

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**BETWEEN:**

**JEAN BURNS**

**Plaintiff;**

**-and-**

**S J BURNSIDE, D G DAVIS, P DEVINE, VERY REVEREND D C ORR, J DOHERTY, W DUNCAN, B HEANEY, M KEENAN, D LOUGHREY, A CASEY, K DONNELLY, M LOUDEN, R MACKEY, R McCAUL, REV CANON D B McLEAN, I WILSON AS GOVERNORS OF TEMPLEMORE SECONDARY SCHOOL AND WESTERN EDUCATION AND LIBRARY BOARD**

**Defendants.**

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**CAMPBELL LJ**

Mrs Jean Burns who is 53 is a retired school teacher. She taught at Templemore Secondary School in Londonderry for 18½ years from September 1977 until her retirement on health grounds in February 1996. She claims damages from the defendants, as her employers, on the ground that it was as a result of severe pressure and stress at work that her health deteriorated and she had to retire.

Before she took up teaching Mrs Burns had a background in office work and at Templemore School her subjects were shorthand, typing, accounts and commerce. She

enjoyed her work and it appears that her former pupils were highly regarded in offices in the city. Mrs Burns took on some additional duties such as running a school bank and later as compiler of the school timetable and these extra duties earned her a further point in the pay scale. As the only teacher in her department she was, for practical purposes, head of the department.

Although she had problems over a number of years with her marriage, which ended in 1983, she found the Principal, Mr F G Wright both sympathetic and understanding. Later when her mother was dying and she had difficulties with a new relationship which she had begun Mr Wright was again helpful to her. In 1987 both of her children, who were over school age, left home for London and from then she lived on her own.

In the late 1980s the impact of information technology was being felt in Templemore School. Shorthand was dropped from the curriculum by the Department of Education and commerce was fading as a subject though Mrs Burns continued to teach typing and accounts. Mr Wright, as Principal, began to reduce the number of typing and account classes and to replace them with simple IT classes for first year students. Mrs Burns became apprehensive about the future and when she spoke to Mr Wright about it she felt that he failed to take her concerns seriously. She wanted the school to have a curriculum development committee which would do some forward planning for her department.

In May 1993 she was told that the school was starting a two year GCSE business studies course from the opening of the new school year in September. Her evidence was that it would be usual to have a much longer lead in before starting a new teaching course, but she was happy to commence the course in September. On hearing this news she set about acquiring books from other schools, which were already teaching the course, and she spent time in the evening preparing an outline of the course which she expanded later.

Mrs Burns began teaching the GCSE course in the Autumn term of 1993 and at the end of October or early November she was told by the School Curriculum Committee that another new course, a General National Vocational Qualification (GNVQ) was also to be introduced. She looked at the syllabus and found that of the four mandatory units two would be taught at Templemore and two at the North West Institute for Further and Higher Education (North West) where two optional subjects would also be available. The students would spend two days at Templemore each week and three at North West. Mr Wright had seen a presentation of the course at North West and he was keen to introduce it. It involved a change in the teaching method as GCSE is a “knowledge based” course while GNVQ is an “I can do” course. Mrs Burns told Mr Wright that there were difficulties about the introduction of this new course at a meeting which the Vice Principal in charge of the curriculum attended. Mrs Burns said that they did not appear to appreciate the difficulties she was facing.

She met Mr Wright again in March 1994 and asked for the introduction of GNVQ to be delayed until she had completed the second year of the new GCSE business course for the first time but he told her that it was coming in and that she would receive training. According to Mrs Burns this was the first occasion in all the years that she had worked at Templemore under Mr Wright that she felt that he was at fault in his attitude.

Mrs Burns attended a one day course at Strathfoyle which she said told her nothing about how a GNVQ course should be taught. According to Mrs Rudd, the Vice Principal at Templemore in charge of curriculum development and staff development, Mrs Burns was not very receptive to attending training with the Western Education and Library Board (the Board) and on occasions refused to go on courses. Mrs Rudd suggested that she appeared to be reluctant to see change and everything that she was going to experience appeared to present difficulties for her.

