[2019] IEHC 819

THE HIGH COURT
JUDICIAL REVIEW

[2018 No. 627 J.R.]

BETWEEN

C.D.

APPLICANT

AND

THE BOARD OF MANAGEMENT OF A NATIONAL SCHOOL

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered on the 4th day of December, 2019

Introduction

1. The primary relief sought by the applicant is an Order of *certiorari* by way of judicial review quashing the decision of the respondent to dismiss the applicant from her position as principal of a particular national school and as a teacher at that school, which decision was made by the respondent on 14th March, 2018 and communicated to the applicant by letter dated 16th March, 2018. Due to the fact that the core allegations against the applicant concerned allegations of inappropriate behaviour towards two pupils, and as the school in question is a very small national school in a rural setting, and as it will be necessary to look at the allegations in some depth later in this judgment, the Court has decided to anonymise the judgment, so as to protect the identity of the parties and more particularly, the identities of the children concerned.

2. The applicant, who has been identified above by the letters "*C.D.*", which are not her actual initials, was the principal of a small rural national school until the Board of Management of that school decided, following a disciplinary process, that she should be dismissed from her position as both principal and teacher at the school. The school in question is very small. It had 20 students, two teachers, a special needs assistant and someone who covered the joint role of secretary/special needs assistant, at the time of the matters complained of herein. The people centrally involved in the incidents giving rise to the allegations, will not be identified by name in this judgment. They will be identified by their job description.

3. The applicant held the role of principal and was also one of the two teachers in the school. Certain allegations were made against her by the special needs assistant (hereinafter "*SNA*"), in a statement which was furnished by the SNA to the chairperson of the Board of Management on 25th March, 2016. Thereafter, an investigation process was put in place which culminated in a disciplinary hearing held on 21st February, 2018. Following that, the respondent reached the decision that the applicant should be dismissed from her post as both principal and teacher, which decision was communicated to her by letter dated 16th March, 2018. The applicant appealed that decision to the Disciplinary Appeals Panel (hereinafter the "*DAP*"), which found in her favour and issued a recommendation that she should be immediately reinstated to her position as principal. However, in a written response dated 27th June, 2018, the respondent declined to follow the recommendation of the DAP and confirmed its decision to dismiss the applicant. This entire procedure will be looked at in more detail in the next section of the judgment.

4. The kernel of the applicant's case is that the investigation process leading to the decision to dismiss her and the subsequent rejection by the respondent of the recommendation of the DAP, was fundamentally flawed, such that the Board arrived at a decision which was legally indefensible. It was submitted that the Board's decision was irrational, unreasonable and unlawful. The applicant has challenged the validity of the process whereby she was put on administrative leave as and from 6th April, 2016. She challenged the validity of the decision to invoke the Stage 4 disciplinary process pursuant to circular 60/2009, which set out the procedures for suspension and dismissal of principals. However, the core of the applicant's argument was that the decision to dismiss her was irrational and unreasonable because the respondent failed to give any, or any adequate, reasons why they had reached that decision. She maintained that there had been no proper evaluation of the evidence for and against the allegations levelled against her, nor had she been told what allegations had actually been found as having been proven against her. In these circumstances, it was argued that the decision was bad at law for failure to give reasons for it. Finally, it was argued that the rejection of the recommendations of the DAP by the respondent was bad in law having regard to the established case law as to the circumstances where a Board could lawfully depart from the recommendations of the DAP.

5. The respondent's response can be summarised in the following terms: it was submitted that having regard to the nature of the allegations made by the SNA on their face, it was reasonable, appropriate and indeed mandated by child protection requirements, that the respondent should place the applicant on administrative leave while the matter was being investigated. It was submitted that it was appropriate to invoke the Stage 4 process, given that the allegations were serious and were hotly disputed by the applicant and therefore had to be investigated in a thorough manner. In addition, given the range of possible sanctions up to and including dismissal, it was appropriate to invoke the Stage 4 process. In relation to the allegation that the respondent failed to give adequate reasons for its decision, it was submitted that the Court should take account of the fact that the Board of Management of the school was made up of ordinary people taken from various walks of life, who did not have any legal training or experience, nor any experience in industrial relations matters. It was submitted that it was against this background that the Court had to look at the adequacy of the reasons given in the latter dated 16th March, 2018. In addition, the Court was urged to have regard to the fact that the reasons set out in that latter, had to be seen in the context of the very thorough investigation that had been carried out by an independent investigator, Ms. Eileen Flynn, on behalf of the chairperson of the Board, together with the holding of a detailed and fair disciplinary hearing. It was submitted that if the Court had regard to the entirety of the process from start to finish, the reasons justifying the dismissal of the applicant were abundantly clear.

6. Finally, the respondent argued that under circular 60/2009, the respondent was entitled to reject the recommendations of the DAP. This it had done for good reasons, which were set out clearly in their response dated 27th June, 2018. In these circumstances, it was submitted that the decision of the Board to dismiss the applicant was justified on both the facts and the law.

7. Given the range of complaints made by the applicant concerning the entire investigation and disciplinary process engaged in by the respondent, it is necessary to set out the steps that were taken in some detail.

Background

8. The applicant qualified as a primary school teacher in 1986. After working in a number of posts, she was employed as a teacher at the respondent's school in 1996. In 1998 she became principal of the school. As already noted, it was a two teacher school, with the applicant being both principal and teacher.

9. In September 2015, a new special needs assistant arrived at the school. She had been an SNA for approximately 20 years by that time. She maintained that in the weeks and months after her arrival at the school, a number of incidents occurred involving interaction between the applicant and two of her students, which caused her considerable concern. The first student was a young girl of 4 years of age, who will be referred to as "*child A".* The second student was a young boy of 9 years of age, who will be referred to as "*child B".*

10. The SNA did not raise any of these concerns directly with the applicant. Instead, on 22nd March, 2016, she telephoned the chairperson of the respondent Board of Management (hereinafter "*the chairperson*") and verbally outlined a series of allegations against the applicant. She met with the chairperson three days later on 25th March, 2016, at which time she handed him a typed statement containing a large number of allegations against the applicant. It is difficult to be precise in relation to the exact number of complaints made against the applicant, because some of the complaints are repetitious and overlap one with the other. However, doing the best that I can with the documents before me, there were approximately 17 allegations concerning the applicant's treatment of child A, and 6 allegations concerning her treatment of child B.

11. Upon receipt of these allegations, the chairperson took advice from a number of sources including: the school's solicitor, the school's insurers, the governing body for the school and from the Department of Education. He also referred the matter to Tusla on 4th April, 2016. On 6th April, 2016, the applicant was placed on administrative leave.

12. By letter dated 23rd September, 2016, the chairperson was informed by Tusla that they had concluded their assessment and that in their view, "*the evidence and information does not reach our threshold for the Social Work Department to remain involved in these cases. Therefore I will be closing both children's files to the Social Work Department.*" The chairperson communicated the result of the Tusla investigation to the applicant.

13. From the time that the applicant had been first made aware of the allegations made against her by the SNA, the chairperson had engaged with the applicant's union representative. When the result of the Tusla investigation was communicated to the applicant, her union representative requested the respondent to downgrade the investigation from a Stage 4 disciplinary process under circular 60/2009 to a more informal disciplinary process. The respondent refused to do this. The respondent

continued to process its own disciplinary procedure in relation to the matter. To that end, the respondent proposed engaging an independent expert, Ms. Eileen Flynn, to prepare a report on the matter, in *lieu* of the chairperson doing so, which would be submitted to the respondent for its consideration.

14. Initially, the applicant, through her union representative, objected to this course of action being taken. There was considerable correspondence between the applicant's union representative and the chairperson on the matter. Eventually the applicant consented to Ms. Flynn carrying out an investigation. There was further correspondence in relation to the terms of reference under which Ms. Flynn would carry out her investigation and report. The applicant's union representative was particularly concerned that Ms. Flynn's report would *"not make any finding, issue any recommendation or make any decision in relation to the complaint*". It was agreed that she would report on that basis.

15. In the weeks and months following November 2016, Ms. Flynn carried out a number of interviews with relevant persons, being: the SNA; the applicant; the second teacher at the school; the secretary/SNA; the learning support teacher and a religious person, who had attended the school when one of the incidents was said to have occurred. She also furnished a plan of the school premises and a number of photographs of a particular locus and copies of drawings done by one of the children. Ms. Flynn compiled an interim report on 24th April, 2017. This was sent to the applicant for her comments. After receiving those comments, Ms. Flynn issued her final report on 8th May, 2017. That report was more in the nature of an information gathering report, as it just dealt with each allegation in turn and set out extracts from the various interviews where the interviewees had given their views on the allegations. It did not reach any findings or make any recommendations.

