

THE HIGH COURT

[2016/960 P]

Between:

AGNIESZKA NOWAK

Plaintiff

AND

INTESA SAN PAOLO VITA S.P.A

Defendant

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 17th day of June, 2026

INTRODUCTION

1. This judgment arises from a motion seeking discovery brought by the plaintiff by way of appeal from the Deputy Master of the High Court. The underlying proceedings concern an action for breach of contract arising from the plaintiff's employment with the defendant company. These proceedings involve the same factual matrix as arises in a related judgment bearing the same name and neutral citation [2026] IEHC 382.

2. In summary, the plaintiff was dismissed by the defendant company on the 26 August 2015. The plaintiff sought redress for unfair dismissal pursuant to the Unfair Dismissals Act 1977, the relevant legislative framework in force at the relevant time. This action was heard by the Employment Appeals Tribunal, appealed to the Circuit Court and a preliminary determination concerning an issue of jurisdiction and related costs was appealed to this Court. For the reasons explained in the judgment bearing citation [2026] IEHC 382, this Court is satisfied as to the jurisdiction of the Circuit Court and therefore the substantive matter awaits hearing before that court.

3. In summary, the plaintiff seeks damages for breach of contract to the value of €250,000 as well as further relief that the purported termination of the plaintiff was invalid and an order for the reinstatement of the plaintiff in her previous role.

4. The plaintiff commenced two sets of proceedings by plenary summons on the 3 February 2016 and the 29 September 2017. The main relief in the 2016 action was framed by the plaintiff as claims for “*Breach of employment contract*” and “*Demand for liquidated sums*”. In the 2017 action, the same claims were made together with a claim for “*Breach of fundamental right to privacy*”. The plaintiff delivered amended statements of claim in both actions on the 11 December 2023. By Order dated the 10 June 2024, the High Court (Simons J.) ordered that the proceedings be consolidated and that the existing amended statements of claim (which were identical in contents) be deemed as having been delivered in the consolidated proceedings. A single defence was delivered in respect of the consolidated proceedings on the 10 June 2024.

5. On the 11 July 2024 the plaintiff wrote to the defendant's solicitors with a request for voluntary discovery.

6. The letter set out the reasons why the documents were sought, and required confirmation by the 26 July 2024 that discovery would be made on or before the 21 August 2024. The defendant's solicitors sent a letter on the 31 July 2024 seeking time, they stated that they were taking instructions from their client and seeking advice from counsel and that in light of the long vacation they did not expect to be able to revert until September. The plaintiff sent an email on the 27 August 2024, in which she demanded a response by the 5 September 2024, and stating that she intended to issue a motion without further notice if a response was not received. On the 2 September 2024, the defendant's solicitors replied stating that due to the long vacation they needed more time to consult with counsel.

7. In the event, the plaintiff issued her motion on the 6 September 2024. The motion was grounded on an affidavit sworn by the plaintiff on the 6 September 2024, in which she explained why the documents were sought. Her affidavit exhibited the letter from the 16 July 2024, but did not exhibit the replies that had been sent on behalf of the defendant.

8. It can be noted that, at the same time, the plaintiff had also issued a discovery motion in the Circuit Court, in the context of proceedings involving an appeal from decisions of the EAT (aspects of which are addressed in a separate judgment delivered today). That motion was restricted to the first three categories of document sought in the voluntary discovery request; i.e. not including the request for information relating to the identified comparators.

9. The High Court discovery motion came on for hearing before the Deputy Master on the 5 December 2024. As appears from the order of the Deputy Master, the defendant made oral arguments but had not delivered any replying affidavit. The Deputy Master refused the motion and made an order for costs, stayed pending this appeal. On the 10 December 2024, the plaintiff issued the motion at issue in this application, seeking to discharge the order of the Deputy Master.

LEGAL PRINCIPLES

10. The principles in relation to applications for discovery provided for in Order 31 rule 12 are very well-established and have been subject to extensive consideration by the Supreme Court and Court of Appeal in cases such as *Tobin v. Minister for Defence* [2020] 1 I.R. 211 (Tobin), and *Ryan v. Dengrove DAC* [2022] IECA 155 (*Dengrove*).

11. The primary test to be applied continues to be whether the documents sought are relevant to the issues in the proceedings. In *Dengrove*, the Court of Appeal set out a series of points concerning the approach to be adopted in discovery applications generally:-

- “Relevance is to be assessed by reference to the pleadings and particulars.
- Relevance must be demonstrated as a matter of probability. “It is not for the Court to order discovery simply because there is a possibility that documents may be relevant” (*Hannon v Commissioner of Public Works* [2001] IEHC 59 (per McCracken J at page 3)).
- It follows that a party “may not seek discovery of a document to find out whether the document may be relevant” and “must demonstrate that it is reasonable for the court to suppose that the documents contain relevant

information.” (*O'Brien v. Red Flag Consulting Limited* [2021] IECA 258, para. 5 and 21.4 respectively).