There were other changes in the school which Mrs Burns said that she found upsetting. She had used two rooms for teaching her courses and when computers were delivered into the larger of these she was left with the smaller room which was inadequate for typing classes. She had asked that the chairs in the computer room should not have wheels as the boys pushed them around and this made it more difficult to keep order. Her request was ignored. She could not reach the safety switch that was installed in the computer room and she had to ask for this to be attended to.

She wanted meetings with colleagues who were going to teach the new GNVQ course but these were not arranged. "Twilight" courses in IT were offered to all teachers in Templemore School in November 1994 and these took place at the end of the teaching day under the Board. Mrs Burns told Mrs Rudd that she was already overloaded and she refused to go on the course as did some others. According to Mrs Rudd this was because it was outside what is called "directed time" which is the period of the school day during which teachers are still required to be at work though the teaching day is over. Mrs Burns said that she was too "lost and exhausted" to attend these courses.

In the second week of December 1994 Mrs Burns went to see her doctor with stress related symptoms and following this she came out of work and she remained off work until April 1995. The school engaged a substitute teacher to take her classes in her absence and the Principal arranged to keep him on after Mrs Burns returned for the Summer term in 1995. This was in part due to concern for the students who were then approaching their examinations and a change of teacher at this stage was felt to be undesirable. It was also to save Mrs Burns from the burden of full-time teaching duties on her return following her illness. She was keen to return as the level of sickness pay was going to reduce to half after more than 100 working days absence and she was buying her house. In her evidence she acknowledged that the school "bent over backwards" to help her. In a note to the governors Mr Wright recorded his concerns not only about the

students but lest Mrs Burns should have a further breakdown and the school would have difficulty in finding a substitute. He added “Can I point out that if Mrs Burns returns without support and suffers a relapse within a few days the cost to the school budget will have been the sick pay for her plus substitute teacher costs, as the more positive and controlled approach outlined above”.

On her return in April 1995 Mrs Burns took a couple of classes and tried to catch up with the head of department paper work which had accumulated in her absence. In May she met with Mr Wright, his Vice Principal Mr Mc Ilwaine and Mr Frederick Kane, an area officer of her union, the National Association of School Masters and Union of Women Teachers. A number of issues were discussed at the meeting including the support to be given to Mrs Burns. Mr Kane wrote on 24 May 1995 to Mr Wright to thank him for the meeting and he said “the provision of administrative/clerical help, the proposed assistance of the acquisition of IT skills and access to in-service/backup and structured team meetings will be of great assistance to Jean as she adapts to the requirements of the new course in business studies”. This accords in broad terms with the minute which the school kept of this meeting though it is more detailed. IT support was to be provided by Mrs Gladys Love who is a part-time teacher, and it was suggested that a period or two could be timetabled for the school team to meet weekly and possibly use this time for meetings with North West team/representatives and Board advisers for consultation. Mr Wright indicated that if the clerical help required by Mrs Burns was more than could be accommodated by existing staff then an additional resource in the form of overtime (if agreeable) or additional temporary staff would be considered.

With her light teaching load in the Summer term followed by the Summer holiday it was anticipated that at the beginning of the Autumn term Mrs Burns would be teaching a full timetable again.

Although Mrs Burns said that she was critical of Mr Wright's management skills when she telephoned him in April 1995 to say that she was returning to school, I found no cause for criticism of his treatment of her. In the course of the trial Mr Morgan QC (who appeared with Mr G Potter for Mrs Burns) conceded that his client had no cause for complaint against her employers prior to the opening of the Autumn term 1995.

Mr Wright retired as Principal on 31 August 1995 and his successor, Mrs Joan Doherty, was unable to take up the position until 1 October 1995 when she relinquished her post as Principal of Dungiven High School. Although she attended Templemore Secondary School as frequently as possible from the date of Mr Wright's retirement, the task of day-to-day running of the school fell on the Vice Principal Mr I R McIlwaine.

