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A IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

(DIVISIONAL COURT).

Royal Courts of Justice,

B Monday, 18th March, 1985

Before:

LORD JUSTICE WATKINS

C LORD JUSTICE LLOYD

and

MR. JUSTICE NOLAN

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D Crown Office List

THE QUEEN

-v-

E CRIMINAL INJURIES COMPENSATION BOARD

Ex parte SIDNEY CHARLES WARNER

CYRIL MAURICE WEBB

HARRY CLACK

and

ALBERT WILKS

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(Transcript of the Shorthand Notes of Marten Walsh Cherer Limited, Pemberton House, East Harding Street, London EC4A 3AS. Telephone Number: 01 - 583 7635. Shorthand Writers to the Court.)

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G MR. L. JOSEPH, Q.C. and MR. G.R. SANKEY (instructed by Messrs. Robin Thompson & Partners, London WC1) appeared on behalf of the Applicants

MR. J. CROWLEY, Q.C. and MR. J. LAWS (instructed by the Treasury Solicitor, London SW1) appeared on behalf of the Respondent.

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J U D G M E N T

H (As approved by the Judge)

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LORD JUSTICE WATKINS: This is the judgment of the court. On 12th September 1983 three members of the Criminal Injuries Compensation Board, the Chairman, Michael Ogden, Q.C. presiding, heard applications for compensation from four engine drivers employed either by British Rail or London Transport, namely Cyril Maurice Webb, Sidney Charles Warner (he made two applications), Albert Wilks and Harry Clack which had previously been considered by the single member who, under the 1969 Scheme, disallowed all applications save the first (No. 1) of Warner's which he referred to the board pursuant to paragraph 22 of the Scheme which came into force in 1979.

The facts upon which the applications were based were not in dispute and in summary form can be stated as follows. On 16th July 1979 a man jumped in front of a train being driven by Webb near Wolverhampton. At the inquest a verdict of suicide was returned. According to Webb, who was then 49 years of age, the man, when the train was only 30 yards or so away, took a headlong dive in front of it. The emergency brake was applied but it was impossible to avoid the fatal accident. Webb was shocked and afterwards suffered from depression.

On 2nd January 1981 a female psychiatric patient threw herself under an underground train driven by Warner, who was then 49 years of age, at Fulham Broadway. At the inquest a verdict of suicide was returned. The patient was apparently determined to take her own life at some time. There was nothing Warner could do to prevent her from doing so on this occasion. He suffered as a result from depression and an anxiety state.

On 23rd May 1981 Warner was again driving an underground train at Fulham Broadway when a youth from a football crowd jumped on the line and pranced about in front of the train. Warner, by applying the emergency brake, brought the train to a standstill without striking the youth, who climbed back onto the platform and ran away. This incident shocked Warner and further depressed him.

On 18th December 1975 Wilks, then 49 years of age, was driving a goods train through Bridgend Railway Station when, unbeknown to him, a woman walked in front of the train and was killed. He had no chance of avoiding her. At the inquest a verdict of suicide was returned. Wilks was unaware that she had been killed by the train until sometime later in the day, following examination of the engine. This led him to suffer from chronic anxiety and depression.

On 26th June 1979 Clack, then 60 years of age, was driving a train near Horsham when it collided with an 84 year old man who was walking upon the railway line. He was suffering from senility. The verdict at the inquest was accidental death. Apparently, the old man had seen the approaching train and had tried to get out of its way as Clack, by applying the emergency brake, strove unsuccessfully to avoid the accident. Clack suffered from nervous shock and a whiplash injury to his neck.

Each applicant claimed to be within the Scheme because in each case the person who went onto the railway line as a train was approaching was guilty of an offence under section 34 of the Offences against the Person Act 1861, and was a trespasser.

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In respect of all the applications the three members of the board found, when giving their written decision on 22nd September, that, with the exception of the 84 year old man, all who went onto the railway line committed an offence under

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section 34 and were trespassers. As for the elderly man, they made these observations: "19. The argument that trespass is an unlawful act, that that unlawful act endangered the people on the train, that, therefore, the deceased was guilty of an

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offence under the Offences against the Person Act, and that thi constitutes a crime of violence, is all very well until we remi ourselves that this involves saying that a senile old gentleman who may not even have realised that he was on a railway line, wa

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guilty of an offence carrying a maximum sentence of two years' imprisonment. If he was guilty, most people would consider it a rather odd and unfortunate conclusion.

