

THE HIGH COURT

[2014 No. 8671 P.]

BETWEEN

IAN FARRELL

PLAINTIFF

AND

DEANSBRIDGE COURIERS LIMITED

DEFENDANT

JUDGMENT of Ms. Justice O’Hanlon delivered on the 20th day of December, 2019

Introduction

1. The proceedings herein issued on 13th day of October, 2014 under record no. 2014/8671 P.
2. By way of certificate bearing authorisation no. PL0409201446843 dated 11th April, 2014 and certificate bearing authorisation no. EL0409201446850 dated 16th April, 2014 the Personal Injuries Assessment Board authorised the plaintiff to bring proceedings in respect of the above entitled claims pursuant to s. 17 of the Personal Injuries Assessment Board Act, 2003 and 2007.

The plaintiff’s evidence

3. The plaintiff was at the time of the institution of the proceedings a courier residing at 52 The Beeches Callystown, Clogherhead in the County of Louth. As of the date of the institution of the within proceedings the defendant was a limited liability company registered in this jurisdiction with registered offices at JF Industrial Estate Rathmullen Road, Drogheda, in the County of Louth. The plaintiff brings these proceedings claiming that at all material times he was a visitor as defined by the Occupiers Liability Act, 1995 at the said premises. He further claims that the said premises was a place of work within the meaning of the Safety Health and Welfare at Work Act, 2005 and the Safety Health and Welfare at Work (general applications) Regulations, 2007.
4. The plaintiff gave evidence that he began his working life by collecting glasses in a public house between the ages of 12 and 16 years. Thereafter he worked in nightclubs while he studied to do his leaving certificate examination which he passed. He then worked in Spain for five years in the bar trade there.
5. On his return to Ireland he had part-time security work in Our Lady of Lourdes Hospital, Drogheda, Co. Louth. The plaintiff explained that he always worked very hard and enjoyed driving and was pretty good at it. He then went to work for the defendant courier company and all went well for the first two years, but he says that all of a sudden Mr. Black, who is the manager in the business, became very aggressive towards him. On one occasion he began throwing parcels in the direction of the plaintiff who was trying to sort out parcels in the middle of the depot and spoke to the plaintiff in abusive terms saying that he would direct him to do as he was told and used coarse language. The plaintiff’s evidence was that the harder he worked the worse the treatment of him became. On another occasion the plaintiff was directed to go to Ashbourne in circumstances where he advised that if he were to attend at Ashbourne he would not be

able to finish his deliveries for that day but then he continued to follow the instruction he was given. The following morning, he was chastised for acting on the instruction given to drive to Ashbourne. He described going to Ashbourne on the instruction of his boss to collect two pallets. The following morning Mr. Black was very aggressive because the plaintiff hadn't been able to actually deliver them. He described how he and his wife had saved €25,000 over two years in order to buy a house at that stage and he said that because of the persistent abuse by Mr. Black towards him other drivers stopped talking to the plaintiff Mr. Black was not around. On another occasion when he pointed out that the van he was given to drive was not road worthy Mr. Black said to him that if it broke down he wanted that to happen in the town of Drogheda. If another worker had a problem with a van the plaintiff was required to swap vehicles with that person, with the plaintiff then having to use the less roadworthy vehicle.

