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

CO/1389/97

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Royal Courts of Justice
Strand
London WC2

Thursday, 11th June 1998

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B e f o r e :

MR JUSTICE LAWS

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REGINA

-v-

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THE CRIMINAL INJURIES COMPENSATION BOARD

EX PARTE JOHANNES COWAN

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(Computer-aided Transcript of the Stenograph Notes of
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MISS C BOOTH QC and MR GM McDERMOTT (instructed by Hugh Potter
and Company, Manchester M3 3ED) appeared on behalf of the
Applicant.

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MR D LLOYD JONES (instructed by the Criminal Injuries
Compensation Board, Glasgow G2 4JR) appeared on behalf of
the Respondent.

J U D G M E N T
(as approved)

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MR JUSTICE LAWS: This is an application for judicial review brought with leave of Jowitt J. The Applicant seeks to challenge the refusal by the Criminal Injuries Compensation Board to make any award of compensation to him in respect of his very serious injuries sustained in an incident with his then fiancée on 17th October 1994.

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On that day there was (I mean the term neutrally) a violent encounter. It is useful, at the outset, to go to the facts of the matter. There is before me a note of the evidence given by the Applicant at the Board hearing on 29th January 1997. In the note the Applicant is referred to as "JC". I read from paragraph 3:

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"JC confirmed that they [that is he and his girlfriend Rita Gorman] had had an argument on the day of the incident. Rita had arrived and JC told her about the incident in the morning with the police. JC recalled that they were looking for a gun and that they searched his flat. He told the police he knew nothing and when he was asked where he was the previous night, he explained that Rita was his fiancée and that he was at her grandmother's house. He gave the police their address. He could not recall if the police specifically asked about Rita.

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4. When he told Rita about the police, she began arguing with JC. She was already in trouble with the police about a burglary at her grandmother's house and did not want to get into more trouble with her grandmother. JC did not think that the police had been to Rita's grandmother's house straightaway but they had told him that they might go and JC had told them that Rita would be there.

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5. Rita was very unhappy that JC had helped the

A police. She flipped out and began arguing with him. JC just wanted her to calm down. Rita threatened to leave England and again JC tried to calm her down. By this time, she was screaming and shouting at him. She ran out of the door and JC wanted her to stop. He intended that she should come back and talk it through.

B 6. JC confirmed that he had brought her back in. He had done this with his arms around her waist and although she struggled, she did not struggle too hard. They came back into the bedsit (they only travelled a distance of about 2 feet) and he closed the door. Instead of calming down, Rita started kicking and slapping JC quite hard. At this point, he lost his head. He was very upset and walked away from her because that is the way he is. He just wanted her to keep away from him. In frustration, he punched the wall with his fist on two occasions. He confirmed that the frustration was really a kind of anger. He was positive that he had hit the wall and not Rita. When asked the purpose of hitting the wall when she was kicking and slapping and he had already said he had lost his head, and more particularly why he had retaliated against the wall and not Rita, JC advised Mr Turnbull [that is the Board's representative who was questioning him] that he had been brought up not to hit a woman.

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E 7. His back was towards Rita and as he started to turn, she said, 'You're a mad bastard' and pushed him. He had his back to her and she pushed the top of his back near his shoulder blades. It was a heavy push and he remembered it sent him forward."

F I need not, I think, read paragraph 8 or further in the record of the Applicant's evidence, until one comes to paragraph 12 where there is some reference to what Rita Gorman had said to the police. That paragraph reads:

G "Mr Turnbull asked what JC would say to Rita's statement to the police that JC caused the injury to himself as he lost his temper and threw himself against the wall. JC indicated that he would state that this was simply not true. Mr Turnbull asked if it was normal behaviour when angry to punch things and JC said no. She had never hit him like that before, kicking and slapping and it had not previously been a violent relationship."

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There is a little more material as regards what Rita Gorman said to the police. She herself did not give evidence before the Board. She had possibly returned, I think, to Ireland, but at all events was not available to assist with testimony that might cast light on the merits of the Applicant's claim to compensation.

