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

No CO-2522-92

Royal Courts of Justice
Strand
London WC2

Friday, 8th July, 1994

Before:

MR JUSTICE SCHIEMANN

R E G I N A

-v-

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte MAXTED

MR K TALBOT (Instructed by Brown Turner Compton Carr & Co, Southport) appeared on behalf of the Applicant.

MR M KENT (Instructed by Treasury Solicitors) appeared on behalf of the Respondent.

Computer Aided Transcription of the palantype notes of John Larking, Chancery House, Chancery Lane, London WC2 Telephone 071-404-7464 (Official Shorthand Writers to the Court)

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

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MR JUSTICE SCHIEMANN: The Applicant was criminally assaulted while in prison on remand. For that, he must receive one's sympathy. He applied to the Criminal Injuries Compensation Board for compensation. The application was refused under paragraph 6 (c) of the scheme. This states:

> "The Board may withhold or reduce compensation if they consider that:
> (a) .....
> (b) .....
> (c) having regard to the conduct of the Applicant before, during or after the events giving rise to the claim or to his character ..... [as shown by criminal convictions or unlawful conduct] ..... it is inappropriate that a full award or any award at all be granted."

This application for judicial review is an application to quash that refusal by the Board. The decision letter under attack sets out as much of the facts as it is necessary to understand.

> "1. John William Maxted made 2 applications to the Board, both of which came before the Board for oral hearing on 8 April 1992.
>
> 2. The circumstances in which the applicant was injured were not material to the Board's decision; but, for the record, they may be summarised thus:
> (a) Application number 88/21480: the applicant sustained a broken jaw, on 5 March 1987, when struck by a fellow inmate at HM Remand Centre, Risley.
> (b) Application number 89/09903: the applicant sustained facial injuries, on 2 July 1987, in similar circumstances.
>
> 3. In respect of each incident, a Single Member of the Board had decided that no award should be made because of the applicant's character and way of life as shown by his criminal convictions. In each case, the applicant applied for an oral hearing, stating as his reason for doing so:

he was the subject of unprovoked attacks and my way of life was not a contributory fact for the unprovoked attacks upon me.

4. The hearing took place on 8 April 1992, in Liverpool, when the applicant appeared and was represented by his solicitor, Mr Bushell.

5. Although an oral hearing before the Board considers the whole application afresh, no issues were raised before us other than the one cited by the Single Member.

6. We were informed that the applicant's criminal convictions were as follows:
11 February 1981 - Placed on probation for 2 years for theft from a shop; and fined £25.00 for assaulting a police officer.
14 December 1981 - fined £10.00 on each of 4 charges; 3 of theft and one of failing to surrender to custody.
26 July 1983 - probation order of 11 February 1981 was discharged in advance of expiry.
10 July 1987 - Placed on probation for 2 years for an offence of indecent assault upon a female child.

The applicant admitted that these were his convictions, and told us that he had no others.

7. The applicant also told us something of the curcumstances of the 1987 conviction. He had initially been charged with attempted rape after following a young girl into female public toilets; we were told that the prosecution had accepted that, although the applicant had undone his trousers, he had no intention to rape the girl. The girl was 14 years of age, and had not had to give evidence. We were informed that there had been no physical contact at all, there was an assault (accompanied by indecency) but no battery.

8. Both assaults upon the applicant occurred while he was on remand in connection with the matter for which he was convicted on 10 July 1987.

9. Although the Hearing Summary prepared by the Board's officers referred, in each case, to "character and way of life"; we reminded ourselves that the hearing was conducted under the 1990 Scheme, which referred to "character" only. In the particular circumstances of the

case, the change introduced by the new Scheme did not affect our consideration of the merits of the 2 applications.

10. After hearing the evidence, and Mr Bushell's submissions, we retired to consider the matter. We reminded ourselves that Paragraph 6 of the Scheme vests in the Board a very wide discretion to withhold or reduce compensation in the circumstances which it comtemplates. So far as is relevant, that paragraph provides that: -

"The Board may withhold or reduce compensation if they consider that -

(a) .....

(b) .....

(c) having regard to ..... his character as shown by his criminal convictions ..... it is inappropriate that a full award, or any award at all, be granted."

In the context of the reason given by the application for requesting an oral hearing, as quoted in paragraph 3 above, we reminded ourselves that it is well established that there need be no causal connection between the applicant's crimnal convictions and the assault upon him; such was the basis of the decision of the High Court in R v CICB Ex p Thompstone and R v CICB a Ex p Crowe, on 17 January 1983. In his judgment, Mr Justice Stephen Brown observed:

"I am satisfied that the Scheme, as published, is intended to afford the widest possible discretion to the Board in its administration of the scheme."

An appeal to the Court of Appeal was dismissed on 2 October 1984 the Master of the Rolls saying:

"As with all discretionary decisions, there will be cases where the answer is clear one way or the other and cases which are on the borderline and in which different people might reach different decisions. The Crown has left the decision to the Board ..... "

11. Having thus directed ourselves, we considered how our discretion should be exercised in these cases. We note that this applicant's record of convictions was not lengthy; nor had his conduct ever led the courts to impose a custodial sentence. Nevertheless, we considered that the nature of the conduct involved in the 1987 conviction was such that it would be inappropriate to make an award of compensation from public funds in respect of either of the incidents in which the applicant was injured. Accordingly, we determined, in respect of each

application, to withhold an award under paragrph 6 (c) of the Scheme."