6. The plaintiff described on one occasion being abused by Mr. Black because the spare wheel didn't appear to be in the van and the plaintiff had no knowledge of its whereabouts. Another worker pointed out that Mr. Black had taken it out of that particular van a few days before and had hidden it behind the bin. This was the van which the plaintiff had been directed to drive.
7. On one occasion on a Thursday he had unloaded his van and was ready for work the next day and he was waiting to be paid. He describes being paid in a manner which left him feeling very humiliated and degraded when the pay cheque was thrown by the Director, Mr. Black at his feet and he had to go down on bended knee to pick it up. He felt that this was very unfair treatment in circumstances where he had worked very very hard.
8. On another occasion when he, his wife and child were all unwell he was obliged to take a sick day off work and he left the van back to the depot. He states that Mr. Black followed him, his wife and child to the Tesco store. He found this very very intimidating and felt that he was being threatened and that his wife and son were also being threatened by being followed by Mr. Black.
9. Thereafter the plaintiff managed to seek better employment with Supermacs Drogheda as a manager for two-year period and now works as a warehouse manager with Ecopipe in North Dublin where he began that employment two months ago. The plaintiff claims to have suffered a loss of earnings of €5,243.04. He suffered from a complete lack of response from the defendants from 2014 on and felt that there was stonewalling. He had worked for the defendant for an eight-year period and despite them being notified and served with the proceedings with ample proof of service they have refused to meet the claim. The plaintiff's counsel submitted that outlay from the solicitor's point of view has been hugely significant and contended that the defendants have behaved in a manner hugely disrespectful to the court. The plaintiff sought aggravated damages for bullying and harassment. Seven years after his ankle injury he is deemed to have an inversion injury to his ankle and to have complex pain syndrome. The plaintiff describes standard procedure in the depot where pallets were delivered to the middle of the depot for sorting and the procedure is that each driver would sort out their own parcels in the order in

which they would be delivered. On one occasion the plaintiff was directed to wait until all the other parcels were sorted out before he could begin to sort his parcels for delivery. When the plaintiff attempted to put parcels into his running order the plaintiff was shouted at by Mr. Black.

10. "What the did I tell you?" and when the plaintiff pointed out that other drivers were permitted to sort their parcels and he was not, the defendant's replied "you do as you are ... told". The plaintiff felt that on return to the depot Mr. Black would single him out even though he might have delivered more parcels than other workers and he felt he was being treated differently.
11. The court deemed service good in circumstances where a number of motions had to issue before judgment in default of appearance was granted by order, dated 19th January, 2015, with an order that the matter be set down for hearing for assessment of damages and granting the costs of the suit after the adjudication of costs to include the costs of the motion and such assessment to take place before a judge sitting alone.
12. He describes events on another occasion in 2013 in the depot. It was a Tuesday morning and the plaintiff was to deliver material to Hickeys Pharmacy. Mr. Black's office was behind him and as the plaintiff moved the parcels from one side to the other he noted in the van mirror that Mr. Black had a rifle. He states that Mr. Black had pointed the sight of the rifle at the back of the plaintiff's head as he moved and that he was facing away from Mr. Black at the time. The plaintiff himself was FCA trained and he could therefore recognise that the weapon could have gone off at any time. He was aware that one ought not point a weapon, such as the rifle in the hand of Mr. Black, unless one intended to shoot. The plaintiff noticed a small red light over his head on the inside of the van when he was unloading it which appeared to be on the inside of the van and seemed to be coming from behind him. When he turned around Mr. Black was present with a rifle which had a laser site on it and which Mr. Black was pointing at the back of the plaintiff's head.
13. The plaintiff felt that even though he worked excessive long hours and had high levels of productivity Mr. Black consistently expressed dissatisfaction and felt that his best was not good enough. The experience with the rifle had a very detrimental effect on the plaintiff who was afraid to go to work, couldn't sleep and felt very down on the following Sunday. He believes that the defendant showed a grudge against him for no particular reason whatsoever and was very afraid that the next time the trigger could easily be pulled. Because of the economic downturn at that stage, he was obliged to remain in that employment for two more years and Mr. Black continued to be very aggressive towards him. The plaintiff was worked excessively hard, beginning at 7am and taking no breaks because he wouldn't have been able to get the work done otherwise such was the pressure placed on him by Mr. Black, the company manager.
14. The plaintiff further contends that the defendant turned off lights in the depot on occasion which meant that it was quite dangerous there as the depot itself had grey concrete floors but that there were potholes outside. Where the vans came and went he said there was no kind of identification marking the step from inside to outside and that with the poor

