and that the behaviour of each of them was affected by the mutual antipathy which each had for the other, but I do not accept that the Applicant returned to Mr. Crowley's office to abuse him as has been suggested. He accepted his posting and made his protest in his letter to Mr. Long dated the 3rd June, 1985.

Upon a full consideration of all these matters, I am left with the clear impression that the matters set out in Mr. Crowley's letter dated the 4th June, 1985 and the personality clash between him and the Applicant had a significant bearing on the Applicant's dismissal. Whether a dismissal is an unfair dismissal or not is dealt with by Section 6 of the Unfair Dismissals Act 1977. Prima facie, a dismissal is an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal: Section 6(1). The dismissal is deemed not to be an unfair dismissal, if it results wholly or mainly from one or more of the grounds set out in Section 6(4).

The dismissal of the Applicant was not wholly for the misconduct alleged by the Board. There were other matters which had a significant bearing on this decision. In the face of this finding, and in particular when such matters were not relied upon to justify dismissal nor tested to establish whether reliance upon any of them was justified, I am not prepared to hold that the misconduct alleged was the main reason for the dismissal. For the same reasons, I cannot accept that these other matters which influenced the Board, either alone or with the reasons given, amount to other substantial grounds justifying dismissal. There will be a declaration that there was an unfair dismissal of the Applicant.

6/11/67

Henry Barnes