[2021] IEHC 72

THE HIGH COURT

[2020 No. 1514P.]

BETWEEN

LORCAN DELANEY

PLAINTIFF

AND

AER LINGUS (IRELAND) LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 2nd day of February, 2021

1. This is a cautionary tale of unforeseen consequences.

2. On 8th June, 2019 Mr. Lorcan Delaney, who was employed by Aer Lingus as a cabin crew member, went to a music festival at Slane castle, County Meath. He brought with him, or acquired there, and at all events was found by a member of An Garda Síochána to be in possession of, a small quantity of cannabis and MDMA. If he had previously contemplated the consequences of being found in possession of these substances, he does not appear to have foreseen that a prosecution for possession of a controlled drug might block the renewal of his daa Airport Identification Card. That is a security pass – sometimes called an airside access card – which allows the holder access to restricted areas of airports. For airline and other staff based in Dublin airport those cards are issued by the authority formerly known as the Dublin Airport Authority and now as daa plc. The process for the issue or renewal of the cards requires Garda vetting.

3. Mr. Delaney had a daa Airport Identification Card which expired on 10th December, 2019. It had not been renewed by then and the daa later refused to renew it by reason of a pending prosecution for possession of drugs.

4. With effect from 10th December, 2019 Mr. Delaney could no longer fly and by letter dated 11th December, 2019 he was told that he had been placed on unpaid leave until such time as he had received his new card.

5. Mr. Delaney, having consulted his solicitors, took the position that his contract of employment did not provide for what he characterised as suspension without pay, and that he had been suspended without having been afforded fair procedures and in breach of the requirements of natural justice. He insisted that he was entitled to return to work and threatened High Court proceedings. By then he had established from the Dublin Airport police that his card had not been renewed because there was an outstanding summons against him to appear at Trim District Court on 26th May, 2020 to answer a complaint that he had committed an offence contrary to s. 3 of the Misuse of Drugs Act, 1977. He does not appear to have foreseen that Aer Lingus might do something other than restore his salary or leave him on unpaid leave.

6. The defendant's answer was that without a daa Airport Identification Card he could not work as a cabin crew member and by letter dated 20th February, 2020 Mr. Delaney was told that that he was dismissed with effect from 21st February, 2020, and that he would be paid his salary in lieu of notice.

7. By this action, which was commenced by plenary summons issued on 25th February, 2020, the plaintiff claims declarations that what he says were his purported suspension and his purported dismissal were void and that he remains employed by the defendant as cabin crew, and a variety of ancillary injunctions and orders. By the motion which is the subject of this judgment, and which was issued on the same day, the plaintiff claims a variety of interlocutory injunctions restraining the defendant from taking any steps for the purpose of effecting or implementing the purported dismissal, and directing the defendant to pay his salary pending the trial of the action.

8. By leave of the court (Reynolds J.) the plaintiff's motion was issued on 25th February, 2020 and was originally returnable for 28th February, 2020. A replying affidavit of Ruairi Costello was filed on behalf of the defendant on 5th March, 2020. The motion had a hearing date for 10th March, 2020 but was adjourned on the application of the plaintiff to 19th March, 2020. The first Covid-19 lockdown intervened, and the motion was adjourned generally. On 5th August, 2020 Mr. Delaney swore a further affidavit in reply to the affidavit of Mr. Costello and on 24th November, 2020 Mr. Costello swore a supplemental affidavit in which he summarised the severe adverse effects of the pandemic on the defendant's business and staff rosters. Broadly speaking, Aer Lingus cabin crew had their hours and pay cut to 50% at the end of March, and to 30% from mid-June until the end of September, when they were restored to 60% until 31st January, 2021.

9. In his affidavit of 5th August, 2020 Mr. Delaney did not say, but at the hearing of the motion on 12th January, 2021, the court – and the defendant, for the first time – were informed that he had secured alternative employment in July, 2020. This, it is said, is minimum wage employment. If it was part-time employment, I expect that the court would have been told that, so I presume that it is full time. Mr. Delaney does not ask that he should be put in a better position than he would have been had Aer Lingus continued to pay him the same proportion of his salary as his colleagues have been paid, but there is no evidence as to what that might be. His most recent contract of employment shows that from 6th February, 2017 he was to have had a salary of €23,885.02 per annum. He may have had an increase since, but half of that would be about €12,000. The terms and conditions of employment refer to additional payments which will be generated by Mr. Delaney's work pattern but there is no evidence of what these ordinarily were or whether they would have arisen from whatever work might have been available to cabin crew on short time. The national minimum wage is €1,656.20 per month, or €19,874.40 per annum.