lighting a person walking out could be forgiven for believing they were still on a flat surface. On the 17th April, 2012 the plaintiff was caused to fall in such circumstances and suffered an injury to his ankle resulting in what he described as an indescribable pain where he couldn't move. He states that Mr. Black smiled at this and kept on working and the plaintiff was left there in pain for fifteen minutes. The plaintiff further gave evidence that Mr. Black continued picking up parcels at that stage and began throwing them at him. He took Nurofen and he was afraid of the defendant but did not want to lose his job. He tried to continue working but after a couple of days he had to cease because of the pain in the ankle. He attended his doctor and was very down. He tried to hide his mood as best he could but was given antidepressants. He was very depressed about the fact that he couldn't carry his son on his shoulders as he was afraid that the ankle would give way and he says that although he had two sessions of physiotherapy at the time he couldn't afford more. Ten days after this accident he signed off on sick leave and he was off for three months with depression. He asked his employer for help with his medical bill and got none. He was obliged to take taxis at a cost of €40 to €50. He says that after he returned to work his fellow workers were afraid to speak to him in case the difficulties would come back on them from their employer.

15. On or about the 21st November, 2016 an order directing service by leaving a copy of the order granting judgment in default by ordinary pre-paid post on the defendant at the address where it was known the defendant was carrying on business and that such service be deemed to be good and sufficient service of the order and of any future documents requiring personal services upon the said defendant at Ballymakenny Road Drogheda, Co. Louth. Liberty was also given to serve the order of 19th January, 2015 and of the order of 21st November, 2016 by registered post on the Registrar of Companies Parnell House, Parnell Square, Dublin 1. By further order of 2nd February, 2018 liberty was given to serve proceedings on Mr. James Black and Ms. Mary Brady Directors of the defendant company with very specific directions including service on the company's registration office and the defendant's accountant, his current trading office, eighteen affidavits of service have been filed in this case.

The Medical evidence

16. The plaintiff's general practitioner Mr. John Mulroy prepared three reports for court and gave evidence as follows. He indicated that in 2007 the plaintiff started attending him as general practitioner initial stress symptoms appeared in 2009 when the plaintiff showed definite psychological stresses with chest pain and breathlessness which the doctor had investigated and which he attributed wholly to stress rather than physical injuries. This was when the plaintiff showed signs of anterior chest tightness associated with spinal vertebral dysfunction in May, 2009. The result of the appropriate investigations were suggestive of psychological rather than physical cause.
17. This witness gave evidence of the aftermath of the plaintiff's accident concerning his ankle on the 17th April, 2012 when his right ankle was found not to be capable of bearing weight and his injury was consistent with the ligaments on the inside of the foot being

damaged. There was no fracture but the plaintiff was in severe pain and that was described by his general practitioner as not being unusual.

18. The plaintiff was found by his general practitioner to have swelling and tenderness on the day of this injury the right lateral malleolus and restricted range of right ankle movements with what he called a severe inversion injury. The plaintiff had been given a certificate to remain off work for one week and an early return to work on 27th April, 2012 gave rise to the difficulties with his back. Regarding his back he suffered very restricted range of movement of the lumbosacral low back with lumbosacral muscle spasms bilaterally but more obvious on the right side and he was off work and certified incapable of working for a further two weeks. He went back to work before the two weeks was up and told his doctor that six weeks passed before he could walk without experiencing severe pain.
19. His general practitioner described his patient's history as the victim of a consistent pattern of workplace bullying where he believed that objectively and subjectively that he was treated differently and unfairly at the hands of one individual in authority and was targeted on one occasion with a rifle which had a severe negative impact on him and his family. At that stage he was beginning to manifest signs of depression, depressed mood, feelings of hopelessness and sleep disturbance. On examination he was found to have mild darting pain with activity in the right anterolateral ankle joint with talofibular ligament to the head of the fifth metatarsal mid-lateral foot. His ankle felt unstable and he was in constant fear of it giving away.
20. At that stage he was found to have constant pain and moderate to severe low back stiffness on average three to four days out of seven precipitated by everyday activities. Sleep disturbed by pain in the back induced by twisting or turning over in bed as well as low back stiffness after rising which could last for a number of hours. His pain was obvious to him most days and there was a limitation of activities at least for half the days of the week on average.
21. The plaintiff at that stage was complaining of low mood, increased irritability and aggression and difficulties coping with everyday stresses, increased anxiety, lack of interest or pleasure in former interest and hobbies, sleep disturbance, a strained relationship with his wife and withdrawal from social activities. At that stage the prognosis was guarded and physiotherapy was advised. Oral and topical non-steroidal anti-inflammatory medications were used as well as codeine based analgesics in order to treat his physical difficulties. A second report of 29th June, 2016 confirmed ongoing discomfort in the right ankle when weather is cold, while driving, with prolonged standing and after walking one to two miles. This right ankle instability causes difficulties negotiating uneven or sloped surfaces with reduced balance and coordination. Low level back pain is a feature after prolonged standing as is also the case where the plaintiff is unable to reach his arms over his head when his back is uncomfortable and when bending is also restricted, squatting is restricted, thighs are not reaching parallel with the ground because of discomfort in the right Achilles tendon. The view of the plaintiff's doctor was