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"20. We have concluded that the deceased was not guilty of an offence under section 34. We consider that the necessary basic intent is not shown to have been present in that the deceased may not even have realised that he was walking along

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a railway line. Of course, it is for the applicant to prove that he was the victim of a crime of violence.

"21. These points relating to Clack's case were not fully canvassed at the hearing. If we were not rejecting this

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applicant's claim on the ground upon which all these applications are rejected, we would have re-listed the case for further argument. However, having rejected the application for another reason and having recited our findings of fact on this point,

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the matter becomes solely a matter of law, which can conveniently

be argued before the Divisional Court, if the applicants apply to that Court for Judicial Review of these decisions. Furthermore, we are anxious that these cases should be resolved as soon as possible, particularly since other cases depend upon these decisions. However, we would consider an application to hear further representations limited to this point, if asked to do sc

They dismissed the applications for these reasons: "14. W considered that the present applications were not cases in which we should attempt to construe the Scheme on a narrow basis of construction, as if it were a statute. We have considered the views expressed by Glidewell J. in Parsons and the minority judgment of Lord Widgery LJ. in Clowes, in addition to the other judgments in the latter case.

"15. We are not satisfied that any injury suffered by these applicants was injury attributable to a crime of violence within the meaning of the Scheme. We conclude that the Scheme was not intended to and does not cover incidents of this kind. Consequently, we reject all the applications, without considerin other possible grounds of rejection (eg. the Paragraph 6(a) poin in the case of Webb)."

Each applicant seeks an order of certiorari so that we may quash those decisions of the board,and a declaration that section 34 of the Offences against the Person Act 1861 is a crime of violence within the meaning of the Criminal Injuries Compensation Scheme.

The grounds relied upon for relief by Webb, Warner and Wilks are that the board, having found that in each of their cases offences under section 34 had been committed, was wrong

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not to find that the injuries suffered by these applicants were attributable to crimes of violence within the meaning of the Criminal Injuries Compensation Scheme. Clack also relies on those grounds and further contends that the board was wrong not to find the elderly man guilty of an offence under section 34, and unjustified in finding that the man was incapable of forming an intention to interfere with the safety or convenience of anyone on the train; or, if justified, the board failed to leave out of account the immunity which, by paragraph 5 of the Scheme, they were required to leave out of account and in the alternative the board were wrong in finding that an intention to endanger the safety of any person was a necessary ingredient of an offence under section 34.

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The board did not hear evidence from the applicants. Accordingly, they did not resolve any medical issues. There will be a further opportunity for them to perform that and other relevant tasks if we conclude that they were wrong to dismiss the applications.

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The only oral evidence they heard was provided by Mr. St. J.R. Goff, District Secretary of ASLEF, who provided an impressive and depressing account of the dangers confronted by train drivers arising from trespass on railways through suicidal and other acts. In 1981 over 420 people were killed on railway lines and a number of others injured. Many drivers involved in these incidents have become, although blameless for death or injury, mentally ill in one way or another as a result. Depression is common amongst them. Other drivers successfully resist the tendency to relive the experience of a train killing

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someone and of attending an inquest afterwards. They are all trained to react quickly to the presence of a trespasser, but they all know the chance of avoiding an accident when this happens is either non-existent or very small.

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They and their trade unions are puzzled by what seems to them to be the changed attitude of the board towards claims, more of which are said to be dependant upon the outcome of this review, made by train drivers for compensation for injury caused

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to them by accidents brought about in the ways, some of which have been described.

The central question in each case before us is whether the injuries suffered by the applicants were attributable to a crime

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of violence, within the meaning of paragraph 5 of the Scheme. The board has held not. But other than referring to the decisio of the Divisional Court in R. v. Criminal Injuries Board, Ex parte Clowes (1977) 1 WLR 1353 and the views of Mr. Justice

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Glidewell in the unreported case of R. v. Criminal Injuries Board, Ex parte Parsons, and other than saying that they favour a generous rather than a narrow or legalistic approach

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to the Scheme, they do not state their reasons at any length.

