IN THE SUPREME COURT OF JUDICATURE No QBCOF 95/1825/D
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM ORDER OF MR JUSTICE CARNWATH

Roval Courts of Justice
Strand
London WC2

Monday, 1st July 1996

B e f o r e:

LORD JUSTICE ROSE

LORD JUSTICE WARD

LORD JUSTICE JUDGE

R E G I N A

- v -

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte DICKSON

(Computer Aided Transcript of the Palantype Notes of
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Official Shorthand Writers to the Court)

MR MICHAEL KENT QC (Instructed by Treasury Solicitors) appeared on behalf of the Appellant

MR DAVID BLAKE (Instructed by Wythenshawe Law Centre of Manchester, London Agents Collyer Bristow of London) appeared on behalf of the Respondent

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

LORD JUSTICE ROSE: Lord Justice Judge will give the first judgment.

LORD JUSTICE JUDGE: This is an appeal by the Criminal Injuries Compensation Board with leave of Carnwath J against the decision dated 5th December 1995 by which he quashed the decision of the Board dated 19th January 1994, refusing to grant Richard Dickson an oral hearing following refusal by a single member of the Board of his application for compensation.

Richard Dickson was born on 12th February 1969. From May 1984 until May 1992 he was before the courts on numerous occasions. His convictions ranged from being drunk and disorderly, minor dishonesty to burglary and theft, twice driving with excess alcohol, three offences of assault (two on police officers in the course of their duty) and a further offence of threatening behaviour directed at a police officer. On the evening of 28th August 1992 when he was 23 years old, three months after his most recent conviction for assault and while on probation, he was himself assaulted and robbed outside a public house. His assailant was subsequently cautioned by police. On 29th September he made an application to the Board for compensation in respect of his injuries. A full statement of the circumstances in which he came to be a victim was included with his application. In due course the Board was also provided not only with a list of his previous convictions but also with details of the dates of the offences and circumstances in which the offences had taken place. While that application was being processed, on 28th March 1993 he was again assaulted outside a public house. On 2nd April he made his second and separate application for compensation.

On 5th May 1993 the first application was rejected by the delegated officer of the Board. The determination letter reads:

> "Under Paragraph 6 (c) of the Scheme, compensation may be withheld if it seems inappropriate that an award should be made from public funds on account of the applicant's character as shown by his criminal convictions.
>
> Having regard to the applicant's list of convictions I have concluded that no award can be made."

In effect, therefore, the discretionary power of the Board to withhold compensation under paragraph 6 of the Scheme was exercised. Paragraph 6, so far as relevant, reads:

> "The Board may withhold or reduce compensation if they consider that -
>
> .....
>
> (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 his criminal convictions or unlawful conduct ..... it is inappropriate that a full award, or any award at all, be granted."

On the 27th July 1993 the second application was rejected by the same delegated officer on the same grounds. I shall simply record that eventually this application succeeded at least to the extent that an award was made subject to a 50% reduction from its full value. This appeal is concerned only with the first application.

On 30th July 1993 Mr Dickson applied for an oral hearing. In his letter he asserted that his offences were mostly of a minor nature and that the last conviction had been recorded over 12 months earlier. Those facts were before the Board and so were his repeated assertions about the

circumstances of the attack on him. He added that he had been seeking employment and attempting "to go straight". On 19th January 1994, after a review by the Board under paragraph 24 (c) of the Scheme, the application for an oral hearing was refused. The decision was based on Mr Dickson's previous convictions. Leave to apply for judicial review of this decision was granted by Popplewell J.

It is against the order of Carnwath J, granting judicial review and quashing the decision, that the present appeal is brought. Although the first and main argument in the court below was based on the inconsistency between, and unreasonableness of, refusing an award in the first application yet nevertheless granting it at least in part in the second, the learned judge concluded:

> "If the first decision was otherwise valid, the mere fact that a differently constituted Board has made a different decision on the same or similar facts does not make it invalid. It is trite law that two bodies may reach different decisions on the same basic facts without either being described as unreasonable or irrational in administrative terms."

In my judgment, that conclusion was correct and was accepted as such before this court by Mr Blake on behalf of Mr Dickson. No further reference to the second application is required.

The single issue in this appeal arises from the second question argued before Carnwath J and concerns the construction of paragraph 24 (c) of the 1990 Scheme as applied to claims by applicants with criminal convictions. Paragraph 24 (c), where relevant, provides:

> "An applicant will be entitled to an oral hearing only if -
>
> .....
>
> (c) no award or a reduced award was made and there is a dispute

as to the material facts or conclusions upon which the initial or reconsidered decision was based or if it appears that the decision may have been wrong in law or principle.

