IN THE HIGH COURT OF JUSTICE NO: CO/3206/99

QUEEN'S BENCH DIVISION
CROWN OFFICE LIST

Royal Courts of Justice
Strand
London WC2

Tuesday, 11th July 2000

B e f o r e:

MR JUSTICE BLOFELD

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R e g i n a

-v-

CRIMINAL INJURIES COMPENSATION BOARD
EX PARTE KEVIN GEORGE WELCH

- - - - - -

Computer-Aided Transcript of the stenograph notes of
Smith Bernal Reporting Limited,
190 Fleet Street, London EC4A 2AG
Telephone No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

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MISS R TUCK (instructed by Thompsons Solicitors, 18, Lawford Street, Bristol BS2 ODZ) appeared on behalf of the applicant
MR J COPPEL (instructed by the Treasury Solicitors, London SWIH]) Appeared on behalf of the Respondent

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

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Tuesday, 11th July 2000

1. **MR JUSTICE BLOFELD**: The applicant, Kevin George Welch, was granted leave to apply for judicial review by the single judge on 15th September 1999. This matter arises out of an incident that took place when he was working as a house parent at Copperfields Local Support Unit (a mental hospital), in Exmouth, in Devon. Mr Gorman was a patient there. He was 20 years old or so, 5 - 5'2" in height and weighed in excess of 25 stones. But before dealing further with the facts I propose to deal with the history.

2. As a result of this particular incident, which I shall describe in a few minutes, the matter was considered by the single Board member of the Criminal Injuries Compensation Board on 21st March 1996. The member of that Board wrote informing the applicant that no award would be made because the member was not satisfied that the injuries sustained to this applicant were as a result of a crime of violence. The applicant was duly notified that he could require an oral hearing. He so indicated. That hearing took place on Friday, 14th May 1999. Miss Tuck, who appeared at that hearing and appears before this court today, accepts that this court is bound by the facts found by that Board at that hearing. I propose to read them into my judgment.

> "At the hearing [it reads] the applicant was represented by Miss R Tuck, instructed by Thompsons Solicitors. Applicant gave evidence at the hearing in Plymouth. Briefly the applicant gave evidence as follows:
>
> '...I was doing the washing up in a mental hospital. The patient pulled me down to give me a kiss. He was a boisterous boy. I couldn't say why he wanted to kiss me. My statement is true. He wanted to give me a hug. He was not aggressive. I cried out in pain and he released me immediately. A report was made on behalf to my employers...'
>
> Miss Tuck submitted, inter alia...'would the action constitute a crime of violence. We say he intended to be reckless in his action. The patient was not of sound mind and didn't know his strength. We say it was a crime of violence'.

After hearing the evidence, the Board retired to consider the matter. The Board's decision was reached as follows:

The alleged offender was a person with learning difficulties and therefore did not have a sound mind. We have to consider whether he intended to injure the applicant or whether he was reckless in his behaviour. If we found that either of the above were true, we could find that the applicant was a victim of a crime of violence.

In this case, however, the alleged offender merely intended to hug the applicant and in so doing injured his neck. We find that the applicant was injured by accident and therefore we are unable to make an award."

3. Such are the facts found by the Board. Attached to their factual findings are their handwritten notes and certain documents that were put before them. In the course of her submissions Miss Tuck has made no reference to the content of the handwritten notes. They appear not to take the matter any further. She has, however, referred to two documents; one is a letter from the Exmouth District Community Health Service dated April 1999 addressed:

"To whom it may concern

Mr Kevin WELCH

I write to confirm that Mr Welch was injured at work by a learning disabled man, during a stay at Copperfields local support unit.

The client concerned used the unit for two care reasons:-

I) Family respite.

II) To advise, support and treat the client with skill deficits and behavioural difficulties.

Intervention plans centred on:

a) How to behave and interact with other people;

b) Reducing the incidence of a range of behaviours including, spitting, swearing, running off, deliberately antagonising other clients and elements of challenging behaviour."

4. They also had in front of them the accident report book. It reads:

"CLIENT S. GORMAN EMBRACED KEVIN AROUND THE NECK PULLING KEVIN TO THE FLOOR AND CAUSED FRACTURE TO NECK BONE. KEVIN LAID ON THE FLOOR FOR A SHORT TIME BEFORE ATTENDING THE CASUALTY UNIT AT EXMOUTH HOSP. SEEN BY DR WARD TO ATTEND R.D & E WONDFORD THIS P.M."

5. Then underneath it has:

"KEVIN WELCH, 124 EXETER ROAD, EXMOUTH, HOUSEPARENT

The date and time of the incident was 11 a.m. on 23rd March 1994 and the room or place in which the accident happened was the kitchen.

There are two comments that I make from that particular report: one is that the word used by Kevin Welch is "embrace", it is not a word that is readily associated with criminal behaviour. As this is an accident report book the question that is asked is:

"In what room or place did the accident happen? [He has written] KITCHEN.

I do not consider it appropriate however to place any reliance on the fact that the word "kitchen" has been written as though it was an accident because it seems to me that whether this was an accident or a criminal offence all that was happening then was that somebody was giving information as to where the incident happened and it would not be right in my view to say that that indicates it was an accident and I dismiss that from my considerations. Those facts are all the facts that this court is entitled to take into account in deciding this matter.