At the outset it may be noted that the words "crime of violence" did not appear in the original Scheme. Under that

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the board were entitled to entertain applications in all cases of personal injury "directly attributable to a criminal offence" The Scheme was revised in May 1979 "in order to reflect more closely the intention of the Scheme". We quote from the fifth

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annual report of the board in 1969. This revision was the result of a recommendation by the board in their third report in 1967, that consideration be given to revising paragraph 5 "in order to define more precisely the type of criminal offence it is intended that the Scheme should cover".

The revision took the following form so far as material: "The Board entertains applications for payment of compensation in any case where the applicant sustains personal injury directl attributable to a crime of violence (including arson and poisoning)".

It came into effect on 21st May 1969. There is no doubt that thereafter from time to time the board regarded an offence under section 34 as a crime of violence within the Scheme. For example, in 1963 the board awarded a railway guard compensation for injuries found to have arisen out of an offence under section 34. In Parsons Mr. Justice Glidewell in this court said his own view was that it was perhaps stretching the phraseology a little to describe an offence under section 34 as a crime of violence. In the Court of Appeal in Parsons Lord Justice Cumming-Bruce, whilst declining to express an opinion of his own as to whether on the facts a "crime of violence" had occurred, referred to what Mr. Justice Glidewell said in this way: "In relation to the question whether a crime of violence was committed by the deceased, who trespassed upon the railway when he was about to commit suicide, there was a concession in the Divisional Court upon the topic and the issue is not explicitly raised in the grounds of appeal on appeal to this court, but the learned Judge

when he gave judgment in the proceedings for judicial review, in relation to the question whether, on the facts, a crime of violence within section 34 had occurred, expressed the view, recognising that he did not have to decide the point, that he regarded the law as previously stated in the case of Clowes with misgivings."

It appears that the board were influenced by what was said by Mr. Justice Glidewell in conjunction with the observations of Lord Widgery in Clowes into thinking again about the meaning to be attached to the expression "crime of violence" for the purpos of the Scheme. Having done so, they reached the conclusion whicl is the subject matter of this appeal.

The term "crime of violence" is not, as we understand it, a term of art. It is a term which is found in various contexts. Thus, in the criminal statistics for England and Wales, publishe annually by the Home Office, crimes are classified under various heads, for example, violence against the person, sexual offences burglary, robbery etc. Our task is, however, to say what "crime of violence" means in the context of the Scheme. The material words are, after all, ordinary English words. Why should we not give them their ordinary English meaning?

Mr. Joseph is content that we should and advances two main arguments. Firstly, and generally speaking, he says that a "cri of violence" is a crime which contemplates the possibility of personal injury, and is designed to prevent such injury. He relies on the judgment of Mr. Justice Wien in Clowes, at page 1362, where he says: "I would rather say that a crime of violenc means some crime which by definition as applied to the particula

facts of a ase involves the possibility of violence to another person. I hink viewing a crime of violence in that manner does justice to he ordinary meaning of the words 'a crime of violenc because the e is a possibility of violence to another person."

We que tion that definition as being too wide. If it were right it wc ld mean that a breach of the Factories Act 1961 or the Health nd Safety at Work Act 1974 would be a crime of violence, f r the legislation plainly contemplates the possibili of personal injury to employees, for example, by failing to fenc a piece of achinery, and is plainly designed, so far as possibl to prevent uch injury. This was recognised by the board who, i 1969, becau e a breach of the Factories Act, for example, might otherwise h ve been covered by the Scheme, revised the Scheme so as to limit the application of it to crimes of violence. At paragraph 7 of the board's sixth report in 1970 it is stated: "One of the reasons for this change is that a breach of the Factories A t is a criminal offence and the Scheme was plainly never inten ed to permit an application to the board instead of an actio for breach of the statutory duty imposed by the Factories A t." Other examples spring to mind, for example, breach of b ilding regulations and food regulations, all of whic contemplate the possibility of personal injury.

In our view, the possibility of violence arising out of a criminal ffence is not sufficient by itself to make that offence a rime of violence; nor are we compelled so to hold by the deci ion of the Divisional Court in Clowes where it was held that a crime of violence in the context of paragraph 5 of the Scheme as not limited to offences involving actual physical

force. This is because the passage already quoted and relied upon by Mr. Joseph, from the judgment of Mr. Justice Wien, differs from the opinions of Mr. Justice Eveleigh with whom he was in the majority and with Lord Widgery CJ., who dissented.

