IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

CASE NO: CO/3618/95

Royal Courts of Justice
Strand
London WC2

Thursday, 4th May 1995

B e f o r e:

MR JUSTICE DYSON

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REGINA

-v-

CRIMINAL INJURIES COMPENSATION BOARD
EX PARTE JOBSON

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(Computer Aided Transcript of the Stenograph Notes of John Larking, Chancery House, Chancery Lane, London WC2
Telephone No: 071 404 7464 Fax: 071 404 7443
Official Shorthand Writers to the Court)

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MR C LEWIS (instructed by Messrs Mincoff Science & Gold, Newcastle upon Tyne, NE2) appeared on behalf of the Applicant.

MR M KENT (instructed by The Treasury Solicitor, London, SW1) appeared on behalf of the Respondent.

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J U D G M E N T
(As Approved)

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Thursday, 4th May 1995

JUDGMENT

MR JUSTICE DYSON: This is an application for judicial review of a decision of the Criminal Injuries Compensation Board, ("the Board"), given on 28th October 1993, refusing to make a full or reduced award of compensation to the applicant under the Criminal Injuries Compensations Scheme ("the Scheme").

On the evening of Friday, 12th April 1991 the applicant was the victim of an unprovoked assault in a public house. He was injured. He applied to the Board for compensation. The application was considered by the single member, Mr Lindsay QC. He disallowed the application.

The applicant sought an oral hearing before the Board. It took place on 28th October 1993. The applicant gave evidence, as did his friend Brian Maughan, who witnessed the incident, and Police Sergeant Gulliver, who was called to the scene on the night in question. The applicant's account of the hearing is set out at paragraphs 6 to 9 of his affidavit, sworn on 22nd December 1993:

> "6. I gave evidence first. I explained the way in which I had been assaulted, in that the attack was unprovoked whilst I was in the public house with Mr Maughan. I explained that after

the injury I was in a state of shock and my left arm was badly injured; that I got into a taxi to go to hospital and that the police officer spoke to me and asked if I could identify the attacker, which I could not. I told the Board that, at that stage, I simply wanted to get to hospital. I believe that the police officer made arrangements to call an ambulance. I told the Board that I believed I did say to the police officer that I did not wish to make a formal complaint. As I explained to the Board, I did not intend to indicate that I was not willing to cooperate with the police. I had had no previous dealings with the police and was not familiar with their procedures. I certainly did not appreciate that my reference to not making a formal complaint would have any legal or other significance; I was simply concerned with getting to a hospital and away from the scene of the incident, and was also shocked and upset at the injury to my arm.

7. I told the Board I was detained in hospital for 4 days; that I expected the police to visit me as I had given my name and address to the police officer at the scene and he had called an ambulance and presumably knew the hospital to which I had gone. I explained that I did not receive a visit from the police and that on the second day in hospital, I was allowed to get out of bed and I telephoned the police station. I told the Board that I spoke to a switchboard operator and explained the incident in which I had been involved; that I was told that she could not trace any record of the incident and that I was told that I should telephone at a later date. I explained to the Board that, accordingly, when I left hospital 16th April 1991, I telephoned the police station from my home and was visited by the police officer and gave a statement.

8. My solicitor then called Mr Maughan as a witness who gave evidence to confirm that I had not voluntarily participated in a fight and had not done anything to provoke the attack.

9. Sergeant Gulliver then gave evidence. He was one of the two officers who were present at the scene of the incident. He gave evidence from his own recollection and his original notebook. He confirmed that I had given my name and address and that I had been injured. He also said that I had said that I did not wish to make a formal complaint. Sergeant Gulliver also gave evidence

to the Board that, after I telephoned the police from my home after leaving hospital, further investigations were carried out into the incident. He confirmed that witness statements had also been taken from other witnesses. Copies of the witness statements taken were provided to the Board and appear at pages 23 to 34. Sergeant Gulliver said that he arrested a Mr Jeffery Keepin who had been referred to in some of the witness statements and had interviewed him. Sergeant Gulliver said that the tape recording of the particular interview had been lost. He also confirmed that no charges were laid against Mr Keepin".

At the conclusion of the hearing the Board announced that they were disallowing the application. They said that they were not satisfied that the applicant had reported the incident to the police as soon as possible. Accordingly, compensation was withheld by the Board in reliance on paragraph 6(a) of the Scheme. This provides:

> "The Board may withold or reduce compensation if they consider that-
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> > (a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to cooperate with the police or other authority in bringing the offender to justice".

The Board provided a full transcript of the Notes of Evidence and a note of the decision. This was in answer to a request made by the applicant's solicitors after judicial review proceedings had been instituted. The Notes of Evidence are full. They record, amongst other things, that Sergeant Gulliver said this:

"... if a complaint had been made at the time then a search could have been made of the area as the people responsible would not be far away. He was of the view that there could have been a quicker resolution if there had been an immediate complaint. If statements had been taken from the 3 men on the night, then the police could have made enquiries and there might have been an arrest. However when he had made his enquiries none of the people were really able to tell him what had happened".

