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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CO/835/88

B20

Royal Courts of Justice.

Thursday, 16th February, 1989.

Before:

MR. JUSTICE ROSE

Crown Office List

THE QUEEN

-v-

CRIMINAL INJURIES COMPENSATION BOARD

Ex Parte GOULD

(Transcript of the Shorthand Notes of Marten Walsh Cherer Limited, Pemberton House, East Harding Street, London EC4A 3AS. Telephone No: 01-583-7635. Shorthand Writers to the Court.)

MR. NEIL BERRIGAN (instructed by Cornish & Co., Ilford, Essex) appeared on behalf of the Applicant.

MR. GRAHAM PLATFORD (instructed by the Treasury Solicitor, London SW1) appeared on behalf of the Respondent.

J U D G M E N T

(As approved by the Judge)

MR. JUSTICE ROSE: This application, brought by leave of Mr. Justice Popplewell, is for judicial review by certiorari of a decision of the Criminal Injuries Compensation Board on the 28th March, 1988. The decision about which complaint is made is that the award, to which the applicant would otherwise have been entitled under the terms of the compensation scheme administered by the Board, should be reduced by 50 per cent because of his conduct.

The complaint which is made is that that decision was contrary to natural justice because the Board, through its chairman, rejected an application made by the solicitor appearing for the applicant that the matter should be adjourned to another day and, by reason of that rejection, the applicant's case as heard and determined by the Board was prejudiced because his solicitor was unable to have available further evidence which an adjournment would have enabled him to adduce.

There are therefore two questions to be considered. First, was an adjournment to another day refused? Secondly, if it was, was the applicant thereby prejudiced? Before examining those questions it is necessary to say a little of the background to the case which gave rise to the decision which the Board reached.

The applicant was undoubtedly seriously injured by an assault upon him by a man called Lindop. That assault took place during the early hours of the 25th February, 1983 at the applicant's home at Wanstead, and indeed, not only the applicant, but his mother and father as well were both assaulted and in their case, wounded by Lindop, and Lindop was convicted of causing grievous bodily harm to the applicant and wounding his parents.

The history, so far as it is material, which led up to that assault was this: that for some time the applicant had lived with a woman called Lorenza Grappi, but during 1982 -- it may be in August, it may be in November, but it matters not which -- they separated. On the 8th January, 1983 Lorenza Grappi married the man Lindop, who in due course was the applicant's assailant. She went to live with him at 74 Hastings Avenue, Barkingside. Whether in fact there was a ceremony of marriage matters not, but certainly the two of them were living together when the events which are crucial in this matter occurred in late February.

In the middle of February, on Valentine's Day, Lorenza Grappi sent a Valentine card to the applicant. At about a quarter to eight on the evening of the 24th February, according to the applicant he received a telephone call from Lorenza Lindop. Whether or not he received the telephone call, it is common ground that soon after 7.45 he went round to 74 Hastings Avenue. There then occurred over a period of time which is not clear certain events which are common ground. The applicant was outside the front door of 74 Hastings Avenue, which was locked. He sought to communicate through the letter box with Mrs. Lindop, who was inside. She was in a state of some agitation. The police were called at the instigation of a neighbour.

Some time after 11 o'clock Constable Goulding saw the applicant talking through the letter box in the way which I have described. Thereafter the applicant went home. An hour or so later the assault occurred to which I have referred.

The Board before whom this application came on the 28th March, 1988 had other cases in their list in addition to this one which were listed for the afternoon of that day. The applicant received notification that the case would be heard in terms of a letter dated 30th September, 1987. This letter was from the Board's advocate, Wendy Gordon. It sent to the applicant's solicitors copies of the documents which the Board would have at the hearing, and it said this in relation to matters in issue: "I refer you to paragraph 23 of the Scheme. It will be for the applicant to make out his case at the hearing. Therefore the onus will be on your client to satisfy the Board that his own conduct did not contribute to this incident and that any further award should not be reduced or withheld because of his own behaviour prior to the incident in which he was injured. See paragraph 6(c)", which was a reference to the terms of the scheme. The letter went on to indicate that the advocate of the Board intended to notify the police officer who had investigated the incident, Mr. Lindop, Mrs. Lindop, and Mr. Freeman, who was a neighbour of the Lindops, to attend the hearing.