The test suggested by Mr. Justice Eveleigh is that of probability of injury rather than possibility of violence. He said at page 1359: "I have regard to the whole sentence and 'personal injury directly attributable to a crime of violence' means in my opinion 'personal injury directly attributable to that kind of deliberate criminal activity in which anyone would say that the probability of injury was obvious.'"

Lord Widgery CJ. took a more restricted view. He said at page 1364: "We have been reminded that an earlier version of th scheme did not use the words 'crime of violence,' but simply spo of 'a criminal offence.' No doubt it was found that the scheme in its operation was too wide if it contemplated any sort of criminal offence, and so a deliberate restriction was imposed in the new edition of the scheme cutting down the sort of offences which might attract an award to a 'crime of violence.'.....

"I think that so far as it would be appropriate to attempt to guide a jury in a decision on this point one would suggest to them for their consideration that a crime of violence is a crime which is accompanied by violence, or, as Wien J. put it, 'concerned with violence.'

"Furthermore, I think that they could properly be invited to consider whether 'violence' in this context does not mean an unlawful use of force or threats directed at the person of anoth

As I say, it seems to me quite clear that what this definition is all about is defining a crime which is injurious to the person. It is the threat to the person which matters in my view because it is the threat to the person which is the concern of the public and no doubt would stimulate the laying down of this scheme.

"It is said on the other side by Mr. Scott Baker that a crime of violence should mean a crime of which violence is an essential ingredient. That, if he will allow me to say so, is a very neat and tidy package in which to put this problem. I do not believe this scheme was intended to provide compensation for cases where no real violence occurred merely because the crime to which the claim had been attached was one which had violence in its essential make-up. In any case, if one contemplates a crime which involved violence, one is again up against the problem of what violence means."

Mr. Crowley's submission in the present case is similar to that made by Mr. Scott Baker in Clowes. A crime of violence is, he submits, one where the definition of the crime itself involves either direct infliction of force on the victim, or at least a hostile act directed towards the victim or class of victims. We think that this comes near enough to the ordinary meaning of the words as generally understood.

It is in that light that we turn to examine Mr. Joseph's second argument which turns on the provisions of section 34 itself. That section provides: "Whosoever, by any unlawful act or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or

being in or upon a railway, or shall aid or assist therein, s
be guilty of a misdemeanour....."

Section 34 is included in a group of sections starting w
section 17 under the cross-heading "Acts causing or tending t
cause danger to life or bodily harm".

Sections 32 and 33 make it an offence to place anything
on a railway or throw anything at a train with intent to endan
safety, carrying a maximum sentence of life imprisonment. It
was conceded by the board that these sections create crimes of
violence. It must follow, so it is argued, that section 34 als
creates a crime of violence for the gist of all three offences
is endangering the safety of passengers by an unlawful act. In
deciding whether a crime is a crime of violence what matters is
the impact on the victim, not the intent of the offender.

The argument was put most attractively, but we cannot accep
it. We do not agree that criminal intent, or recklessness, is
irrelevant in deciding whether a crime is a crime of violence.
All the elements of the crime must be taken into account. In
our view there is a clear distinction between sections 32 and 33,
on the one hand, where each require intent to endanger safety,
and section 34 which does not. The mere endangering of safety,
without more, does not in itself import violence, whether on the
railway or on the factory floor. If we were to encapsulate this
part of Mr. Joseph's argument in a single sentence it was that
a man cannot be endangered except by some sort of violence. We
cannot accept that submission. In our judgment, sections 32 and
33 create a crime of violence as those words are ordinarily understood. Section 34 does not.

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The more difficult and tantalising question is whether section 34 should be held to create a crime of violence in the wider context of this particular Scheme; that is to say, a moder and unique Scheme for providing state compensation by way of ex gratia payments to victims of crime, having regard, in particula

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to the circumstances in which the expression was introduced into the Scheme, the view taken of it for a considerable time by the board itself and its own interpretation of "crime of violence" a

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set out, for example, in the sixteenth and nineteenth reports of the board. These are as follows: "Sixteenth. 1. An assaul is a crime of violence. 2. In cases where the acts of the offenders cause personal injury to another but do not constitute

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an assault, an award will be made if there was an intention to inflict personal injury or recklessness as to whether such injur should occur or not, i.e. the offender must have foreseen that personal injury might be inflicted and yet gone on to take the

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risk of it. Nineteenth. D. Crime of Violence. An assault which, of course, is a crime of violence, may be carried out intentionally or recklessly. A person is reckless if he does an

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act which in fact creates an obvious risk of injury to other people, and, when he does that act he either has not given any thought to the possibility of there being any such risk, or has recognised that there was such a risk involved and has never-

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theless gone on to do the act. However, it is not enough for the person who caused the injury to have acted very carelessly. All claims must be founded on a crime of violence. Carelessnes or negligence of itself is not a crime.(3)."