16. Following receipt of the Flynn report, the respondent proceeded to set up a disciplinary hearing. There was considerable correspondence between the chairperson and the applicant's union representative concerning procedures to the adopted at the hearing. The disciplinary hearing was ultimately held before the respondent on 21st February, 2018, in a hotel near the school. The hearing commenced at 16:00 hours. Ms. Flynn was present at the respondent's request. The applicant was present, along with two union representatives. The chairperson and five members of the Board were also present. Ms. Julie O'Leary B.L. was present on behalf of the firm of solicitors who were advising the Board of Management. There is some confusion as to the exact role which Ms. O'Leary B.L. had at that hearing. In an affidavit sworn by the chairperson on 16th November, 2018, he stated that she was there as an "*observer/note taker*". It was stated that her only role was to intervene to stop people shouting or raising their voices from time to time. However, in a submission made to the DAP, the chairperson explained the reason why Ms. O'Leary B.L. had been at the disciplinary hearing in the following terms: "*The Board wished to have a legal advisor present in the event that any advice was required on a procedural or evidential matter".*

17. The hearing itself went on over a number of hours. For the purpose of deciding on the allegations, the Board was made up of five members being: two parents' representatives, two community representatives and a representative of the patron of the school. As it happened, the mother of one of the children involved, was also on the Board of Management at that time. However, she did not take part in any discussions or consideration concerning the allegations made against the applicant. The chairperson, while being present at the disciplinary hearing, did not participate in the deliberations, or cast any vote on the final decision in relation to the allegations.

18. The hearing commenced with an opening statement by the applicant's union representative. She then carried out a detailed cross-examination of the complainant SNA. That lasted for almost two hours. The Court has had the benefit of a note of that cross-examination, as drawn up by one of the union representatives. However, it was accepted that it was not a complete note of all the evidence given at the hearing.

19. Evidence was also given by the second teacher in the school and by the secretary/SNA, who were called on behalf of the applicant. Finally, the applicant read out a very detailed statement in response to the allegations that had been made against her. That took approximately two hours to read out. In all, the disciplinary hearing lasted approximately 6.5 hours.

20. It is not entirely clear to the Court when the Board sat down and looked at the evidence which had been put before it in Ms. Flynn's report and at the disciplinary hearing. There are no minutes which record that the Board actually sat and considered the allegations and the evidence in a collective manner. There are however two minutes of Board meetings subsequent to the disciplinary hearing, which are of relevance.

21. The Court was furnished with the minutes of a meeting of the Board of Management held on 5th March, 2018, at 20:00 hours. That was described in the minutes as being "a short meeting". The minutes recorded that the chairperson thanked the members for their attendance, in particular as the meeting had had to be rescheduled to accommodate one member of the Board. The chairperson explained that as only five members of the Board would have a vote, it was important that those particular members would be present at all meetings. It should be noted that present at that meeting was the second teacher, who was then acting principal, but she did not attend any meeting where there was consideration of the disciplinary allegations, so it is unlikely that there were any deliberations on that matter at that meeting.

22. Those minutes go on to record that the applicant was going to send in further appendices to her statement and the chairperson stated that he would forward those to the Board members once he received them. The minutes go on to record that the chairperson explained that once the hearing was over and the written statement was received from the applicant, the Board had an obligation under the disciplinary procedures to make a final decision in the matter. He stated that such a decision could not be delayed indefinitely. It was recorded that the chairperson told the members that he had spoken to their legal advisor and that a meeting of the Board of Management would take place on

Wednesday 14th March, 2018. He explained that he would not be able to chair the meeting on that occasion, but that Julie O'Leary B.L. would be available via Skype. Those minutes were signed by the chairperson. It does not appear therefrom, that there was any consideration of the allegations at that meeting.

23. The only other minutes of a Board meeting after the disciplinary hearing were the minutes of a meeting held on 14th March, 2018, at 20:00 hours. Again, the second teacher and acting principal was present at that meeting, although she would not have any vote or participate in any deliberation on the disciplinary issues. As this meeting is important, it is appropriate to quote the relevant part of the minutes in full:

> *"Ms. Julie O'Leary BL attended by Skype.*
>
> *The meeting came to order in Junior Classroom.*
>
> *The chairman thanked the members for their attendance and then connected the school IT System to Skype.*
>
> *Julie O'Leary though Skype, briefed the members prior to the vote.*
>
> *The eligible members voted one at a time while the other voters left the room. They placed their ballot in a designated ballot box.*
>
> *The chairperson then entered the same classroom alone and was instructed by Julie O'Leary to open the votes one at a time and call out the result to her.*
>
> *Once this took place and she had duly noted the result of the vote she instructed the chairman to inform the board of management of the result, instruct them on the importance of the confidentiality of the result of the vote and then to close the meeting. She then ended the Skype call.*
>
> *The chairperson complied with the instructions received."*

24. Given the importance of this meeting, it is relevant to note that a memo was prepared by Julie O'Leary B.L. of that meeting in the following terms:

> *"I observed the meeting of the board of management of [name of school redacted] last night, 14th March, 2018, at 8pm via Skype.*
>
> *All the board members were present in the same room at the beginning of the meeting. I reminded them about the stages of the disciplinary process that had already taken place, and their role as decision makers. I reminded them of the purpose of the secret ballot which had been agreed as the decision making process.*
>
> *I read them some relevant extracts from the disciplinary procedure and reminded them of their duties to act reasonably, proportionately and fairly. I reminded them of the purpose of the investigation and hearing. We discussed the need to give*

reasons for their decision. I reminded them of the range of sanctions available to them and that it was open to impose any one of these sanctions.

I then observed that the board members left the room and each of the voting members entered individually to write their decision in secret. These were placed in a box.

When this had finished, [the chairperson] entered the room on his own and read each of the votes to me. All five voted for dismissal, giving various reasons. I advised [the chairperson] to retain the ballot papers and to ask the board of management members to keep the decision confidential."

25. By letter dated 16th March, 2018, the applicant was informed of the outcome of the disciplinary investigation. In his letter, the chairperson outlined the general background to the investigation and informed the applicant that the Board of management had met on 14th March, 2018, in order to cast a vote on the outcome of the disciplinary hearing. There was no mention of the meeting held on 5th March, 2018. She was informed that the decision of the Board had been reached by secret ballot process which had been overseen by Julie O'Leary B.L. via Skype. Having identified the members of the Board who were entitled to cast a vote, the chairperson continued:

"I write to confirm that the outcome of such secret ballot was five votes stating that your employment be terminated with zero votes stating anything to the contrary. Each member of the board was asked to include a reason for the decision made by them and the wording of each anonymous decision is set out hereunder verbatim:

1. *Dismissal – after hearing the witness and reading the report I am of the view that [named redacted] should be dismissed for gross misconduct, I believe the complaint to be accurate.*

2. *I have listened to all of the evidence and because of that my vote is dismissal. Because the children in case have blossomed since.*

3. *Having listened to the various points put forward and take them points into account with regret I vote for dismissal.*

4. *Dismissal. From the hearing and report I find there to be grounds of gross misconduct.*

5. *Dismissal. Believe not.*

Consequently, it is the decision of the board of the management of [name of school] to notify you of its intention to terminate your employment by reason of gross misconduct."

26. The letter went on to inform the applicant of her right to appeal to the disciplinary appeals panel.

27. The applicant exercised her right to appeal to the disciplinary appeal panel and both she and the respondent submitted comprehensive further submissions to them. The DAP held an oral hearing on 6th June, 2018. On 13th June, 2018, the DAP came to a number of unanimous conclusions which were critical of various aspects of the disciplinary procedure carried out by the respondent. Their conclusion was that a case had been established by the principal. They recommended to the respondent that the applicant should be reinstated to her position as principal with immediate effect.

28. Finally, by letter dated 27th June, 2018, the five members of the respondent who had voted to dismiss the applicant, set out their reasons why they were rejecting the recommendation of the DAP. This letter contained a detailed statement of the reasons why the respondent was rejecting the recommendation of the DAP. It ran to five typed pages.

Summary of Allegations and the Applicant's Response Thereto

29. As already noted, the SNA made a total of approximately 17 allegations against the applicant in relation to child A and approximately 6 allegations in relation to child B. It is not intended to set out each of these allegations and the applicant's response thereto, but instead to give a brief summary of some of the more major allegations, together with the applicant's response to those allegations and surrounding evidence on the matter, for the purpose of demonstrating the disputed issues of fact on which the respondent had to reach a decision before it could come to the conclusion that the applicant should be dismissed. This is relevant in relation to the core argument made on behalf of the applicant to the effect that the respondent's decision to dismiss her is bad in law due to the fact that they did not state any, or any adequate, reasons for the dismissal.

30. Perhaps the most serious allegation made by the SNA was to the effect that on one afternoon, when the children were in the hall preparing for a flag acceptance ceremony, which was to take place two days later, and while the SNA was in the adjoining junior room doing some laminating of documents, she stated: *"[a]ll I could hear from [child A] for the entire 30 minutes was stop, you're hurting me, let go"*. The SNA stated that later when they were in the classroom the child came to her and said that *"teacher hurt her*". The SNA told the child that she must tell her mother if someone hurt her.

31. In her response to that allegation, the applicant denied the allegation completely. She stated that it was absolutely implausible to suggest that when she was in the hall with 16 other pupils and two other teachers, being the second teacher and the learning support teacher, that she could have physically assaulted or hurt child A. She stated that she would never physically assault any child in her care. She further pointed out that the SNA was not even in the hall, but was in another room laminating documents. She doubted whether it would have been possible, given the location of the children in the hall and the general noise being made by them, and the location of the SNA at the laminating machine in the adjoining room, for her to have heard any such comment being made by child A.

32. At the disciplinary hearing, the SNA was asked why, if she had heard such comments being made over a 30 minute period, she did not go into the hall to investigate what was

been done to the child. She stated that she did not do so, as there were other teachers in the hall at the time. She confirmed that child A did not identify the applicant as the person who had hurt her, but she stated that when the child said "*teacher hurt me*", she was clearly referring to the applicant as she was the teacher.