that since the plaintiff was no longer exposed to the alleged workplace bullying psychological symptoms have resolved since the 5th May, 2015. The plaintiff was found to have mildly restricted right ankle dorsiflexion which physiotherapy should help. Low back discomfort should respond to mobilisation treatment delivered by a physiotherapist.

22. Ten days later he attended his doctor with an injury to the lower back. The diagnosis was that he had to be careful as to how he used his right foot at that time and he altered how he lifted heavy loads and how he stepped up into the van and this meant that in adjusting his back to protect his ankle he suffered an injury to the lower back. This general practitioner was of the opinion that ankle injuries although this injury was classified as minor it took longer to heal in that the plaintiff's nerve muscle control mechanism had been thrown out of kilter and the plaintiff had to relearn how to use his ankle. He was fearful that the plaintiff was going to suffer continued loss of power in the ankle and felt that the plaintiff did not have as much physiotherapy as he the doctor would have wished. He found that the plaintiff's ankle was incompletely recovered structurally and that there was damage to the soft tissue in and around the joint. He said that the brain was involved in relation to the ankle injury and described the plaintiff as having complex regional pain requiring extensive rehabilitation and physiotherapy and that he had suffered persistent functional disturbance. The plaintiff is still not restored to the former use of his ankle in terms of his functional control and the structure has suffered atrophy and a perceptual and functional disorder. The doctor stressed the effect of the event where a loaded rifle was put to the plaintiff's head by the plaintiff's employer the defendant and the fear that that engendered in the plaintiff who felt he could have been shot. The doctor felt that there was a pattern of behaviour which caused the plaintiff to be irritable, angry, to have low mood and to be aggressive to his wife. He did not feel that these injuries were in the area of post-traumatic stress disorder in terms of his diagnosis but rather that the events exacerbated a pre-existing anxiety. These difficulties persisted until the 26th June, 2016 when the plaintiff was in new employment and he found that by May, 2015 the psychological difficulties were beginning to resolve. His third report in 2018 referred to coldness in the ankle and the plaintiff's efforts to keep it warm by wearing a second pair of socks for example. He was driving long distances on uneven ground and he couldn't certain activities with his child he couldn't carry his child on his shoulder because of the weakness in his ankle and he suffered sleep disruption at that time. The doctor's first report was dated the 2nd April, 2014. In this first report the doctor outlined how fifteen years prior to this time the plaintiff had been treated with low back and posterior thigh pain which resolved spontaneously over a three-day period and also told his doctor that he had been involved in a road traffic accident years prior to that when he had neck stiffness for several weeks in respect of which he did not seek medical attention and were symptoms resolved spontaneously. He also had a prior injury to the left knee at work in 2008 but that resolved in one day.
23. Dr. Mulroy general practitioner, gave evidence to this Court and his first report is dated 2nd April, 2014. He described the date of the accident as 17th April, 2012 when the plaintiff suffered a right ankle injury and whereby on the 28th April, 2012 he suffered low back pain which the doctor attributed to the ankle injury resulting from posture problems