The applicant and his solicitor arrived at 10 minutes to 10. It is common ground that the stage came when he was invited into the room where the Board was sitting. The way in which the matter is set out in the grounds is this: that invitation into the room came against the background that on or very shortly after arrival the applicant's solicitor had been presented with another bundle of statements. There was nothing unusual about this. It was in accordance with the

Board's usual policy. The applicant's solicitor was concerned that he was unable to assimilate and deal with the contents of those statements immediately. There were a number of them. There were indeed 31 typescript pages. In particular the counsel for the Board indicated that reliance would be placed on a statement from Mr. Freeman, the neighbour, to show that the applicant had conducted himself in such a way as to render it inappropriate that a full award be granted.

Having had only some 20 minutes to consider those documents, the applicant's solicitor was called in before the Board. Paragraph 7 of the grounds says this: "In the circumstances those acting on behalf of the applicant requested an adjournment. In the course of the application for an adjournment the Chairman of the Board made reference to a letter having been sent by the Board prior to the hearing indicating that there would be no adjournment on whatever grounds. In the light of that belief, and after further submissions, the Chairman granted an adjournment until the end of the list." It is immediately apparent that there is in that statement an ambiguity as to whether it is being said that it was the letter that indicated there would be no adjournment on whatever grounds, or the Chairman who gave that indication. It is common ground that the letter in question which is before me, dated 17th March, 1988, gives no such indication. What it says is: "The Board is unlikely to adjourn if you do not comply with the Board's requirements in regard to your client's special damages claim."

The terms of Ground 7 are deposed to in the first affidavit by Mr. Kentisbeer, the applicant's solicitor. The Chairman of the Board, Lord Morton, in paragraph 7 of his affidavit says: "I completely refute the comment by Mr. Kentisbeer in paragraph 7 of the Grounds that I said that no adjournment would be granted on whatever grounds. If I did allude to the Board's letter of 17th March, 1988 it was within the terms of that letter."

The matter proceeded in this way: after Mr. Kentisbeer had been for some minutes with the Board, making an application, he came out and had some further 45 minutes in which to continue reading the papers. The evidence shows that an inquiry was made, after the Board had done the next case, as to whether Mr. Kentisbeer was ready. He said he was not and, accordingly, another case was dealt with by the Board. That case having been concluded, a further inquiry was made as to whether Mr. Kentisbeer was ready, and he does not suggest that he gave any indication at that time that he was not ready. The way in which the matter is put on behalf of the applicant is that, the Board having at the outset indicated there would be no adjournment to another day, there was no point in renewing any application for an adjournment on the last occasion when the case of the applicant was called on.

So far as the first question for my determination is concerned, it does raise a matter of some difficulty as to the extent to which, on the basis of potentially conflicting affidavit evidence, the issue can satisfactorily be resolved. In my judgment the proper interpretation of the affidavits which are before me is to this effect. Mr. Kentisbeer, it is

common ground, was embarrassed and put out when the application which he first made did not result in an adjournment to another day. Mr. Berrigan invites me to infer that that very embarrassment, as to which more than one deponent speaks, can only properly be attributed to the fact that he had applied to have the case adjourned to another day and that application had been summarily rejected in terms which brooked of no contradiction That is not an inference which, as it seems to me, I can possibly draw. Mr. Kentisbeer had arrived on the scene late, he had been presented with a considerable number of documents to read, and there is no doubt that he was flustered, but his state of embarrassment does not enable me to infer that an adjournment to some other day was then unequivocally refused.

What is clear to me is that, subsequent to that appearance before the Board, Mr. Kentisbeer was asked if he was ready to go on, and when he said that he was not, he was not required to go on. When again, later in the afternoon, he was asked if he was ready, he either assented, or certainly did not dissent. What is abundantly plain is that he made no further application for an adjournment.

Accordingly, I am not prepared on the affidavit evidence which is before me to find that it establishes, or that an inference is properly to be drawn, that an adjournment to another day was unequivocally refused.

That is sufficient to dispose of this application, but, because of the difficulty in relation to that aspect of the matter, it seems to me that I ought to go on to consider the question which, if I am right, does not arise, but which, if I am wrong on the first question, does arise, namely, if an

adjournment was improperly refused, did that result in prejudice to the applicant?

