IN THE HIGH COURT OF JUSTICE CO/432/86

QUEEN'S BENCH DIVISION

Royal Courts of Justice.

Friday, 20th February, 1987.

Before:

MR. JUSTICE NOLAN

Crown Office List

THE QUEEN

-v-

CRIMINAL INJURIES COMPENSATION BOARD
Ex parte BRADY, S.

(Transcript of the Shorthand Notes of Marten, Walsh Cherer Ltd., Pemberton House, East Harding Street, London, EC4A 3AS. Telephone Number: 01-583 0889. Shorthand Writers to the Court.)

MR. R. THOMAS Q.C. and MR. M. SHARP (instructed by Messrs E. Rex Makin & Co., Liverpool) appeared on behalf of the Applicant.

MR. M. WRIGHT Q.C. and MR. R. JAY (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

J U D G M E N T

(As approved by Judge)

MR. JUSTICE NOLAN: In this case, Mr. Steven Brady moves with leave for orders of certiorari to quash two decisions of the Criminal Injuries Compensation Board. The first was given on 27th November 1985. By that decision, Mr. Brady's claim for compensation as a result of injuries sustained by him on 30th September 1984 was refused. There was a further decision by the Board, communicated to the applicant's solicitors by letter of 2nd January 1986, refusing to reconsider the matter or to re-hear the application. The relief as claimed in the Order 53 Notice includes mandamus to order the Board to reconsider the decisions and/or to re-hear the application. In the event, in the course of discussion during the case it has become clear that the first of the types of relief sought, namely, certiorari, would be appropriate and, if granted, would afford the applicant all the relief which he claims. The effect of quashing the original decision of the Board would be to give the applicant an opportunity to renew his application and to proceed with it on the merits.

The background to the applicant's claim sufficiently appears from information contained in the grounds upon which relief is sought. On 30th September 1984, at about 8.30 in the evening, the applicant, then aged 15, sustained quite serious stab wounds to his forearm whilst out walking with his friend, Ian Birch. The injury took place in Litherland, Liverpool. The applicant was taken to hospital by ambulance. His wounds were treated. The police became involved and pursued their investigations forthwith.

On 31st October 1984 the applicant claimed compensation

from the Board. By a letter written in February 1985 and signed on behalf of the Secretary of the Board, the applicant's solicitors were told that the application had been refused by the single member, Mr. Charles Whitby Q.C.

The procedure of applications to the Board, which are dealt with first without a hearing by a single member and then, if renewed, by three members at a hearing, is fully described in an unreported judgment of my own in a case called The Queen v. Chief Constable of Cheshire and Another, Ex Parte John Berry, given on 30th July 1985. It is unnecessary for me to repeat what I said in that case, though I shall make some reference to passages in the judgment later.

The letter referring to the decision of Mr. Whitby quoted him as stating that: "The Applicant has not satisfied me that he did not participate willingly in a gang fight. Nor has he satisfied me that his injuries are not connected with his associations with a violent gang. Paragraph 6(c) of the Scheme and the Board's Statement refers." Paragraph 6(c) of the scheme, so far as relevant, reads as follows: "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 and way of life .... it is inappropriate that a full award, or any award at all, be granted."

On 7th March 1985, the applicant indicated his unwillingness to accept the decision of Mr. Whitby. He requested a hearing before three members of the Board. On 30th July 1985, the Board's advocate wrote to the applicant's solicitors, enclosing a schedule and copies of the documents which were to

be before the Board at the hearing and setting out the procedure to be adopted. That letter, amongst other things, dealt with the matters in issue. It did so in these terms: "You will have to satisfy the Board that on the above mentioned date your client sustained some personal injury directly attributable to a crime of violence within the scope of the Scheme and that compensation should not be refused or reduced pursuant to paragraph 6 of the Scheme having regard to your client's conduct before, during and after the incident, including any willingness to enter into fighting or other disorderly conduct in or near Moss Lane, Litherland, and/or any participation in violent rivalries between gangs of youths." The letter added that the applicant should arrange for the attendance of any witnesses whose evidence he wished the Board to hear in support of his application and that the Board would pay their reasonable expenses. The letter went on: "I hope to arrange the attendance of one or more police officers. I shall also invite Ian Birch."

