Neutral Citation No. [2005] NICA 13 | *Ref:* **NICF5224**

Judgment: approved by the Court for handing down | *Delivered:* **15/03/2005**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

JOHN RINGLAND

Plaintiff/Appellant

and

SOUTH EASTERN EDUCATION & LIBRARY BOARD

Defendant/Respondent

Before Nicholson LJ, Campbell LJ and Girvan J

NICHOLSON LJ

Introduction

[1] This is an appeal from the decision of McCollum LJ in an action in which the appellant claimed damages for injury to his health and loss of his employment with the respondent on the grounds of negligence and breach of duty of the respondent, its servants and agents. He claimed damages for libel before McCollum LJ but he has not pursued this claim before the Court of Appeal.

[2] The appellant has appeared in person before McCollum LJ and before this Court. His courtesy to this Court and towards counsel for the respondent has been exemplary. It is apparent that he showed the same courtesy before McCollum LJ.

The background to the appeal

[3] We are indebted to McCollum LJ for the care which he took to set out the background to the case and the claims of the appellant at first instance. We are grateful to the appellant for responding to the matters raised in the judgment,

paragraph by paragraph in the document headed, "Reply to Judgment by McCollum Lord Justice".

[4] The appellant was appointed to the full-time post of Assistant Lecturer in Electrical Engineering at Lisburn Technical College, Co Antrim in 1970: see the correspondence at Tab 2 of the Court Bundle – Volume 1 prepared on behalf of the respondent.

[5] The Statement of Claim (which was re-drafted on a number of occasions) is dated 16th April 2003 and is to be found at pages 671 – 691 of the Court Bundle – Volume 2. At paragraph 1 it is stated that he was employed as a lecturer in Electrical/Installation Engineering at the said college now known as Lisburn Institute, by the respondent from 1st September 1970 to 31st August 1996. The terms of this contract, as claimed by the appellant, are set out at paragraphs 2 to 4 of the Statement of Claim. He claimed, at paragraph 4, that by reason of the negligence of the respondent from October 1991 until January 1996 he sustained personal injury (as detailed in his medical records) which forced him to take constructive dismissal on 31st August 1996. He set out the particulars of negligence at pages 3-12 of this document.

[6] These particulars are helpfully summarised by McCollum LJ as follows:-

> "[i] failure to provide technical support between 1991 and1996 to replace Mr B Graham, a technician who retired in 1991,
>
> [ii] requiring the plaintiff to carry out repair work on electrical accessories and equipment and to carry out refurbishment work contrary to his terms of employment,
>
> [iii] failing to ensure the correct application of the appropriate disciplinary code,
>
> [iv] harassment by a threatening letter and a malicious telephone call relating to the plaintiff's retirement".

[7] The respondent disputed all of the arguments set out in the Statement of Claim by their defence (as amended) dated 19th May 2003, which is to found at pages 766-770 of the Court Bundle – Volume 2. They denied negligence and at paragraph 11 pleaded contributory negligence.

[8] McCollum LJ set out the relevant details of the appellant's employment and his claims at paragraphs [2] to [41], [47] to [49] and [51] to [52] of his judgment. We set these out here in order that the appellant's claims may be understood. Mr Ringland referred to them in his opening speech to this Court.

"[2] The claims arise from events which occurred when the plaintiff was a lecturer in electrical installation and engineering in Lisburn College of Further and Higher Education, now known as Lisburn Institute ("the college").

[3] The case was conducted on the basis that if the plaintiff has any legal redress for the matters of which he is complaining, the defendants accept responsibility as employers to provide such redress as may be appropriate.

[4] The plaintiff's employment in the college commenced in 1970 and consisted of teaching electrical installation work. The course was under the auspices of City and Guilds and consisted of 80% practical training and 20% theory.

[5] Students were instructed in planning electrical work, preparing wiring diagrams, circuit diagrams and also the practical exercise of actual installation of electrical wiring.