10. In practical terms the plaintiff's application is for an order, pending the trial of the action, and while he is working for someone else, requiring the defendant to pay the difference between what he is earning and what he would have been earning had he remained on the Aer Lingus payroll. There is simply no evidence of what that differential is, and it seems to me that it is by no means beyond the bounds of possibility that Mr. Delaney has been better off in full time minimum wage employment than he would have been had be

remained on the Aer Lingus payroll. I will need to come back to what the plaintiff hopes to achieve by the orders now sought.

11. The starting point of the plaintiff's argument is that the reasons given for the dismissal were invalid. The defendant's letter of 20th February, 2020 asserted that it was a fundamental term and requirement of Mr. Delaney's contract of employment as an Aer Lingus cabin crew member that he would successfully pass Garda vetting, thus enabling him to obtain a security card which, in turn, would enable him to go airside and work as cabin crew on aircraft. It went on to say that the defendant had no option but to terminate his contract of employment on the grounds of frustration of contract. Ms. Bolger S.C. submits that the contract was not frustrated, and that Mr. Delaney was not in breach of a fundamental term.

12. The frustration argument is easily disposed of. While the personnel officer who wrote the letter did refer to "*frustration of contract*" it is quite clear that he was not invoking the legal doctrine of frustration. Legally, frustration occurs where, without default by either party, and by reason of an unexpected supervening occurrence, a contractual obligation has become incapable of being performed. In such an event, the contract is discharged by operation of law. In this case, the requirement that Mr. Delaney should renew his security pass was obvious from the expiry date. The need for a new card was plainly known to Mr. Delaney – who applied for a new card shortly before the expiry date – and to Aer Lingus – who, as I will come to, had sent him a number of reminders. More immediately to the point, if the expiry of the security pass had legally frustrated the contract, the contract would have been discharged by operation of law on 10th December, 2019. That was not the position taken by the defendant. Rather, the fact that Mr. Delaney did not have a card was relied upon as a reason for his dismissal (or purported dismissal). In other words, the contract was plainly terminated (or purportedly terminated) by the act of the defendant, and not by law. Whether, by reason of the fact that Mr. Delaney's card had not been renewed, the contract of employment was incapable of performance by him is a separate issue.

13. Similarly, although the defendant's letter identified the requirement that Mr. Delaney should have a current airside access card as a fundamental term, there was no suggestion that his contract of employment might have been discharged by the acceptance by the defendant of a fundamental breach.

14. As to whether it was a requirement of Mr. Delaney's contract that he should have a current daa Airport Identification Card, the simple argument advanced on his behalf is that it was not expressly provided for in the written statement of the terms and conditions of his employment, which was provided in accordance with the requirements of the Terms of Employment Information Acts, 1994 to 2014. Ms. Bolger focused on the statement of terms and conditions provided in January, 2017, at the time when Mr. Delaney's employment was made permanent.

15. In my view an eyes down reading of the most recent iteration of Mr. Delaney's statement of terms and conditions, divorced from the reality of the requirements of his employment,

would be wholly unrealistic. It is common case that it is a legal requirement that in order to be granted access to a security restricted area a person must produce an authorisation. This is one of the requirements of Commission Regulation (EU) 2015/1998 which lays down detailed measures for the implementation of the common basic standards on aviation security. That regulation is 142 pages long and is binding in its entirety and directly applicable. In the case of cabin crew, the required form of authorisation is a valid airport identification card. Without it, crew cannot get to the airside and so cannot fly.

16. Mr. Delaney in his grounding affidavit deposed that he had commenced employment on 18th February, 2015 and referred to and exhibited the statement of terms and conditions provided to him when he was made permanent. He said that there was no reference in "that" contract to any requirement to hold a daa airside access card, or to Garda vetting, or to any consequence for the future of his employment in the event that any issue should arise on a Garda vetting form.

17. Mr. Costello sought to paint a bigger picture. The defendant, he says, employs over 5,000 people, about 4,600 of whom are based at Dublin airport. He says that the layout of the defendant's offices and operational areas in Dublin airport is such that all of its staff based there are required to hold a valid daa Airport Identification Card. If there is a difference between the defendant's operational requirement that land based staff should have airside access and the terms of their individual contracts of employment, it seems to me that that cannot apply to those staff who need to get to airplanes.