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When those interpretations are examined alongside the provisions of section 34 it becomes, perhaps, less surprising that cases such as those before us were regarded for so long by the board as falling within the Scheme. A man who deliberately lies upon a railway line, or walks upon it when a train is approaching, not only invites violent injury or death for himself, but also exposes the passengers on the train to the risk of violent injury. Thus, the former practice of the board may be explicable, not on the basis that an offence under sectio 34 is by definition a "crime of violence", but on the basis that the particular criminal offences under section 34, with which we are concerned, were carried out in an undeniably violent manner; that is to say, in a manner which involved not only the certaint of violent injury or death for the criminal, but the danger of violent injury for others.

Despite these considerations, we have in the end reached the conclusion that the ordinary or generally understood meaning of the words must prevail. We applaud the board's policy of a generous rather than a narrow or legalistic approach. But a generous approach cannot alter the plain meaning of the words. It is our task to say what the words mean. We must firmly decline to be influenced by the board's previous interpretation of the words, however well intentioned.

We must, of course, have regard to the immediate context in which the words are used, that is to say, the provisions of the Scheme as a whole and the surrounding circumstances. But we have found little to assist us from the context in which these words were used. For example, the words in parenthesis,

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that is to say "arson and poisoning", we regard as neutral in the sense that they do not seem to us to give a wider meaning to the words "crime of violence" than they ordinarily bear.

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The trespasser who commits suicide on the railway may well be in breach of a duty of care owed to the driver of and the passengers on the train; his action may result in the driver suffering from depression and in passengers being injured. But it surely would be a startling result that the trespasser could properly be said to have committed a crime of violence.

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Returning to Parsons' case in the Court of Appeal, we find that it does not help for the simple reason that the point was conceded. The only question in that case was whether the depression suffered by the train driver was directly attributabl[e] to an admitted crime of violence. It was held that it was. There is nothing in the judgment of Lord Justice Cumming-Bruce t[o] indicate what view he would have formed on the question we have to decide if the point had not been conceded. Nor can we find anything there to support the argument that the violent death of the offender is itself sufficient to turn an offence into a crime of violence or is even, indeed, relevant in that connection. If, as we have held, section 34 does not by definition create a crime of violence, we do not see how the manner of carrying out the offence can have that effect.

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We now turn to consider the special circumstances of Mr. Clack's claim. His claim, it will be remembered, had been rejected by the single member on the ground that the 84 year old man who had wandered on to the line and had been struck by the train "had not the intention to make him guilty of any criminal

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offence of endangering railway passengers or of endangering life". Thus, Mr. Clack's injuries were not accepted as being directly attributable to a crime, let alone to a crime of violence.

The provision in the Scheme which appears to us to be relevant to this case is found in the last sentence of paragraph 4, which states that, in considering whether any act is a criminal act, "any immunity at law of an offender, attributabl to his youth or insanity or other condition, will be left out of account".

The word "immunity", in the criminal context, is normally used to connote immunity from prosecution, such as diplomatic immunity, or immunity offered to a prosection witness on grounds of public policy. We think it clear, however, that in paragraph 4 of the Scheme the word is used to connote immunity from conviction. Thus, inability to form the requisite criminal intention by reason of extreme youth or insanity may constitute a good defence at the trial, but will not prevent a prosecution from being brought. In the context of paragraph 4 of the Scheme, the same considerations must, we think, apply to the words "or other condition" as to youth and insanity.

Further, in our judgment, those words in the context of the whole phrase "youth or insanity or other condition" are apt to include a lack of the requisite mental capacity due to old age. Accordingly, accepting as we do that the criminal act prohibited by section 34 and relied upon by Mr. Clack consists of an unlawful act (in this case trespass) deliberately carried out, and accepting further that the trespasser struck by

Mr. Clack's train would have escaped conviction because of his inability to form the intention to trespass, we consider none-theless that the claim must be considered on the basis that the trespasser was in full possession of his faculties. On that basis, there is no apparent reason to suppose that he would have escaped conviction.