PC Mansley is recorded as having told the Board this:

"PC Mansley confirmed that he was the investigating officer and that Rita Gorman was the alleged assailant. She was not charged. The account given by JC and Miss Gorman was identical except for the push. JC alleged that he had been pushed whereas she said that she was sat on the coffee-table at the time that JC punched the wall in rage. She said that she was looking at the floor and saw JC's feet leave the ground. The CPS had concluded that there was insufficient evidence for charges to be brought."

Then continuing with the officer's evidence:

"He had spoken to Miss Gorman after he had spoken to JC and he had a copy of the tape that he had brought today which unfortunately had not been transcribed. Miss Gorman was interviewed under caution and the account was very similar. She says that she was brought back into the house by JC - that he had picked her up and carried her. When asked whether there was any mention that she had kicked JC, he said that there was no written transcript of the tape. On checking the summary of evidence, it stated that she said she sat on the coffee table."

As I said, the Board refused to award any compensation. The Applicant's case was that he was the victim of a crime of violence under paragraph 4(a) of the then Applicant's Scheme. The crime of violence was an assault committed by Rita Gorman consisting in the push which he described to the Board. The wholly unforeseen

A consequences of this push are, tragically, that he has been rendered, quadriplegic. It is convenient just to cite the terms of paragraph 4(a) and also certain other provisions in the Scheme. Paragraph 4(a) of the 1990 Scheme reads, in part, as follows:

B "The Board will entertain applications for ex gratia payments of compensation in any case where the applicant... sustained in Great Britain... personal injury directly attributable-

(a) to a crime of violence..."

C Paragraph 6(c) of the Scheme is, in part, as follows:

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

...

D (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."

E Paragraph 25 opens with the sentence:

"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..."

F I may break off there. There has also been published by the Board a guide to the Scheme of which paragraph 29 reads as follows, and it relates to what is meant by "conduct" in paragraph 6(c) of the Scheme:

G "'Conduct' means something which can fairly be described as bad conduct or misconduct. It includes provocative behaviour. There is no limit upon the sort of conduct that the Board can take into consideration, but no reduction will be made on account of 'contributory negligence' unless it

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can be said to constitute misconduct."

The Applicant's solicitors took a note of the Board's decision at the time it was made and that note is before me. It reads as follows:

"(In reaching our decision) we have assumed that the probability is that the Applicant was pushed by Gorman and then hit his head on the wall.

The question is 'Was a degree of violence justified in circumstances where probably both had lost their tempers, there was a struggle and the Applicant acknowledges hitting the wall with his fist before being pushed?'

I would have to say that the Applicant has been unable to satisfy us that the push was unjustified.

Furthermore, even if the push were justified and we were to look at the Applicant's conduct and whether it would be appropriate to make an award, we are of the view that the conduct of the Applicant himself (requires us) to withhold any award and does not even allow us to make a reduced award."

It appears, from this short account of the decision, that the Board held that there was no crime of violence within 4(a), or alternatively if there had been then it was appropriate to make a nil award having regard to the matters referred to in paragraph 6(c). As a matter of law, assuming the Board found, as they did, that Miss Gorman pushed the Applicant and that the push was no accident, it must have amounted to an assault and thus a crime of violence, albeit a minor one, unless justified by self-defence. No reference to self-defence, as such, is made in this first short statement of the Board's reasons; though their reference to justification, no doubt, is intended to focus on the issue

A whether or not the push they found was justified by
self-defence. Their reasons are expanded in a written
statement made later in light of this judicial review
application. That is exhibited by a member of the Board,
B Mr Gee, who swore an affidavit on 6th August 1997. I should
read those reasons in full:

C "Having considered the totality of the evidence
before us, both oral and written, we concluded on
the balance of probabilities that the injuries
sustained by the applicant were the result of a
push by his fiancée Rita Gorman, which caused his
head to hit the wall. We were quite satisfied
that Miss Gorman neither intended nor could have
foreseen the tragic consequences which flowed from
her action, although that by itself did not
preclude the push being a crime of violence.