The last paragraph of the document prepared by the Board contains their reasons:

"After listening to submissions from Mr Bare the Board retired to consider the applicant's case. The Board considered whether there had been a delay in reporting this matter and making a complaint to the police. The Board were satisfied that the applicant could have made the complaint at the time that the police were on the scene thus enabling the police to commence enquiries there and then but the applicant had failed to do so".

Thereafter the Board considered whether, taking into account the applicant's failure to report the matter at the earliest opportunity, they could exercise their discretion to make a full or reduced award to the applicant. The Board took the view, taking into account all the circumstances of the case, that this was not a situation in which they should exercise their discretion in favour of the applicant, and that his delay in reporting the matter properly to the police rendered an award of compensation inappropriate. The Board, therefore, dismissed the application under the paragraph 6(a) of the Scheme.

On behalf of the applicant, Mr Lewis makes the following submissions: (1) the reasoning of the

Board was inadequate on the grounds that (a) it failed to follow the proper chain of reasoning, or (b) it failed to give any or any adequate reasons for the decision to award no compensation rather that reduced compensation. Alternatively, (2) the Board misdirected itself as to the meaning of the Scheme, in that it considered the effect of delay in reporting the matter to the police as determinative of the question of compensation, and failed to consider whether and to what extent, in the light of the circumstances of the case, it was fair to the applicant to award reduced compensation.

I turn to the submission that the Board failed to follow the proper chain of reasoning. Mr Lewis referred me to an unreported decision of Sedley J, given on 3rd December 1993 in R-v-Criminal Injuries Compensation Board ex parte Gambels. That was a case under paragraph 6C of the Scheme which empowers the Board to withold or reduce compensation if they consider inter alia that "having regard to the conduct of the applicant before, during or after the events giving rise to the claim", it is improper that a full award or any award should be granted.

At page 9E of the transcript in ex parte Gambels Sedley J said this:

> "The Board in such a case as this has therefore to proceed in three stages:
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> (A) Does the applicant's conduct make a full award inappropriate?

(B) If so, to what extent does the applicant's conduct impact on the appropriateness of an award?

(C) What award, if any, should the applicant consequently receive?"

Mr Lewis submits that this three stage approach should have been followed in the present case, and that the Board omitted the second stage. In my view it is clear that Sedley J's three stage approach cannot be applied literally to a case under paragraph 6 a) of the Scheme. This is because he formulated his three questions in the light of the language of paragraph 6(c).

In a case such as the present I would formulate the three stages as follows: (a) did the applicant take steps without delay all reasonable steps to inform the police of the circumstances of the injury and cooperate with the police in bringing the offender to justice? (b). If so, should compensation be withheld or reduced? (c) What award, if any, should the applicant consequently receive?

It is accepted by Mr Lewis, and rightly so, that the Board answered the first question adversely to the applicant.

Mr Lewis submits that the Board failed to consider "the extent to which the applicant's conduct has impacted upon the appropriateness of the award". This wording, lifted verbatim from Sedley J's formulation, is appropriate to a case under paragraph

6(c), but not a case under 6(a). The real issue in this case is whether the Board considered whether compensation should be withheld or reduced.

In my judgment it is plain that, after concluding that the first question should be answered adversely to the applicant, the Board did consider whether to make a full award, a reduced award, or no award at all. There is nothing in Mr Lewis' chain of reasoning point once the links in the chain have been properly understood. The Board asked itself the very questions that it was required to ask.

I turn next to the submission that the Board failed to give adequate reasons for its decision not to award reduced compensation. Both Mr Kent and Mr Lewis referred to, and relied on R-v-Civil Service Appeal Board ex parte Cunningham 1991 4 All ER 310. At page 319B Lord Donaldson MR cited a passage from Lord Lane CJ in R-v-The Immigration Appeal Tribunal ex parte Khan (Mahmood) 1983 QB 790 to 795, which he said he believed owed nothing to the fact that in that case a statutory requirement to give reasons existed. The passage cited by Lord Donaldson is in these terms:

> "The important matter which must be borne in mind by tribunals in the present type of circumstances is that it must be apparent from what they state by way of reasons first of all that they have considered the point which is at issue between the parties, and they should indicate the evidence upon which they come to their conclusions. Where one gets a decision of a tribunal which either fails to set out the

issues which the tribunal is determining either directly or by inference, or fails directly or by inference to set out the basis on which it has reached its determination on that issue, then that is a matter which will be very closely regarded by this court, and in normal circumstances will result in the decision of the tribunal being quashed. The reason is this. A party appearing before a tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the tribunal; in other cases it may not. Second, the appellant is entitled to know the basis of fact on which the conclusion has been reached. Once again in many cases it may be quite obvious without the necessity of expressly stating it, in other cases it may not".

Lord Donaldson, stated:

"When judged by that standard the Board should have given outline reasons sufficient to show to what they were directing their mind and thereby indirectly showing not whether the decision was right or wrong, which is a matter solely for them, but whether their decision was lawful. Any other conclusion would reduce the Board to the status of a freewheeling palm tree".