arising out of this injury. This witness described how he examined the plaintiff on the 5th March, 2014 and he found him to be complaining of psychological distress caused by workplace bullying, right ankle pain, right low back pain and restriction in the activities of daily living. Fifteen years' prior to this time the plaintiff had been treated with low back and posterior thigh pain which resolved spontaneously over a three-day period. He had also given a history to the GP of being involved in a road traffic accident years ago which resulted in mild neck stiffness for several weeks and in respect of which he did not seek medical attention and where symptoms resolved spontaneously. He had also hurt his left knee at work in 2008 but that resolved in one day although it was painful enough to disturb his sleep.

24. The plaintiff suffered anterior chest tightness associated with spinous vertebral dysfunction in May, 2009 which was associated with stress at work and again in February and September, 2010 and which was not associated with exertions and he was referred to the Accident and Emergency Department of Our Lady of Lourdes Hospital, Drogheda, Co. Louth where he underwent an exercise stress test which was negative, in September, 2010.
25. The plaintiff describes stepping out of his van on 17th April, 2012 onto an uneven surface sustaining an inversion injury to the right ankle with immediate severe pain causing him to scream when he fell to the ground. The plaintiff was found to have swelling and tenderness the same day when examined by the GP around the right lateral malleolus and restricted range of right ankle movements consistent with severe inversion injury. An x-ray was carried out but no fracture was detected. He was given a certificate to remain off work but after one week he attempted to return to work but developed a right sided low back pain around April 27th 2012 while lifting delivery loads and guarding his right ankle. The plaintiff attended the Magdalene Medical Clinic on April 30th and May 8th 2012. He had a very restricted range of movement of the lumbosacral low back with lumbosacral muscle spasm bilaterally more but obvious on the right side. He was certified as incapable of working for a further two weeks. Although he was not fit for work he returned without making a full recovery and he told his doctor that six weeks passed before he could walk without experiencing severe pain. He sustained an inversion injury to the right ankle and continues to have right ankle discomfort.

The law

Legal submissions on behalf of the plaintiff

26. An order was granted by Justice Iseult O'Malley on 19th January, 2015 for judgment in default of appearance in respect of this matter which became before this court on 22nd November, 2019. The plaintiff brought these proceedings in respect of his claim arising out of a severe inverted injury to his right ankle. The plaintiff suffered an injury which continues to give him difficulty and is symptomatic. His general practitioner is of the view that he may continue to suffer from chronic pain syndrome caused by his accident. The plaintiff's claim is also for bullying and harassment in work resulting in psychological injuries as well as for his ankle injury.

27. Reference is made to breach of duty of care owed by the employer to an employee McMahon and Binchy Law of Torts 4th Ed. para. [18.80] which states:

“There is no distinctive tort of bullying or harassment. The question is to be resolved in a context of the employer’s liability, by asking whether the employers took reasonable care not to expose the plaintiff to the risk of injury from such conduct.”

28. The legal definition of workplace bullying is defined in para. 5 of the Schedule to the Industrial Relations Act, 1990 (Code of Practice Detailing Procedures for Addressing Bullying in The Workplace) (Declaration) Order, 2002 (S.I. No. 17/2002). That order declares that the code of practice set out in the schedule shall be a code of practice for the purposes of the Industrial Relations Act, 1990. Paragraph 5 of the taskforce on the prevention of workplace bullying published in March, 2001 defines workplace bullying for the purposes of the code of practice as follows:

“Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.”

