

**IN THE HIGH COURT OF JUSTICE**

1996 H. No.

**QUEEN'S BENCH DIVISION****BETWEEN:****DOMINIC HEHIR****Plaintiff**

- and -

**BRIAN HIGGINS****Defendant**

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**STATEMENT OF CLAIM**

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1. At all material times:
  - a. the Plaintiff is and was a regional officer for the London South East region of the Union of Construction Allied Trades and Technicians ("UCATT");
  - b. the Defendant is and was the Secretary of the Northampton branch of UCATT and the Secretary of the Building Workers Group, an organisation constituted by a group of UCATT members politically opposed to the elected leadership and officials of UCATT.

c. the Irish Post is and was a newspaper enjoying a wide circulation and readership throughout Great Britain and the Republic of Ireland.

2. In the edition of the Irish Post for 5 October 1996 under the headline "*A different case of treatment*" the Defendant published and caused to be printed a letter he had written which contained the following defamatory words of and concerning the Plaintiff and of and concerning him in the way of his office as a full time official of UCATT (the words in square brackets being reproduced for the purposes of context and comprehension and not for the purpose of complaint, the words complained of being reproduced in bold type face):

**"A different case of treatment**

"[You report on UCATT and Denis Falvey winning an industrial tribunal and that Johnny Gould was the UCATT official involved... Congratulations to Denis, Johnny Gould and all concerned in this tribunal victory.

However I also notice that a photograph of Dominic Hehir, a full time UCATT official in London, figures very prominently in the article and he is quoted as saying, among, other things: "We made a decision right from the start to defend our man"]. **What a resolute fellow Dominic appears to be.**

**Not so in the case of John Jones** [, a UCATT shop steward in Southwark DLO, who was singled out with another worker, a plumber in EPIU, and sacked by Southwark Council under the guise of TUPE last October. These sackings happened in spite of the fact that John Jones and the other worker had a grievance procedure out against the Council at the time of their

sackings, but which the council totally ignored. This is utterly contrary to the union/managment procedures laid down in these matters...

... [T]he two sacked workers initiated proceedings for an indutrial tribunal on the grounds of unfair dismissal. As a UCATT member John Jones rightly asked Dominic Hehir, who was the full time official concerned with the situation in Southwark, to represent him at the tribunal. Hehir and UCATT were also asked to test the case in a court of law as TUPE, a European employment law, was clearly being breached in this instance].

**To their eternal disgrace, Dominic Hehir [and Lou Lewis, the UCATT regional secretary for London and the South East, backed by the Southwark DLO Building Works Convenor, Tony O'Brien,] steadfastly and resolutely refused to represent John Jones at an industrial tribunal or to test the case in a court of law.**

...[Johnny Gould was not, of course, the UCATT official who let John Jones down so badly in Southwark]. **But what did happen there doesn't exactly square up with his statement: "UCATT will vigorously defend the trade union rights of its members in the courts and employers should think twice before attacking genuine trade unions". He would have been more correct to have said "some of its members"!**

**Pity Dominic Hehir didn't decide to defend John Jones, a UCATT member and shop steward, right from the start in Southwark, or even half way through.**

**Incidentally, is it coincidental Hehir just happened to be standing for**



election as a UCATT regional organiser this September that he appeared and said what he did in your paper? Strange how officials like him never appear or give quotes about their more dastardly deeds. [Perhaps this letter might change that]".

3. In their natural and ordinary meaning and/or inferential meaning the words complained of meant that the Plaintiff was:
- in deliberate and gross dereliction of his duty as a union official to represent and/or support John Jones in meritorious legal proceedings;
  - guilty of treating union members differently when deciding whether to support and/or represent them in legal proceedings which he was duty bound to do;
  - a hypocrite in supporting the industrial tribunal proceedings of Denis Falvey but not the well founded legal proceedings of John Jones;
  - had publicly backed Denis Falvey in the pages of the Irish Post and caused or permitted his photograph to be printed along side the same article in order to curry favour with his UCATT electorate in his election as a regional organiser whilst knowingly hiding the politically inconvenient fact of his gross dereliction of duty to represent and support John Jones.
4. By the law of the Republic of Ireland the publication of the said words are actionable.