[6] The plaintiff described it as a very wide ranging course with a high standard of work required and said that there could be a lot of danger involved because of potential contact with live electricity.

[7] He was a member of the Chartered Institute of Building Services Engineers, of which the Institute of Electrical Engineering was a part and the text book in use in the College was produced by the Institute of Electrical Engineering.

[8] The plaintiff's evidence was that the services of a technician were necessary for the proper conduct of his teaching duties. He worked in room B7 and the technician's task was to set out equipment in that workshop, to make sure that the benches were in safe working order, and that the socket outlets and the safety devices, switches and trips worked properly.

[9] The students had to complete 30 exercises in a 36 week period in each year of the three year course.

[10] The technician laid out the electrical equipment for the use of his students and gathered it together again at the end of classes. He was responsible for scrapping equipment which was no longer usable or to recycle it if that could be done.

[11] Second year students were allowed to work with live electricity and had to study the use of motors of which there were 4 or 5 different kinds. The student had to take them apart, re-assemble and run them and the technician would attend to demonstrate with the plaintiff how to run the motors which might have accounted for about one week of the students' instruction. It was the technician's duty to check the motors and to repair them if necessary.

[12] There were also different kinds of lighting apparatus, the study of which was part of the syllabus.

[13] The recycling carried out by the technician saved on the purchase of new equipment and the plaintiff and the technician joined in preparing a list of what had to be re-ordered at the end of the year.

[14] The plaintiff said that he could not carry out his duties properly without the services of a technician and referred to the legal liability that he had under health and safety requirement and Electricity and Work Regulations.

[15] In October 1991 Mr Bertie Graham, the technician, retired and the plaintiff was told that a new technician would be appointed in January 1992. The plaintiff responded that he could carry on with his work for a couple of weeks in the absence of the technician.

[16] The plaintiff did not regard himself as under any obligation to do repair work and found it difficult to ensure that the stores were accessed for the production of equipment for the students' use and said this was not a part of his contract. The plaintiff said that from January 1991 to January 1996 when he left, "due to a heart attack", no technician had been appointed.

[17] As a result he said that the 298 students were not being properly tutored and the students suffered, particularly in the craft courses.

[18] The Departments of Electricity and Engineering were amalgamated and Mr McCambley took over the mechanical department.

[19] The plaintiff said that he often complained that he could not teach his pupils properly in the absence of a proper technician. However the new Principal of the college said that a technician was not needed.

[20] There was also a technician called Harry on the mechanical side but he left in 1992 also on the basis that he was not needed.

[21] When Mr McCambley took over the department the plaintiff told him that a new technician was needed for the craft courses and the academic course, which required some practical demonstrations.

[22] He admitted that he did not get on well with Mr McCambley. There was another technician who took over the electronics section but again when he left he was not replaced.

[23] Mr McCambley told the plaintiff that he should act as technician but he refused.

[24] Some electrical installation had to be done in room C5 and Mr McCambley had another teacher, Mr McLaughlin, carry out that work. The plaintiff complained in writing that there was a need to have a design certificate, a contractors' certificate, the identification of the contractor and the installation needed to be tested but says that his note was completely ignored. He refused to have anything to do with the work.

[25] Mr McCambley still insisted that he should act as technician.

[26] Following that Mr McCambley told the plaintiff that he had decided to turn another room into the new electrical workshop and to leave B7 as a classroom. The plaintiff was asked to dismantle B7 of all electrical parts and to get the students to help him to do it. He refused for the reasons that he was not a contractor but a teacher, that the students were not contractors but learners and that there was a health and safety issue involved. P2 was never completed as an electrical workshop.

[27] The plaintiff also found that first year students were working with live circuitry, which was illegal. A colleague, Mr McClune, with the help of some students, stripped room B7 and removed all the demonstration material from it and learning aids. The plaintiff had mounted the design of the complete electrical wiring for a house on a wall so the students could see it but it was taken off the wall and put on the ground.