At page 323H McCowan LJ said:

"To this day neither he, nor for that matter this court, has any idea why the board recommended that he received so little. As Mr Pannick says, it cries out for some explanation by the board... not only is justice not seen to have been done, but there is no way, in the absence of reasons from the board, in which it can be judged whether in fact it has been done. I find that a thoroughly unsatisfactory situation, in which this court should hold, if it can properly do so, that the board ought to give reasons for its recommendations".

At 323C he added:

"I add only that I see no reason why the board need take more than a few simple sentences to state those reasons, or why the necessity to do this should in any way prejudice the informality of the proceedings or, in Mr Forman's words,

lead to 'bodies of precedent and legalistic concepts'."

Finally Leggatt LJ at 326D said:

> "In my judgment the duty to act fairly in this case extends to an obligation to give reasons. Nothing more onerous is demanded of the board than a concise statement of the means by which they arrived at the figure awarded. Albeit for reasons which go wider than those relied on by the judge, I too agree that the appeal should be dismissed and the cross-appeal allowed".

As to what is the touchstone of adequacy, it was common ground before me that a useful summary is contained in the judgment of Hutchison J in R-v-Criminal Injuries Compensation Board ex parte Cummins reported at Volume 1 of PIQR Q81, at Q98 where he said:

> "Is it apparent from the amplified reasons that the Board have considered the point which is at issue between the parties and have indicated the evidence upon which they have come to their conclusions, on the issue of appropriate level and cost of compensation for future care? Does what they have said enable Mr Cummins to know to what the Board were addressing their minds and the basis of fact on which their conclusion has been reached on this issue? Have they given outline reasons sufficient to show whether their decision on this issue was lawful?"

It will be seen that this passage echoes very loudly the extracts from the case of ex parte Khan which I have just cited. The issue before me is whether the reasoning of the Board was adequate, in particular whether it was adequate as to why the Board decided to refuse compensation altogether, rather than to award reduced compensation.

Mr Lewis submits that the Board has not given

any reasons at all. The Board has merely said that it decided to make no award "taking into account all the circumstances of the case".

Mr Kent, on the other hand, submits this was a simple case. It had none of the unusual features of cases such as ex parte Gambels and another decision of Sedley J ex parte S, which demanded more elaborate reasons than the instant case. He submits that since the Board found that the applicant was guilty of culpable delay in failing to make a complaint on the night of the incident, events occurring after that night were not regarded as relevant by the Board. Thus it was unnecessary for the Board to consider, still less make findings about what happened after the night of the incident or shall out its effect on the Board's exercise of discretion. I cannot accept Mr Kent's submission. In my view, the Board did not say: "the failure to make a complaint to the police on the night of 12th April 1991 is sufficient of itself to lead to the conclusion that no compensation should be awarded, regardless of any other circumstances of the case". The Board heard evidence from the applicant as to his attempts to contact the police two days later, his making a complaint on 16th April, and evidence from Police Sergeant Gulliver as to the effect of the delay on the ability of the police to bring the assailant to justice and so on.

Crucially, the Board said that, in exercising

its discretion, it took into account all the circumstances of the case. In my judgment, to say that a decision is made in the light of all the circumstances of the case is not to provide any reason for that decision at all. To say that compensation is refused, taking account of all the circumstances of the case, is no different, in effect, from simply saying that compensation is refused. In each case no reasons are given. I have, therefore, come to the conclusion that this decision is flawed on the grounds that no adequate reasons were given for the decision not to award at least some compensation.

I am extremely conscious, as was the Court of Appeal in ex parte Cunningham, of the need to maintain informality of proceedings before the Board and to avoid burdening the Board with unreasonable obligations in a case such as the present. There is no need to make detailed findings of fact or to give exhaustive reasons and justification of the exercise of discretion. Short reasons for the conclusion will suffice, but those reasons must be sufficient to enable the applicant to see the factual basis on which the relevant conclusion has been arrived at what considerations have been taken into account, and whether the decision on the issue in question is lawful. In view of my decision on the adequacy of reasons point it is unnecessary for me to deal with

Mr Lewis's alternative argument.

MR LEWIS: My Lord, in terms of relief, I ask for an order of certiorari to quash the decision and, I think, it would be useful if your Lordship would remit the matter formally, although I am sure the Board will want to consider it. Mr Kent has very fairly said the Board will undertake that it will be considered by a different tribunal, so I need not trouble your Lordship with the question of a differently constituted tribunal. I ask for an order to quash an decision of 28th and a discretion that an matter be remitted to an Board for a rehearing. I would ask for the costs of this application.

MR KENT: My Lord, I cannot resist any of those matters. My Lord, I am instructed to seek leave to appeal on this ground, an question of principle, which arises in these cases. What has yet to be decided by an Court of Appeal is how far in an case of an CICB, there is a duty to give reasons and if so an extent, particularly in an case of a direction such as this, rather than in ex parte Cumming which was a financial reward, and an breakdown of that award and that is an point of principle which I seek to identify. In your Lordship's reasons we remain neutral.

MR JUSTICE DYSON: No, I think you will have to seek leave from an Court of Appeal. Thank you both, very much.