The way in Mr. Berrigan puts the case is that there were four issues of fact which the Board considered, and which would have been illuminated in the applicant's favour by further evidence which could have been called had an adjournment been granted. First, whether the applicant knew that Lorenza Grappi or Lindop was married; secondly, whether she had encouraged the applicant in any way; thirdly, how serious was the disturbance at the house; and fourthly, what was the significance of a pistol found in the possession of Lindop.

So far as the first of those matters is concerned, Mr. Berrigan says that the evidence before the Board was against the applicant in that Mrs. Lindop said that he knew that she was married, whereas Constable Goulding, who was was not called, and of the existence of whose statement Mr. Kentisbeer was unaware save to the extent that he was told of its terms by Constable Richards, could have said -- and if his statement had been before the Board it would have underlined the fact that he was capable of saying -- that the applicant had told him, Constable Goulding, that he had only recently discovered that Mrs. Lindop was married.

The difficulty with that aspect of the matter, as it seems to me, is that it is immaterial to any issue which the Board had to decide, whether the applicant knew, or when he knew, that this lady was married. As Mr. Platford for the respondent points out, it is at best a very moot question whether it is preferable to pester a woman whom you believe to be married or a woman you believe to be single, if you choose to pester her at the

home where she is living with her current lover.

In any event, that which the applicant said to Constable Goulding was on any view a self-serving and exculpatory statement, and it is by no means clear what the word "recently" meant. It does not seem to me that on this issue evidence of the statement of Constable Goulding would have assisted the applicant's case.

As to the second issue, Constable Goulding, says Mr. Berrigan, could have substantiated that the applicant had told him that the woman had telephoned him, thereby causing his presence at Wanstead, in the circumstances which I have described, and that Constable Goulding's evidence would have served to underline the fact that the applicant had, as he told the officer, received a Valentine card ten days before, whereas Mrs. Lindop was saying that the relationship had ended and he, the applicant, in effect was pestering her without encouragement of any kind, she being married to a man of violence.

So far as that is concerned, it is clear from Mr. Kentisbeer's second affidavit that the Valentine card was before the Board. But, in my judgment, whether or not the applicant was or was not encouraged by Mrs. Lindop in his advances is irrelevant to the question which the Board had to decide, namely, whether that which the applicant did constituted provocation leading to the assault upon him. The reason <u>why</u> he did what he did is in my judgment immaterial.

So far as the third matter is concerned, Mr. Berrigan submits that Constable Goulding's account was of an incident which was nothing like as serious as that to which Mrs. Lindop and the neighbour, Mr. Freeman, spoke.

The description of the incident which I gave earlier in this judgment is derived from that which Constable Goulding said. I have not thought it appropriate or necessary to go into the description which Mrs. Lindop and Mr. Freeman said. What Mr. Berrigan submits is that on P.C. Goulding's version of events there would have been real doubt cast upon the account of Mrs. Lindop as to what had happened at the house, and all that had there happened would have then assumed a far less serious aspect.

Mr. Platford submits, and I accept, that the degree of seriousness of the disturbance in Wanstead was not a matter of importance. The significance of the incident was that there occurred a public pestering by the applicant, pressing an unwelcome or even welcome suit upon a woman at the house where she was living with her current lover, and doing so through the letter box in a locked door, with the consequence that the police were called. The fact of that incident is what matters, not whether it was elaborated in any other way.

The difficulty so far as Mr. Berrigan is concerned in relying on Constable Goulding's statement on this aspect is that it tends to extend rather than diminish the period of time during which the incident took place because Constable Goulding, on arrival, found the engine of the car in which the applicant had gone to Wanstead was cold. This could only mean either that he had been there for a substantial period of time, or that, having arrived there, he had gone away on foot and then returned again. The fact that on the arrival of the Constable the applicant went quietly does not, as it seems to me, provide a basis for suggesting that Constable Goulding's evidence would

have materially affected the outcome in the applicant's favour. The pestering had by then already taken place.

So far as the fourth matter is concerned, Lindop gave an account of picking up the pistol after the applicant had left and yet, says Mr. Berrigan, he had pleaded guilty to possessing the firearm and the ammunition. The fact that he had pleaded guilty was something about which the police officer could have told the Board, and this would have shown or underlined the fact that Lindop was a very violent and dangerous man.