[28] An incident occurred when Mr Lester came from room B5 to B7 because equipment in the former room was live and apparently the trip-switch had not functioned because of a wrong connection. A firm of contractors had to come to repair it. No accident or injury appears to have been caused by any of these matters complained of.

[29] According to the plaintiff, between 1992 and 1996 a good deal of work was done with the help of students that should not have been done. He said there was a lack of materials and a lack of books. Each student had to complete an assignment prepared by the joint industrial board and the terms of the assignment were contained in field evidence record books.

[30] In 1994, 1995 and 1996 the assignments arrived extremely late by as much as 28 weeks, arriving in January in one year and March in another year. The plaintiff complained about this. There was a change to accommodate the award of National Vocational Qualifications and instead of examinations assessments were substituted. There was a meeting about this issue and the plaintiff was told that there would be no examinations but the lecturer was required to assess the students. It was his duty to show the students what to do, such as preparing a wiring system, and then the student was required to do it.

[31] A decision was made to hold examinations in about 1993 or 1994 but the assignments and appraisals also had to be carried out.

[32] Field evidence record books had to be completed. The first topic was Health and Safety and assignments were usually completed at each lesson and certified by the lecturer.

[33] The plaintiff was dissatisfied by the way in which instruction was carried out and felt that some students did not receive proper qualification which entitled them to the best employment. A serious issue arose about assignments during the academic year 1994–1995.

[34] According to the plaintiff the assignments should have arrived at the beginning of the students' first term but instead arrived in March 1995 which, the plaintiff says, was 28 weeks late for the third year students. First year assignments arrived 14 weeks late and second year assignments 15 weeks late.

[35] The assignments were designed by the City and Guilds Institute and a paper was provided setting out 25 assignments to be completed over the period between December 1994 and May 1995. When the assignments were made available to the students another document called the "Schedule of Evidence" was provided for the tutor. This contained guidance regarding the type of answers which could reasonably be expected from candidates.

[36] Being practical assignments the answers could vary but the Schedule of Evidence set out the basic requirement for dealing with each situation described in the assignment. In 1993 each candidate received a copy of the Schedule of Evidence as well as his assignment paper. Apparently this was because the same

number of Schedules of Evidence had been printed as assignments, but this was not regarded as the appropriate course and in the 1994-1995 Schedule of Evidence it was made clear that it had been prepared to offer guidance for tutors' attention only.

[37] The Schedule of Evidence commences with the following remarks:

> 'This Schedule of Evidence has been prepared by a moderating committee in order to offer GUIDANCE FOR TUTORS ATTENTION ONLY regarding the type of answers which can reasonably be expected from a candidate in connection with each section of the assignments. It should not be used as a prescriptive marking scheme.'

[38] On 21 March 1995 Mr John Montgomery visited the college as a external verifier and included the following among his comments:

> 'As can be seen from the action plan much work requires to be done before the course and those personnel involved comply with the requirements of the centre registration document and the `Standards'.
>
> I was disturbed to find, when I checked the City and Guilds 2360-101 assignments, a written copy of part of the Schedule of Evidence in the portfolio of one of the candidates (copies enclosed). I expressed my concern to Mr Ringland who is responsible for this part of the course and Mr McClune in his capacity as internal verifier.
>
> The college would need, as a matter of urgency, to identify the role UG Internal Verifier/Assessor, of each lecturer involved in the course.'

[39] Mr McClune, who was internal verifier, issued a memorandum to Mr Ringland with copies to Mr McCambley, Mr Kilpatrick, Mr Dornan and Mr Law in the following terms:

> 'I have been advised by the External Verifier for NVQ in Electrical Installation (Mr J Montgomery) that a serious breach of confidentiality may have occurred concerning the leakage of information contained within the Schedule of Evidence for the C& G Part I assignments.
>
> As you are aware the Schedule of Evidence supplied along with the assignments provides the teacher with possible solutions to the various sections of the assignments and as such is for the teacher's use only.
>
> Whilst examining a first year trainee's partially completed assignment the External Verifier came across what he thinks is a handwritten version of the Schedule of Evidence for this year's assignments and suspects that cheating is taking place within this group. The External Verifier has taken photographic evidence away with him for his own investigation.
>
> In the meantime we should carry out our own investigation into the matter to try to establish how, if that is the case, trainees have seen

> the Schedule of Evidence. It is imperative that this document remains in the possession of the teacher at all times and that trainees have no access to it.
>
> I will arrange a meeting with you to discuss what action should be taken.'