An application for a hearing which appears likely to fail the foregoing criteria may be reviewed by not less than two members of the Board other than any member who made the initial or reconsidered decision. If it is considered on review that if any facts or conclusions which are disputed were resolved in the applicant's favour it would have made no difference to the initial or reconsidered decision, or that for any other reason an oral hearing would serve no useful purpose, the application for a hearing will be refused."

Subject to judicial review principles, the decision to refuse an application for an oral hearing is final. In that text I note two references to "facts or conclusions" and it is plain that they have the same meaning wherever they appear. In addition, it is clear from the language that "conclusion" is distinguished from the "decision" itself.

There was made available to the learned judge, at his own request, the Guide to the Criminal Injuries Compensation Scheme issued

by the Board in February 1990. Our attention has been drawn to it and, in particular, to the paragraph that deals with the problem raised in paragraph 6 (c) of the Scheme and the character of the applicant "as shown by criminal convictions". The guidance reads:

"37. 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 ..... "

and there are set out four individual factors for consideration including at paragraph (c) -

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

39. Each case is judged on its merits and in some circumstances even a conviction for a serious crime of violence would 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 uphold the law or genuinely giving help to someone who was under attack."

The learned judge regarded this guidance as offering sensible features for consideration under the 1990 Scheme, embodying and expressing the sort of questions which would arise when criminal convictions of an applicant were in issue.

I agree with him, and I further agree with his judgment that the precise status of its own guidance was for the Board itself.

Although the issue now before this court remains the proper construction of paragraph 24 (c) of the Scheme, the procedure for requesting an oral hearing is laid down in paragraph 23. The application must be in writing and supported by reasons which may suggest that the information on which the decision was made was "incomplete or erroneous". If so, the application may be remitted for reconsideration. That step was not taken in this case. As requested by the applicant, the application was treated as an application for an oral hearing under paragraph 24 (c). The effect of paragraph 24 (c) is that where an applicant for compensation is refused on the basis of his character as shown by his criminal convictions he is entitled to seek and be granted an oral hearing either where the relevant facts or conclusions are in dispute or an error of law or principle may have occurred. The hearing may nevertheless be refused if the Board, through

its responsible member, decides that even taken at its highest from the applicant's point of view the outcome would be the same or that for "any other reason" an oral hearing would serve no useful purpose. Therefore a discretion is granted to refuse an oral hearing even when the facts are in dispute.

It follows that there can be no entitlement to a hearing simply because an applicant disputes the factual basis of the original decision or provides additional information for consideration. Any other conclusion would, effectively, permit an oral hearing on demand in virtually every case and that would be contrary to the language of paragraph 24 (c) and the intentions behind paragraph 23.

The learned judge concluded that the decision in this case was flawed because the procedure for oral hearings under paragraph 24 (c) was not limited to cases "where the raw facts were in dispute or inferences from the facts" and extended to conclusions in the form of "value judgments as to the significance or weight to be given to particular facts in reaching an overall evaluation". He then noted that the reasons for the determining officer's assessment were inadequately expressed and that the same criticism applied to the Board's refusal to permit an oral hearing or make any order in favour of the applicant. The learned judge attached considerable importance to this feature of the case, but in doing so he did not have the advantage of the decision of this court in R v Criminal Injuries Compensation Board ex parte Cook [1996] 2 All E R 144 in which judgment was given a few days after the hearing before him. In Cook an award was refused to the widow of a man who was murdered while unlawfully at large from prison on the grounds set

out in paragraph 6 of the Scheme, that is his previous convictions. The applicant applied for an oral hearing. She drew attention to her own good character, her ignorance of the deceased's criminal activities, her financial dependence on him, the prospects that on release from a very long sentence of imprisonment he would then support her and, she argued further, that the decision was wholly inequitable. The Board refused the application for an oral hearing, pointing out that regard must be given to the deceased's conviction and that an oral hearing would serve no useful purpose.

In the context of criticism of the failure of the single member sufficiently to particularise the reasons which led to his decision, Aldous LJ said:

> " ..... I believe it is clear that the board's reasons should contain sufficient detail to enable the reader to know what conclusion has been reached on the principal important issue or issues, but it is not a requirement that they should deal with every material consideration to which it has had regard."

Hobhouse LJ explained his conclusion that the reasons -

> " ..... were adequate for their purpose. They made clear the basis of the decision. They enabled Mrs Cook to understand why she had been unsuccessful and to prosecute her appeal. Speaking for myself, I would prefer in future to see rather fuller reasons in cases such as this; it is usually a better practice to make explicit what is otherwise only implicit."

I agree.

In my judgment, the same considerations apply to the short statement of reasons given by the Board in this case. The award was refused because of the applicant's previous convictions. Put another way, the decision that an award should be refused stemmed from the undisputed facts of

and about his convictions together with the facts of the assault of which he was the victim, as he described them.