5. Further or in the alternative, the publication of the said words constituted a malicious falsehood.

**PARTICULARS**

- a. Paragraphs 1-4 are repeated.
- b. The said words were false in that:
  - i. John Jones had not asked the Plaintiff to represent him at an industrial tribunal or to take a test case in a court of law as to the effect of the Transfer of Undertakings Regulations 1981 ("TUPE") in his case. In fact, he had expressly asked the Plaintiff not to represent him at the grievance hearing before Southwark Council ("the Council").
  - ii. The Plaintiff had not refused to support or represent John Jones in legal proceedings. Indeed he sought advice from UCATT's solicitors and also advice from another trade union who taken legal advice on the effect of TUPE on Mr Jones' employment and, in particular, his outstanding grievance before the Council and had done everything he could in negotiations with the Council to minimise the number of UCATT employees of the council to be transferred to Botes Building Limited ("Botes") and to advance Mr Jones's grievance with the Council. In the premises, the Plaintiff carried out his duty to protect his members' interests in Mr Jones' case as he had in Mr Falvey's

case.

iii. The industrial tribunal proceedings were not meritorious. The London South Industrial Tribunal on 16 May 1996 in a preliminary decision in case number 4702/96 brought by John Jones ruled that his contract of employment was transferred to Botes, the transferee on a transfer of the undertaking by the Council pursuant to TUPE.

iv. The Plaintiff was not opposed in standing for election as regional organiser and knew the same at the time of making his comments to the Irish Post. The photograph was taken in 1987. In consequence, he had no reason to seek to curry favour with his electorate within UCATT.

c. The said words were published maliciously by the Defendant in that:

i. He knew or ought to have known the facts and matters set out in sub-paragraph (b) above. The same were either a matter of common knowledge within UCATT or were easily discoverable by the Defendant.

ii. He knew from an internal grievance taken out by the Plaintiff in on 21 June 1996 and 10 July 1996 in relation to the pamphlet referred to in paragraph 6 below that the Plaintiff took exception to his account of the Plaintiff's dealings with Mr Jones's case.

iii. Notwithstanding this, he published the words complained of with complete indifference to the truth of their contents and recklessly without bothering to carry out the most elementary checking of facts.

iv. The Defendant was motivated by ill will and spite towards the Plaintiff. Through the pamphlet referred to in paragraph 6 below and the leaflet referred to in paragraph 11 below which he had written and widely publicised through UCATT the Defendant had conducted a vendetta against the Plaintiff. The Plaintiff will refer at trial if necessary to the tenor and contents of the said pamphlet and leaflet to evidence the Defendant's malicious state of mind towards the Plaintiff.

d. The publication of the words complained of were likely to cause pecuniary damage to the Plaintiff in his respect of his office as a full time official of UCATT in that they carried inter alia the false meaning that he was guilty of a gross breach of his duty to defend his members' interests in the case of Mr Jones and the same endangered his position and standing in the said office.

6. In or about April 1996 the Defendant published and caused to be printed a pamphlet entitled "Rank and File or Broad Left: Democracy versus Bureacracy A short history of the Building Worker Group" ("the pamphlet") which contained the following defamatory words of and concerning the



Plaintiff and of and concerning him in the way of his office as a full time official of UCATT (the words in square brackets being reproduced for the purposes of context and comprehension and not for the purpose of complaint, the words complained of being reproduced in bold type face):

- a. **"(p31) The national UCATT full time machinery is proven to be corrupt to the core. The same is true of many of the regional ones as well.** [Unfortunately, some parts of the rank and file have also been corrupted by this. This corruption is being covered up by a conspiracy of silence by the broad left, right and centre. Look at what's happening to "The UCATT Inquiry". Most of the corrupt national officials were voted into office on a broad left ticket - as were many local ones also!]

**Dominic Hehir, broad left and of High Court infamy, has done so many unprincipled somersaults that he more represents a circus acrobat than a UCATT regional official."**

- b. [(p42) As I write this, the Building Worker Group is involved in supporting a dispute that two building workers have with Southwark council Direct Labour Building Works Department, who sacked the workers on 31 October 1995.

To cut a long story short, management singled out John Jones, a brickie and UCATT shop steward who had been a serious thorn in their side for many years ... Management told John he'd have to accept a transfer to a private building contractor or be sacked. As this is often a

management tactic when victimising militant shop stewards, they had to transfer another few workers to make it appear no one was being singled out... They also reminded Southwark Council they had a grievance out against the transfer to Botes with the Council.

The Council then came up with most idiotic pieces of management claptrap any of us, and many others, have heard. Believe us we've heard some! They said Botes would deal with their grievances against being transferred to Botes! All this utterly contrary to nationally agreed union/management procedures for dealing with grievances.