[40] As a result a meeting was held in the Vice-Principal's office on Friday 12 May 1995 described as being a preliminary investigation under the terms of the disciplinary procedure for teachers of institutions of further education. The plaintiff attended that meeting.

[41] Subsequently what was described as a counselling meeting was held on 21 June 1995 in the Principal's office. The meeting lasted approximately 10 minutes and seems essentially to have consisted of a reprimand to Mr Ringland for allowing dissemination of the Schedule of Evidence among the students.

….

[47] A further upset to the plaintiff occurred when Mr G Murray an electrical inspector for the Department of Education visited the college in December 1995 and furnished the following report on the plaintiff's teaching of a class:

> '[The quality of Mr Ringland's teaching in electrical installation is unsatisfactory. Mr Ringland uses a restricted range of teaching approaches. In the class inspected, he read questions from an assignment booklet and failed to provide the students with sufficient information. This lesson lacked purpose and challenge; he provided few opportunities for the students to develop their knowledge and understanding of electrical installation practice. The students were not provided with any activities. They were unmotivated; only 3 of the 10 students participated in the lesson, the remainder did not make any written or oral contributions. The teacher's expectations were low and the students did not produce the standard of work of which they are capable. Relationships between Mr Ringland and the students are poor; he fails to encourage the students and to develop their confidence. Mr Ringland's planning is also poor; he does not prepare sufficient work to occupy the students in learning throughout the timetabled sessions. The class started 12 minutes late after morning break, and Mr Ringland terminated the class 5 minutes before the official finishing time.
>
> Mr Ringland needs to ensure that:-
>
> i. he identifies appropriate learning objectives for all lessons;
>
> ii. he plans and organises lessons to meet the objectives;
>
> iii. he uses a range of teaching methods that promote learning among all students;
>
> iv. his expectations of the pupils are commensurate with their abilities and in line with the requirements of the course; and
>
> v. lessons occupy the time allocated on the college's timetable.'

> [48] The report was brought to the plaintiff's attention and on 8 January 1996 the Department of Education Northern Ireland sent him a copy of it indicating that a further inspection of his work would be carried out as part of the follow-up inspection process.
>
> [49] It is clear that the plaintiff was under substantial stress at this stage. He may have suffered a heart attack and he did not return to his duties in January 1996.
>
> …
>
> [51] An unfortunate exchange took place on 4 September when Mr Ellison, Clerk to the Board of Governors, telephoned him to protest at the fact that he had not sent notice of his resignation to the Board of Governors.
>
> [52] There is no doubt that this incident caused further distress to Mr Ringland and resulted in an apology by Mr J B Fitzsimons, Chief Administrative Officer in a letter dated 23 September 1996. However it can have had no bearing on his decision to retire which had already been made and there is no evidence that it caused or contributed to any worsening of his stress thereafter."