For the reasons we have mentioned, however, we are not per-suaded that the board reached the wrong decision in this or in a of the other cases before us, but on the contrary we believe tha the decisions reached were correct and that the claimants were properly denied the relief which they sought.

In conclusion, we feel bound to say that we find it highly unsatisfactory that there is no definition, nor even a reasoned explanation, of what constitutes a crime of violence for the purposes of the Scheme. If a definition is called for from us, we would suggest "any crime in respect of which the prosecution must prove as one of its ingredients that the defendant unlawfull and intentionally, or recklessly, inflicted or threatened to inflict personal injury upon another". We were told, however, i the course of argument that it is proposed to put the Scheme on a statutory basis. We trust that those who are responsible for drafting the legislation will consider the desirability of including, if not some such definition as we have suggested, at least a broad and easily comprehensible statement of the policy which is to be followed in compensating the victims of such a crime.

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MR. CROWLEY: My ord, in those circumstances we ask that these applications e dismissed with costs. These are all union ca

LORD JUSTICE WATK NS: Yes.

MR. SANKEY: With regard to costs I would say this. So far as the applicants ar concerned, there had been a well-known previous practice of t e board to accept that suicide cases were attributable o a crime of violence. Indeed, the point has be conceded in t e Parsons' case. As your Lordship has just poin out, there is no definition of crime of violence within the wording of th Scheme. In my submission, it was therefore qui proper for th se applications for judicial review to be brough for the matte to be tested. In those circumstances, I would a your Lordship to consider that there should be no order for co in this case.

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The othe point I wish to make is that this is clearly an important dec sion because, as your Lordships have heard, there are many case which were pending to the board. I would therefore ask your Lordships to grant leave to appeal in respect of each of the a plications.

MR. CROWLEY: My ord, on the second point may I say that our understanding is t at no leave is required. In the case of judicial review there s a right of appeal to the Court of Appeal.

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LORD JUSTICE WATK NS: If you need it, you have it. Do you want to say any more bout costs?

MR. CROWLEY: My ord, it was a perfectly proper case to bring, but there is noth ng out of the ordinary in an interested party union wishing to have this tested by the courts. They have brought this ssue before you in five cases and they have lost. I would say t at costs should follow the event.

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LORD JUSTICE WATK NS: The applications are refused with costs.

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IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

B

Royal Courts of Justice

Thursday 8th May 1986

Before:

LORD JUSTICE LAWTON

C

LORD JUSTICE STEPHEN BROWN

SIR JOHN MEGAW

D

THE QUEEN

v

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THE CRIMINAL INJURIES COMPENSATION BOARD

ex parte SIDNEY CHARLES WARNER

(Transcript of the Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London WC2A 3RU).

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MR LESLIE JOSEPH, Q.C., and MR G. R. SANKEY, instructed by Messrs Robin Thompson & Partners, appeared for the Applicant (Respondent).

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MR J. M. WRIGHT, Q.C., and MR J. G. M. LAWS, instructed by The Treasury Solicitor, appeared for the Respondent (Respondent).

J U D G M E N T

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LORD JUSTICE LAWTON: There are four appeals before the court. We heard them together as they all raise the same question, namely whether a psychiatric injury directly attributable to conduct amounting to an offence under section 34 of the Offences Against The Person Act 1861 is a "personal injury attributable to a crime of violence" within the Criminal Injuries Compensation Scheme as amended in 1969. If it is, compensation is payable, not otherwise. The Criminal Injuries Board decided that such an injury was not attributable to a crime of violence. The Divisional Court agreed and on March 18th 1985 adjudged that the four injured appellants were not entitled to an order of judicial review. They have appealed to this court. In the case of one of the appellants, Mr Clack, a further question arises, as to whether the words in the scheme "immunity at law of an offender, attributable to his youth or insanity or other condition" referred to immunity from prosecution or immunity from conviction. The Divisional Court adjudged that they referred to immunity from conviction. Mr Wright, Q.C., on behalf of the Board submitted that this construction was wrong.

All four appellants were at all material times railway engine drivers. Each of them had had the misfortune when driving his train to run over and kill someone who was on the railway line as he approached. In three cases the coroners' courts returned verdicts of suicide. In Mr Clack's case the deceased was a senile man of 84 who may not have known what he was doing. All four drivers suffered psychiatric injury directly attributable to the conduct of the deceased. The three who had committed suicide had been guilty of offences under section 34 of the 1861 Act. The deceased in Mr Clack's case may not have been because of his mental condition.

