

EXPIRED

School liable for payment to teacher whose Teaching Council registration has expired



DAVID RUDDY BL

PRINCIPAL OF TALBOT SNS
AND IPPN PRESIDENT-ELECT

Department of Education and Skills (DES) (1st Appellant)

and A School (2nd Appellant)

v

A Teacher

Employment Appeals Tribunal
(Published 2017)

BACKGROUND

This case concerned an appeal by the DES and a school against a recommendation of a Rights Commissioner. In essence, a teacher omitted to renew her Teaching Council registration. The case was taken by the said teacher under the Payment of Wages Act 1991. It was agreed by all the parties that the school was the employer of the teacher and that her salary was paid by the DES. The terms and conditions of the teacher's employment provide and include a statutory requirement for her to apply and obtain a yearly licence (renewal of Teaching Council Registration) without which, pursuant to Circular 52/2013 which took effect on 30/01/2014, the

DES reserves the right not to pay the teacher's salary. That afore-mentioned yearly registration renewal expired on 30th January 2014, and the DES did not pay the salary of the teacher in question. The teacher discharged her normal teaching duties at the school for the disputed period. The Rights Commissioner held that the DES was liable to pay the teacher's salary for the unregistered period. The DES and the school appealed this finding.

FINDINGS OF THE EMPLOYMENT APPEALS TRIBUNAL

Pursuant to Section 30 of the Teaching Council Act 2001, there is no liability on the part of the DES to discharge the teacher's salary for the disputed period. It was also accepted that the teacher had adequate notice of her statutory requirement to renew her registration. It therefore sets aside the decision of the Rights Commissioner thus allowing the appeal to the DES. The Rights Commissioner had ordered the DES to pay the teacher's salary.

The other consideration was whether or not the school had a liability to pay the teacher's salary for the

unregistered period? In the absence of evidence to the contrary, the Tribunal found that the school was regularly presented with circulars for implementation by the DES. It was also clear to the Tribunal that the school not only implements these circulars but also supervises compliance with them. It is therefore satisfied that the school has constructive notice of the date of expiry of the teacher's yearly registration and also of the consequences for the teacher in this regard. The school, through its supervision, either knew or ought to have known that the teacher had not complied with her terms and conditions of employment with them.

Since the school both consented to and permitted the teacher to discharge her teaching duties for the disputed period on their behalf, it is clear that as her employer, it was liable to discharge her agreed salary shortfall in the sum of €2,493.

OBSERVATION

This decision is a cautionary tale in relation to the onerous responsibilities that Boards of Managements (BoM) shoulder. It would be prudent for BoMs to seek from all teaching staff evidence of Teaching Council registration renewals on an annual basis. Otherwise, schools could be exposed to financial loss. Equally, special needs substitutes who are not vetted will not be paid, not to mention that a BoM is breaking the law in not vetting staff prior to appointment.

LEGAL REVIEW OF A NEGLIGENCE CASE TAKEN AGAINST A SCHOOL

Pupils collide during football training

CIRCUIT COURT

This case was heard in the Circuit Court and involved a collision between two pupils during the course of GAA training after normal school hours. The court heard that the injured party (a girl) was rugby tackled by a boy before the session commenced. This version of events changed during the course of the hearing to that of an accidental collision. Following the collision, the injured party alleged she was forced to participate in the session despite being injured. The teacher witnessed the accident and attended to the injured party. After the collision, the teacher

It was alleged that there was a lack of supervision and that the teacher should not have allowed the injured party to continue to participate in the training session.

tested the girl's finger movement and her wrist and was satisfied that there was no bruising or redness.

It was alleged that there was a lack of supervision and that the teacher should not have allowed the injured party to continue to participate in the training session. Evidence was given that there were 20 pupils participating in the session supervised by the teacher and a parent (who was in a car adjacent to the pitch, looking on). The Circuit Court judge found against the school on the basis that supervision was inadequate but had no criticism to level against the teacher or parent who were freely giving their time. The judge commented that the injured girl was forced to continue training and that, although there was no evidence to support this, it may have exacerbated the pupil's injury. The judge found against the school.

HIGH COURT

The case was appealed by the school on the basis that supervision at a ratio

of two supervisors to twenty pupils was well within acceptable limits. Secondly, no medical evidence was presented to prove any exacerbation to the injury. The judge allowed the appeal and dismissed the girl's claim commenting:

"The teacher was involved in an activity of public utility which was very much appreciated locally and it was something he need not have done. There was a dispute as to how the accident occurred. There was a question as to whether the teacher was there at all. His evidence is convincing and truthful. He was there at the time it occurred and observed what had happened".

The judge was satisfied that the teacher's observation regarding the girl's fingers was accurate and true, that this was not a serious accident and that there was a system in place where a parent witness was there if either parent needed to be contacted. He was satisfied that supervision was adequate and that there was no negligence on the part of the school.

OBSERVATION

The High Court judgement is to be welcomed. However, it is advisable that a second adult be on site in the event of an accident or emergency when after school training takes place.



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