33. Important evidence was given at the disciplinary hearing by the second teacher, who stated that she had been in the hall on the day in question, but did not see any physical abuse of child A, nor hear her making any complaint of being hurt. She further stated that she had heard child A saying words to the effect "*ow, you're hurting me"* on other occasions, when nobody was near her at all. She would make that comment whenever she did not like being told to do something, which she did not wish to do. The secretary/SNA also gave evidence at the hearing to the effect that child A would make such comments when she was told not to do something that she wished to do, such as when she was told not to go near the scissors.

34. In considering this allegation, the respondent also had the benefit of the plan of the school attached to the report furnished by Ms. Flynn. This showed that the children were at a distance of approximately 25 feet from their position in the hall to the door leading from the hall to the junior room. The SNA was stationed approximately 15 – 18 feet from the door at the far side of the junior room, where she was working at the laminating machine.

35. Finally, the applicant in her statement pointed out that in an interview which the SNA had with Ms. Flynn on 25th November, 2016, the SNA had acknowledged that child A "*can be wilful and saying 'you are hurting me'*". The applicant further pointed out that the second teacher had recalled during her interview with Ms. Flynn on 12th January, 2017, that she too had been accused by child A of hurting her on one occasion as they entered the school after lunch. The second teacher stated that child A was not being hurt; rather, she just did not want to go back into the school.

36. While it is not appropriate for this Court to tell the respondent how it should determine an allegation made against the applicant, it is entitled to point out that there was a significant body of evidence which tended to show that this allegation was without substance. The respondent had a duty to engage with that evidence in a forensic manner in order to reach a decision on whether the allegation was proven against the applicant.

37. Another allegation made by the SNA was that on Friday 9th October, 2015, she and the applicant and the learning support teacher took a number of children from the school over to an exhibition of their drawings, which was being shown in the village square. While they were looking at the paintings, the learning support teacher returned to the school. When it was time to return to the school, the children were put in pairs, with the SNA holding child A's hand at the front of the line and the applicant took up a position at the rear of the line. At one point as they were walking back towards the school, child A slipped her hand from the grasp of the SNA and ran ahead. The SNA ran after her and caught her. Child A did not want to hold the SNA's hand, but they went to look at some hens. She then passed child A to the care of the applicant. Child A was very vocal about

her displeasure at having her hand held. The SNA stated that when they returned to the school, the applicant later said to her that she would have to apologise to child A's mother because she had twisted the cuff of the child's cardigan and stretched the material. The SNA stated that child A was sitting at her desk crying. The SNA noted that the cuff of the cardigan had made red weals on the child's right wrist.

38. In response to that allegation, the applicant stated that the incident where child A ran away from the SNA had occurred in the manner described. She stated that it had been market day in the village that day and accordingly there was a lot of traffic. Child A had an aversion to having her hand held. For that reason, a strategy had been put in place whereby she would allow a teacher to hold the cuff of her cardigan rather than her hand. The applicant had held the cuff on the sleeve of the child's left arm. She had walked to the child's left between her and the traffic. She accepted that the cardigan had become stretched, due to the fact that the child had twisted her arm and tried to break away from her grasp as they returned to the school. She stated that she did make a comment about possibly stretching the cardigan to the SNA and that she would have to report that to the child's mother. She did so when the mother came to pick up the child at the end of the school day. The child's mother looked at the cardigan and said words to the effect that there was no need to worry about it. The applicant denied that she had held the cuff so tightly as to cause any red marks on the child's wrist.

39. In considering this allegation, the respondent had the benefit of a photograph attached to Ms. Flynn's report showing the path along which they walked back to the school. In addition, the members of the Board, being people from the local area, would have had knowledge of the volume of traffic on market day.

40. The fact that the applicant held the cuff of child A is not in dispute. The only question for the Board was whether the applicant held the cuff too tightly, such as to cause red weals on the child's wrist and, if such weals did exist, was this due to the teacher holding the cuff too tightly, or was it due to the child attempting to break free from her grasp.

41. The Board would also have to consider the safety aspects of this case. Child A was four years of age at the time. Being that age, she would have been of a height of approximately 1 – 1.2m. She had already run away from the SNA. If a child of that height emerges out from between parked cars, an oncoming car driver simply will not be able to see the child in time to brake. This would mean that if the child had run out from between parked cars, she would have been hit at whatever speed the car was driving at, that would probably have thrown her into the air, with a good chance that she would have struck her head against the road surface or the pavement. Given the child's age, she would likely have suffered a skull fracture, with possible consequential brain injury. Anyone who has seen the effects of an acquired brain injury on young people, as this Court has done in the course of its personal injury work, will know that the effects of such an injury can be both devastating and permanent.

42. In these circumstances, given the risk of such serious injury, many parents would probably prefer that if necessary, their child's cardigan cuff should be held tightly, rather

than allowing them to break free and suffer possible serious injury as a result of running away from the teacher. However, this again is a matter which had to be weighed in the balance when the respondent considered whether the applicant had been guilty of inappropriate behaviour on that occasion.

43. A further allegation arose out of an incident which was said to have occurred on 1st March, 2016, however the SNA later ascribed it to a different date. The SNA alleged that on 1st March, 2016, child A showed her her hand, which had "*four chunks out of it".* Upon questioning, the child stated that the applicant had done it to her. She stated that the applicant subsequently said to her that "*she had 'got caught' in her hand".* The SNA stated that later the applicant was photocopying, while the SNA was sitting at the computer next to her, when child A came up to the applicant to show her a picture; she saw the applicant stand on child A's toes and demand that she sit down. In her later account concerning the same incident but ascribed to the week of 7th – 11th March, 2016, she stated "*I saw teacher 'stand on her toe and say get back to your seat'. I would like to say that the toe standing was an accident but I didn't hear any apology and I do feel it was on purpose*". In a later account, the SNA stated that having stood on child A's toes, the applicant then proceeded to kick the child's foot away.

44. In her response, the applicant stated that she recalled the morning of 1st March, 2016, very clearly. She stated that child A had been playing in the yard with two sticks, which the applicant told her to put away as they were sharp. Child A was not happy about this, but she did as she was told. They then came in out of the yard and the children were put tracing pictures of the local area. Child A selected a difficult picture to trace over. For this reason, the applicant stated that she sat down beside her to help. While child A held the tracing paper in place with her left hand and traced over the drawing with a pencil in her right hand, the applicant helped her by holding the top of the pencil.

45. The applicant stated, child A "*suddenly turned to tell me something and my broken nail on my little finger on my right hand lightly rubbed against the back of her right hand causing a faint white mark which faded immediately. I said sorry and asked if she was okay. She said she was. There was no scratch, and the skin was not broken. I asked if I could finger – kiss her hand better. She said 'yes' I kissed my index finger and placed the kiss where the faint mark had been. By this time, it had faded completely. We continued to trace. [Child A] got upset when I got up to check on the other children as she couldn't complete the tracing without me."* The applicant further pointed out that the SNA had been inconsistent in her allegation, both in relation to the date when it was alleged to have occurred and in relation to the alleged injury to the child's hand, which she variously described as "*chunks out of the hand*" and "*five scratches to the hand*".

46. In relation the allegation that she had stood on the child's toes, the applicant stated that the SNA had most unfairly misrepresented what had happened on 1st March, 2016. She stated that the photocopier was in the administration part of the classroom. She was unaware that the child had come up behind her and she accidentally stepped back onto the toe of the child's shoe. She stated that she immediately turned around to her,

concerned that she might be hurt, and said sorry and asked if she was all right. The child nodded. She told her to sit down and that she would come to her. She stated that she had not stood on the toe of the child's shoe on purpose. It was purely an accident. She did not know that the child was standing behind her.

47. The applicant stated that she was taken aback to read the further allegation, which was not contained in the original statement provided by the SNA, but was stated in her interview with Ms. Flynn on 25th November, 2016, to the effect that she had kicked the child's foot sideways. She stated that she rejected that allegation completely. She took great exception to the allegation that she would kick a child. She stated that she had never kicked a child and would never do so. She could not understand why, if the SNA had seen her allegedly kicking the child's foot on 1st March, 2016, she did not include that in her statement furnished on 25th March, 2016, but waited until November 2016 to raise it for the first time in her interview with Ms. Flynn. Again, these were matters which had to be addressed by the respondent when deciding upon the validity of this allegation.

48. The SNA made a further allegation that child A had been mistreated by being forced to stand during her lunch break on a number of occasions and that her chair had been removed, which would have been a very embarrassing and hurtful experience for the child, as she would have been in full view of all the other children, who were sitting eating their lunches. In response, the applicant denied that the child had been standing on the three dates alleged. She stated that on one occasion, the child had been standing for a portion of her lunchbreak, but this had been at the request of the child herself. The applicant stated that when she left the room to do an errand, she told the SNA that child A was standing of her own volition, but that she was not being punished and she could sit down whenever she wanted. She stated that she was somewhat surprised when she returned to the room 10 minutes later to find the child still standing. The applicant stated that she had removed the chair, but she had done so for safety reasons, as child A tended to swing on the chair, thereby putting herself at risk of falling over. That was the evidence on this allegation.