18. Mr. Costello exhibited the statement of terms and conditions provided to Mr. Delaney when he was first employed in March, 2015 on a six month fixed term contract– which is not obviously materially different to his current contract – and a covering letter dated 31st March, 2015 which stipulated that before commencing employment he was required to satisfy the conditions of:-

- *Being issued with and maintaining valid Airside Security pass for the base you are being employed into.*

- *Hold a current, valid passport entitling you to travel throughout the world without restriction.*

19. Ms. Bolger argued that this was a condition precedent which once it was satisfied ceased to be a requirement. I am not on this application to finally decide any contested issue of law or of fact, but I cannot see how the requirement that the pass should be maintained could be satisfied once and for all before the commencement of employment. If the plaintiff has a case to make that this requirement did not survive the award of a permanent seasonal contract on 16th November, 2015 or the award of Mr. Delaney's permanent fulltime contract on 29th November, 2016, it is not a strong case.

20. Mr. Costello also exhibited a copy of the letter dated 29th November, 2016 by which Mr. Delaney was offered his permanent full time position, with which was enclosed a document called *"Lay Off Period and Return Arrangements"* which spelled out the

requirement that to reactivate his DAA and Aer Lingus identification cards he was required to fill in a Garda vetting form and collect his DAA ID from Dublin Airport police.

21. In any event, clause 21.5 of the 2017 terms and conditions provided (as clause 19.4 of the fixed term contract and clause 20.5 of the seasonal contract had) that:-

> *"21.5 Your employment is subject to your ability to maintain the standard of proficiency determined by the Company in safety drills for the aircraft in our fleet and is subject to you maintaining permissions and authorisations that are necessary to enable you to discharge your duties while you are employed by the Company."*

22. If the plaintiff has an argument to make that this express requirement that he should maintain all necessary permissions and authorisations did not extend to a daa Airport Identification Card, it is not a strong argument.

23. In September, 2018 there was a change in the procedures for renewing daa cards. Theretofore, cards were issued for a period of up to two years and nine months and could be renewed without the necessity for Garda vetting, which took place every five years. Thereafter cards could be issued for up to five years and Garda vetting was required on every renewal. All Aer Lingus staff were notified of the impending change by e-mail of 11th July, 2018 and again on 4th September, 2018 when the change came into effect. Staff were warned that the new renewal process might take up to 60 days.

24. On 19th September, 2019 and again on 18th November, 2019 Mr. Delaney and a number of his colleagues were reminded by their team manager that their cards were due to expire in the coming weeks and that they were required to complete Garda vetting as part of the renewal process. They were advised for the avoidance of doubt that failure to renew their cards in a timely manner would result in their removal from the roster and that they would be placed on unpaid leave until such time as they should receive their new cards.

25. In circumstances which are unclear – or which at least are not spelled out – Mr. Delaney did not apply for his new card until very shortly before his existing card was due to expire. It was not renewed before the expiry date and by letter dated 11th December, 2019 he was told that he had been placed on unpaid leave to afford him an opportunity to complete the process. By the same letter he was asked to provide updates to management as to the estimated timeline for completion and warned that any delays on his part would be viewed unfavourably and could lead to disciplinary proceedings.

26. Over the following days Mr. Delaney was chased up by his team leader and he chased up the daa. On 23rd December, 2019 Mr. Delaney was informed by Inspector McGrath of the Dublin Airport police that the Garda vetting disclosure had turned up a pending prosecution for possession of drugs at Trim District Court on 26th May, 2020. Mr. Delaney reported this to his manager and, after a number of attempts to find a date suitable to Mr. Delaney's solicitor, a meeting was arranged for the early afternoon of 19th February, 2020 at Dublin airport. In the meantime, the District Court summons, which

had been applied for on 5th December, 2019, was served on Mr. Delaney on 10th February, 2020.