A further letter was sent from the Board to the applicant's solicitors on 18th October 1985, setting out, amongst other things, the constitution of the Board. It also stated that the Board would be inviting as witnesses four persons, namely, S.A. Teese, J. West, M. Thomas and A. Culshaw.

At the hearing on 27th November 1985 the Board in fact only had available and called the last three of those witnesses; in other words, Teese was not present and was not called. In addition, one police officer, namely, Detective Constable Mott, was called. The applicant himself gave evidence and called

as his witness Ian Birch.

The grounds for relief in paragraph 8 state: "All the lay witnesses on both sides exonerated the Applicant from being involved in the material incident in any way other than as an innocent victim and gave no evidence as would in any other way bring him within the scope of paragraph 6(c) of the Scheme." That appears to me to be a fair description of the evidence of the witnesses, though I would question the expression "on both sides". The procedure before the Board is inquisitorial. It was the Board who had invited the witnesses, other than the applicant himself, to attend.

The decision of the Board, according to an affidavit filed on its behalf by Mr. North, who is its Secretary and Solicitor, is in these terms: ".... the Board's Chairman said that the burden of proof was on the Applicant and they were not satisfied that the Applicant was not a voluntary participant in gang fighting and disallowed the application under Paragraph 6c of the Scheme."

The recollection of Mr. Cheeseman, the solicitor representing the applicant at the hearing and in these proceedings, is somewhat different. He noted the chairman as saying: "It is for you to establish your client's case. We are not satisfied." The difference does not, however, appear to me to be material and Mr. Royden Thomas, representing the applicant, did not lay any great stress upon it.

The institution of these proceedings led to the preparation of a full decision in writing by Mrs. Shirley Ritchie Q.C. who had taken the Chair at the hearing, setting out the reasons for their decision. It includes these passages:

"At the hearing in Liverpool on 27 November 1985 the applicant was represented by his solicitor Mr. Cheeseman. Before the hearing there were provided to them the documents which we, the Board members had already read, namely the application form, the medical reports, and the statements made to the Police by the applicant himself, Steven Teese, John West, Michael Thomas, Anthony Culshaw and DS Mott of the Merseyside Police.

"The statement of Steven Teese indicated that on 30 September 1984 he had gone out with a gang which had engaged in fighting. He himself had stabbed members of the rival mob only after 'I heard one of our lads got stabbed, called Stephen Brady.' In the statement Teese referred to the applicant as 'Biddy'.

"The applicant, who lives in Litherton, was the first to give evidence at the hearing. He said that his nickname was 'Biddy' and that he knew Steven Teese, but only from school. On the evening in question he had been with Ian Birch and was on his way home - he lived just 2 minutes from where the incident occurred. He was not involved in a gang fight, had not gone there for such a purpose, and did not know any of the others involved. He and Birch were just walking home when they saw a group of people. It looked as though trouble would occur. There were over 50 lads, all spread out. He and Birch stopped. Suddenly the group came towards them, they turned to run away but were attacked and stabbed. He knew that 'The Dodge' was a local name for the Netherton housing estate which had a local reputation for being a rough place. He denied knowing that 'The Dodge' also referred to a gang. The

applicant concluded his evidence by stating he had never been in trouble with the Police.

"Detective Sergeant Mott then gave evidence. He had gone to Foston Hall Detention Centre on 4 October to interview Steven Teese whom it was believed was connected with 3 of the stabbings that night. The officer read out parts of Teese's statement. He related what Teese had said about the incident in that someone had stabbed his friend Brady and he had got annoyed and had stabbed 2 others. The officer said that apart from Teese's statement (in which Teese referred to Brady as 'one of our lads') there was no connection between the two. Another officer, Detective Constable Abram, had told DS Mott that it was his initial impression that the applicant had been an innocent party who had been attacked.