49. The SNA further alleged that on one occasion when she was on yard duty with the applicant, she saw child A fall off a small wall on which she had been walking. She stated that she fell into rose bushes and appeared to be hurt. She stated that when she indicated that she would go to the child's assistance, the applicant stated that she should leave the child be, as she would be looked after by the older children.

50. In response, the applicant stated that child A had in fact fallen off a very low wall measuring some 18 inches in height. The respondent would have been familiar with the locus and they also had the benefit of a photograph of the wall attached to Ms. Flynn's report. The applicant stated that the child did not fall into rose bushes, which were some distance away from the wall and could be clearly seen in Ms. Flynn's photograph. She stated that the child did not cry and was not hurt. Other older children went over to see if she was all right. This was something that the teachers encouraged, as it fostered a caring attitude by the older children towards the younger children.

51. The SNA alleged that the applicant gave negative reports about child A to her mother at pickup time and as a result she feared that the child would be put under excessive pressure at home. However, in cross-examination at the disciplinary hearing, the SNA accepted that she had never been present at pickup time and therefore had not heard any conversations passing between the applicant and child A's mother. In her statement, the applicant stated that she had indeed had regular conversations with child A's mother at pickup time. She would report to the mother how her child had got on that day. However, she denied that she had ever deliberately given bad reports of the child, so as to cause the child any undue difficulties at home.

52. In another allegation, the SNA alleged that on one occasion when child A did not eat cheese which had been part of her packed lunch, the applicant had retrieved the cheese from the food waste bin and the child had been "*force fed*" the cheese. However, in cross-examination, the SNA accepted that she had not actually seen the child being fed the cheese, nor had she seen her eating it. In her responding statement, the applicant stated that she had indeed retrieved the cheese from the food waste bin; she had packed it in tinfoil and had placed it in the child's bag, so that her mother would know what food she had eaten during the day. She had done this as her mother had asked that she be kept informed as to what food the child did or did not eat, and in particular she was anxious that the child would be adequately hydrated during the day. The applicant went on to state that at pickup time she spoke to the child's father and told him that she had not eaten the cheese. He expressed surprise at this, as it was one of child A's favourite cheeses. The applicant stated that the cheese had never been consumed, much less "*force fed*" to the child on that occasion.

53. The SNA made a further allegation that the applicant tended to make comments to the class in general, which caused them to dislike child A. An example of such comments was when the applicant told the older children to sit down, because they were giving child A bad example, or that they should stop doing a particular thing because that was what child A did and she was very young. The SNA alleged that as a result of this, a *"pack mentality*" grew up among the children whereby they tended to blame child A, or dislike her as a result of these comments. In response, the applicant pointed out that even in her own statement, the SNA had contradicted herself, when she had stated "*these children are so kind to each other*". She further pointed out that in the Whole School Evaluation report of 2014 (hereinafter the "*WSE*" report), the inspector had stated that the children were "*courteous and well behaved*". He also noted that there was a "*familial atmosphere*" in the school. The applicant denied that she had ever made any comments which would have caused the other children to dislike, or resent child A.

54. In a further allegation, the SNA alleged that on one occasion when the school was being visited by a religious person, the applicant had demanded that child A leave the classroom and was brought to walk the hall with her. She stated that after some time the applicant and child A returned to the classroom. The applicant then said to the SNA that she knew that child A would hate that.

55. In her response, the applicant stated that she had indeed removed child A from the classroom on that occasion, as she was fidgeting and beginning to make noise. As she was only five years' of age at that time, the applicant felt it better to bring her out and allow her to run off a little steam, so that she could return to the class and sit quietly. She stated that she whispered to the child that they would go to the hall for a bit of fun. They then left the classroom and went to into the hall where the child was able to run around for a little while. They then returned to the classroom and the child was able to sit quietly and indeed was complimented on doing so by the visitor. She denied that she made any such comment as alleged by the SNA.

56. Finally, there were two further allegations which, while not serious in themselves were deserving of the Board's attention. In the first, the SNA alleged that the applicant told her on one occasion when they were in the yard, that child A had "exposed herself to the other children". When she asked what "exposed" meant, the applicant said that child A had urinated on the playing field. The SNA asked the applicant whether she was going to explain to child A that such conduct was not in the school rules. The SNA stated that when the applicant replied "no", she had a conversation with child A, wherein she explained the necessity of using the toilets in the school.

57. In response, the applicant stated that the account given by the SNA entirely misrepresented what had happened. She denied that she had ever used the term "exposed", either on the day alleged, or on any other day. She stated that that word had negative connotations and was a totally inappropriate word to use to describe an innocent toileting incident. She stated that the incident occurred early in the school year, perhaps within the first three or four weeks. During the first weeks in the school year, the junior infants are instructed about the necessity of using the toilets in a correct manner. They are reminded and encouraged to go to the toilet throughout the day so as to prevent accidents.

58. On the day in question, one of the older pupils came down the steps from the pitch area and informed the applicant that child A had pulled down her tights and pants and had urinated on the pitch. She then pulled them back up and ran off to play. The applicant stated that she made a judgment call not to intervene immediately, as she could see that child A had resumed playing happily and was oblivious to the incident. As the older child had reported that child A had pulled down her clothing first, she knew that there was no wetting issue and therefore no change of clothes was needed. As it was almost time to call the children back in from yard, the applicant decided to wait until later to speak to child A privately after they had returned to the classroom, so as to save her embarrassment. She did not document the incident, as she felt that it would have been unfair to demonise a child for getting *"caught short"* while in the playground. The applicant stated that, while they were in the yard, the incident was discussed a few moments later with the second teacher and the SNA, who had been on yard duty. The SNA offered to talk to child A. The applicant stated that she thanked the SNA, but declined the offer as she was not assigned as SNA to child A. It was the applicant's responsibility, as her teacher, to have that conversation. She told the SNA that she would

speak to child A later. She stated that she subsequently had a conversation with child A about the incident later in the day, when they were back in the classroom.

59. That allegation, did not involve any alleged inappropriate behaviour towards a child, it was the SNA criticising the applicant for words allegedly used by her in a private conversation between her and the applicant, together with an allegation that she had told the SNA that she would not speak to the child herself. The applicant denied the use of the word, but accepted that she had told the SNA that she was not going speak to the child at that time, but did so later. It was for the Board to consider whether that allegation amounted to serious misconduct or inappropriate behaviour on the part of the applicant and if not, they would have to consider the motivation of the SNA for making the allegation.

60. The second somewhat minor allegation was to the effect that the SNA had heard it said about a particular child, that owing to particular circumstances involving the child's parents, one could not expect much from the child. The comments made of the parents were highly derogatory. The SNA went on to state that it was not the applicant who had made that comment, but she stated that as principal, she would have expected that there would have been a policy of privacy for children. She continued, "*from the Bishop down derogatory comments are made on a regular basis*". While this was not an allegation directed against the applicant, the Board may have considered it somewhat alarming that the SNA was alleging that a number of unidentified people *"from the Bishop down*", were making derogatory comments about parents and pupils on a regular basis. The making of such a wide ranging and extraordinary allegation, may have given the Board pause for thought when considering the accuracy and validity of the other allegations made by the SNA.

61. The SNA also made a number of allegations in relation to child B. She stated that he had been kept in to work on a very regular basis and was asked to do work which only a secondary school student could do. The applicant denied this. She stated that the work which had been set for child B had come from the standard third class text book. She stated that while he may have been delayed going out on lunchbreak on a few occasions, this was not by way of punishment, but was because he was a little slow at working and would become frustrated if he could not finish his work. In order to allow him to do so, he was permitted to remain in the class for a short period to enable him complete the work. She stated that this was never longer than 10 minutes. In relation to the allegation that the child had been kept in three days of each week at lunchtime for not doing his homework, the applicant stated that that allegation was entirely untrue. She stated that child's mother was very supportive and would sit with him every afternoon and supervise him as he did his homework. There was never any issue with his homework not being done.

62. A further allegation by the SNA, which to some extent was supported by the interview of the learning support teacher with Ms. Flynn, was to the effect that child B was left to do work which was too difficult for him and was unexplained. Again, the applicant denied

that allegation, pointing out that he was only ever given work suitable to a third class student. She stated that in fact, child B's work was "*differentiated considerably*" to take account of his slower work rate. She did not understand how the learning support teacher could have given the opinion that the work was not properly explained to child B, as she had not been in the classroom when the applicant was teaching the children and explaining the work. Accordingly, she would not have heard all of the applicant's interactions with the pupils and therefore could not state that the work had not been properly explained to child B. She pointed out that the learning support teacher would only very briefly visit her classroom for the purpose of collecting and dropping off pupils, as she was timetabled to teach the learning support pupils in another room upstairs.

63. The SNA further alleged that before Christmas it was common for the applicant to say to the children "*eat up or [child B] will eat your lunch as well*". The SNA stated that this was particularly inappropriate, as it was known that child B had a problem with obesity. In response, the applicant stated that she had never at any time said anything about child B eating the other pupils' lunches. She stated that the allegation was totally and utterly without foundation. She stated however, that as part of general banter in the classroom, child B occasionally and jokingly said that he would eat the lunches of the other pupils if they couldn't finish their lunches. Even the other children knew that he was joking. She stated that no sharing of lunches was allowed in the school, as one of the pupils had diabetes. The applicant pointed out that the secretary/SNA had stated in her interview that she did not recall the applicant ever making any comments regarding child B eating anyone else's lunches. She pointed out that the secretary/SNA was in the classroom every day at lunchtime, except on Tuesdays.