In order to understand the attack launched on this decision by Mr Talbot, on behalf of the Applicant, it is necessary to refer to the Guide of 1990 of the Criminal Injuries Compensation scheme issued on the authority of the Board in February 1990. The paragraphs relevant to the present application are paragraphs 37 to 39:

"Character as shown by criminal convictions.

"37. This part of paragraph 6 (c) of the Scheme gives the Board discretion to refuse or reduce compensation because of the applicant's (or the deceased's) past record of criminal offences, whenever committed. The Board can take account of convictions which are entirely unconnected with the incident in which the applicant was injured. Any attempt the applicant has made to reform himself will also be taken into consideration.

"38. The Board may completely reject an application if the applicant has -

a. one conviction for a serious crime of violence, e.g. murder, manslaughter, rape, wounding or inflicting grievous bodily harm

b. one conviction for some other very serious crime, e.g. drug smuggling in quantity

c. more than one recent conviction for less serious crimes of violence, e.g. assault, burglary, theft or criminal damage; or

d. numerous convictions for dishonesty of a serious nature.

"39. Each case is judged on its merits and in some circumstances even a conviction for a serious crime of violence will not be regarded as a complete bar. For example the Board would be likely to approach sympathetically an application from a person with a bad record of convictions who had been injured while assisting the police to hphold the law or genuinely giving help to

someone who was under attack."

Mr Talbot submits that it is apparent from the decision letter that the Board failed to consider those paragraphs of the Guide and that they failed properly to approach their task under the scheme. The matter is put thus in the application for judicial review at paragraphs 11, 12 and 13 that the Board, when deciding how their discretion should be exercised ought, at least to have considered paragraphs 37 to 39, that they failed to do so and by failing to do so they were in error and/or failed to direct themselves properly and/or acted unreasonably in reaching their decision.

Paragraph 13 states:

> "Without prejudice to the generality of the foregoing, it is further submitted that by failing to consider the relevant provisions of the Guide, the members of the Board omitted, when exercising their discretion
>
> > (a) to consider or take into account properly or at all the attempts which the Applicant had made to reform himself as evidenced, inter alia, by the fact that he had not been in any further trouble since his conviction on the 10th day of July 1987.
> >
> > (b) to undertake any or any sufficiently detailed or proper analysis of the Applicant's previous convictions, especially in the light of the guidance provided by paragraph 38 of the Guide.
> >
> > (c) to consider properly or at all its power to reduce, as opposed to refuse, an award of compensation."

Mr Talbot accepts that there is no legal obligation on the Board to refer to the Scheme expressly. Mr Kent for the Board, for his part, accepts that any attempt that an Applicant has made to reform himself is a relevant matter within paragraph 6 (c). Mr Talbot

accepts that the only evidence before the Board as to attempts by the Applicant to reform himself is the evidence that he has not been prosecuted for five years, since 1987. In my judgment, the decision letter read as a whole gives no reason to suppose that this point was not in the mind of the Tribunal. The relevant facts are recited in their decision letter. No doubt the Applicant's solicitor made what he could of this point. How much weight the Board should give to it was a matter for the Board and cannot be reviewed by this court.

Mr Talbot submits that the Board ought in its decision letter to have referred to paragraph 38 of the Guide and to have stated that the Applicant's conviction did not fall within any of the four categories there set out, but that nevertheless for reasons which they should advance in the decision letter, they were withholding compensation. He accepts that paragraph 38 of the Guide does not preclude the refusal of compensation in circumstances such as the present but submits that, at the least, if the only matter relied on by the Board for refusing compensation is one conviction and that conviction does not fall within any of the four cases in paragraph 38 then the Board ought to explain why it is nevertheless refusing compensation totally as opposed to either granting or reducing its amount. In effect, it can be argued, what has happened here is that the Applicant was treated by the Board as though he had been convicted of rape when in truth he was only convicted of indecent assault, one moreover that did involve physical contact. No submission has been made to me that the Applicant has, in any way, relied upon paragraph 38 and acted to his disadvantage by so doing. It is conceded that the Board were entitled to take the view that this indecent assault five years ago is a matter

that should cause it to withhold compensation. They did not act illegally in so doing. In my judgment, they were under no obligation to spell matters out further in their decision letter than they did. Their discretion is very wide as is made clear in R v Criminal Injuries Compensation Board ex parte Thompstone 1984 3 All ER 572, a decision of the Court of Appeal in which Sir John Donaldson MR said:

> "It seems to me to be clear that paragraph 6 (c) contemplates that circumstances can arise in which it would be 'inappropriate' that the public purse should be used to compensate a victim, when it could not reasonably be expected to be used for that purpose."

He then expanded on that in circumstances where paragraph 6 (c) was in slightly different terms from the present, but that does not alter the substance of the comments he made. The width of that discretion has not been reduced by the issue of the guidance. The Board has no authority to reduce the width of its own discretion. This is one of those cases where the Board might have decided the case the other way but, as entitled, they chose not to do so. This court is not empowered to substitute its discretion for that of the Board and this application fails.

MR KENT: I understand the Applicant is legally aided and I do not ask for costs.

MR TALBOT: May I ask for legal aid taxation?

MR JUSTICE SCHIEMANN: Yes.

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