"Ian Birch gave evidence. He and the applicant had spent the evening at Birch's home. They left the house and started to walk towards the applicant's home as they did not have any bus fare. He saw a big gang by the shops. The gang started running at them so they turned and ran down an alley. They were then 'jumped'. Steven, the applicant, had a big hole in his arm. There appeared to be 2 groups but he did not know who was in the big group. In fact he had never found out. Mr. Birch said he knew Teese in that he used to hang around with him but he and the applicant had definitely not been with him that night."

There is then reference to the evidence of Messrs West, Thomas and Culshaw, all of whom gave evidence to the effect that Mr. Brady, the applicant, was not part of any mob or gang fight on that night. There was no other evidence adduced.

The Board's decision is recorded in these terms: "We were satisfied that there had been fighting between the 2 rival gangs of Netherton and Litherland and that in the course of the large-scale disturbance the applicant had been stabbed.

"The onus was on the applicant to prove that he was the innocent victim of a crime of violence. Having heard him giving evidence we were not satisfied that he had been a truthful witness. Nor were we satisfied that Birch had given a true account. Taking into consideration all the evidence we were unable to find that the applicant had not participated willingly in a gang fight. In those circumstances Paragraph 6(c) of the Scheme precluded the making of any award of compensation and we rejected the application."

It is common ground that the onus of proof is on the applicant, that the Board has no power to compel attendance of witnesses and that the Board, at any rate as a general rule, is entitled to consider hearsay evidence, such as the statement made by Mr. Teese to the police. The procedure, so far as relevant, is set out in paragraph 23 of the Board's scheme: "It will be for the applicant to make out his case at the hearing, and where appropriate this will extend to satisfying the Board that compensation should not be withheld or reduced under the terms of paragraph 6 ...The applicant and a member of the Board's staff will be able to call, examine and cross-examine witnesses. The Board will be entitled to take into account any relevant hearsay, opinion or written evidence, whether or not the author gives oral evidence at the hearing. The Board will reach their

decision solely in the light of the evidence brought out at the hearing, and all the information and evidence made available to the Board members will be made available to the applicant at, if not before, the hearing. While it will be open to the applicant to bring a friend or legal adviser to assist him in putting his case, the Board will not pay the cost of legal representation. They will, however, have discretion to pay the expenses of the applicant and witnesses at a hearing."

I would make two comments on the points there made. The first is that the information and evidence made available to the Board, so far as it consists of witness statements supplied by the police, is in practice made available to the applicant on the morning of the hearing and not before. Secondly, applications to the Board do not qualify for legal aid.

Mr. Cheeseman, who is very experienced in conducting applications before the Board, was aware of all of these matters. He was surprised and concerned at the Board's decision in respect of Stephen Brady which he assumed to have been made on the basis of Teese's statement. Mr. Cheeseman says in his affidavit that he has never found any reason to disbelieve his client. Accordingly, he took steps to interview Teese and obtained from him an affidavit. That affidavit was sworn on 13th December 1985 and includes these passages: "On the 30th September 1984 I was present at a gang fight in Moss Lane, Litherland. As a result I was charged with offences of wounding and was sentenced to nine months' youth custody.

"2. I have been informed by Steven Brady that his application to the Criminal Injuries Compensation Board was refused

because I had implicated him in the statement which I gave to the police and the inference from what I had said in my statement was that Steven Brady had been a member of the gang and that he participated willingly in a gang fight.