64. The SNA alleged that on one occasion when they were icing buns in the kitchen, the applicant put her head around the door and accused child B of licking a bun. The applicant denied this and stated that she had seen child B standing just to the left near the sink, licking icing off the palm of his hand and fingers and then picking up another bun, accidentally touching the top of the bun with his licked palm. As the applicant was standing close to him, she whispered to him to be careful and instructed him to wash his hands before icing the next bun. She stated that in acknowledgment of this whisper, child B nodded and smiled at her.

65. The SNA alleged on one particular Wednesday, child B was made to translate from English into Irish for almost an hour. She stated that it was work that a secondary school student would find challenging. She further stated that on some occasions when other children were finished and were rewarded with a game, child B would be directed to do extra work to make sure that he knew what he was doing and did not get to play. She stated that when she praised child B's writing, the applicant told the whole class and her, that he did not have good writing all the time.

66. The applicant denied that those allegations were true. She stated that Irish class lasted for a maximum of 35 minutes daily; not nearly an hour as alleged by the SNA. On the particular date alleged, it had been a shorter lesson. She intended finishing by 10am, as

it was a review of three weeks' work and she wanted to reward the pupils' hard word with an extra playtime. In relation to the allegation that it was work suitable for a secondary school child, she stated that that was also untrue. She pointed out that the SNA was not a teacher and accordingly may not have been familiar with the standard of Irish appropriate for third class pupils. She outlined the lesson that was involved on that occasion and stated that it was appropriate for third class pupils. In relation to translating, the third class pupils were to translate four sentences which had been put on the board. Child B took an active part in translating the sentences orally that morning. It was not true that child B alone was asked to translate the four simple sentences. She stated that all the pupils in third class were doing the same work, which should have taken no more than 10 minutes as it had been pre-prepared orally.

67. There were also a number of general allegations of poor performance by the applicant in respect of the way in which she treated the children generally. It was alleged that the atmosphere in the school was not a pleasant one. In response to these somewhat vague allegations, the applicant referred to the WSE report compiled by the inspector in 2014 wherein he had stated as follows:

> *"The pupils are motivated, enthusiastic, courteous and very well behaved. […] pupils in this school are very well cared for and supported. The school has a close-knit, familial atmosphere and significant attention is devoted to the social, cultural and moral development of pupils. […] pastoral care provision is of a very high quality and there is an inclusive environment within the school. […] the principal, with the assistance of the deputy principal, builds a positive environment for teaching and learning and promotes a high level of pastoral care. The overall quality of teaching in this school is good. Teachers are experienced and talented and they demonstrate a keen awareness of the need to differentiate their teaching to accommodate the wide variety of abilities in their multi-grade classes."*

68. Finally, it was submitted on behalf of the applicant that she had had a thirty-year unblemished teaching record, with twenty of those years in the school. There had never been any parental complaint lodged against her, either in relation to any other students, or in relation to child A or child B. Given that the parents of both child A and child B appear to have taken a keen interest in their children's development, the Board might have thought it significant that none of the parents had raised any concerns with the school about any inappropriate behaviour or mistreatment of their daughter or son by the applicant. It was further submitted that the Board should have regard to the fact that Tusla had investigated the matter and had closed their files without any further action.

Conclusions

69. It is important to bear in mind that this Court is not sitting as an appeal against the decision made by the respondent to dismiss the applicant, which decision was made on 14th March, 2018 and communicated to the applicant by letter dated 16th March, 2018. This Court is only concerned with whether the process which lead to that decision is good at law and whether the subsequent action of the respondent in rejecting the recommendation of the DAP, is also good at law. It has been submitted on behalf of the

applicant that the process that was engaged in by the respondent which led ultimately to her dismissal in March, 2018, was fundamentally flawed in a number of respects. In giving its conclusions on the matter, the Court will deal with each of these submissions in turn.

70. Firstly, it was submitted on behalf of the applicant that the respondent was wrong to invoke the Stage 4 disciplinary procedure provided for under circular 60/2009 at the outset. It was submitted that having regard to the provisions of that circular and in particular to the general principles outlined therein, which provided that early intervention at the appropriate level should be adopted and that every effort should be made to resolve any shortcomings that there may be in the work or conduct of a principal through informal means, the respondent ought to have adopted one of the less formal disciplinary procedures set out in that circular, rather than proceeding immediately to a Stage 4 disciplinary process.

71. In the alternative, it was submitted that even if the respondent was justified in adopting the Stage 4 disciplinary process initially, any such justification was removed as and from September, 2016, when the response was received from Tusla, that having conducted their investigation, they saw no further need to be involved and were closing their files. It was submitted that at that stage, in view of the fact that a designated statutory authority, which was specifically mandated and equipped to investigate and look after the safety and welfare of children, had found that there was effectively no case to answer in relation to child safety, the respondent ought to have downgraded its disciplinary procedure to one of the less formal measures provided for in circular 60/2009.

72. Section 24 (3) of the Education Act, 1998 provides, *inter alia*, that the Board of Management may suspend or dismiss teachers and staff in accordance with the procedures agreed from time to time between, the Minister, the patron, recognised school management organisations, and any recognised trade union and staff association representing teachers or other staff as appropriate. Circular 60/2009 was a product of such agreement. It was headed *"Revised Procedures for Suspension Dismissal of Principals*". Under the section dealing with disciplinary procedures for principals, a range of disciplinary procedures in ascending order were provided for as follows: informal stage, verbal warning, written warning, final written warning, and Stage 4. The Stage 4 procedure was designed to be used where either the poor work or conduct on the part of the principal had continued after a final written warning had issued, or the work or conduct at issue was of a serious nature. The circular went on to provide that a report would be prepared by the chairperson of the Board which would be forwarded to the Board of Management. A copy was to be given to the principal. The Board of Management were to consider the matter; were to seek the views of the principal in writing and were to afford the principal an opportunity to make a formal presentation of his/her case. This was to be done by means of a disciplinary hearing, at which the principal could be accompanied by his or her trade union representatives. The principal was to be given an opportunity to respond and to state his or her case fully and to challenge any evidence that was being relied upon for a decision.

73. The circular provided for a range of sanctions as follows: deferral of an increment; withdrawal of an increment or increments; demotion (loss of principal's allowance); other disciplinary action short of suspension or dismissal; suspension (for a limited period and/or specific purpose) with pay; suspension (for a limited period and/or specific purpose) without pay; and dismissal. The circular provided that the Board of Management was to act reasonably in all cases when deciding on the appropriate disciplinary action. The nature of the disciplinary action should be proportionate to the nature of the work or conduct issue that had resulted in the sanction being imposed. The circular further provided that in cases of serious misconduct at work or a threat to health and safety of children or other personnel in the school, the stages outlined in the circular do not normally apply and a principal may be dismissed without recourse to the previous stages. It was further provided that if the investigation upheld a case of serious misconduct, the normal consequence would be dismissal.

74. In response to the submission made on behalf of the applicant, it was submitted on behalf of the respondent that having regard to the serious nature of some of the allegations made by the SNA against the applicant in her written statement furnished on 25th March, 2016, it was reasonable for the respondent to deem those as being allegations of serious misconduct, such as would warrant proceeding directly to a Stage 4 disciplinary process.

75. In relation to the alternative submission on behalf of the applicant, it was submitted that the fact that Tusla had closed its investigation and its files in September, 2016, did not relieve the respondent of its duty of care towards the children in the school and its duty to investigate the allegations contained in the SNA's report. It was submitted that the respondent could not outsource its moral and professional duty to investigate the matter to Tusla and simply close down or scale back its investigation merely because Tusla had decided that the allegations did not reach the threshold required for further action by them. It was pointed out that the Board of Management was unaware of what investigations had been carried out by Tusla, or of the exact threshold below which they deemed further action as being unnecessary. It was submitted that as the procedure provided for under Stage 4 was a comprehensive and fair procedure, there was no prejudice to the applicant, in the respondent choosing to initiate that procedure and continuing with it notwithstanding the Tusla response of September, 2016.

76. The Court is of the view that when the chairperson was presented with the verbal allegations on 22nd March, 2016 and with the written statement from the SNA on 25th March, 2016, those allegations were of sufficient gravity, that the respondent could reasonably come to the view that a Stage 4 investigation was appropriate. One has to remember that on its face, there was an allegation that child A had been heard to complain that she was being hurt over a thirty-minute period by a person, whom she subsequently identified to the SNA as being the applicant. Taken on its face, that was a very serious allegation of some form of physical abuse of the child. In these circumstances, the Court does not find that the respondent acted unreasonably in moving directly to a Stage 4 disciplinary process.

77. In relation to the submission that the respondent ought to have scaled down the disciplinary process upon receipt of the Tusla report, the Court is of the view that the submissions made on behalf of the respondent in this regard are correct. The respondent could not outsource its own moral and legal responsibility to investigate serious allegations, to Tusla. While the fact that Tusla had carried out an investigation and had found nothing that merited further involvement by them was undoubtedly a significant fact, it did not absolve the respondent from its own responsibility to investigate the allegations which had been raised by the SNA. The procedure provided for under the Stage 4 disciplinary process was a comprehensive and fair procedure. The Court does not criticise the respondent for continuing to follow that procedure in this case.