27. On 14th February, 2020 Mr. Delaney's solicitor wrote to the defendant's human resources department. Mr. Delaney was said to reserve his position in relation to the alleged offence, but it was said to be common case that simple possession charges are often struck out or dismissed with a donation to the court's poor box thereby leaving the defendant with no criminal record. It was said that Mr. Delaney had not been furnished with any written decision informing him of the details of his suspension or whether any review or appeal was available and whether he was entitled to make any representations in relation to same. This, it was said, was a fundamental breach of fair procedures and natural justice. Mr. Delaney who, *"needless to say … enjoys a full presumption of innocence in relation to this allegation"*, was said to have been " *… shocked and surprised that he was immediately suspended without pay based on the mere fact that a summons had been applied for by a Garda*." Mr. Delaney was said to have asked to be considered for any other suitable role in the company, *"in particular in one of the many sites where an Airport Identification Card is not required"* but to have been told that this was not possible, although, it was said, no reasons had been given. Mr. Delaney's solicitor noted from a previous conversation that the company might suggest that its hands were tied by the fact that the cards are issued by the daa. That stance, it was said, would be vigorously contested since the defendant was Mr. Delaney's employer *"… and has the overall responsibility to ensure that my client is entitled to carry out his duties for remuneration, even if that means that he is temporarily employed outside the airport building."* The defendant was challenged to set out, by return, the contractual basis for suspension without pay and its its explanation for the suspension. Mr. Delaney's solicitor said that it was clear to her that there was no lawful basis upon which the defendant could continue to prevent his return to work. She demanded that the defendant immediately lift the suspension and permit Mr. Delaney's unfettered return to work; that the defendant would not subject Mr. Delaney to any disciplinary process save in accordance with fair procedures, natural justice and his employment contract; that the defendant would not subject Mr. Delaney to any further publication of these matters; and that in the event of any disciplinary process Mr. Delaney would be afforded legal representation. She said that failing confirmation by 2:00 pm on 20th February, 2020, Mr. Delaney would apply to the High Court and use the letter to fix the defendant with the costs.

28. This being an interlocutory application, I am not to say that Mr. Delaney's solicitor will not ultimately be vindicated in the position which she has taken on behalf of her client, but the objective fact of the matter is that Mr. Delaney was put on unpaid leave – or suspended without pay – before his application for a new card had been processed. The Garda vetting disclosure shows that the search on which it was based was conducted on 17th December, 2019 and the evidence is that the outcome of that search was first made known to Mr. Delaney, and by Mr. Delaney to his manager, on 23rd December, 2019. The premise of the letter of 14th February, 2020 is that Mr. Delaney was put on unpaid leave by reason of the summons or the alleged offence but as far as I can see that cannot

have been so. Rather, as far as I can see, as Mr. Delaney had repeatedly warned he would be, he was taken off the payroll because he had no card and could not fly. If there was not, obviously, in Mr. Delaney's terms and conditions of employment, a clear entitlement to take him off the payroll if he could not fly, neither was there, obviously, any entitlement to be redeployed to other work in the event that he could not do the work for which he had been employed. The basis for the assertion that there were many sites at which an airport identification card was not required is not apparent and sits uneasily with the suggestion later that he might be employed outside the airport building.

29. I do not understand the basis for the assertion that the defendant, as the plaintiff's employer, had overall responsibility to ensure that Mr. Delaney was entitled to carry out his duties for remuneration, perhaps outside the airport building. The fact of the matter was that Mr. Delaney was not in a position to carry out his duties. The real proposition appears to have been that if and for so long as Mr. Delaney was not able to do the work which he had been employed to do, where he had been employed to do it, the defendant had to find some other work, elsewhere, for him to do. If Mr. Delaney's contract of employment did not provide that he could be placed on unpaid leave, neither did it provide that the defendant was obliged to redeploy him.

30. It is now said that the decision to dismiss Mr. Delaney was unwarranted because the defendant would have suffered no prejudice by leaving him on the books as he was on unpaid leave. If this is an appeal to fairness, Mr. Delaney – as Mr. Mallon says – is in the wrong forum. That apart, it seems to me that the reliance now on the fact that Mr. Delaney was on unpaid leave is inconsistent with his position then that his contract did not permit unpaid leave and that he was entitled to be paid. It is inconsistent also with the claim in the general indorsement of claim for a declaration that his purported suspension by the letter of 11th January, 2020 is null and void and of no legal effect.