"3. It is correct that I gave a statement to the police in which I referred to Steven Brady as being 'one of our lads'. I had assumed at the time that statement was given by me that he was a member of our gang. The reason I had assumed this was because on the 30th September 1984 I saw Steven Brady after he had been stabbed. I recognised him because he was a pupil at the same school as I attended, namely Bootle High. To my knowledge, however, he had not been involved in any other way in the gang fight that night. I would have known had he been involved because a gang of us were assembled in Moss Lane. He was not a member of that gang. The only time I saw him that night was when he had been stabbed and at no time previously.

"4. I was not particularly friendly with Steven Brady. I knew him as a 'school mate' and usually saw him every day when I was at school, but I did not 'hang around' with him outside of school.

"5. So far as I am concerned Steven Brady was not involved in any gang fight on the night of the 30th September 1984."

It was on that basis that Mr. Cheeseman asked the Board to re-hear the case but they refused to do so. It is, I think, accepted on all sides that certiorari will provide a sufficient remedy for Mr. Brady if the decision of the Board on 27th November was defective and should be quashed.

I now turn to consider the criticism made of that decision. For this purpose, I go back to later passages in the applicant's

grounds for relief. In paragraph 14 of those grounds there appear the words: "In reaching its decision on the 27th day of November the Board failed to take into account all relevant considerations and reached a decision which no reasonable Board could have reached. PARTICULARS i) The Board failed to give proper consideration to the evidence of all the lay witnesses who gave evidence at the hearing. ii) The Board gave undue weight to the hearsay and untested evidence of the said S.A. Teese."

I am bound to say that this ground upon which relief is sought does not appear to me to be capable of bearing weight. It is really an attempt to re-open the issue of fact and to attack the findings of the Board by reference to the evidence before them. It was for them to say whether they believed the applicant. They are very experienced practising members of the legal profession. They made it clear in their decision that they did not require him. The suggestion that they gave undue weight to the hearsay and untested evidence of Teese is wholly without the possibility of being supported. There is no reason whatever to suppose that they did so.

I turn then to the second set of particulars relied upon by the applicant. These are set out in paragraph 15 of the grounds. They are as follows: "i) Having stated by its letter of the 18th day of October 1985 that the said Teese was to be invited as a witness by the Board, (the Board) failed to ensure his attendance at the hearing. ii) In the like premises (the Board) allowed the hearsay evidence of the said Teese to be presented before it. iii) In the like premises

(the Board) failed to notify the Applicant's solicitors in advance that this procedure was going to be adopted thereby enabling the solicitors to seek to make the appropriate inquiries in relation to Teese. iv) Failed to provide the Applicant's solicitors with the Statement of Teese until it was produced on the hearing by D.C. Mott."

The position as it emerges from the affidavits of Mr. Cheeseman and from the discussion in this court, is that the Board, to Mr. Cheeseman's knowledge, was unable to ensure the attendance of Teese at the hearing, and that the Board under its rules was allowed to hear hearsay evidence.

The thrust of the argument, as presented by Mr. Royden Thomas, is that the decision of the Board was reached wrongly and contrary to natural justice, in that the applicant, being confronted for the first time with the statement of Teese at the hearing, was not given any real opportunity to put his case adequately or to deal with that statement.

Why, then, was the applicant not provided with Teese's statement before the day of the hearing? The explanation given by Mr. Ogden, the Chairman of the Board, in his affidavit, is derived from earlier affidavits sworn by him for the purposes of the Berry case which I have mentioned. The first of those affidavits was sworn on 28th November 1984. In paragraph 8 of that affidavit Mr. Ogden deposes as follows: "The Board receive statements of witnesses from the Police subject to an undertaking that they will not be disclosed prior to the actual hearing.

"9. As stated in Paragraph 23 of the Scheme 'all the

information and evidence made available to the Board Members will be made available at, if not before the hearing'. I can state categorically that the statements to which Mr. Rudd refers in his affidavit will be disclosed to the Applicant either during the hearing or at the hearings centre before the hearing, it being for the Board's advocate's discretion to decide which procedure to follow."