D Having reached the above conclusion we had to
consider whether or not the push, in all the
circumstances, was an unjustified use of force
which went beyond the limits of self-defence and
which amounted to a crime of violence in terms of
the Scheme, and if it did, whether the conduct of
the applicant made it inappropriate in terms of
Paragraph 6(c) of the Scheme that a full award, or
any award at all, be granted.

E In our view, whether or not the push constituted a
crime of violence in the particular circumstances
of this case, was dependent on the degree of force
used being unjustified in all the circumstances.
The evidence before the Board was clear that there
had been an argument between the applicant and
Miss Gorman and that she had attempted to leave
F the flat but was prevented by the applicant by
means of physical force from so doing, despite
struggling against him.

G Furthermore, it was clear that both had lost their
tempers and that the Applicant had reacted
violently by striking the wall twice with his fist
with such a degree of violence as to result in
damage to the wall. It was also evident from the
applicant's own evidence that the push occurred as
he started to turn towards Miss Gorman, albeit
that the medical evidence suggested that if the
applicant had been turning his head at the time
the injury occurred, other injuries would have

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been expected.

Given the totality of the evidence, we were not satisfied, as the applicant was required to satisfy us by Paragraph 25 of the Scheme, that the push by Miss Gorman was in all the circumstances unjustified so as to amount to a crime of violence.

Even if the push by Miss Gorman amounted to a crime of violence, then we also had to consider the applicant's own conduct before, during and after the relevant events. The applicant by force prevented Miss Gorman from leaving the flat and then lost his temper, and immediately prior to the relevant incident he struck the wall twice with such a degree of force that there was damage to the wall. In view of the applicant's own conduct we consider that it would be inappropriate in any event to make either a reduced or any award out of public funds..."

And reference is made to paragraph 6(c) of the Scheme.

Miss Booth QC for the Applicant essentially advances two submissions on his behalf. She submits, first, that there was here no evidence upon which the Tribunal could form the view that the Applicant had failed to discharge the burden upon him of negating self-defence in relation to the critical push, which was the cause of his injuries; secondly, she submits in the alternative that no reasonable Tribunal could have reduced the putative award of compensation to nil in the circumstances of the case.

It will at once be apparent that both of these submissions closely engage the facts of the matter. It is of the first importance that I should bear in mind, from first to last, that this Court's function is no more nor less than the conventional judicial review function. I have to supervise the decision of the Board to see that it does

A not transgress the well-established principles of public
law. In particular, the Board are bound by the Wednesbury
rule. It is very far from my task, at any point, to
substitute my view for that of the Board upon any aspect of
B the factual merits of the case. I approach the case very
much with that in mind.

C As regards the first of these arguments, it is right to
remember, as I have indicated more than once, that it was
for the Applicant to make out his case. He had to show that
his personal injury was directly attributable to a crime of
violence. In the present case it is uncontentionous that the
D push, administered by Miss Gorman, amounted to a crime of
violence unless it might have been done in self-defence.
Therefore, as I have said, the Applicant had to negate
self-defence. In my judgment, however, unless there was
some material suggesting that Miss Gorman was defending
E herself, it is very hard to see that there was, in this
respect, anything to negate.

F What was there then before the Board which suggested
that there might here be a case of self-defence? I have read
the relevant extracts of the Applicant's evidence. I do not
travel over that ground again and it is enough to say it is
plain that there was an extremely angry quarrel which, upon
his evidence, started because Miss Gorman was very cross
G over the fact that in some respect, whose details do not
matter, the Applicant had been helping the police. It
developed so that she ran out of the door and he brought her
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A back in. He did so by force, as he put it himself. He did
it with his arms around her waist and although she struggled
she did not struggle too hard. Then it was that she started
kicking and slapping him. He lost his head and in
B frustration punched the wall, indicating to the Board that
he had been brought up not to hit a woman.