Section 34 of the 1861 Act is in these terms: "Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour."

It follows two sections, numbered 32 and 33, which created offences of interfering with the operation of railways on proof of intent to endanger the safety of any person being upon the railway (section 32) or being in or upon any part of a train (section 33). I do not find it necessary to recount any more facts or the history of the claims. Details are set out in the judgment of the Divisional Court.

These appeals are, of course, of importance to the four appellants, but they are also of importance to about 250 other engine drivers who have suffered psychiatric injuries in the same kind of circumstances as these appellants and whose cases are awaiting hearing by the Board and to engine drivers in the future who may suffer similarly. The kinds of incidents under discussion in these appeals are all too frequent. In 1981 219 persons committed suicide by throwing themselves in front of trains and another 36 were seriously injured in trying to commit suicide.

A scheme to compensate the victims of crime was first introduced by the Government in 1964. That scheme provided for compensation to be payable for "personal injuries directly attributable to a crime." This brought within the scheme persons injured as a result of breaches of regulatory statutes such as

the Factories Act 1961 and Food and Drugs Act 1955. In 1969 the scheme was modified by limiting its operation to a "personal injury attributable to a crime of violence." The words "crime of violence" are not a term of art. The scheme is not a statutory one. The Government has made funds available for the payment of compensation without being under a statutory duty to do so. It follows, in my judgment, that the court should not construe the scheme as if it were a statute but as a public announcement of what the Government was willing to do. This entails the court deciding what would be a reasonable and literate man's understanding of the circumstances in which he could under the scheme be paid compensation for personal injury caused by a crime of violence.

Counsel on both sides accepted that this would be the right way to construe the scheme but they differed as to the conclusion which the court should reach.

Mr Joseph, Q.C., on behalf of the appellants, submitted that the hypothetical, reasonable and literate man would keep in mind that anyone acting in the way prohibited by section 34 of the 1861 Act was likely to endanger or cause to be endangered the safety of any approaching engine driver. Trains often approach at high speeds. Sudden braking causes jolting and in some circumstances might cause derailment. The appellant Mr Clack's case reveals what can happen. On one occasion when he pulled up sharply to avoid running down a disorderly youth who was prancing on the line in front of his train he sustained a whiplash injury to his neck. If a crime is likely to cause injury, whether physical or psychiatric, then as a matter of the ordinary usage of English it can properly be described as a crime of violence.

In support of this submission Mr Joseph referred to R. v Criminal Injuries Compensation Board, ex parte Clowes (1977) 1 W.L.R. 1353, a decision of the Divisional Court. In that case a police sergeant was injured by an explosion when he was investigating the suicide of a man who had broken off the end of a gas standpipe in his house. The sergeant claimed compensation under the scheme. The Board rejected his claim on two grounds: first that the deceased had not committed a crime of violence and secondly that his injuries were not directly attributable to the deceased's crime anyway. When giving its decision the Board had said that "to knock the end off a gas pipe with a hammer and chisel is a violent act, but the act is directed against property and not against the person." By a majority (Lord Widgery, C.J. dissenting) the court adjudged that the deceased could have committed a crime of violence and the sergant's claim should be reconsidered by the Board. The majority came to this conclusion because the offence created by section 1 of the Criminal Damage Act 1971 envisaged that the criminal act could be done recklessly or with intent to endanger the life of another: see subsection (2). I agree that an act done with intent to endanger the life of another may be a crime of violence. Eveleigh, J., (as he then was) was of the opinion that the words in the scheme under consideration in this appeal meant a "personal injury directly attributable to that kind of deliberate criminal activity in which anyone would say that the probability of injury was obvious" (see page 1359); but he said that this was not meant to be an exhaustive definition, rather an indication of approach. Wien, J., defined a crime of violence as "some crime which by definition as applied to the particular facts of a case involves

the possibility of violence to another person".