O'Brien, the Convener Steward who is on the broad left and] Hehir, the UCATT full time regional official, who is also on the broad left [, and J Rouse, TGWU/EPIU official,] then entered the fray and promptly backed the management's sacking of John and Terry and agreeing their grievance procedures should be heard by Botes.

- c. [(p44) 16th February 1996: On this day a meeting of London and South East Regional Council of UCATT completely reversed their decision of December 11th] and told John Jones that, after taking legal advice, they had decided that John (and that means Terry as well) would have to accept the transfer of his grievance to Botes - who would then decide the outcome. What treachery! Legal advice is a euphemism for "we have just brutally and

cynically sold you out but we are using this legal claptrap to hide our shame'".

7. The pamphlet has been published to UCATT members at large and has been sold by or for the Defendant at UCATT conferences and meetings. It is to be inferred that the words complained of have been published to many UCATT members.
8. In respect of the words set out in paragraph 5 (c) above the Plaintiff will contend that the same in their context were understood to refer to the Plaintiff as a regional full time official was known to some readers of the pamphlet to have given and also subsequently obtained the legal advice received by UCATT to the effect that Mr Jones's outstanding grievance with the Council in respect of the transfer of his contract of employment to Botes would on transfer of the undertaking become the legal responsibility of Botes and advised the Regional Council accordingly.
9. In their natural and ordinary meaning and/or inferential meaning within the context of the whole of the pamphlet (to which the Plaintiff will refer at trial if necessary) or innuendo meaning the words complained of meant that the Plaintiff was:

#### PARTICULARS

- a. a corrupt official of UCATT;
- b. unprincipled;



- c. opportunistic in the political stances he adopted within UCATT over the years;
- d. had backed, in flagrant breach of his duty as an official of UCATT, a transparent management ruse to victimise John Jones by supporting the dismissal of Mr Jones;
- e. by innuendo, had committed treachery in advising the Regional Council that Mr Jones would have to pursue his grievance against transfer of his contract of employment by his old employer with his new employer and/or had cynically hid behind worthless legal advice in so advising. The Plaintiff will rely upon the facts and matters set out in paragraph 8 above;
- f. by implication or by innuendo, had condoned the treacherous decision of the Regional Council to tell Mr Jones that he would have to pursue his grievance against transfer of his contract of employment by his old employer with his new employer and/or the cynical dressing up of this decision as being the result of worthless legal advice. The Plaintiff will rely upon the facts and matters set out in paragraph 8 above.

10. Further or in the alternative, the publication of the said words set out in paragraph 6 above constituted a malicious falsehood.

#### PARTICULARS

- a. Paragraphs 1, 5-9 are repeated.

b. The said words were false in that:

- i. The Plaintiff is not a corrupt unprincipled opportunistic official. In fact, he, the Plaintiff, has taken a consistent line against corruption and ballot rigging within UCATT for many years.
- ii. He had not backed a management decision to dismiss Mr Jones. He had attempted to prevent such a situation arising in the manner particularised in paragraph 5 above.
- iii. He had not been treacherous in advising the Regional Council as to the nature of the legal advice given in relation to Mr Jones' case or in supporting the decision of the Regional Council. The legal advice received had been correct and the Regional Council had acted correctly in acting on that advice as the subsequent industrial tribunal decision (as referred to in paragraph 5) had shown.

c. The said words were published maliciously in that:

- i. The Defendant knew or ought to have known the facts and matters set out in sub-paragraph (b) above. The same were either a matter of common knowledge within UCATT or were easily discoverable by the Defendant.
- ii. Notwithstanding this, he published the words complained of with complete indifference to the truth of their contents and recklessly without bothering to carry out the most elementary checking of facts.

iii. The Defendant was motivated by ill will and spite towards the Plaintiff. The Plaintiff will refer at trial if necessary to the tenor and contents of the pamphlet to evidence the Defendant's malicious state of mind towards the Plaintiff.

d. The publication of the words complained of were likely to cause pecuniary damage to the Plaintiff in respect of his office as a full time official of UCATT in the manner already set out in paragraph 5 above.