- “A vague, unsubstantiated assertion may not be used to justify a trawl through an opponent's documents in the hope that the allegation will crystallise into a substantial one. Moreover, a party may not make a vague or unparticularised plea of wrongdoing and then seek discovery in the hope of obtaining documents which will reveal evidence in support of that allegation.” (*Abrahamson et al, Discovery and Disclosure, 3rd ed, 2019, at para 6–35*)
- In addressing whether discovery is “necessary”, the degree of relevance of the documents may be a relevant consideration: “in considering the necessity of the discovery of relevant documents the nature and potential strength of the relevance is a consideration to be taken into account” (*Boehringer Ingelheim Pharma GmbH v. Norton (Waterford) Ltd* [2016] IECA 67)
- Proportionality requires that “there must be some proportionality between the extent or volume of the documents to be discovered and the degree to which the documents are likely to advance the case of the applicant or damage the case of his or her opponent.” (*O'Brien v. Red Flag Consulting, para. 21.9*) [footnoted material provided in brackets]

SUMMARY OF THE ISSUES

12. The issues of discovery for determination in these proceedings are four-fold, following the consolidation of the proceedings. It should be noted that the defendant raised the issue that

depending on the outcome of the appeal from the decision of the Circuit Court dealt with in the other judgment being delivered today, there may be an issue as to whether the discovery application was premature. This was on the basis that if, as has now been decided, the EAT, and the Circuit Court on appeal, has jurisdiction to deal with the plaintiff's claim that she was unfairly dismissed, the defendant company may have a basis to seek to challenge the plenary proceedings in this court.

13. I agree that there is an argument that the application for discovery may prove to be unnecessary depending on the course of action to be adopted by the defendant. However, I consider that the proper way to proceed where no such application actually has been brought and without in any sense prejudging whether such an application would succeed, is to decide on the discovery application and consider thereafter whether the making of an affidavit of discovery should be stayed if the defendant confirms that it intends to bring an application the objective of which is to bring these proceedings to an end. In those premises it is necessary to consider the discovery sought by the plaintiff.

14. The plaintiff in her pleadings argued and the defendant has disputed that:

- i. the defendant was in breach of its obligation to review the plaintiff's salary annually;
- ii. the disciplinary process instituted against the plaintiff was "*unfounded, flawed, deficient, groundless and unfair*";
- iii. the purported termination of the plaintiff's employment contract was not effective; and

- iv. the defendant breached the data protection rights of the plaintiff by accessing in an unauthorised manner the plaintiff's work email and clearing its contents.

SUMMARY OF DISCOVERY CATEGORIES

15. The categories of discovery sought are as follows:

- 1) [Documents] *relating to and/or evidencing the appointment of Mr Dave Sheehan by the Board of Directors as an investigator in relation to the issues giving rise to the disciplinary actions. This category includes all copies or original minutes of the Board of Directors, internal file notes made relating to the appointment of Mr. Sheehan as an investigator, Mr Sheehan's terms and conditions of employment in 2015.*
- 2) [Documents] *relating to and/or evidencing the reporting of Mr Sheehan's findings of the investigation to the Board of Directors. This category includes all copies of counterparts or original minutes of the Board of Directors, internal file notes relating to Mr. Sheehan's report, a report made by Mr Sheehan.*
- 3) [Documents] *relating to and/or evidencing a transfer of authority from the Board of Directors to Mr. Sheehan in relation to the termination of the Plaintiff's employment contract.*
- 4) [Documents] *relating to and/or evidencing the salaries, terms and conditions of the employment with the Defendant along with job descriptions of the counterparts, qualifications and educational background. This category includes all copies or originals of P.45 or P.60*

generated in the course of the employment with the Defendant from 2010 – 2015 for [four named colleagues] and their educational diploma(s) and/or certificates.

16. I will deal with the first three categories together. With regard to the first category, the plaintiff considers it relevant on the basis that the plaintiff alleges that Mr. Sheehan, who signed her termination letter, was not authorised to conduct the disciplinary hearing. The plaintiff therefore considers this category of discovery necessary to prove that Mr. Sheehan acted *ultra vires*.

17. That factual and legal contention is asserted by the plaintiff from paragraphs 16 to 20 of the statement of claim. The defendant in its defence pleads that there was a fair disciplinary process following which the plaintiff's employment contract was terminated. The defendant denies the claims made by the plaintiff and asserts that Mr. Sheehan was charged with the conduct of the disciplinary process rather than an investigation. The defendant pleads that the plaintiff acquiesced in the disciplinary process and is estopped now from contending that the process or Mr. Sheehan lacked authority.

18. The plaintiff considers the second category relevant on the basis that she pleads that Mr. Sheehan failed to report the findings made during the disciplinary hearing to the board of directors. The plaintiff considers the documents necessary as they would prove the board of directors were unaware of the disciplinary hearing conducted with the plaintiff. The defendant also joins issue with this contention and asserts that Mr Sheehan had the requisite authority and in the alternative relies on a subsequent ratification of the termination decision by the Chief Executive Officer, who was a director.