78. The second area of complaint by the applicant was in relation to her suspension. It was submitted that having regard to the very real negative personal and professional consequences of being suspended during an investigation, as identified by Noonan J. in *Bank of Ireland v. Riley* [2015] IEHC 241 and by Hogan J. in *Wallace v. The Irish Aviation Authority* [2014] IEHC 431, it was unreasonable and unnecessary for the respondent to have placed the applicant on administrative leave as and from 6th April, 2016. It was submitted that having regard to the overall nature of the allegations made by the SNA against the applicant, it was unnecessary and unreasonable to place her on suspension at that time. It was pointed out that the applicant has remained suspended since 2016 to the present time, which along with her dismissal in March, 2018, has had a serious adverse effect on both her life generally and on her mental health.

79. In response, it was submitted on behalf of the respondent that having regard to the nature of the allegations contained in the SNA's statement, which on their face were serious allegations of misconduct and abuse towards two of the young children in her care, it was not only reasonable, but necessary, that the applicant should be placed on administrative leave. It was pointed out that in their initial letter, Tusla upon referral of the complaint, had advised that the necessary child protection measures be put in place. It was submitted that in placing the applicant on administrative leave pending the investigation of the matter, the respondent was doing no more than complying with their obligation to put sufficient measures in place to ensure the safety of the children in their care.

80. The Court is of the opinion that the issue of whether the respondent acted reasonably and lawfully in placing the applicant on suspension while the matter was being investigated, has to be viewed not with the benefit of hindsight, but through the prism of the alleged facts as they were at the time that the complaint was made by the SNA in March, 2016. As already noted, the allegations made against the applicant were, on their face, serious allegations including: hurting child A over a period of thirty minutes; causing red weals to appear on one of her wrists; causing chunks to be taken out of one of her hands; and making her stand for periods during her lunch break. In relation to child B it was alleged, *inter alia*, that the applicant had treated him very unfairly, made him do work that was inappropriate to his age and educational status, and had made derogatory comments about him. The Court accepts that it was not possible for the respondent to come to any

conclusion at that time as to whether these allegations were well founded or not. All it could do was deal with what was presented to it, which was a relatively detailed statement of complaint, containing numerous allegations against the applicant, which was made by an SNA of considerable experience. In these circumstances, the Court is of the view that it cannot be said that the respondent's decision to place the applicant on administrative leave was unreasonable, notwithstanding the fact that that by so doing, the applicant was caused to suffer considerable stress and upset.

81. It was also submitted on behalf of the applicant that the report furnished by Ms. Flynn was grossly deficient because it was characterised by the respondent as being a full investigation, whereas in fact it was nothing of the sort; it was merely a fact gathering exercise. In this regard, the Court has reached two conclusions: firstly, the applicant has no cause for complaint in relation to the actual content of Ms. Flynn's report. This was due to the fact that her union representative had specifically written in advance of Ms. Flynn conducting her investigation, stating that on no account should she express any views, make any findings or make any recommendations in relation to the matter. In these circumstances, the fact that her report is effectively a summary of various interviews, the full content of which was set out in the appendices to the report, together with certain ancillary documents such as a plan of the school and photographs of the wall in the yard and of the street in the village, is not a matter on which the applicant has any legitimate grounds for complaint.

82. Secondly, while there is perhaps some validity to her complaint that the respondent could not refer to Ms. Flynn's report as being a full investigation of the matter, it seems to the Court that this is but a dispute as to the description of her report. It was indeed a comprehensive report in that she interviewed most of the relevant parties. Although in this regard, it is perhaps surprising that she did not seek to interview the parents of either child A or child B, whom one might have thought would have had very valuable evidence that may have either corroborated the allegations, or contradicted them. Be that as it may, the Court is satisfied that there is no real complaint that can be lodged against Ms. Flynn's report.

83. The applicant also had a number of complaints in relation to the disciplinary hearing held on 21st February, 2018 and the decision making process engaged in by the Board thereafter. It was submitted on behalf of the applicant that the Board in some way misconducted itself by failing to ask her any questions arising out of her very lengthy statement, which she read out to the Board over two hours at that hearing. The Court is of the view that the applicant does not have any legitimate complaint in relation to the conduct of the disciplinary hearing. The procedure was clearly set out by the chairperson in correspondence with the applicant's union representative well in advance of the hearing. The applicant had more than adequate notice of the allegations which were made against her, as these were set out in the statement made by the SNA and in the interviews which the SNA had given to Ms. Flynn. The applicant also had copies of the other interviews carried out by Ms. Flynn. At the hearing the applicant's union representative was given an opportunity to make an opening statement, she was then

given an opportunity to cross-examine the SNA, which she did for approximately two hours. The applicant was then given the opportunity to call witnesses, which opportunity she took by calling the second teacher and the secretary/SNA. Finally, the applicant was given the opportunity to give evidence on her own behalf. She did this by reading her statement, which took approximately two hours.

84. When one considers that the Board of Management is made up of lay people, who do not have any legal qualifications or experience, nor any experience of acting in a quasi-judicial or adjudicative role, and having regard to the fact that they had sat through a lengthy hearing of approximately 6.5 hours, I do not think it was unreasonable for them not to ask any questions of the applicant, given that she had delivered a very comprehensive statement on her own behalf. Furthermore, the respondent was under a duty to act impartially as the decision maker and as such, they may not have wished to have been seen to be biased by questioning the applicant. In these circumstances, the Court is entirely satisfied that the disciplinary hearing held on 21st February, 2018 was conducted in an exemplary manner.

85. The applicant also complained about the fact that the ultimate decision to dismiss her was reached by reason of a secret ballot of the five members of the Board at a meeting held on 14th March, 2018. The circumstances surrounding that meeting have been outlined earlier in the judgment. The chairperson had previously indicated to the applicant's union representative that the decision of the Board would be reached by a secret ballot of the individual members. This was done so as to prevent any intended, or unintended coercion, or influence being exercised by any of the Board members on any of the other members of the Board. The applicant or her union representative did not object to the holding of a secret ballot. In the circumstances, while it may be seen as a somewhat unusual way of reaching a decision, I do not think that the fact that it was done by means of a secret ballot is of itself a cause for complaint.

86. Overall, the Court is satisfied that up to, and including, the disciplinary hearing, the respondent acted in a rational and fair manner. The Court was particularly impressed by the conduct of the chairperson of the Board. He treated the applicant and her union representative in an entirely fair and appropriate manner. He kept the applicant fully informed at each stage of the process. He engaged with her union representative in a fair and transparent way. His conduct throughout was exemplary.

87. I turn now to the central ground of complaint made by the applicant in relation to the decision to dismiss her. Put simply, the applicant submits that there is no evidence that the respondent ever engaged with the issues surrounding the allegations made against her by the SNA. In particular, it was submitted that there was no evidence that the Board had sat down and discussed and evaluated either the evidence against the applicant, or her own response in relation to the allegations, nor the supporting evidence that she had called on her behalf.

88. The Court is concerned by the fact that there are no minutes, nor any record of a meeting of the respondent being held at which they sat down and considered all of the evidence

that had been presented to the Board, which comprised of: the statements furnished by the SNA and the applicant; the interviews and report furnished by Ms. Flynn; the oral evidence given at the disciplinary hearing; the WSE report of 2014; and the applicant's unblemished teaching record in the school. The Court has only been furnished with two sets of minutes concerning meetings of the Board held subsequent to the holding of the disciplinary hearing. The first of these was described as a "*short meeting*" held on 5th March, 2018. The Court is satisfied that there was no discussion or evaluation of the evidence in relation to the allegations at that meeting. The Court has reached this conclusion for a number of reasons: firstly, the minutes made it clear that the chairperson was awaiting receipt of further documents from the applicant. It does not appear that the respondent could have embarked on a consideration of the issues until it had received all relevant documentation. Secondly, the second teacher was present at that meeting and it was common case that she was not present at any meetings at which the allegations were considered by the Board. Thirdly, the fact that it was described as being a short meeting, indicates that no substantive discussion or deliberation on the allegations was held at that time.

89. In relation to the meeting held on 14th March, 2018, it seems reasonably clear from the minutes provided, that there was no deliberation on the substantive allegations at that time. It would appear from these minutes when read in conjunction with the memo furnished by Ms. Julie O'Leary B.L., who had participated in the meeting via skype, that it was purely for the purpose of holding the secret ballot of those members of the Board who were eligible to decide whether the allegations were proven and, if so, what sanction should be imposed. Again, the second teacher was recorded as attending that meeting; therefore it was unlikely that there was any discussion or deliberation on the allegations at that time. The Court is satisfied that that meeting was purely for the purpose of the casting of the secret ballot by the eligible members of the Board.

90. In these circumstances, the Court is very concerned by the fact that there does not appear to have been any meeting of the respondent at which the Board members sat down and considered all the evidence that had been presented to it. There is certainly no evidence, either documentary or otherwise, of any such meeting having taken place. If it were the case that the individual members of the Board, who were eligible to consider the allegations and vote on the sanction, went off and considered all the evidence on their own, without any collective discussion on the evidence or on the sanction, that would appear to be contrary to the very idea that the decision was to be made by the Board. At the very least there should have been some collective discussion and deliberation among them of the evidence and of the sanction, even if the ultimate vote was going to be done by way of individual secret ballot. The reason why there should be a collective deliberation, is due to the fact that these are people who are brought together from various walks of life, who have little or no experience of this type of adjudication. In these circumstances, a frank exchange of views and discussion among them would go a long way towards ensuring a considered decision. There is no evidence that that took place in this case.