Returning to the procedure under paragraph 24 of the Scheme, our attention has been drawn to a decision of Lord Gill in R v Criminal Injuries Compensation Board ex parte Scott-Young, an unreported decision dated 9th August, 1995. The learned judge in this case did not have the same advantage. The facts were very similar to the present case. An application for compensation was refused on the grounds of previous convictions. The applicant sought an oral hearing. He drew attention, as Mr Dickson did in the present case, to the circumstances of his own previous convictions and how he came to be involved in the assault which caused his injuries. An oral hearing was refused, notwithstanding that the decision of the single member was challenged and despite the argument that this challenge meant that there was a dispute about the conclusion on which the decision was based. Lord Gill said:

> "In making a decision under paragraph 24 (c) the respondents had to ask themselves two questions; namely, whether there was a dispute as to the material facts or conclusions on which the decision to refuse compensation was based, and whether it appeared that the decision to refuse compensation might have been wrong in law or in principle."

He continued:

> "The references in paragraph 24 (c) to 'material facts' and to 'conclusions' are references, in my view, to the primary facts and to the conclusions of a factual nature which fall to be drawn from such primary facts. .....
>
> In the present case compensation was refused by reason of the petitioner's character as shown by his previous convictions. The convictions constituted the material facts on which the decision was based.

A

> The petitioner did not dispute these material facts. He disputed the decision itself. Accordingly the requirements of paragraph 24 (c) were not made out."

Finally he said:

B

> "The petitioner's argument fails to distinguish between the conclusions on which a decision is based and the decision itself."

C

This approach seems to me to be consistent with the views touched on without elaboration in this court in ex parte Cook and represent a valuable and correct analysis of the effect of the relevant part of this Scheme and the proper construction of paragraph 24 (c) in particular. I can see no advantage in a further reformulation of the relevant principles save to underline that the proper

D

construction of paragraph 24 (c) requires that the distinction between the "conclusion" and the "decision" should be maintained.

E

In this case the conclusions related to inferences to be drawn from primary facts and not to the decision itself and the decision to withhold compensation was based upon the material facts or conclusions. In reality, the target of the attack by this applicant was the decision that an award should not be made. In my judgment, of itself that is not an appropriate justification for an oral

F

hearing within paragraph 24 of the Scheme. Accordingly, I should allow this appeal by the Board.

G

LORD JUSTICE WARD: For reasons which will become apparent when Lord Justice Rose gives judgment, it is perhaps better that I be short in stating my reasons for disposing of this appeal

H

as I would have wished.

The Scheme under which criminal injuries compensation is awarded is set out in the document before us which regulates the 1990 operation. Paragraph 6 of that document enables the Board to withhold or reduce compensation for reasons, among others, set out in sub-paragraph (c), that is to say -

> "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 his criminal convictions or unlawful conduct ..... "

Paragraph 24 of the Scheme which Lord Justice Judge has read entitles (and that is the word I would emphasise) an applicant to an oral hearing only if -

> "(c) .... there is a dispute as to the material facts or conclusions upon which the initial or reconsidered decision was based ..... "

In his judgment, Carnwath J said (page 14 C):

> "It seems to me, therefore, that the intention was not to confine oral hearings simply to cases where raw facts are in dispute, or inference from the facts. The word 'conclusions', in my view, giving it its ordinary meaning, extends to value judgments as to the significance or weight to be given to particular facts in reaching the overall evaluation. I do not need to attempt to an overall definition, but the guide illustrates the sort of points that might be relevant, such as [the] genuineness of attempts made by the applicant to reform himself, the seriousness of particular crimes, or the weight to be given to a series of less important crimes. They are all matters on which an oral hearing could be important to enable the applicant to put the bare facts as stated in his list of convictions in a proper context."

The guidance to which his Lordship referred was that dated February 1990 which includes in paragraph 37 this statement:

"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."

Paragraph 38 provides:

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

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

b. a conviction for other serious crime e.g. drug smuggling or supply, kidnapping or treason

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

d. numerous convictions for dishonesty."

This is a case falling under paragraph 38 (c). Paragraph 39 requires that -

"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 uphold the law or genuinely giving help to someone who was under attack."

Paragraph 39 makes it plain, from the examples given, that a value judgment is involved.