31. Ms. Bolger now appeals to clause 10 of the general principles set out in the schedule to Mr. Delaney's terms and conditions by which the parties committed themselves to the success of the company and in particular to "*the speedy and effective resolution of employee and employer issues and concerns, using the various internal mechanisms available*". The application of this provision, it is said, could have seen Mr. Delaney released from flying duties pending the renewal of his card, in the same way that the company makes provision for the release of female cabin crew from flying duties during pregnancy. If there is anything in this argument, it is not in my view a strong argument. The commitment to speedy and effective resolution of problems relied on is a mutual commitment. Mr. Delaney's inability to renew his security pass, on one view, created a shared problem. Mr. Delaney could not fly, and Aer Lingus could not roster him. On the other hand, I cannot see that the fact that Mr. Delaney had no card had anything to do with Aer Lingus. If there is anything in the argument that Aer Lingus was obliged to intervene with the daa, or might, because the daa was its landlord, have been able to persuade the daa in its regulatory capacity to issue Mr. Delaney with a card, it is not a strong argument. The internal mechanism that might have been available to resolve the problem was unpaid leave, but Mr. Delaney had set his face against that.

32. The meeting between Mr. Delaney's team manager, Mr. David McMahon, Mr. Costello, who is the human resources manager for flight operations and in-flight operations, Mr. Delaney, and Mr. Delaney's solicitor, eventually took place on 19th February, 2020. There is no issue as to what was said. Mr. Delaney said that he wanted to get back to work immediately, making clear that he was willing to take up an alternative position pending the resolution of his court case if that presented any issue to the company. One or other of Mr. McMahon or Mr. Costello said that they had great sympathy for Mr. Delaney but that as far as they were concerned his predicament was not about the presumption of innocence, or the summons, or any of the other matters set out in his solicitor's letter of 12th February, 2020. As the company saw the problem, Mr. Delaney could not pass Garda vetting, and so could not get a daa Airport Identification Card, and so could not do the work for which he had been employed, and his contract of employment would be terminated. Mr. Delaney wanted to be redeployed and suggested a number of roles to which he might be redeployed, and he likened his situation to that of a pregnant colleague. One or other of Mr. McMahon or Mr. Costello said that all of the roles suggested by Mr. Delaney did in fact require possession of a card and suggested that his position was very different to that of a pregnant flight attendant.

33. The substance and outcome of the meeting was reflected in the letter written on the following day to Mr. Delaney's solicitor. Mr. Delaney had been placed on unpaid leave because his card had expired; he was not the subject of a disciplinary process; he needed a card to work as cabin crew; because he had not passed his Garda vetting, the daa would not renew his card; there was no alternative role to which he could be assigned; and, with regret, his employment was terminated.

34. In the meantime, earlier on 20th February, 2020, Mr. Delaney's solicitor had written to the daa and had sent an e-mail to the defendant asking for an opportunity to explore with the daa whether it would "*engage with us to find an alternative to not issuing Lorcan with a card*". The letter to the daa sought details of its policy in relation to the renewal of Airport Identification Cards where the applicant had been summoned to appear in court several months later, whether there was any differentiation between alleged offences, whether there were published guidelines, whether there was any appeal or review, and so on. The daa's decision not to renew Mr. Delaney's card was said to have been arbitrary, disproportionate, and wholly unnecessary and it was called upon to renew the card pending the outcome of *"any review/appeal and/or the outcome of the District Court case."*

35. As of the date of swearing of Mr. Delaney's grounding affidavit on 25th February, 2020 there had been no response from the daa to the letter of 20th February, 2020. In his second affidavit sworn on 5th August, 2020 Mr. Delaney referred to and quoted from but did not exhibit an e-mail from the daa of 5th March, 2020, a reply of the same date, and a further daa e-mail of 6th March, 2020, the upshot of which was that in circumstances in which the Garda vetting disclosure had reported that Mr. Delaney was due in court on 26th May, 2020 to answer a complaint of possession of drugs – without any indication of

the nature or quantities of the substances – it was the norm to await the outcome of the court case before making a decision on an application for an Airport Identification Card.

36. Mr. Delaney now complains, variously, that Aer Lingus never sought to determine whether the offence alleged against him was serious, or whether he had a defence to it, or whether he intended to challenge the Garda vetting, and that it did not afford his solicitor time to engage with the daa. However, he does not attempt to identify any legal obligation on the part of Aer Lingus to have done any of that. If his case is not that his employer failed to do something which it was bound by contract to do but that it behaved unreasonably, he is in the wrong forum.

37. By the way, the submission now made on behalf of the plaintiff that if the defendant had shown some forbearance and awaited the outcome of the correspondence between his solicitor and the daa his card could have been renewed pending the hearing before the District Court in May, 2020 is contrary to the evidence.