Mr. Ogden deposed at paragraph 11: "If during the hearing the Applicant or anyone appearing for him asks for an adjournment because of what is contained in any document which he did not see before the case started, an adjournment would be granted unless, of course, the reason given was plainly absurd. It is my experience over more than 15 years as a Member of the Board that there is seldom any problem in this respect and I cannot recollect any case in which anyone has ever asked for more than up to about half an hour to discuss the contents of such statements with the applicant, nor can I recollect such an application being rejected.

"12. It is my firm belief that if Applicants were able to have access to the statements of witnesses prior to the hearing they may well adapt their stories to avoid any criticism of their conduct that might be contained in the witnesses statements. With pre-knowledge an Applicant might well lie when questioned by the Board's Advocate. Also many Applicants and other witnesses try to deceive the Board as to their convictions; of course such lies are very damaging to the credibility of the person concerned."

In the Berry case the question was raised as to the precise form of the undertaking referred to in paragraph 8 of

that affidavit. Mr. Ogden in response to these enquiries filed a further affidavit, sworn on 30th April 1985, which says this: "1. I will endeavour here to amplify what I said in paragaph 8 of my affidavit sworn on 28 November 1984 about the basis upon which the Board receives witness statements from the Police.

"2. I became Chairman of the Board in 1975. By that time the procedures regulating the supply of information to the Board by police authorities (upon whose voluntary co-operation the Board as a non-statutory body naturally relies considerably in order to discharge its functions) had become well-established, and so far as I can ascertain were set out in a series of Home Office circular letters to Chief Constables dated 26 August 1964, 18 March 1965 and 30 May 1969. Copies of those circular letters are (exhibited).

"3. It will be seen that the supply of witness statements (ie statements by persons other than the Applicant) is dealt with in the circular of 30 May 1969, which concludes (last sentence of paragraph 6) 'a statement might be supplied to the Board for use at a hearing without reference to the witness.'

"4. Those circular letters, read together, appear to impose upon the Board an obligation only to use (and disclose to the Applicant) such statements at the hearing, and not to supply them to the Applicant outside the confines of the hearing."

The letter of 30th May 1969, signed by Mr. Moriarty, is, I think, worth quoting rather more fully. It says: "The

Conference was informed that, as a result of representations made by the Chairman of the Board, the Commissioner of Police of the Metropolis has agreed as a normal practice to supply copies of witnesses' statements in individual cases on request without the consent of the witnesses being first obtained, relying on the general understanding of the witness, at the time of making the statement, that it is likely to be used in legal proceedings of some kind; in agreeing to this procedure the Commissioner made it clear that it may be necessary for him, in exceptional cases, to decline to follow the new procedure. The Central Conference agreed to the general adoption of the same practice: i.e., subject to the overriding discretion of the chief officer to withhold a witness's statement in any individual case, a statement might be supplied to the Board for use at a hearing without reference to the witness."

I turn now to my judgment in the Berry case. That is a case in which the applicant, Mr. Berry, was seeking to obtain from the Chief Constable concerned copies of the statements of witnesses which Mr. Berry anticipated would otherwise not be available to him before the morning of the hearing. He said, in effect, that no reasonable Chief Constable could refuse his request, since to refuse it would deny him the opportunity to present his case properly before the Board.

At page 14 of the judgment I said this: "The question, therefore, is whether the disadvantage expected to be suffered by Mr. Berry at the hearing before the Board amounts to a denial of natural justice and a breach of his Common Law

rights which in the mind of any reasonable Chief Constable should outweigh the public interest in withholding witness statements from members of the public such as Mr. Berry. To that question, in my judgment, the only possible answer is, no. In the first place, according to the evidence of Mr. Ogden, whose experience of the Board's work is extensive and probably unrivalled, any disadvantage suffered by applicants because of the Board's procedure does not prejudice those with valid claims. Mr. Ogden's evidence may not wholly reassure Mr. Berry, but in my judgment the Chief Constable is fully entitled to accept it and to rely upon it. Secondly, granted that applicants are given adequate time, by way of an adjournment if necessary, to study the witness statements before their case is heard, it cannot be maintained that the Board's procedure conflicts with the rules of natural justice."

