R. v. Criminal Injuries Compensation Board, ex p. Pearce

CO/2841/91 November 5, 1993

McCullough J.

Criminal Injuries Compensation Board Scheme 1979, para. 6(a)—failure of victim to co-operate with police—extent of duty of Tribunal to assist unrepresented person.

The applicant sought judicial review of the decision of the Criminal Injuries Compensation Board after a hearing on May 22, 1991, refusing his claim on the basis that he had failed to co-operate with the police pursuant to paragraph 6(a) of the 1979 Compensation Scheme. This allows the

Board to withhold or reduce compensation if they consider that: "the applicant has not taken without delay all reasonable steps to inform the police . . . of the circumstances of the injury and to co-operate with the police . . . in bringing the offender to justice."

The applicant contended that whilst on holiday, (then aged 38), he had been attacked in the late afternoon of October 10, 1987, on the Cleethorpes sea-front, by a gang of youths and had sustained a fractured left shoulder, general bruising and a cut mouth. He had attended hospital and been discharged the following day.

His application for compensation was first refused by a single member of the Board on the ground that he had not co-operated with the police. The applicant requested an appeal hearing on May 22, 1991, before Mr Barker Q.C. and Mr Lewer Q.C., two members of the Board. He said that he disagreed with a letter sent by the police to his Member of Parliament on June 29, 1988. The letter stated that the applicant had declined to make a statement as was confirmed in the crime report relating to the incident. The applicant was unrepresented before the Board.

There was a fundamental conflict of evidence before the Board: D.C. Rands produced the crime report signed by him requesting the alleged offence to be "filed as undetected due to the reluctance of Mr Pearce to give a statement." D.C. Rands gave evidence that the applicant had been seen by the police on October 10, 1987, the day of the assault, and that D.C. Rands had seen him the following day, in the hotel, after his discharge from hospital. However, the applicant contended that he had only seen one police officer whilst in hospital and had not been seen by D.C. Rands on his discharge from hospital. He cross-examined D.C. Rands about the times of his discharge from hospital and departure from the hotel and the Board took this cross-examination up on his behalf. The Board concluded that they preferred the testimony of D.C. Rands and therefore found that the applicant had not co-operated with the police.

The applicant's grounds in support of judicial review were:

(a) that he was not given the opportunity to read the said crime report; and
(b) that considering that he was unrepresented, the Board did not itself cross-examine D.C. Rands who produced the report in the way the circumstances required and thus the hearing was conducted unfairly.

In his first affidavit in support of his application for judicial review, the applicant had contended that there was no documentary evidence before the Board to support D.C. Rands's evidence. However, in his second affidavit, he contended that he only became aware of the existence of the crime report on reading the affidavit of Mr Barker Q.C., on behalf of the respondent. Finally, at the judicial review hearing, the applicant amended his grounds to state that although the crime report was produced in evidence and questions were asked about it in his presence, he was not supplied with a copy and thus could not properly comment upon it.

Held, refusing the application:

(1) The substance and significance of the crime report could have come as no surprise to him as the police had referred to its contents in their letter

dated June 29, 1988, to his Member of Parliament. He had known of that letter for almost three years by the time of the hearing before the Board.

(2) The obligation on a court or tribunal to assist the unrepresented party to put his case to the other side's witnesses does not extend to asking any question which a skilled advocate might have asked. The obligation was to help the unrepresented party put his version of events and his points to the witness and it was clear that the Board had done this (see *Chilton v. Saga Holidays PLC* [1986] 1 All E.R. 841). There was a limit to the extent to which the Board could enter the arena. Just because some possible questions were not asked, did not mean that the procedure was unfair. The Board had not failed in its duty to give proper assistance to the applicant [illegible] had decided that D.C. Rands was to be believed.

Case considered: *Chilton v. Saga Holidays PLC* [1986] 1 All E.R. 841.

A. Bradley (Ellis-Fermor & Negus, Ripley) for the applicant; *M. Kent* (Treasury Solicitor, London SW1) for the respondent.

J.O.D.