19. The relevance of the third category is said to arise from the fact that the plaintiff argues Mr. Sheehan lacked the authority to dismiss her. Its necessity therefore following on the basis that the plaintiff places in issue the need to prove or refute this authority.

20. In my view, the first three categories all go to the process that led to the termination of the plaintiff's employment and the authority of those involved in the decision. The plaintiff's contentions have been put in issue by the defendant. It seems to me that some formulation of discovery is relevant to this issue and necessary. This is so even if, as pointed out by the defendant, she has misconstrued the process. That argument – that the plaintiff has misconstrued the process – itself is a matter in issue and the court cannot on the evidence available make any decision on the question at this point.

21. In those premises, the court will make an order that the defendant discover to the plaintiff documents that evidence the process under which the defendant reached the decision that the plaintiff's employment contract should be terminated, including any documents that evidence the authority or instructions to any person to carry out the process, and documents that evidence the ratification of the decision by the defendant's CEO.

22. The fourth category relates to the employment terms of her colleagues, the plaintiff considering it necessary to obtain discovery over these documents in order to prove that the defendant failed to meet its equal pay obligations. It is necessary to consider the precise pleading in this regard.

23. The relevant relief claimed by the plaintiff is framed as flowing from the consequences of any finding that her termination was unlawful, and it is an "*Order directing the Defendant*

to re-instate the Plaintiff to her previous role at [the company] with the remuneration increased for merit and cost of living from the moment of the purported termination of contract.” Hence the relief is focussed on the term in her employment contract relating to review of remuneration that itself refers to “*merit and cost of living*”. The pleading in support of that relief is relatively brief. The plaintiff pleads that the defendant breached her employment contract by failing “*to review her remuneration between 2013 and 2015 for merit and costs of living and failed to adjust her salary for merit and cost of living between 2009 and 2015. It is alleged that the Defendant in breach of implied terms the Employment Contract [sic] and statutory provisions failed to meet equal pay obligations.*” The focus hence is on the implementation of the contractual term prior to the disputed termination, and there are no further pleas or particulars that support a claim of unlawful discriminatory pay practices. The plea appears to be the subject of a general traverse in the defence.

24. In that light, it is not at all clear that the discovery sought in category D is relevant to a disputed issue. The court is very concerned that what has been sought involves a considerable amount of documentation that *prima facie* is private and confidential to identified persons who are not party to the proceedings. While confidentiality does not in and of itself defeat a proper claim for discovery, it does require the court to consider carefully whether what is sought can properly be construed as relevant or necessary given the potential for overbroad discovery to impinge on the rights of non-parties.

25. In the premises, and giving the plaintiff some latitude in light of the fact that she is representing herself, the court will direct that the defendant makes discovery of documents from 2009 and 2015 evidencing any review of the plaintiff’s remuneration. I consider that the more extensive discovery sought by the plaintiff under this category is not necessary on the

pleaded case. There is some merit in the contention that the request in relation to comparator information is a form of fishing, given that the information sought is not clearly connected to any express plea concerning the identified comparators.

CONCLUSION

26. Hence the court will make an order for discovery that the defendant discover the following categories:

- i. Documents that evidence the process under which the defendant reached the decision that the plaintiff's employment contract should be terminated, including any documents that evidence the authority or instructions to any person to carry out the process, and documents that evidence the ratification of the decision by the defendant's CEO.
- ii. Documents from 2009 and 2015 evidencing any review of the plaintiff's remuneration.

27. In relation to the costs of the motion it appears to the court that the plaintiff has been partially successful; albeit that the motion seems to have issued in the teeth of a not unreasonable request for more time from the defendant's solicitors. However, it is striking that the defendant did not swear any affidavit in reply to the application or properly suggest a contrary formulation in correspondence even after the issue of the motion. Instead there was a blanket refusal to make any discovery, which continued to the hearing of the application. In those premises, the court considers by reference to s. 169 of the LSRA 2015 that the plaintiff should be entitled to 75% of the costs that may be due to an applicant in person of the

applications before this court and the Deputy Master to be adjudicated in default of agreement with that order to be stayed pending the outcome of the overall proceedings.

28. However, as noted above, I will not fix a time within which the affidavit of discovery is to be made pending a further application relating to the question of whether the defendant, as intimated during the hearing, intends to bring any further application which may mean that discovery becomes unnecessary or redundant. To be clear, the court is not inviting any such application or suggesting that if brought an application has a prospect of success. Instead, in the interests of both sides avoiding incurring unnecessary costs, and in circumstances where it was made clear that such an application is being considered by the defendant, the court is willing to consider an argument that the making of discovery might be deferred.

29. In those circumstances the court will list the matter for further argument of no more than 30 minutes at 10.30am on Tuesday, the 30 June 2026.