29. The Court of Appeal in *Ruffley v. Board of Management of St. Anne’s School* [2005] IECA 287 heard an appeal against a decision of Mr. Justice O’Neill (then in High Court) given on 9th May, 2014 whereby the High Court awarded the plaintiff €255,276.00 and costs on foot of her claim for bullying and harassment in the course of her employment as a special needs assistant in the defendant’s national school. The then President of the High Court and Ms. Justice Irvine allowed the appeal on the basis that inter alia there was insufficient evidence in the case to demonstrate workplace bullying and at p. 22 of the judgment Ryan P. (then President of the Court of Appeal) states that for workplace bullying there needed to be inappropriate behaviour which was repeated directly or indirectly at the plaintiff and that this could reasonably be regarded as undermining the plaintiff’s right to dignity at work. At p. 8 of the judgment of Finlay Geoghegan J. in the same case stated: -

“Accordingly I have concluded that a court must first assess whether the conduct or behaviour alleged is objectively to be considered as repeated inappropriate behaviour. If so it must then determine objectively whether it is reasonably to be regarded as undermining the individual’s right to dignity at work.”

30. It is submitted that in the instant case there were numerous examples, given in the evidence and pleadings, of the plaintiff describing incidents stripping him of his right to dignity at work and putting him in fear of his own life and at the time he believed the defendant might shoot him dead.

31. Reference is made to *Maier v. Jabil Global Services Limited* [2005] IEHC 130 when Clarke J. considered the duty of care an employer had in relation to an employee who alleges that he suffered physical and mental health during the course of his employment and three questions were identified by that judge which have to be addressed as follows:

“has the employee suffered an injury to his or her health as opposed to what may be described as ordinary occupational stress; if so, is that injury attributable to the workplace and if so, was the harm suffered by the particular employee concerned reasonably foreseeable in all the circumstances”.

32. It is submitted that from the evidence of the plaintiff not only was the injury suffered reasonably foreseeable but it seems to have been the desired effect of the defendant's repeated behaviour towards the plaintiff. In other words, the test on intention is satisfied.

33. Mr. Justice Fennelly in *Quigley v. Complex Tooling and Moulding Limited* [2009] 1 I.R. at p. 349 states:

“The plaintiff cannot succeed in his claim unless he also proves that he suffered damage amounting to personal injury as a result of his employer's breach of duty. Where the personal injury is not of a direct physical kind, it must amount to an identifiable psychiatric injury.”

34. Doctor Mulroy GP gave extensive evidence showing that the plaintiff's anxiety had required ECG testing and that ultimately his depressive order was caused by the bullying and harassment he was subjected to by the defendant, which required being prescribed anti-depressants for an extended period of time and also required him to take an extended period of time off work.

35. The plaintiff's submissions draw comparisons in terms of quantum between the instant case and the *Ruffley* case. In the present case the plaintiff suffered depression, anxiety, feelings of hopelessness, sleep disturbance, increased irritability and aggression, difficulty coping with everyday stresses, lack of interest or pleasure in former interests and hobbies and a strained relationship with his wife as well as withdrawal from social activities. Counsel has drawn attention to the fact that the circumstances in the *Ruffley* case are quite different on the facts to this case and in that case the Court of Appeal found it not to be a bullying and harassment case but they did unanimously uphold Mr. Justice O'Neill's award for general damages.

36. Liability for workplace bullying therefore comprises four essential proofs, all met in this case

- (a) that the plaintiff has suffered a recognisable psychiatric injury,
- (b) that the injury was caused by the plaintiff's treatment at work,
- (c) that the plaintiff's treatment at work satisfies the definition of workplace bullying.

(d) that the plaintiff's injuries were reasonably foreseeable.