Mrs Burns said that on 31 August Mrs Doherty met the staff and told them she expected them to be "on their toes". She invited them to tell her in writing what their problems were now and not later as no quarter would be given.

Mrs Burns said that this made her very apprehensive and that she spoke to Mrs Doherty after the meeting and asked her if she knew about her department and she told her that she had no knowledge of it. Mrs Burns said that she then gave her a verbal explanation.

Mrs Doherty said that her meeting with the staff was to introduce herself to them and that she was not at all aggressive and was trying to get them on her side. After Mrs Burns spoke to her she arranged to meet her on 5 September and travelled from Dungiven for the meeting. She was accompanied at the meeting by Mr McIlwaine and they talked with Mrs Burns for about half an hour. The burden of the message from Mrs Burns was that she felt that her timetable was very heavy and she wanted to be sure that Mrs Doherty knew the background. Mr Wright had told her that Mrs Burns had returned after a long absence but she was not told that this was due to stress. She saw her timetable and felt that it was reasonably light for someone with her responsibility points and she also looked

at her timetable for the previous year and found it was extremely light too. She found Mrs Burns pleasant and there was nothing to indicate to her that Mrs Burns was under pressure. When Mrs Doherty told Mrs Burns that she did not know her background she asked her to write it out and arranged, when it was available, that Mrs Burns would tell Mr McIlwaine and they would meet again.

In her evidence Mrs Burns said that at a meeting with Mr McIlwaine, earlier in the term, she told him about the new arrangement regarding the large classroom and he replied that the room was for the use of the whole school. Then there was an incident when a member of the senior management team made it plain that she was in charge of resources for computers and Mrs Burns felt that not only had her room been taken over, but also the computers in it. When she raised the topic at a staff meeting she was so upset she walked out.

By 11 September she felt very upset and this was not helped by being told that it was intended to teach the CSE Welsh Board course for the less able students. She had previously told Mr Wright that she could not cope with this and he told her that it would be phased in. Now it was being raised again by Mrs Rudd early in September and Mrs Rudd told her that she knew nothing about it being phased in.

Mrs Burns said that by 12 September she felt so distraught that she wrote the letter that Mrs Doherty had suggested at their meeting. There was no clerical assistance, no structured meetings had been held and she believed it had been agreed that half a day per week would be spent by her at the technical college. She felt that things were back where she had started. She was crying and exhausted and yet the term had only begun 15 days. In the letter that she wrote to Mrs Doherty, under the heading "Present Situation" she wrote "September 1995 Other than IT training with G Love no further communication has taken place on other support needed - re union meeting" it ends "In short - chaos I feel totally devalued as a teacher and as a person."

Mrs Doherty's recollection was that she saw Mrs Burns on 12 September when she received the letter and even then there was nothing about her demeanour to cause Mrs Doherty any concern. She said that she read it and within 48 hours Mrs Burns had gone. Mrs Doherty said that if she had been in post she would have gone through the document when it was given to her.

On 14 September Mrs Burns went back to see her GP and after a couple of days she stopped work and was referred to Dr Robertson, a consultant psychiatrist. She was seen by the community health mental team on 12 October 1995 when she complained, inter alia, of inability to cope and low mood.

Mrs Doherty saw Mrs Burns again in November 1995 when she was accompanied by Mr Kane. The note of this meeting shows that Mrs Burns indicated that her current absence from work was caused by stress and anxiety brought about by lack of support in implementing GNVQ. At the meeting Mrs Doherty told Mrs Burns that she understood that all possible help that could have been provided had been made available to Mrs Burns, but she discounted this and said that as Mrs Doherty was a new Principal she did not have sufficient information to support her belief.

Dr Robertson in a report of 11 November 1998 said that she had presented with symptoms of a chronic anxiety state which had been superimposed on a depressive illness. Since she stopped teaching Mrs Burns has had a long period of disability due to sciatic pain which left her bedridden for many months. She was involved in a road traffic accident which caused back problems and she has taken time to adjust to the loss of her occupation as a school teacher. Although she tried voluntary work she found that she could not cope with the time pressure.

