IN THE HIGH COURT OF JUSTICE CO/4764/99

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Wednesday, 12th April 2000

B e f o r e:

MR JUSTICE NEWMAN

- - - - - - -

REGINA

-v-

CRIMINAL INJURIES COMPENSATION APPEALS Panel
EX PARTE BARRY SHAWN CARLING

- - - - - - -

(Computer-aided Transcript of the Stenograph Notes of
Smith Bernal Reporting Limited
180 Fleet Street, London EC4A 2HD
Telephone No: 0171-421 4040/0171-404 1400
Fax No: 0171-831 8838
Official Shorthand Writers to the Court)

- - - - - - -

MR ANDREW HOGAN (instructed by Tracey Barlow & Furniss, 9 New Street, Retford, Notts DN22 6EG) appeared on behalf of the Applicant.

MR CLIVE SHELDON (instructed by Treasury Solicitor, 28 Broadway, London SW1H 9Js) appeared on behalf of the Respondent.

J U D G M E N T
(APPROVED)

IN THE HIGH COURT OF JUSTICE CO/4764/99

QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

Royal Courts of Justice
Strand
London WC2

Wednesday, 12th April 2000

B e f o r e:

MR JUSTICE NEWMAN

- - - - - - - -

REGINA

-v-

CRIMINAL INJURIES COMPENSATION APPEALS Panel
EX PARTE BARRY SHAWN CARLING

- - - - - - - -

(Computer-aided Transcript of the Stenograph Notes of
Smith Bernal Reporting Limited
180 Fleet Street, London EC4A 2HD
Telephone No: 0171-421 4040/0171-404 1400
Fax No: 0171-831 8838
Official Shorthand Writers to the Court)

- - - - - - - -

MR ANDREW HOGAN (instructed by Tracey Barlow & Furniss, 9 New Street, Retford, Notts DN22 6EG) appeared on behalf of the Applicant.

MR CLIVE SHELDON (instructed by Treasury Solicitor, 28 Broadway, London SW1H 9Js) appeared on behalf of the Respondent.

J U D G M E N T
(APPROVED)

Wednesday, 12th April 2000

JUDGMENT

1. **MR JUSTICE NEWMAN:** This is an application for leave to apply for judicial review of a decision of the Criminal Injuries Compensation Appeals Panel. On 9th September 1999 the Panel refused the application of Mr Barry Carling, the applicant, for compensation for very serious injuries which were caused in an incident which took place on 25th May 1997. The Panel's decision was expressed by the chairman orally in these terms:

> "I am afraid I have some bad news for you, Mr Carling. The Panel has considered all the facts in this case and finds that there is no evidence of recklessness on Mr Scully's part. We are not convinced that this was a crime of violence. There might be some evidence of carelessness but this does not amount to recklessness and your appeal must be dismissed. We are sorry in the light of the serious injuries that you sustained."

2. The reference to Mr Scully is a reference to the circumstances in which these injuries were sustained. The applicant was working as a labourer with Mr Scully but he, the applicant, was taking a tea break in a corrugated iron shed. He was resting with his back against the side of the shed shortly before the event which caused the injuries.

3. Mr Scully walked by and was able to see the applicant inside with two other people. Shortly thereafter the wall was kicked by Mr Scully, and it was as a result of that kick that very severe injuries were sustained to the applicant's spine.

4. The evidence before the Panel included evidence that Mr Scully had some reason to dislike the applicant, who had recently received a pay raise and he had referred to the applicant as "a gaffer's boy". There was evidence before the Panel that Mr Scully had admitted to the police kicking the side of the shed, he said, "because he wanted to cause sawdust within the shed to be disturbed". It was suggested by him that he was acting in that way as a practical joke.

5. The case has been thoroughly advanced by Mr Hogan on behalf of the applicant who, in his careful skeleton argument, identified originally four grounds of challenge. The first, he rightly accepts, must fall away having regard to a statement received by the court this morning from the Treasury Solicitors department, which discloses the written note of the Panel decision, which the court understands is the internal note drawn up by the Panel. In the relevant part of the form against the rubric decision and reasons, the following appears:

> "The Panel are not satisfied that the injuries were directly attributable to a crime of violence. There was no evidence of deliberate assault or battery. Whilst there may have been carelessness on the part of Mr Scully, we are not satisfied that on the balance of probabilities that he was reckless."

6. It is apparent from the bundle put before the court by the applicant that apart from the facts, as I briefly referred to them, the Panel had the advantage of an extract from an article dealing with the definitions of recklessness and assault and battery, and dealing indeed with assault and battery.

7. As a result of the document disclosing the decision and reasons, as recorded internally, the first ground of challenge, namely that in using the words, "they were not convinced", the Panel were in error because they had not approached the matter with the correct standard of proof in their minds, falls away. The reference to the "balance of probabilities" in their internal note is sufficient to put an end to that.