Findings of fact

37. Viewed objectively, there is no doubt in the mind of this Court but that the plaintiff has suffered in relation to the defendant's breaches in tort, contract and pursuant to statute and in particular the plaintiff has a duty not to permit bullying to take place in the workplace and also has a duty not to cause the plaintiff psychiatric/psychological damage or any emotional or mental distress by reason of a hostile and bullying environment in which the plaintiff was required to work.
38. The defendant further has a duty not to undermine the plaintiff in the workplace and a duty to heed and investigate the plaintiff's complaints in relation to his treatment in the workplace including his complaints of being bullied, harassed, overworked and/or subjected to unfair treatment or disciplinary sanction.
39. It is quite clear from the evidence of the plaintiff that there was an uneven surface and it was not marked as defining it as between the indoor and outdoor surfaces on the premises and this caused the difficulty for the plaintiff leading to a severe ankle injury. Ample evidence was given to the court outlining nine instances in all of repeated and continuous bullying even to the point where the plaintiff believed that he could have been shot and was in fear for his life and for the well-being of his family.
40. The defendant's treatment was unfair towards the plaintiff in unfairly subjecting him to disciplinary sanction and in fact showed a bullying attitude by his abusive behaviour in essentially trying to wrong-foot the plaintiff on a number of occasions giving him a chore then countermanding the order and then chastising him for not carrying out the first instruction while failing among other things to provide him with the proper rain gear to carry out the tasks. The defendant's manager, being the plaintiff's superior, on the evidence of the plaintiff to this Court, was downright abusive towards him continuously, persistently and he was threatening to him. The worst incident of this was, when in his van, the plaintiff could see in the mirror a red light and could see that there was gun trained on the back of his head and with his FCA training he was well aware of the dangers and thought he was going to be killed. This gun was in the hands of the plaintiff's superior.
41. An example of bullying included his being singled out as to the manner in which he was to carry out the work and being treated negatively and offensively in front of other staff members when the defendant shouted at him across the depot using foul language abusively towards him. Viewed objectively, this was a pattern of behaviour. He was singled out on one particular occasion concerning returned parcels and late deliveries when he, the plaintiff, had helped others unload their vans and they were all ready to go home but still he hadn't been given his paycheque. When he asked for same the defendant threw the cheque on the ground at the plaintiff's feet in the front of staff members. The plaintiff suffered continuously for a five-year period, from this pattern of bullying behaviour.

42. The plaintiff's ankle condition was treated by his doctor. It was an inverted injury although there was no fracture. What is difficult about this injury in terms of quantum is the fact that he still has symptoms arising from same and that his doctor gave evidence as to his belief that he may have acquired a chronic pain syndrome as a result. Despite intensive treatment he still has this problem. He has been referred for further pain treatment.
43. In addition, it is his doctor's belief that the injury to the ankle caused exacerbated chronic right sided low back pain which still affects him when lifting heavy loads and the doctor explained this as the plaintiff's attempt to protect his right ankle which lead to this further difficulty. His doctor found him to have mild right lateral neck discomfort and mild discomfort in his posterior upper left arm. He has severe problems still reaching and bending. The plaintiff was not able to bear weight or to walk without severe pain for a six week period arising out of the inversion injury to the ankle. His doctor detailed dorsiflexion of the right ankle as minus 90 degrees with reduced inversion and eversion and a tender right talofibular ligament and calcaneocuboid joint difficulties. The plaintiff was treated for the psychological problems associated with bullying arising out of these incidents by his general practitioner who found that his difficulties did not reach the level of post-traumatic stress disorder but did require treatment over an extensive number of years and that he did suffer a significant loss of the amenities of life as a result having difficulties in his relationship with his wife, being more irritable and certainly having depression and anxiety.
44. This Court finds that these sequelae in terms of the psychological injury, arising out of the bullying and harassment at work of the plaintiff were reasonably foreseeable and yet, despite that, the defendant company and its management, even though the defendant and the plaintiff's particular manager knew well the effect that this was having on this gentleman as his employee, continued treating him in a manner which is not legally permissible. On the balance of probabilities, the plaintiff's physical injuries as outlined by his general practitioner were attributable not only to an accident at work where the area was not properly delineated as having a different level between the inside and the outside of the building which was negligent on the part of the defendant in failing to ensure a safe place of work and the accident was reasonably foreseeable and the psychological injuries are attributable on the balance of probabilities to the bullying pattern of behaviour of the defendant employer over a considerable period of years, by any objective standard.
45. It is interesting to note that this employee left the employment to take up a management role with Supermacs in Drogheda for a two-year period and now is in a further management role as a warehouse manager.
46. It is quite clear from the evidence of the plaintiff's doctor that the plaintiff has suffered a recognisable psychiatric injury. He has been treated for same and has been obliged to take time off work as a result of same. His medical practitioner has no difficulty objectively attributing this illness to bullying of the plaintiff at work.