Dr Fleming (who was called by the defendants) said that the onset of stress is insidious and the signs are tension in the workplace, headaches, inability to relax and sleep disturbance. The patient has a perception of what is causing the distress, but in reality it



may be different and may be multifactorial. If a person goes back to work with the same stresses it is likely the problem will return.

It was confirmed by the evidence of both doctors that if the cause of stress is withdrawn the patient tends to get better. In due course they repair to the state they were in beforehand.

When Mr Wright gave evidence he said that the IT support, from Mrs Love, which had been agreed to in May 1995 was included in the timetable for the new school year. Mrs Love who described Mrs Burns “as a very good friend at school and far beyond” confirmed that she had given one-to-one tuition in IT at the beginning of the new school year and that Mrs Burns had got on fine at it. She could see no difficulty and she saw no sign that Mrs Burns was going to have a breakdown. It was only on 13 September when they met in the staff room that she was told by Mrs Burns that she would have to go and see her GP as she was feeling the pressure.

Clerical support was another matter which troubled Mrs Burns and Mr Wright said that any work that Mrs Burns required was to be sent to a Mrs Flanagan and any she could not cope with was to be redirected to his front office and he would then arrange for it to be dealt with. Initially he put this arrangement in place for the Summer term and it was his recollection that Mrs Burns did not ask for it to continue at the start of the new school year. As for structured team meetings Mr Wright said that these would have been in the timetable during the 1995/96 year and that he was satisfied that there was access to in-service training and backup for her. Mrs Doherty was not aware that any special arrangements had been made for Mrs Burns on her return in the Spring and at her meeting it was the subject of her timetable that was raised by Mrs Burns.

Mr McIlwaine was in charge of the school at the beginning of the Autumn term. He had been present at the meeting in May 1995 with Mr Kane and Mrs Burns and Mr Wright and had kept the minute. He said that he was approached by Mrs Burns early in

September about a cabling problem, but she did not complain about the absence of meetings about teaching or her timetable. He said that if Mrs Burns had come to him about clerical backup and told him that she needed help he would have seen to it. He added that he was surprised when she left during week of 11 September and sad as he had no inkling that this might happen. As for school team meetings he entrusted this to Mrs Rudd, together with access to in-service training. Mr McIlwaine said that he felt that after a light term in May and June and the holidays Mrs Burns was back to normal and needed no special care from him.

Mrs Rudd said that she was aware that it had been promised that there would be structured meetings and that they were to be put in place. They would be arranged between Mrs Love, Mrs Burns and herself and a member of support staff from North West. It was not possible to arrange this at the beginning of term until North West timetables were available, but Mrs Burns would have been aware of this. However, she agreed that she did not take any steps to explain that the meetings could not yet be arranged to her. Mrs Rudd was asked if knowing about the package and that Mrs Burns was vulnerable did she not feel that she should have told her that all these things would be available. Her reply was that she already been told this by the Principal, Mr Wright, who had been more than understanding.

Mr Morgan submitted that following Mrs Burns absence from work prior to May 1995 there was a foreseeable risk that if she was exposed to similar stress at work she would suffer psychiatric illness. This was appreciated by Mr Wright in his note to the Board of Governors of 3 May 1995. Mr Morgan relied on a passage in the evidence of Mr Wright in which he said that if he had been Principal in September 1995 he would have ensured that all the matters that had been agreed earlier were in place.

A sub-teacher had been provided for a limited period during the summer term and Mrs Love was providing IT training for Mrs Burns. Following the retirement of Mr

Wright there was no suggestion that there was anyone to whom Mrs Burns could turn for extra clerical help. She was to receive in-service training, but the only document that she was given contained details of the training available for all staff members and not of the extra support that Mr Wright had indicated would be provided for her. The structured meetings within the school and if possible with North West had not taken place. At least she should have been told the reasons why these were not yet available as if she felt things had not changed the stress illness was likely to recur.