91. The applicant makes a more fundamental complaint in relation to the decision making process engaged in by the respondent which led to her dismissal. She states that the decision to dismiss her is fundamentally flawed by virtue of the fact that no adequate reasons were given as to why she was being dismissed. The only reasons that she was given were the five extremely short and vague reasons set out in the chairperson's letter to her dated 16th March, 2018. She was not told whether all the allegations against her were deemed to have been proven, or if not, which of the allegations had been found against her. There was no evidence of any engagement by the respondent with the formidable body of evidence that had been led by her in response to those allegations. The nature of that evidence has been outlined in detail earlier in this judgment and it is not necessary to repeat it. In short, it was submitted that the applicant does not know what serious misconduct she was found guilty of and which it is alleged by the respondent to justify its decision to dismiss her.

92. It was submitted on behalf of the applicant that it is now well established in Irish law that there is an obligation on persons and bodies who are making decisions that fundamentally affect the lives and employment of other persons, to give adequate reasons for their decisions. The Court was referred to the decision in *Mallak v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 297, where Fennelly J., giving the judgment of the Supreme Court stated as follows:

> *"In the present state of evolution of our law, it is not easy to conceive of a decision-maker being dispensed from giving an explanation either of the decision or of the decision-making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."*

93. The Court was also referred to the decision of the Court of Appeal in *Bank of Ireland v. Heron* [2015] IECA 66 where Kelly J. (as he then was) stated:

> *"For many years the Superior Courts have held that administrative bodies making judicial or quasi judicial decisions must give reasons for so doing. Such bodies must satisfy the criteria identified by Murphy J. in O'Donoghue v. An Bord Pleanála [1991] ILRM 750 where he said in the context of a decision given by the Planning Board that it: '. . . must be sufficient first to enable the courts to review it and secondly, to satisfy the person having recourse to the Tribunal that it has directed its mind adequately to the issues before it.'"*

94. The Court was also referred to the decision in *EMI (Records) v. The Data Protection Commissioner* [2013] IESC 32, where Clarke J. (as he then was) stated:

"Legal certainty requires, as was pointed out in Christian, that it must be possible to accurately determine what the reasons were. There should not be doubt as to where the reasons can be found. Clearly, an express reference in the decision itself to some other source outside of the decision document meets that test. Where, however, it is suggested that the reasons can be found in materials outside both of the decision itself together with materials expressly referred to in the decision, then care needs to be taken to ensure that any person affected by the decision in question can readily determine what the reasons are notwithstanding the fact that those reasons do not appear in the decision itself or in materials expressly referred to in the decision.

Where, for example, an adjudicator makes a decision after processing which both sides have made detailed submissions it may well, as Fennelly J. pointed out in Mallak, be that the reasons will be obvious by reference to the process which has led to the decision such that neither of the parties could be in any reasonable doubt as to what the reasons were. But it seems to me that, in a case where any party affected by a decision could be in any reasonable doubt as to what the reasons actually were, it must follow that adequate reasons have not been given."

95. Finally, Mr. Ward S.C. on behalf of the applicant referred to the recent case of *Nano Nagle School v. Daly* [2019] IESC 63 where the Supreme Court held that while the Labour Court had carried out an investigation that was in many respects extremely thorough and meticulous, nevertheless there was no doubt that significant and relevant evidential material was not recorded or evaluated. The Court stated at paragraph 74:

"A tribunal, or other decision-maker which is under a duty to give reasons for its decision, should, as part of this process, give some outline of the relevant facts and evidence upon which the reasoning is based. This does not in any sense, mean that a determination must set out all of the evidence; but it should set out such evidential material which is fundamentally relevant to its decision or determination; still more if such relevant evidence is not disputed. Obviously, the test as to the issue of materially [sic] must be fact-specific, and dependent on the circumstances."

96. It was submitted on behalf of the applicant that having regard to the very clear duty at Irish law for decision makers to clearly state their reasons for reaching a particular decision, the respondent in this case had fallen far short of that requirement in giving the terse, vague and almost incomprehensible reasons that were furnished to the applicant in the letter of 16th March, 2018.

97. It was further submitted that as the sanction imposed was the most serious sanction available, the very least that the applicant could expect was that she would be told which of the many allegations that had been made against her, had been deemed to have been established by the respondent and as a result of which they had reached the decision that dismissal was the appropriate sanction. It was submitted that the respondent had not set out anything like adequate reasons to justify the dismissal of the applicant from the

position which she had held in the school for almost 20 years. On this basis it was submitted that the decision to dismiss her ought to be set aside.

98. In response to these submissions, it was submitted on behalf of the respondent that the Court should have regard to a number of matters. Firstly, the Court had to have regard to the entire content of the investigatory process that had taken place: commencing with the statement of allegations furnished by the SNA; the interviews and appendices contained in Ms. Flynn's report; the detailed statement of the applicant; and culminating with the extensive hearing carried out by the respondent on 21st February, 2018. It was submitted that the reasons set out in the letter of 16th March, 2018, had to be read in light of that voluminous documentation and evidence. When one looked at the totality of the process, it was submitted that it was very clear why the respondent had reached the decision which it did in the circumstances, which was to dismiss the applicant.

99. Secondly, it was submitted that in considering this aspect, one had to bear in mind that the Board of Management was made up of people who were drawn from many walks of life, who did not have any qualifications or experience in the law, nor any experience acting as adjudicators in a disciplinary process. It was pointed out that of the five members who were eligible to vote because they were not otherwise conflicted in the matter, one was a nominee of the patron of the school, two were parents' representatives on the Board and two were community representatives. In these circumstances, it was urged on the Court that it would be unreasonable to expect such people to produce anything like a judgment which would be produced by a Court or statutory tribunal. It was submitted that the applicant was made fully aware of all the allegations against her and was given every opportunity to deal with those allegations. The fact that she did not like the conclusion that was reached by the respondent, which was due to the fact that they simply did not believe her, did not entitle her to have their decision set aside.

100. In the course of his submissions, Mr. Kerr S.C. referred the Court to the Supreme Court decision in *Faulkner v. Minister for Industry & Commerce* [1997] WJSC-SC 162, where O'Flaherty J., giving the judgment of the Court, cautioned against any requirement that administrative tribunals should be obliged to give exhaustive reasons for their decision in the following terms:

> *"I would reiterate what has been said on a number of occasions, that when reasons are required from administrative tribunals they should be required only to give the broad gist of the basis for their decisions. We do no service to the public in general, or to particular individuals, if we subject every decision of every administrative tribunal to minute analysis."*

101. Counsel pointed out that the decision in the Faulkner case had been applied by Charleton J. (then a Judge of the High Court) in *GRA v. Minister for Finance* [2010] IEHC 78, see page 26 – 27 of the judgment.

102. Counsel also submitted that this Court must be careful not to act as a court of appeal from the decision made by the respondent. It was submitted that the Court's only role

was to ensure that the process which led to the decision to dismiss the applicant, had been carried out in a fair and reasonable manner. In this regard, counsel referred to the judgment of O'Donnell J. in *Ruffley v. Board of Management of St. Anne's School* [2017] IESC 33, where he stated as follows:

> *"The guarantee of fair procedures is based on the theory that if fair procedures are followed, a fair result will ensue, but there is inevitably a range of decisions which a reasonable decision-maker may take even if a judge on the same material would not make the same decision. A court exercising judicial review is not a court of appeal on the merits. A similar test is applied when reviewing the fairness of dismissals from employment."*

103. Counsel also referred to the dictum of Noonan J. in *Bank of Ireland v. Reilly* [2015] IEHC 241 where the learned Judge cautioned against the High Court on review substituting its own view for that of the employer:

> *"It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view, another quite reasonably take a different view. It is clear that it is not for the EAT or this court to ask whether it would dismiss in the circumstances or substitute its view for the employer's view but to ask was it reasonably open to the respondent to make the decision it made rather than necessarily the one the EAT or the court would have taken."*

104. It was submitted that having regard to the decisions in these cases, this Court was not concerned to enquire whether or not it would have reached the same decision as the respondent on the evidence that had been placed before the respondent, but rather whether the process leading to the respondent's decision was fair and whether the plaintiff had been afforded every opportunity to put her side of the case before the respondent. It was submitted that that had plainly been done in the elaborate investigative and adjudicative process that had been put in place by the respondent. It was submitted that it could not be argued that the applicant had not been given full notice of all the allegations made against her by the SNA and had been given every opportunity to put her defence to these allegations.

105. It was further submitted that in considering the adequacy of the reasons given by the respondent for the decision that it had reached on 14th March, 2018, as contained in the letter dated 16th March, 2018, one had to have regard to the entire process, which was a "*unitary process*" as described by Ní Raifeartaigh J. in *Sheehy v. Board of Management of Killaloe Convent Primary School* [2019] IEHC 456. While counsel accepted that the respondent might have given more fulsome reasons for the dismissal than it had done in its letter dated 16th March, 2018, it was submitted that when one looked at the entire process, together with the reasons stated in that letter, it was clear that the decision had been reached by the respondent to dismiss the applicant because they had not believed her response to the allegations made against her by the SNA. As this was a Board made up of ordinary people, it was unrealistic to expect them to produce anything like a

detailed written judgment justifying their decision to dismiss the applicant. It was submitted that when viewed in its entirety, the process and the decision to dismiss which resulted therefrom, were entirely lawful. In these circumstances, the Court should not quash the decision to dismiss which had been made by the respondent.