38. Mr. Delaney in due course answered his summons to appear at Trim District Court on 26th May, 2020. Having heard the evidence, Judge Brennan accepted that Mr. Delaney had been found in possession of a small quantity of drugs for his personal use and that he had not come to Garda notice before or since, and dismissed the complaint. If, following the disposal of the prosecution, the daa was ever asked to review and decide Mr. Delaney's application, there is no evidence that it was. As far as the evidence goes, at the date of hearing of the motion Mr. Delaney had no daa Airport Identification Card.

39. The orders now sought on behalf of the plaintiff are mandatory orders. It is necessarily and properly accepted on his behalf that to engage the jurisdiction of the court he must go further than establishing a fair question to be tried but must show that he has a strong case that is likely to succeed at the hearing of the action. *Maha Lingham v. Health Service Executive* [2005] IESC 89, [2006] 17 ELR 137.

40. He has fallen well short of that.

41. The proposition that it was not a term of the plaintiff's contract of employment as an air steward that he should have a valid daa Airport Identification Card which would allow him to get to his airplane is not, in my view, even arguable.

42. As to the argument that the plaintiff was not afforded fair procedures, there is a fundamental disconnect between the parties. The plaintiff's case is that the cause or reason for his dismissal (or purported dismissal) was the District Court summons, which, he says, was for an offence which he says is much less serious than other offences which have not led to dismissal. The defendant, however, maintains, and has been absolutely consistent, that it was wholly and exclusively attributable to the fact that he did not have a daa Airport Identification Card. The defendant's case, to be clear, is that it was not and is not obliged to objectively justify the exercise by it of the termination of Mr. Delaney's employment in accordance with the terms of the contract and that his remedy if he wished to challenge the fairness of the dismissal was under the Unfair Dismissals Acts,

1977 to 2015. I accept the plaintiff's argument that in a case where an employer is enquiring into an allegation of misconduct which reflects on the employee's good name or reputation, basic fairness of procedure and natural justice must be observed. However, the plaintiff has failed to establish that he has a strong case that is likely to succeed that he was dismissed by reason of misconduct.

43. I should note for completeness that the plaintiff was dismissed, for all practical purposes without notice, but on the basis that he would be paid in lieu. His terms and conditions of employment expressly provided for payment in lieu of notice and at the hearing of the motion he acknowledged by counsel that he had been paid his salary for the period of notice to which he was entitled. It was not argued that his dismissal was invalidated by reference to the fact that he was paid in lieu.

44. If the plaintiff had met the threshold test, he would have needed to go further and persuade the court that this is an appropriate case in which to make the orders sought, the object of which, ordinarily, is to preserve the status quo pending the trial of the action. As of the date on which the summons and motion were issued, and as of 10th March, 2020 when the motion was first listed for hearing, the plaintiff was without an income. On 10th March, 2020, by consent, but on the application of the plaintiff, the motion was adjourned. Later it was adjourned generally by reason of the first Covid-19 lockdown. By the time it was re-listed, and before it was relisted for hearing, the plaintiff had secured alternative employment and – as far as the evidence went – still did not have a daa card, so that it was wholly unclear what, if any, benefit he would derive if the orders sought were made.

45. I referred earlier to Mr. Costello's supplemental affidavit as to the effects of the pandemic on the defendant's staff. Among the measures which have been taken by the defendant to manage staff numbers is a voluntary severance programme. It was suggested by Ms. Bolger in the course of argument that if the court were to make an order in the terms sought, restraining the defendant from treating the plaintiff otherwise than in accordance with his contract of employment, he might qualify for that programme and avail of it. That prospect, in my firm view, would not have been consistent with the objective of an interlocutory injunction.

46. It was also suggested that the making of the orders sought would preserve or vindicate the plaintiff's reputation, but it seems to me that the premise of the argument that Mr. Delaney's reputation might have been damaged is his contention that he was dismissed by reason of misconduct. In any event there is no disputed question of fact in the concatenation of events which have led to Mr. Delaney being in the very unfortunate position in which he finds himself.

47. I am not persuaded that the plaintiff has established that he would be exposed to a real risk of injustice if the orders sought are not made.

48. For these reasons the application must be refused.

49. I will hear counsel, remotely, as to the appropriate order for costs.