Neutral Citation Number: [2002] EWHC 486 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

NO: CO/2212/2001

Royal Courts of Justice
Strand
London WC2

Friday, 15th March 2002

B e f o r e:

MR JUSTICE GRIGSON

- - - - - - -

THE QUEEN ON THE APPLICATION OF O'NEILL

-v-

CRIMINAL INJURIES COMPENSATION APPEAL PANEL

- - - - - -

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)

- - - - - -

MR G STEPHENSON (instructed by Hewitson, Becke & Shaw, solicitors) appeared on behalf of the Claimant
MR J MOFFETT (instructed by the Treasury Solicitor) appeared on behalf of the Defendant

- - - - - - -

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

- - - - - - -

1. **MR JUSTICE GRIGSON:** This claimant seeks to quash a decision of an officer of the Criminal Injuries Compensation Board refusing a rehearing of the claimant's appeal. The appeal hearing took place on 30th April 2000. The refusal of the application for a rehearing is contained in a letter dated 9th March 2001 from Miss Jenson, the officer concerned. The claimant asserts that letters of 3rd and 17th September 2000, written on his behalf, constitute an application for a rehearing under regulation 79 of the regulations which govern the scheme of criminal injury compensation.

2. Factually, the position is this: the claimant did not attend the hearing of his appeal on 30th April. That was not by oversight or mischance; it was a deliberate and informed decision. He chose not to attend and sent to represent him his parents. They did attend and they conducted the appeal on his behalf.

3. The submission made by the claimant is that, first of all, the claimant was absent and, secondly, that he has a right under this regulation to apply for a rehearing. Mr Stephenson, his counsel, argues that "absence" means physical absence. He derives some support for that proposition from the case of **Wilkinson v Wilkinson (1963) P1**. Whilst that case dealt with a very different situation, in fact the defendants do not dispute that here the word "absence" means physical absence. Mr Stephenson argues that, looking at the scheme as a whole, it envisages throughout that the appellant will be present. He points specifically to regulation 74, which says:

> "It will be open to the appellant to bring a friend or legal adviser to assist in presenting his case at the hearing, but the costs of representation will not be met by the Authority or the Panel."

4. He argues that the word "bring" necessitates the physical presence of the appellant. I agree that it does. However, I do not accept that it follows that the appellant must be present, although that is plainly what the rules anticipate. There is no express requirement in the rules that the appellant should be present, and common sense suggests that there may very well be situations where an appellant cannot be present, for example by reason of physical infirmity, and in those circumstances he will be represented by another person, either qualified or unqualified.

5. Regulation 79 must be read with regulation 78, which provides that:

> "Where an appellant who fails to attend a hearing gives no reasonable excuse for his non-attendance, the adjudicator may determine the appeal in his absence."

6. Read with regulation 79, it is perfectly plain that these two regulations are designed to deal with the situation where the appellant fails to attend the hearing itself and no good reason for his failure is advanced at that time. It does not mean and cannot mean that, if good reason is advanced, the adjudicator cannot proceed in his absence.

7. Regulation 81 reads:

"Where a member of the staff of the Panel considers that there are good reasons for an appeal to be reheard, he will refer it for a rehearing."

8. Again, in my judgment, reading all three regulations together, the purpose is plain. If no good reason is advanced at the time, but subsequently the appellant furnishes a good reason for his absence, then a retrial or a rehearing can be ordered. Mr Stephenson submits that the wording is sufficiently wide for the reasons to be other than those connected with absence. I doubt that but I do not need to decide that issue to determine this claim.

9. Mr Moffett, counsel for the defendants, submits that the word "appellant" must be taken to mean the appellant and his representatives. He submits that the regulations have to be interpreted purposefully. I agree. In my judgment, that is the correct interpretation to be applied to these regulations. If one looks at regulations 73, 75, 78 and 79, all make perfect sense if that interpretation is adopted. It follows that, in my judgment, the appellant was not absent within the true meaning of regulation 79. He was present through his parents, whom he had chosen to represent him.

10. That is sufficient of itself to dispose of this claim, but there is a secondary point, with which I will deal. Mr Stephenson has submitted that the letters of 3rd and 17th September from the claimant's parents constitute an application for a rehearing under regulation 79. It is plain that a rehearing was being sought, but it is equally plain that, although many complaints were raised in those letters, it was never suggested that the absence of the appellant was a ground for the rehearing. Unsurprisingly in the circumstances, no reasons were advanced in those letters for the absence of the appellant. Mr Stephenson argues that the officer who replied to those letters, Miss Jenson, in refusing the rehearing must have treated the letters of 3rd and 17th as an application under regulation 79, as there was no other relevant provision under which she could consider an application for a rehearing. I am quite satisfied from the terms of all three letters that none constitute an application made under regulation 79, and that Miss Jenson's reply did not constitute any acknowledgment that the letters of 3rd and 17th were such an application. It was simply a reply to each complaint and each request contained in those letters. In any event, no reasons for absence were advanced, and that is a mandatory requirement under the regulation. So the application would have been bound to fail.

11. I have considered the comments made by Collins J in the judgment he gave when giving permission. In paragraph 13, he says:

"It is true that there was nothing in the letters to show or even to request that the rehearing should be on the basis that the appellant had not attended at the original appeal. Nevertheless, it was plain that he had not. That fact gives jurisdiction to the panel to order a rehearing and the fact that it is not specifically referred to cannot, particularly where one is dealing with lay people who may not put matters in as precise a form as can be expected from professionals, and should not make any difference."

12. With great respect, I disagree. If the application was being made under regulation 79, any applicant would at least mention the failure to attend. If he did not advance reasons, then the officer considering the application might well ask for particulars, but in my judgment an application under regulation 79 cannot be made without at least the mention of non-attendance. It is the absence of the appellant which triggers the mechanism.

13. In the circumstances, the claim is refused.

MR STEPHENSON: My Lord, I respectfully ask for leave to appeal.

MR MOFFETT: There are no further applications from the defendant.

MR JUSTICE GRIGSON: I think this is a plain matter and I am refusing leave to appeal.

MR STEPHENSON: My Lord, I am legally aided and I wonder if your Lordship would order legal aid taxation.

MR JUSTICE GRIGSON: Yes.