Mr Ringland QC (who appeared with Mr Fitzpatrick for the defendants) said that Mrs Burns had a very light workload and that between May and June all that had been promised was provided for her. If she had been interested in training Mrs Rudd would have been available to discuss it with her. But she was, he claimed, less than enthusiastic. The regular meetings were going to be arranged and Mrs Burns knew this could not be done during the first days of term. Mrs Burns did not approach anyone to make the point.

### **Conclusion**

As a matter of law the defendants owed Mrs Burns a duty to take reasonable care that her teaching duties would not damage her health. After her return to work this duty of care extended to ensuring that her teaching duties did not bring about a repetition of her illness and as Dr Fleming explained if the causes of stress were not removed it was likely to return.

Following the summer holiday she was returning to full teaching duties for the first time since her illness having been on light teaching duty in the previous term. It was incumbent on the school authorities to make sure that the system of support that had been devised to reduce the risk to her of a relapse was in place or if this was not practicable to reassure her that it would be in place as soon as possible. It has been shown that the arrangement for additional clerical support was not in place and structured meetings had not been arranged and no explanation was given to Mrs Burns for this.

Having seen Mrs Burns in the witness box and listened to her history she impressed me as lacking the degree of flexibility that would allow her to adapt easily to the changes occurring currently in education. If coping with change in itself was difficult for her, the failure to provide all of the support which she understood she was to receive or at least to explain why it was not yet there created in her an anxiety state which was superimposed on a depressive illness and resulted in her absence on sick leave in September 1995. It may be that even with this support she would have found eventually that the new GNVQ course was too much for her, however I am satisfied that it was the fact that only limited support was made available to her in the vulnerable state she was in that resulted in her departure from work in September 1995.

This amounted to a failure to take reasonable care to ensure that the duties given to Mrs Burns, in the light of her history, did not injure her health. It may be explained by the change in the administration following the retirement of Mr Wright and the gap before Mrs Doherty took up full-time office. I found each of them to be to be understanding in their approach and I have no doubt both would have been keen to help Mrs Burns. It is unfortunate that Mrs Doherty was not made aware that the cause of Mrs Burns's earlier absence from work was stress: not least because it would have been reassuring to Mrs Burns to know that the form of support she had been offered by Mr Wright would be continued under the new administration. Mr McIlwaine who had to assume responsibility for running the school in the interim was aware of the arrangements for support however he believed that Mrs Burns had recovered from her illness. Despite the problems which were bound to flow from a change of principal the duty of care continued throughout this transitional period.

Unfortunately since her retirement in February 1996 Mrs Burns has not enjoyed good health. In *Jobling -v- Associated Dairies Limited* (1982) AC 794 Lord Bridge said:

“When the supervening illness or injury which is the independent cause of loss of earning capacity has manifested itself before trial, the event has demonstrated that, even if the plaintiff had never sustained the tortious injury, his earnings would now be reduced or extinguished. To hold the tortfeasor, in this situation, liable to pay damages for a notional continuing loss of earnings attributable to the tortious injury, is to put the plaintiff in a better position than he would be in if he had never suffered the tortious injury.”

The medical evidence shows that since her retirement Mrs Burns has been incapacitated for periods of time by sciatica and she spent almost eight months in bed with this condition. Sciatica has been a recurring problem and she has also been troubled with back problems. The sciatica, not surprisingly has caused her to have “ low periods”, though Dr Robertson did not think that this was depressive illness.

If with support Mrs Burns had managed to continue to teach the new GNVQ course, which in my view is problematical, it is clear that with her other health problems it would have been impossible for her to continue in teaching. In my judgment to leave work, because of stress, is very different to having to leave as a result of a physical condition and the loss of her profession in this way must have been very damaging to her morale. Although I am not persuaded that she is entitled to recover for loss of earnings, because her sciatica followed on very close to the date of her retirement in February 1996, I consider that she is entitled to general damages and I allow the figure of £20,000.

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