C The high point of any case, if high it is, relating to
self-defence, consists in his evidence at paragraph 7, which
I have read: "His back was towards Rita and as he started to
turn, she said, "You're a mad bastard" and pushed him. He
was certainly not saying that Rita Gorman was defending
herself. It seems to me very significant that the material
D before me and before the Board, showing what was the
attitude of Rita Gorman herself to this incident, is wholly
inconsistent with any assertion by her of self-defence. I
have read the short passages from the police officer's
E evidence. It is true, as Mr Lloyd Jones submitted on behalf
of the Board, that she seems to have given inconsistent
accounts, but she gave no account alleging, asserting or
suggesting that she was in any way defending herself. That
F seems quite extraordinary if, in truth, this might have been
a case of self-defence.

G For what it is worth, in addition, on the Applicant's
evidence, which in this regard seems to have been accepted,
immediately after describing his starting to turn and her
pushing him he said he had his back to her and she pushed
the top of his back near his shoulder blades. The truth is
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A that there was no assertion from any quarter before the
Board that Rita Gorman struck the Applicant in
self-defence. Such a possibility simply does not, on any
view of the matter as I see it, truly arise from the
evidence.

B I am troubled, in addition, by the way in which the
matter is formulated in the Board's later written reasons,
part of whose the second paragraph (and I have already read
C it) is as follows:

"We had to consider whether or not the push, in
all the circumstances, was an unjustified use of
force which went beyond the limits of
self-defence..."

D That suggests, though in fairness it does not distinctly
assert, that the Board were proceeding upon the premise that
Miss Gorman was defending herself and then asking themselves
the question whether the force she used in doing so was
E excessive. In fact, of course there is no such premise here
available. It was very far from an agreed fact that she was
defending herself.

F The Board do not seem in their reasons distinctly to
have addressed the question whether this was a case of
self-defence at all. It rather looks as though that was
assumed. Whether or not that is right this is, I fear, one
of those rare cases in which the Board have arrived at a
G conclusion which stands beyond the limits imposed by public
law principles in the light of the evidence they heard. The
Applicant here, in truth, had no self-defence case to refute
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A and accordingly it seems to me the Board fell into error in holding, so far as they did so, that he had not refuted it.

B I have borne in mind the jurisprudence which shows that the Board are only obliged to give short reasons for the conclusions they arrived at. I have borne in mind, of course, the elementary and important fact not only that they are the judges of the facts not I, but that they heard the live evidence. However, the record of the evidence seems to be clear and full and I have arrived at the conclusions which I have described upon the basis of it.

C As regards the second issue raised by Miss Booth, the written reasons address paragraph 6(c) only in their last paragraph. Of course, they were entitled, and perhaps obliged, to consider the question of paragraph 6(c), even though they, for their part, had found that this was not a crime of violence case. It is commonplace for Courts and Tribunals to address disputes conducted before them by two alternative routes. The difficulty that I find with the last paragraph of the written reasons is that there is no acknowledgment there whatever of Miss Gorman's part in this episode. Of course, they are not obliged to set out in detail every point that falls for consideration. However, here they are taking the most extreme course open to them, that is to deny any compensation at all. The only reasons given for that course of action appear in the middle sentence in the paragraph which, for convenience, I will repeat:

A "The applicant by force prevented Miss Gorman from leaving the flat and then lost his temper, and immediately prior to the relevant incident he struck the wall twice with such a degree of force that there was damage to the wall."

B For my part, though it is not really for me to arrive at a view about it, I certainly see that it may be thought culpable of the Applicant to lose his temper and certainly culpable for him to prevent Miss Gorman from leaving the flat, or more accurately, forcing her back in. If the Board C accepted, however, that he struck the wall in frustration, as it were, rather than strike Miss Gorman, then I rather doubt whether one could regard that aspect of the case as such heinous conduct on his part as to justify the D conclusion the Board reached.

E In short, I am not satisfied that a decision to make a nil award here has been properly reasoned in this short paragraph. I repeat, only short reasons are required and I am no judge of the merits of what award, if any, ought to be given. I do not hold, though at one stage this was F canvassed before me by Miss Booth, that a reasonable Board must have made some award. In the result the Board's decision will be quashed. It will be for them to reconsider the whole matter and arrive at a fresh decision.

MISS BOOTH: My Lord, I would ask for my costs and also a legal aid taxation?

G MR LLOYD JONES: I do not resist that.

MR JUSTICE LAWS: Yes, thank you very much.

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