The application of either of these definitions to happening which could occur on a railway line would be likely to produce results which would probably surprise a reasonable and literate man. Could children just over the age of ten who ran in front of an approaching train be said to be committing a crime of violence? Or the signalman who fell asleep in his signal box thereby causing an accident in which passengers in a train were injured? The difficulties of deciding how the words under consideration should be construed in their context in the scheme were highlighted by Mr Joseph's reliance on the case of R. v Pittwood (1902) 19 T.L.R. 37 in which a gatekeeper forgot to close level-crossing gates (unlawful conduct within section 34 of the 1861 Act). A man drove across the line and was killed by a train. The gatekeeper was convicted of manslaughter which most people would regard as a crime of violence.

Mr Wright submitted that the correct approach to this problem is to start by construing the words in their grammatical context. The word "crime" by itself covers all unlawful acts or omissions for which the law imposes a penalty. The draftsman of the scheme as amended clearly intended to limit the meaning of the word "crime". He did so by the use of the qualifying words "of violence". These words are adjectival and indicate the nature of the crime to which the scheme applies. The nature of a crime is different from its consequences. Injury to a person may be the probable consequence of a failure to fence a dangerous part of a machine, contrary to section 14 of the Factories Act 1961 (which is an offence), but no-one would say that such a failure amounted to a crime of violence. If consideration of probable consequences is what makes a crime

one of violence, a motorist who leaves his vehicle in a dangerous position contrary to section 24 of the Road Traffic Act 1972 commits a crime of violence. Mr Wright accepted that the acts of the four deceased caused psychiatric injury to the appellants; but that was because of the consequence of their acts, not their nature.

He suggested that a crime coming within the scheme was one which involved the infliction or threat of force to a victim, or the doing of a hostile act directed towards him. The second part of this suggested meaning is necessary to bring within the scheme conduct amounting to causing grievous bodily harm even though no violence is used by the offender: R. v Martin (1881) 8 Q.B.D. 54 is an example of such conduct. In that case the accused by unlawful conduct caused panic in the course of which a number of people were injured. This suggested construction is wider than that which Lord Widgery, C.J., suggested in his dissenting judgment in Clowes (at page 1364).

In my judgment Mr Wright's submission that what matters is the nature of the crime, not its likely consequences, is well founded. It is for the Board to decide whether unlawful conduct because of its nature, not its consequence, amounts to a crime of violence. As Lord Widgery, C.J., pointed out in Clowes' case at page 1364 following what Lord Reid had said in Brutus v Cozen (1972) A.C. 854, the meaning of "crime of violence" is "very much a jury point". Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words of ordinary usage in English which the Board, as a fact finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even

though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences, as in the case of the Road Traffic Act 1972 to which I have referred.

There remains the particular problem which arises in Mr Clack's case. The coroner's jury returned a verdict of accidental death, no doubt because they were not satisfied that the deceased knew what he was doing. If he did not know what he was doing he lacked an intention to do an unlawful act and committed no offence contrary to section 34 of the 1861 Act. If he committed no offence, there was no crime. Without a crime there was no basis for the application of the scheme to anyone who had been injured as a result of his conduct. The draftsman seems to have envisaged this problem and to have inserted the words to which I have already referred in order to deal with it.

We were told by Mr Wright that the Board are of opinion that when a person charged with a crime of violence which has caused personal injury puts forward successfully a defence negativing mens rea he is not an offender and there is no crime which can attract compensation. This opinion is based on the construction of the words "any immunity at law of an offender." Mr Wright submitted that before the qualifying words can apply there has to be an offender who cannot be prosecuted because of, for example, his age, unfitness to plead or his possession of diplomatic immunity. In my opinion this is too narrow a construction. The intention of the scheme, read as a whole, is to pay compensation to persons injured by acts of criminal violence. There does not have to be a conviction before compensation becomes payable. It would be a most defective

scheme if anyone injured by a mentally unbalanced person could not be paid compensation. The key to construction lies in the words "insanity or other condition". A person who is unfit to plead is immune from prosecution. Save in this limited sense, insanity is a defence as is abnormality of mind as defined in the Homicide Act 1957. The Divisional Court adjudged that the words "immunity at law" meant immunity from conviction and the the words "youth or insanity or other condition" were apt to include a lack of mental capacity due to old age. I agree.

I would dismiss the appeals.

LORD JUSTICE STEPHEN BROWN: I find myself in complete agreement with the judgment delivered by Lord Justice Lawton. I would therefore dismiss each of these appeals.

SIR JOHN MEGAW: I agree.

Order: Appeals dismissed with costs; leave to appeal to the House of Lords refused.