47. The plaintiff's own evidence gives viewed objectively a picture of repeated inappropriate behaviour directly inflicted upon him both verbally by one person at the place of work and on any view objectively this could be reasonably regarded as undermining the individual's right to dignity at work. It is not a question in this case of an isolated incident of the behaviour described in the definition as being an affront perhaps to dignity at work or simply as a once off incident which would not be considered to bullying.
48. It is quite clear from the evidence of the plaintiff that the injuries he received psychologically were reasonably foreseeable. He was candid in giving evidence to the court of any previous difficulties he had had as a result of previous injuries/accidents and this Court formed the view that what he described was certainly much more than ordinary occupational stress attributable to the situation in which he found himself in the workplace. This Court has no difficulty finding that the harm suffered to the particular employee concerned was reasonably foreseeable in all the circumstances.
49. As against this this Court has had to deal with the fact the plaintiff while he through his solicitors took every step to ensure proper service on the defendants which was extensive in all its efforts and was court directed and mandated and that seventeen affidavits of service in all had to be filed, such was the difficulty in trying to have the defendant meet the matter properly. In the final analysis there was no meeting of the matter by the defendant employer. That causes an extra difficulty for this Court in trying to fully assess the evidence given.
50. The plaintiff was in this regard an impressive witness anxious to work with a good pattern of work all of his life from a very young age and subsequent to his leaving the said employment has had two management positions with two well-known companies. He did not exaggerate the situation but it is clear that the continuous pattern of behaviour by his employer towards him did cause him grave difficulties from a psychological point of view.
51. In all the circumstances this Court deems it appropriate taking into account his physical injury which was an inverted ankle injury in respect of which he still continues to have pain and suffering, his low back pain which resulted from the way in which he had to hold himself to protect and prevent pain or minimise pain in his ankle in the sum of €55,000 in respect of his physical injuries pain and suffering to date with a deduction from that sum of €5,000 because of the plaintiff's failure to attend sufficiently for physiotherapy as recommended by his medical practitioner. This Court awards the sum of €30,000 in respect of pain and suffering into the future in the ankle because he still has an incompletely recovered structure and the difficulty for rehabilitation in this case according to the medical evidence was that the brain was involved that it is a complex regional pain and that this plaintiff requires extensive physiotherapy and rehabilitation and that he has persistent functional disturbance and that the use of his ankle is not restored to its former status in terms of functional control. The finding of his GP was that the ankle structure suffered from atrophy and that it was and is perceptually and functionally disordered.
52. In respect of his psychological difficulties it is quite clear from the medical evidence given that his difficulties pertain to the working environment in terms of psychological difficulty

and in particular reference was made by his medical practitioner in his evidence to the fact that a loaded rifle was put to the plaintiff's head by his boss and that there was a pattern of behaviour which caused the plaintiff to suffer irritability, anger, low mood aggression towards his wife but he said that it did fall short a PTSD diagnosis and that since the 5th May, 2015 the plaintiff's psychological difficulties had resolved. This medical witness was strongly of the view that the treatment by the defendant of the plaintiff exacerbated a pre-existing anxiety and he was treated with anti-depressants and had symptoms of depression.

53. This Court awards to this most credible witness the sum of €55,000 in respect of the psychological difficulties suffered by the plaintiff noting that these difficulties were very significant for a three-year period and ended when the plaintiff changed his place of employment and by the 5th May, 2015 his psychological systems resolved. This Court further awards the plaintiff €5,000 by way of loss of earnings.