That passage in my judgment was, of course, spoken on the basis of the evidence then before me. By reference to circumstances such as those in the present case, I would amplify the second sentence, making it clear that the adjournment should be long enough, if needed, not only to study the witness statements but, if so advised and if reasonably required, to obtain evidence to contradict them.

I do not know whether the evidence of Mr. Ogden did reassure Mr. Berry. It does not reassure the applicant in this case. Further, I have evidence from Mr. Cheeseman with which to compare that of Mr. Ogden. Before coming to that, I should quote a little more from the affidavit of Mr. North, dealing with the question of an adjournment.

In paragraph 5 of his affidavit, sworn on 21st August 1986, Mr. North says: "Mr. Michael Ogden QC, the Chairman of the Board, has told me that he has always understood that the Board receives the statements of witnesses from the police subject to an undertaking that they will not be disclosed prior to the actual hearing. Although it is not now possible to establish that an express undertaking in those precise terms has been given, the Board is certainly under an obligation to protect police statements from improper use. It is to discharge that obligation that the Board retains custody and control of the statements, discloses them to the Applicants only on the morning of the hearing and recovers them from the Applicants before they leave. The Board would consider any reasonable application for an adjournment made because of what is contained in a document which an Applicant has not seen prior to the date of the hearing."

I now turn to passages from an affidavit filed by Mr. Cheeseman in response to that of Mr. North. Referring to the practice of the Board Mr. Cheeseman at paragraph 4 of his affidavit says: "I would make the following points as to this practice in relation to witness statements: (a) In my experience the Board will never disclose prior to the hearing copies of the police statements made by witnesses. (b) The police will themselves never disclose to solicitors prior to the hearing statements made by witnesses. (c) In any event Applicants and solicitors are not supplied with the addresses of witnesses. Hence unless the Applicant happens to know the address of a witness who has been named it is not possible

for his representative to go and interview that person.

(d) In summary in actual practice there is no way that the Applicant's representative can obtain copies of witness statements or interview witnesses or know what they are going to say until they arrive on the hearing of the application itself.

"5. It is fully appreciated that there may well be reasons for the practice of denying the Applicant's representatives substantial time to read and digest the witness statements, but it does seem that the basis for this is uncertain even from the Chairman of the Board. I of course accept that steps must be taken to guard against improper use of police witness statements and I would respectfully submit that arrangements could be made other than distributing them and collecting them at the beginning and the end of the hearing. It is not uncommon to wish to prepare a cross-examination or indeed to consider whether a witness should or should not be called.

"6. I note that the final sentence of paragraph 5 refers to the fact that the Board would consider any reasonable application for an adjournment but in practical terms it is my experience that this is not encouraged. The Board understandably perhaps do not take kindly to applications for an adjournment particularly in cases where police officers are in attendance and several lay witnesses. Furthermore in the event of an adjournment the application may not be reheard for many months and this is an obvious deterrent which will militate against an adjournment being asked for in any event.

One final factor is that the purpose for the adjournment may not be attained if the witness is unavailable or does not assist the Applicant's case. In the present case it was only after Teese had been able to clarify what he meant by the phrase 'one of our lads' in his affidavit as exhibited to the application that it became clear that the evidence was vital to the Applicant's case."