Had I come to this case fresh and had to construe paragraph 24 (c) and ask the question posed by paragraph 24 (c), namely, "Is there a dispute as to the material facts or conclusions upon which the initial decision was based?" I would conclude that there are three elements which

would need to be established. The first task is to ascertain whether there is a dispute as to the material facts. They are proved in this case by the list of convictions in each case with a degree of particularity which identifies firstly, the nature of the offence; secondly, a resume of the factual background in which the offence took place; thirdly, the date of the offence; fourthly, the date of the conviction. There may not be much dispute about it The second element is to see whether the conclusions drawn from those material facts are disputed. Those conclusions must establish that the offences are too serious, too numerous, too recent to be ignored and, importantly and in the language of paragraph 6 of the Scheme, that the applicant's conduct after the events which gave rise to his convictions are not demonstrative of a determined enough effort to reform himself as now to render him worthy for compensation in circumstances where it is unchallenged that he was the victim of an unprovoked assault and mugging. There is a value judgment in weighing the seriousness of the applicant's record which may well be disputed. The third element required is to establish the decision. The decision in this case being (page 24):

> "I ..... have concluded that the applicant is not eligible for an award."

is a decision of ineligibility for compensation. The oral hearing is the opportunity to dispute the facts and to dispute the conclusions by advancing new material or argument aimed at throwing new light on these facts. Our whole forensic process is an acknowledgment of the greater eloquence of the spoken word over the written word.

For my part, therefore, I would have found the judgment of the judge totally compelling. But we have had drawn to our attention the judgment of Lord Gill. He said at page 10 of that judgment:

"In my opinion it cannot be said that there was a dispute as to the material facts or conclusions on which the decision to refuse compensation was based. The references in paragraph 24 (c) to 'material facts' and to 'conclusions' are references, in my view, to the primary facts and to the conclusions of a factual nature which fall to be drawn from such primary facts. For example, the injuries suffered by an applicant are material facts. A conclusion might be drawn from those facts as to the degree of disfigurement or disability resulting from the injuries. The facts and the surrounding circumstances of an assault would be material facts. A conclusion might be drawn from those facts that the victim provoked the assault or that the victim was acting in self-defence."

I agree with Lord Gill that the primary facts would be a recital of the injuries that were suffered by the victim, but the conclusion would be the degree of seriousness or disability resulting from those facts, that is to say, a conclusion as to the seriousness of what the primary facts reveal. If the seriousness of the injury is a conclusion, then, for my part, I cannot see how it can be argued that the seriousness of the convictions and the seriousness of the attempt to reform is any less a conclusion capable of being put in dispute.

Mr Kent QC submits, moreover, that to construe the word "conclusion" as I have done, entitling a convicted applicant to put in dispute the value judgment of how serious his convictions are and how real his attempt to reform is or is not, as the case may be, would be to open the door to further review by the Board too widely. He submits that applications for a rehearing have been tightly controlled by paragraph 24. I do not accept that the purpose of paragraph 24 would be frustrated. There is a built-in filter or control, namely that two members of the Board can consider on a paper review that it would have made no difference to the initial decision if any facts or conclusions which are disputed were resolved in the applicant's favour. I could well

understand that two members of the Board might consider that grounds 2, 3 and 4 of the applicant's challenge which relate entirely to a description of the offences for which he has been convicted, add too little to that which already appears on the face of the document before the Board. But ground 1 is material which is completely new. It says:

> "I have been attempting to go straight, it is over 12 months since my last conviction. Since my CICB application I have tried to find work but can only find work on a temporary basis and have done some temporary work as a machine operator but this has currently stopped ..... "

It seems to me this introduces material facts which were not before the Board previously and not before the first officer who adjudicated on his decision. They alter the perception one would have formed from a bald consideration of the convictions of his worthiness for an award and consequently put the conclusion about his worthiness in dispute. It seems to me therefore to entitle him to his rehearing.

Mr Kent submits the applicant has one and only one opportunity to set out all the material that might be relevant. I find that unconscionably harsh. The applicant are all victims, often traumatised victims of crime, who with little or no advice are expected to complete a form in which there is no particular box or place in which to deal with their previous convictions. I would be slow to accept they are to be told no more than "You had better read the guidance very carefully because in this case it is only one strike and then you are out". If Mr Kent's submissions are well founded then they must be of universal application affecting the good as well as the wicked. None of us naturally overflow with sympathy for a man with a string of convictions, but would we apply the full rigour of Mr Kent's analysis to a little old lady who did

not disclose all she could have done about her medical condition and who wished for an oral rehearing to argue the error of this conclusion that her injuries were not serious enough to justify an award? I think not.

For those reasons, I would have found that Carnwath J was right and, for my part, I would have dismissed the appeal.

LORD JUSTICE ROSE: This appeal turns on a single, very short point of construction. Paragraph 24 (c) of the Scheme is not as happily drafted as it might have been and I sympathise with Carnwath J in the difficulty which he experienced in seeking to construe it. Mr Blake has said all that could be said in support of the judgment of Carnwath J. But for the reasons given by my Lord, Lord Justice Judge, I agree that this appeal should be allowed and the application for judicial review dismissed.

Order: Appeal allowed.