Before turning to Miss Tuck's submissions it is appropriate to set out the paragraph of the Criminal Injuries Compensation Scheme 1990, which is relevant. Construction of the wording of that Scheme is a process akin to statutory construction, although where there is any ambiguity in the term used the Board will have a margin of discretion in choosing the appropriate construction: see R v Criminal Injuries Compensation Board ex parte Marsden (Court of Appeal Transcript 23rd March 1999). Paragraph 4 reads as follows:

"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

(including arson or poisoning); or

(b) to the apprehension or attempted apprehension of anoffender...; or

(c) to an offence of trespass on a railway....

In considering for the purposes of this paragraph whether any act is a criminal act a person's conduct will be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity."

6. It is appropriate to refer to the previous legislative history of the Scheme prior to that paragraph 4 of the relevant Criminal Injuries Compensation Scheme was 1964 (1969 Revised) stated:

> "The Board will entertain applications for ex gratia payment of compensation in any case where the applicant...sustained in Great Britain...personal injury directly attributable to a crime of violence...In considering for the purpose of this paragraph whether any act is a criminal act, any immunity at law of an offender, attributable to his youth or insanity **or other condition**, will be left out of account. [emphasis added].
>
> Consequently, it is clear that the Scheme that applied now applied at the time when this unfortunate incident took place. It took place when the Scheme did not include the words "or other condition" those words were apt to cover mental incapacity falling short of insanity. As they were deliberately deleted when the Scheme was amended in 1990 it is clear that the Board did not intend to include mental incapacity short of insanity.
>
> Before the 1990 Scheme was in place the words "insanity or other condition" were considered in R v Criminal Injuries Compensation Board ex parte Webb [1987] QB 74. Lawton LJ held that words "insanity or other condition" extended to unfitness to plead due to insanity, the legal defence of insanity and abnormality of mind defined in the Homicide Act 1957. He also held that "youth, insanity, or other condition" were apt to include a lack of mental capacity due to old age. (It is interesting to note that in the same case the Divisional Court had held that the lack of mental capacity due to old age was also covered by the words "or other condition" rather than insanity; see the same case [1986] QB page 1976.)

It is with that background that Miss Tuck submits the following. She submits that as far as Mr Gorman was concerned he was acting recklessly but she accepts - because it was her client's evidence and wholly undisputed - that he was not aggressive and, therefore, there was no hostile attempt, either deliberate or reckless, as far as he was concerned. But she submits that if he had been a man of sound mind and behaved in the way he did while such a man would not have had a deliberate hostile intent he would have been acting recklessly, in the sense that he could not have cared less what he was doing but would have gone on to do it. Therefore, if such a sane man had done that he would, on the injuries caused to Mr Welch, have been guilty of an offence of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Persons Act 1861.

Turning back to paragraph 4 of the Criminal Injuries Compensation Scheme 1990, the Board has to be satisfied that the applicant sustained personal injury directly attributable to a crime of violence. In considering that they have to consider whether any act is a criminal act:

"In considering for the purposes of this paragraph whether any act is a criminal act a person's conduct will be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity [those are the relevant words]..."

7. In my view the Board did not misdirect themselves. They made the finding that the alleged offender was a person with learning difficulties and therefore did not have a sound mind.

8. Miss Tuck during her submissions has tried to persuade me that that is the equivalent of a finding of insanity. She recognises that she faces difficulties because the only evidence before the Board was the contents of the letter of April 1999 by Exeter District Community Health Service, the relevant bits of which I have already read. From that it was quite impossible for the Board to be satisfied that at the time of committing the act Mr Gorman was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know that he did not know what he was doing was wrong. Consequently, their finding that he was a person with learning difficulties, and therefore did not have a sound mind, is not a findings that he was insane. They went on to find, as I have already stated, that he merely intended to hug the applicant and in so doing injured his neck. In the skeleton argument, but not so

much in the oral submissions, Miss Tuck submitted that that was a decision that was Wednesbury unreasonable. On the evidence before the Board I consider it was a finding that the were reasonably entitled to make and not Wednesbury unreasonable.

9. It is true that they did not in their reasons specifically set out paragraph 4 of the Scheme. If they had made a finding of insanity it would have been necessary for them to have applied that paragraph even if they did not set it out. But having, as I have found, not made a finding of insanity they were not required to set it out. Consequently, I reject Miss Tuck's submission on that point.

10. It is for that reason that I have drawn attention in this judgment to the earlier Scheme which contained the words "or other condition" which were helpfully contained in the respondent's skeleton argument, for which I express my gratitude. By reason of their absence I have come to the conclusion that this decision by the Board cannot be faulted and, consequently, I dismiss this application

11. (To Miss Tuck) You are probably legally aided, are you not?

12. **MISS TUCK**: My Lord, no, it is funded by the applicant's union.

13. **MR JUSTICE BLOFELD**: I see, well if you are not legally aided I cannot grant you legal aid taxation.

14. **MR COPPEL**: My Lord, I ask for the respondent's costs of the application.

15. **MISS TUCK**: I cannot argue against that.

16. **MR JUSTICE BLOFELD**: No, you cannot. Thank you very much.

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