8. But Mr Hogan advances three other grounds. First of all he says that the Panel erred in law in concluding, as they did, that there was no evidence of deliberate assault or battery, as in their internal note, or concluding as they did in their oral ruling, that there is no evidence of recklessness on Mr Scully's part. He submits that that is an error of law because there was evidence. He says there was all the evidence in the case, which they had to consider. If they were to find in the applicant's favour, they were bound to draw an inference of fact. He accepts that in order to find in the applicant's favour either they had to infer on the material they had that Mr Scully had an intention to cause some harm

when he kicked the side of the shed or if he did not have an intention to cause some harm, that he had some foresight of some physical harm, which might be occasioned to the applicant, or generally anyone else in the shed, as a result of the physical action that he was taking.

9. In my judgment the way in which Mr Hogan has felt constrained to advance this argument itself demonstrates the difficulty. When this Panel said there was no evidence of deliberate assault or battery or saying there was no evidence of recklessness on Mr Scully's part, of course they were not referring to the stage in their deliberations or process of reasoning which required them to draw inferences, nor were they referring to the absence of any evidence upon which they could draw inferences. They were stating as a matter of conclusion, on the primary facts, that they were not able to reach a conclusion that there was a deliberate assault or battery or that there was evidence of recklessness on the part of Mr Scully because, on the balance of probabilities, they were not satisfied that either of those inferences could properly be drawn from the primary facts.

10. That was a classic fact-finding exercise for the Panel. Unless Mr Hogan could put it, and he has not, upon the basis that no reasonable fact-finding tribunal, on the evidence before it, directing itself in accordance with the law, could come to the conclusion to which the Panel came, the challenge on this ground must fail. In my judgment it must fail. It was open to this tribunal, on the evidence they had, to reach the conclusion that they did and to express it in the way they did. In my judgment it is not open to criticism.

11. Mr Hogan next criticises the distinction which the Panel drew between recklessness and what they suggested may have been a case of carelessness. He submits that this gives rise to the question whether they were really addressing the facts in the correct way, having regard to the absence of any clear definition in law, in connection with this sort of conduct, which introduces carelessness as a relevant factor. In my judgment there is nothing in this point. The fact that they considered carelessness and reached a conclusion that there may have been carelessness, simply illustrates the care

with which they must have considered all the evidence which was before them in order to decide what inference it was proper for them to draw. I regard the observation they made as an indication of the careful thought process the Panel applies rather than an indication they erred.

12. Lastly it is said by Mr Hogan that they failed to give adequate reasons. He has helpfully referred the court to the case of R v Legal Aid Area (No.8) ex parte Parkinson [1990] The Times, LR 201. He submits that the proposed respondent, which acts in a judicial capacity, determining matters of considerable importance so far as applicants are concerned, should not deliver oral reasons in the way they were delivered in this case. Nor record them in the limited way in which they were recorded internally. He submits that these cases require a more elaborate laying out of the material and a response to that material by the fact-finding tribunal so that those, like the applicant, can see the processes of thought and consideration through which the Panel has gone.

13. He raised also the onset of the Human Rights Act in October of this year, and suggests that more elaborate reasons in a judicial area affecting rights is supported by the principle underlying that Act. In my judgment there is no requirement of law that they should set out their reasons as a fact-finding tribunal in the way in which judges customarily set out the evidence. It will depend of course on each case and the way in which the issues have been canvassed and the areas of disagreement there may be upon the evidence.

14. In this case, such evidence as they had, since they did not have any from Mr Scully, was essentially evidence which was not in issue. They had a brief array of primary facts which formed the foundation for their inference-drawing exercise. I can see no basis for suggesting that the reasons given are inadequate. In my judgment they are succinct and to the point and make it entirely clear that the reason why this applicant failed was because the Panel was not satisfied, on the balance of probabilities, that the required mens rea on the part of Mr Scully had been made out. There is nothing more, in

my judgment, which needed to be said. They were the fact-finding tribunal.

15. I should add that it is not necessary for the Panel in a case such as this, where there is no dispute on the evidence to say anything more than they did, namely, the Panel has considered all the facts in this case. For all those reasons, and despite the thorough way in which this matter has been argued by Mr Hogan, this application for permission is dismissed.

16. MR HOGAN: Your Lordship, might I ask for Legal Aid assessment.

17. MR JUSTICE NEWMAN: There is no certificate with the court.

18. THE COURT: It is lodged with an agent.

19. MR JUSTICE NEWMAN: So that must be lodged with the court, and when it is, then that will be done.

20. MR HOGAN: I am obliged, my Lord.