106. Having considered the submissions of counsel, the Court is satisfied that there is an obligation under Irish law for decision makers to set out adequately the reasons for reaching a decision, when such decision will have a far reaching and profound effect on the life and earning capacity of the person concerned. In this case, the decision to dismiss the applicant, who had 30 years of teaching experience, 18 years of which had been as principal in a school in a rural community, was of profound importance to her. Indeed, short of a conviction for an indictable offence, being dismissed from one's job is probably the most serious consequence that a person may have to face in their life. Being dismissed from her position as principal of a school in a small rural community was going to have a profound effect not only on the applicant's capacity to earn an income, but also on her general standing within the community. In these circumstances, at the very least, she deserved to know why she was being dismissed.

107. Where serious allegations had been made against the applicant and where she had led cogent evidence in response to those allegations, she was entitled to know which allegations were found by the decision maker to have been proven against her. It was simply not good enough to tell the applicant "*we did not believe you, therefore you are being dismissed*", which was effectively what she was told in the letter of 16th March, 2018.

108. Unless the applicant was told which specific allegations had been proven against her, she would not be in a position to know whether she had any valid appeal or arguable challenge by way of judicial review against those findings, or whether the sanction of dismissal was proportionate to the allegations found against her.

109. In *Sheehy v. Board of Management of Killaloe Convent Primary School* [2019] IEHC 456, Ní Raifeartaigh J. was dealing with a case where allegations had been made against a principal that on two occasions she had made a child kneel on the floor by way of punishment. The Judge noted that one of the points that had to be considered by the Board in that case was the child's alleged propensity to kneel down. She held further that the particular allegation was the type of allegation where "*there was a need for careful attention to detail*". This Court is of the view that the allegations in this case also required that a careful forensic examination of each of them be carried out by the Board, not least due to the fact that if the allegations were upheld and a finding of serious misconduct were made against the applicant, that could lead to the most serious sanction being imposed, being that of dismissal, as happened in this case. However, there was no evidence from the reasons given, that the Board had actually given the allegations against the applicant the careful attention that they clearly warranted.

110. The Court has considerable sympathy for the people who found themselves on the Board of Management of this school in the period 2016 – 2018. The Court appreciates that they

are people who were drawn from different walks of life, who may not have had any legal experience, nor any experience of acting as adjudicators. It may well be that they went onto the Board from a simple desire to help in the running of their children's school. They may not have envisaged that they would ever be called upon to adjudicate on such an important question as the dismissal of the applicant. However, that was the role that was thrust upon them by the Education Act 1998. As they were given the role under the 1998 Act of adjudicating on whether the principal should be dismissed on grounds of serious misconduct, they had to engage with the evidence tendered in respect of each and every allegation and make a decision as to which of those allegations, if any, were proven against the applicant. They had to engage with all of the evidence in a rational and fair manner. It could only be demonstrated that they had done that, by giving reasons for their decision. They did not do that. I am satisfied that on this ground, the decision of the Board to dismiss the applicant must be set aside.

111. In relation to the submission that was made on behalf of the respondent that it would be unfair and unrealistic to expect the Board, which was made up of unqualified lay people, to be capable of providing detailed and cogent reasons for their decision, the Court is not convinced that in this case such argument holds true. The reasons given by the respondent for reaching its decision as set out in the letter dated 16th March, 2018, were hopelessly inadequate. One of the reasons given was to the effect that one member of the Board had listened to all of the evidence and because of that his or her vote was for dismissal, "*because the children in case have blossomed since".* To tell a principal that they were being dismissed because some unspecified children had blossomed in some unspecified way since they had departed, was both irrelevant and irrational. The other reasons given in that letter are equally deficient. The Court does not accept that this Board was incapable of providing adequate reasons. This is due to the fact that when the Board was obliged by statutory regulation to provide reasons why it would not follow the recommendation of the DAP, the Board, by letter dated 27th June, 2018, set out over five pages, comprehensive reasons why it would not follow that recommendation. Thus, the Court is satisfied that far from being incapable of giving reasons, the respondent was quite able to do so when it so wished. Accordingly, there is no substance to this submission made on behalf of the respondent.

112. Finally, it was submitted on behalf of the applicant that the respondent had acted unreasonably, irrationally and therefore unlawfully in failing to have due regard to the decision and recommendation of the DAP. It was submitted that the Court should have regard to the fact that in this case the DAP findings were reached on a unanimous basis. Furthermore, the DAP took the unusual step of not recommending any lesser sanction, but instead made a definitive recommendation that the applicant should immediately be reinstated to her position as principal.

113. The Court was referred to the decision of O'Malley J. in *Kelly v. Board of Management of St. Joseph's National School, Valleymount* [2013] IEHC 392 where the Court commented on the position of the DAP in the following terms at paragraphs 166 – 167:

"This is a body drawn from the fields of teaching and management, with an experience of these areas that is unlikely to be matched or exceeded by Board members. It has an independent chair. The members are not involved in the dispute and can bring their expertise to bear with an objectivity that is likely to be lacking amongst the parties to the dispute. Although not a statutory body, it is established as part of the statutory regime.

It is, therefore, a body of the sort to which the courts generally display a high level of deference on issues within its area of expertise. Its recommendations should, accordingly, carry very substantial weight with boards of management. While a board is not bound to carry out its recommendation, it should in my view depart from it only for very good reasons."

114. It was submitted that despite the contents of the letter furnished by the respondent on 27th June, 2018, in relation to the DAP findings and recommendation, it was clear that no proper consideration was given by the respondent to the DAP findings and its criticisms of the entire process. It was submitted that no effort was made by the respondent to take on board any of the recommendations of the DAP. Instead, the respondent focused its efforts on opposing the DAP decision in its entirety. The Board stated that the DAP had failed to give full consideration to the independent report of Ms. Eileen Flynn. However, it was submitted on behalf of the applicant that the Flynn report contained no findings of fact, but was merely an information gathering report.

115. The Court is satisfied that in making its criticism of the DAP, that it had not engaged with the substance of the matter, the respondent was in fact criticising the DAP for not doing the very thing that it had failed to do. The Court is of the view that the respondent's letter of 27th June, 2018, was nothing more than an outright rejection of the comprehensive findings and recommendation of the DAP. There was no logical or constructive engagement by the respondent with the findings or recommendation of the DAP. The fact that the DAP, which is a highly experienced and qualified body with an independent chair, had reached its findings and recommendation on a unanimous basis, was something which ought to have been given considerable weight by the respondent. It does not appear from the letter dated 27th June, 2018, that that was done. The Court is satisfied that for its failure to give due consideration to the DAP findings and recommendation, the decision of the respondent to dismiss the applicant from her position as principal must also be set aside on this ground as well.

116. Finally, it was submitted on behalf of the respondent that when this Court came to consider whether an order of *certiorari* by way of judicial review was the appropriate relief to order in this case, it should have regard to the fact that the applicant had failed to exhaust the more appropriate remedy for her grievances by bringing a statutory claim for, *inter alia*, unfair dismissal before the Workplace Relations Commission pursuant to the Unfair Dismissals Acts 1977 – 2015 and the procedures laid down in the Workplace Relations Act 2015. It was submitted that that avenue provided a more suitable remedy as it was cheaper, more expedient and would have enabled the applicant to have the

benefit of an expert specialised employment rights decision-maker in the form of an adjudicator before the Commission and on appeal, the members of the Labour Court, to make a determination on her claim.

117. Counsel referred to the decision in *O'Donnell v. Tipperary (South Riding) County Council* [2005] 2 I.R. 483 where Denham J. (as she then was) referred to the decision in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497, where Barron J. stated:

> *"The real question to be determined where an appeal lies is the relative merits of an appeal as against granting relief by way of judicial review. It is not just a question of whether an alternative remedy exists or whether the applicant has taken such steps to pursue such a remedy. The true question is which is the more appropriate remedy considered in the context of common sense, the ability to deal with the questions raised and principles of fairness; provided, of course, that an applicant has not gone too far down the road to be estopped from changing his or her mind. Analysis of the authorities shows that this is in effect the real consideration."*

118. The Court is of the view that such a consideration may be relevant where there is an existing appeal pending before another Court or tribunal; where in a case such as this, the applicant has instituted her proceedings promptly seeking judicial review upon being notified of an adverse decision against her, and where there has been an extensive hearing and legal argument before this Court, it would be inappropriate for this Court to decline to deal with the applicant's case merely on the ground that there may have been an alternative remedy available to her. Given that it is now over three years since the allegations were first raised and when the applicant was placed on administrative leave and over 18 months since the decision to dismiss her was made, and having regard to the fact that this matter was heard over a period of three days, it is appropriate that the Court should deal with the matter that has been properly placed before it. Approaching the matter in the light of common sense and fairness as advised by Barron J. in the *McGoldrick* case, the Court is satisfied that the most appropriate thing for it to do is to decide the issues that have been placed before it on this application.

119. Accordingly, for the reasons set out herein the Court hereby quashes the decision of the respondent to dismiss the applicant from her position as principal and teacher in the respondent's school, which decision was made on the 14th March, 2018 and communicated to the applicant by letter dated 16th March, 2018.