11. In or about April 1996 the Defendant published and caused to be printed a leaflet entitled "Building Worker Scabbing and Treachery in Southwark" ("the leaflet") which contained the following defamatory words of and concerning the Plaintiff and of and concerning him in the way of his office as a full time official of UCATT (the words in square brackets being reproduced for the purposes of context and comprehension and not for the purpose of complaint, the words complained of being reproduced in bold type face):

**"SCABBING AND TREACHERY IN SOUTHWARK**

**O'BRIEN SELLS OUT AGAIN!**

**HEHIR BACKS HIM TO THE HILT**

[The Building Worker Group and quite a few other working class organisations supported the struggle of John Jones UCATT shop steward



and Terry, another DLO worker against their sacking by "new" Labour Southwark Council in London on October 31st 1995.

They refused to accept a transfer under TUPE to Botes, a private construction firm...]

**Question - Who in their right mind could blame workers for refusing to transfer to such a mob?**

**Answer** -[Southwark Council, Botes and the UCATT Convenor convenor steward Tony O'Brien and] **Dominic Hehir, UCATT Regional Organiser**

[... John and Terry reminded UCATT, the TGWU, O'Brien and the council that they had a grievance out with the council against their transfer to Botes. Hehir was also reminded. O'Brien and] **Hehir ignored John and Terry and backed DLO management and Southwark Council.**

[we learned that the transfers to Botes were so good that the workers who had gone across had taken industrial tribunals against Southwark Council. UCATT, Hehir and O'Brien were not only supporting them but had actually instigated the tribunals. **Not so for John and Terry of course - John's request for a tribunal was refused point blank - victimisation union style**".

- 12 The leaflet has been published to UCATT members at large and has been distributed by or for the Defendant at UCATT conferences and meetings. It is to be inferred that the words complained of have been published to many UCATT members.

13. In their natural and ordinary meaning and/or inferential meaning within the context of the whole of the leaflet (to which the Plaintiff will refer at trial if necessary) the words complained of meant that the Plaintiff:

- a. was guilty of refusing to support legitimate industrial action by union members over the transfer of employees from the Council to Botes;
- b. was guilty of treachery in supporting the decision of the Council in dismissing John Jones and another worker.
- c. had victimised John Jones by refusing to support or initiate proceedings on his behalf before an industrial tribunal whilst being prepared to do so for others.

14. Further or in the alternative, the publication of the said words set out in paragraph 11 above constituted a malicious falsehood.

#### PARTICULARS

- a. Paragraphs 1, 5, 10-13 are repeated.
- b. The said words were false in that:
  - i. The Plaintiff had not refused to support legitimate industrial action. He had done all he could to minimise the number of transfers from the Council in negotiations as particularised in paragraph 5 above. Further, any strike action was unlawful.
  - ii. He had not supported the decision of the Council to dismiss John Jones and another worker as particularised in paragraph 5.

above. Further, there had been no decision by the Council to dismiss the said workers, but only to transfer them under TUPE, which they were entitled to do as a matter of law.

iii. He had not refused to support or initiate industrial tribunal proceedings as particularised in paragraph 5 above.

c. The said words were published maliciously and the Plaintiff repeats the particulars of malice set out in paragraph 10 above.

d. The publication of the words complained of were likely to cause pecuniary damage to the Plaintiff in respect of his office as a full time official of UCATT in the manner already set out in paragraph 5 above.

15. By reason of the publication of the libels set out in paragraphs 2, 6 and 11 above the Plaintiff has been gravely injured in his professional and personal character, reputation, and feelings, has been brought into public scandal, odium and contempt and has been caused distress both within the jurisdiction and within the Republic of Ireland.

16. Further, the Plaintiff is entitled to recover general damages for distress and anxiety caused by the publication of the malicious falsehoods set out in paragraphs 5, 10 and 14 above.



17. Additionally, the Plaintiff claims aggravated damages in respect of the libels set out in paragraphs 2, 6 and 11 above and in the alternative to paragraph 16 in respect of the malicious falsehoods set out in paragraphs 5, 10 and 14 above. The Plaintiff will rely in respect of each publication on the particulars of malice set out in paragraphs 5, 10 and 14 and further upon the failure of the Defendant to apologise and retract the allegations he has made notwithstanding the Plaintiff's solicitors' letters before action dated 4 and 23 October 1996.

18. Unless restrained by this Honourable Court, the Defendant will further publish the same or similar words of the Plaintiff.

AND the Plaintiff claims:

- (1) Damages, including aggravated damages;
- (2) An injunction restraining the Defendant, by itself, its servants or agents or otherwise from further publishing the same or similar words of the Plaintiff.

**ROBIN OPPENHEIM**

SERVED this day of 1996 by Christian Fisher 42 Museum Street Bloomsbury  
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Ref: LC. RG. 5564.S **Solicitors for the Plaintiff**