[9] From 1970 until 1991 it appears that everything went well. But in 1991 Mr Graham, an electrical technician who assisted Mr Ringland, retired and was not replaced despite promises to replace him, according to Mr Ringland. Mr Ringland claims that in effect he was required thereafter to do the work of two men, namely his own work and the work of an electrical technician, although his contract as a lecturer did not oblige him to do so. He claimed that he was put under considerable stress which led to a breakdown in his health. He told this Court that his contract required him to do 30 hours work per week but that he voluntarily did additional work. Mr Graham's contract required Mr Graham to do 35 hours per week. He was a lecturer; Mr Graham was a technician. They did different jobs. When Mr Graham retired and was not replaced, he found that in order to provide a service for his students, he had to undertake additional work which put undue stress on him. He told us that he complained to Dr Baird, who said that they did not need technicians and to Mr McCambley, his line manager. Mr McCambley did not give evidence at the hearing before McCollum LJ but, as the Lord Justice recorded, it was put by the appellant to Mr McReynolds, the then Principal of the College, that he had complained to Mr McCambley. It is inappropriate for us to make primary findings of fact. We have recorded what the trial judge found and will set out Mr Ringland's comments.

[10] Mr Ringland made no comment about the first twenty paragraphs of the judgment of McCollum LJ. He appears to have accepted a number of subsequent findings, amplifying them in his "Reply to Judgment of McCollum LJ" and in the course of his submissions to this Court. Thus he stated that he told Mr McCambley that he could not do the work of two men (see para [21] of the judgment and Mr Ringland's comments thereon). He accepted the finding of McCollum LJ at para [22] augmenting it by stating that Mr McCambley was unwilling to discuss with him "the dire straits I was in". He accepted that he told Mr McCambley that he refused

to act as a technician because "Mr McCambley was asking me to do the work of two men" and no attempt was made to re-write his contract: see para [23] of the judgment. He accepted the finding at [24], adding that it was highly unprofessional of Mr McCambley to delegate such work to Mr McLaughlin. He accepted the finding at para [25], adding that Mr McCambley "continued to pile on the pressure which developed into a very stressful situation". He also accepted the findings at paras [26] and [27] and [28] but claimed that the outside contractor was brought in as a result of his complaint, thereby preventing an accident or injury. He blamed Mr McCambley for the matters alleged by him which are set out at para [29] of the Lord Justice's judgment. He stated that Field Evidence Record Books arrived late and as a result assignments were late for the years 1994, 1995 and 1996 as recorded by the Lord Justice at para 30 of his judgment. He blamed this on Mr McCambley. He accepted the findings at para [31] to [34], blaming them on Mr McCambley. At paras [35 to [45] the Lord Justice dealt with the Schedule of Evidence. He claims that he did not show the Schedules of Evidence to students but read out extracts when asked for assistance. These, he said, did not supply the answers to students. He referred to the visit of Mr John Montgomery, the external verifier on 21 March 1995 and to his detailed report in which, say Mr Ringland, the college was severely criticised. One of the students had a copy of the Schedule of Evidence and had apparently cheated. He had not provided any opportunity to a student to copy the Schedule of Evidence. He stated that it neither posed a question nor attempted to give an answer to a question. All 14 students failed to pass the course in question. He was wrongly blamed for cheating by Mr Montgomery. He disputed that the meeting in the principal's office on 21 June 1995 was a counselling meeting. He said that the pressure continued to mount and the stress was building within him. He disputed the finding by McCollum LJ at para [42] that the college staff acted at all times in good faith and that no member was motivated by any bias against Mr Ringland. He disputed the finding that the City and Guilds Institute took a strong view about the Schedule of Evidence and he denied that he had shown the Schedule of Evidence to students. He stated that he merely quoted "notes for guidance on assessment" from 1993 onwards. He disputed the finding that there was no evidence whatever that the college or its officers had any reason to anticipate that the conflict would have any consequences for the health and welfare of Mr Ringland. He stated that the college was badly managed and that he was harassed, cajoled, bullied and pressured into following a line laid down by Mr McCambley, an untrained and incompetent head of department, who had no concern for Mr Ringland's health or well-being and refused to discuss problems with him. Mr Ringland stated that he was at breaking point and no one wanted to know. Unknown to him his health was beginning to be affected. Had he known what was happening, he would have gone to see his doctor at an earlier stage.