However, the Board had before them Lindop's record, which is not only extremely long, but also has upon it the conviction for unlawful possession of a firearm. That plainly is a matter which was within the Board's cognisance, and in my judgment, whether or not Lindop pleaded guilty to that offence is neither here nor there.

It seems to me that the crucial matter so far as the Board was concerned was the conduct of the applicant at the Lindops' house, and that is referred to in the note of the decision as follows: "Inspector Richards stated that a telephone call had been made to the local police station about a disturbance at Mr. Lindop's house. The officer who attended found the applicant talking through the door of Mr. Lindop's house. The woman on the other side of the door appeared excitable. The officer informed him that the applicant was leaving and took him away. Inspector Richards stated that Mr. Freeman was a wholly independent witness who gave an account in his statement of having threats from the man at the door. Mr. Freeman also recounted how he had told Lindop when he returned later what had happened. The Board accepted that Lindop and another man had gone to the applicant's

house and severely assaulted him. The question before the Board was whether the applicant's conduct in associating with Mrs. Lindop and in going to the Lindop house when he created a disturbance was conduct which would render a reduction of an award appropriate under Paragraph 6(c). The Board considered that the applicant's conduct was grossly provocative and that a reduction of 50% was appropriate."

In my judgment the only material matter -- as appears from that passage with regard to his conduct -- was the applicant's presence pressing his suit at the Lindop household some comparatively short time before the assault upon him. There is nothing in the information in the affidavits and exhibits before me to suggest that any evidence could have been obtained which would have effectively countered that allegation, substantiated as it was from several sources. In those circumstances, even if I am wrong in regard to the first question, in my judgment there was no prejudice at all shown in relation to the applicant by such refusal of an adjournment as there may have been.

In those circumstances this application is refused.

MR. PLATFORD: My Lord, the applicant is legally aided, I understand, so that there is little point my pressing any claim for costs.

MR. JUSTICE ROSE: Are you making an application for costs?

MR. PLATFORD: I am making an application with the realisation that there may not be much substance in it.

MR. JUSTICE ROSE: Mr. Berrigan, what I propose is to make an order not to be enforced without leave of the court, subject to anything you may say.

MR. BERRIGAN: I would ask your Lordship not to make an order. The final determination by the Criminal Injuries Compensation Board has yet to be made.

MR. JUSTICE ROSE: So far as quantum is concerned. Yes.

MR. BERRIGAN: It may be that when that determination is made the applicant will then be in possession of funds which the Board would wish to enforce their order for costs against.

MR. JUSTICE ROSE: What is his legal aid contribution at the moment?

MR. BERRIGAN: I imagine it is nil. As you see, he is unemployable and simply has no funds other than the interim payment he has received from the Board. Your Lordship will appreciate that he has brought this application on advice so far as he is capable of accepting advice.

MR. JUSTICE ROSE: There are circumstances in this case, Mr. Platford, having regard to the applicant's mental condition, which might persuade you to take some further instructions as to whether you are seeking an order for costs.

MR. PLATFORD: Might I take those instructions, but while I do so, my Lord, I have in front of me Mr. Kentisbeer's assessment of the loss of earnings claim which is very nearly £66,000, so that the difficulty that we may all be faced with in due time is that the applicant will have means, by all appearances, so that any order might bite.

MR. JUSTICE ROSE: I tell you, so that those instructing you hear what I say, that, having regard to his mental condition it would not seem to me to be very fair and just that, as and when he obtains compensation in a substantial sum, as he undoubtedly will, despite the reduction, he should have to pay anything towards the Board's costs in all the circumstances. Perhaps you would like to take some instructions.

MR. PLATFORD: I have taken instructions, my Lord, and unless I can say that it was wrong of the advisers to bring this case, it seems that I should not be pressing an application for costs. I do not think I can say that it was wrong of the advisers because they owed it to him in his circumstances to see that every stone was covered.

MR. JUSTICE ROSE: Yes. So for a number of reasons which may have appeared in the course of this case, although they have not necessarily formed part of the agument. Very well. There will be no order for costs.

MR. BERRIGAN: I am very much obliged. Would your Lordship order legal aid taxation of the applicant's costs?

MR. JUSTICE ROSE: Yes.

MR. BERRIGAN: I am obliged.