Mr. Royden Thomas referred me to two authorities in support of his submission that there had been a denial of natural justice. The first of these was B. Surinder Singh Kanda v. Government of the Federation of Malaya (1962) AC 322. Mr. Kanda was an inspector of police. In July 1958, the Commissioner of Police in Malaya purported to dismiss him on the ground that at an enquiry before an adjudicating officer he had been found guilty on a charge of failing to disclose evidence at a criminal trial. The contents of the enquiry were not, however, disclosed to Mr. Kanda until the fourth day of the trial. Those contents, when disclosed, were found to be highly prejudicial to him. They had been available to the adjudicating officer before he started to enquire into the charge. Those were the circumstances in which it was held that there had been a failure to afford Mr. Kanda a reasonable opportunity of being heard in answer to the charges made against him.

At page 337 this passage appears in the advice of the Judicial Committee of the Privy Council: "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been

given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in Board of Education v. Rice down to the decision of their Lordships' Board in Ceylon University v. Fernando. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough."

The second authority is Peter Thomas Mahon v. Air New Zealand Ltd. and Others (1984) AC 808. What gave rise there to the complaint of a breach of the rules of natural justice was a finding in the inquiry report made by the judge who carried it out, that there had been a pre-determined plan of deception on the part of officials of the New Zealand airline, with the result that he, the judge, had had to listen to an orchestrated litany of lies. It was held that this was a finding reached without giving those affected a proper opportunity to comment upon it.

At page 820, Lord Diplock, giving the advice of the Judicial Committee, referred to the rules of natural justice, so far as relevant. He said: "The second rule is that he" - that is the judge - "must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation)

may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made."

At page 821 Lord Diplock said this: "The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicted that it would inevitably have had that result." I mention in passing that the case is of some interest as making it clear, if authority is required, that the rules of natural justice apply in the same way to inquisitorial as to adversarial proceedings.

Here, was the applicant given a fair opportunity to correct or contradict the witness statement of Teese, or was he left in the dark as to the risk of the finding being made against him and thus deprived of any opportunity to produce additional evidence which might have produced a different result? Clearly, the applicant knew exactly what case he had to meet, both from the decision of the single member and from the matters in issue described in the letter of 30th July 1985. Mr. Royden Thomas's complaint is that he had no real opportunity to correct and contradict the hearsay evidence of Teese's statement when presented with it on the morning of the hearing. Unless the Board were sure that Teese would attend, submitted Mr. Royden Thomas, and would submit to cross-examination, they

should have supplied the applicant with the statement in advance of the hearing, so that he could prepare himself to meet it or contradict it. The understanding with the Chief Constable, referred to in Mr. Ogden's affidavit, does not, submits Mr. Royden Thomas, prevent that if proper safeguards are observed, such as an undertaking on the part of the applicant's solicitor that it will only be used for the purposes of the hearing and will be adequately protected.

In my judgment, however, the Board are entitled to take the view that the agreement contained in the Home Office letter of 30th May 1969 is an agreement to supply the statements to the Board and to the Board alone. It is clearly implicit in that statement that the Board will throughout retain custody and control of the statements and will not release them into other hands. The reasons of public policy which lie behind that agreement are more fully set out in the judgment which I gave in Berry, but what matters for present purposes is the conclusion, in my judgment, that the agreement is so limited.

Further, I do not think that the result of the non-disclosure of the statements is one which breaches the rules of natural justice, so long as the Board are prepared to consider any reasonable request for an adjournment so that the statement may be challenged. The evidence of Mr. Ogden in paragraph 11 of his first affidavit and of Mr. North in paragraph 5 of his affidavit is specific on this point. Indeed, Mr. Ogden goes further and says that reasonable requests for adjournments will be granted. Mr. Cheeseman, for his part,

says that he, in his experience, finds that such requests are not encouraged. That may be so. The fact remains that in the present case no application for an adjournment was made. In those circumstances, in my judgment, there was no breach of natural justice in the proceedings before the Board. This application must therefore be dismissed.

MR. WRIGHT: Would your Lordship dismiss the application? The applicant being legally aided I seek no orders for costs.

MR. ROYDEN THOMAS: Would your Lordship grant legal aid taxation and say that it should be Liverpool.

MR. JUSTICE NOLAN: By all means.