At para [47] of the judgment reference is made to further upset to Mr Ringland when Mr Murray, an electrical inspector for the Department of Education criticised the quality of Mr Ringland's teaching in a report either in December 1995 or in January 1996. Mr Ringland contended that Mr Murray's area of work was not in electrical installation work and that he was not qualified to criticise Mr Ringland.

[11] At para [49] of the judgment, McCollum LJ found that Mr Ringland was under substantial stress at this stage, may have suffered a heart attack and did not return to his duties in January 1996, remaining off work until final retirement on 31 August 1996.

There was further stress in September 1996 but we do not consider it necessary to deal with this in view of Mr Ringland's retirement in August. Nor do we consider it necessary to consider Catherine Ellis' letter of 6 July 1995 to Mr Ringland.

The crucial question

[12] As pointed out in his judgment by McCollum LJ and raised in the course of argument in this Court by Campbell LJ and Girvan J, the crucial question is whether Mr Ringland's employers knew or ought to have known at any time prior to his ceasing work that his working conditions and the incidents that had occurred were liable to cause injury to his health: see para [82] of the judgment. Mr Ringland contends that it should have been obvious. However, at para [83] of the judgment a finding was made that nothing had been shown in relation to the conduct and demeanour of Mr Ringland prior to his ceasing work that would have brought to the attention of his employers that his health was impaired or was being impaired by events at work. Despite Mr Ringland's eloquent submissions to the contrary, we consider that we cannot interfere with that finding by the trial judge and would not be justified in doing so.

As the judge pointed out at para [84] there was no suggestion that there was any medical evidence available to the respondent or any of its servants or agents or that there was any indication from Mr Ringland himself that he was suffering from stress. As he frankly admitted to this Court, he was quite unaware himself that his health was under threat and when he experienced a deterioration in his health he thought himself that it was an attack of flu. It was only when the doctor did a blood test that the question of a heart attack was mentioned.

The judge concluded that none of the matters discussed at paras [9] and [10] of this judgment was a foreseeable cause of injury or harm to Mr Ringland. There was a complete absence of any evidence that anyone at the college or anyone connected with the respondent was given any reason to believe that his health was deteriorating at that time or that he was liable to suffer any degree of stress: see para [89] of the judgment. Mr Ringland disputed this. But the judge had the advantage of hearing all the witnesses who were called to give evidence at the trial and was in a far better position than we are to assess the evidence.

[13] The judge discussed the legal principles at paras [91] to [98] of his judgment with admirable clarity and we endorse what he stated therein.

[14] As the judge pointed out, one of the great problems in the case was that there was no medical evidence whatever and no direct evidence that Mr Ringland either exhibited any signs of health damaging stress nor did he complain at any time up to January 1996 that his health was being affected by the various circumstances experienced by him at work. No medical opinion was placed before the judge as to the cause of his condition or its severity. The respondent made clear to Mr Ringland that medical notes and records would not be accepted and that it would be necessary to call medical evidence. Notwithstanding this, the judge looked at the medical notes and records produced by Mr Ringland in case there should be anything helpful to his case but could find nothing. We have carried out the same task with the same result. Heart attacks can, of course, be caused by stress but there are many other causes. Seemingly no doctor was prepared to say that there was a probable link between the stress undergone by Mr Ringland at work and his heart attack. Or, less likely, no doctor was asked to express an opinion. Whichever is the case, the lack of such evidence is fatal to Mr Ringland's claim as the judge concluded at para [109] of his judgment. It is apparent that the judge painstakingly listened to, analysed and assessed the evidence and the gaps in the evidence and reached his conclusions in a lengthy judgment in which he covered every possible point.

[15] Mr Ringland and Mr Brian Fee QC will forgive us, we trust, in refraining from setting out their carefully marshalled arguments before this Court. Having considered all the evidence and the documents placed before us and having examined all the submissions and contentions presented to us, we conclude that this appeal must fail for the reasons set out under the heading of "The crucial question". Accordingly the appeal is dismissed. But we wish to record again that Mr Ringland presented his appeal skilfully and with the utmost courtesy.