Neutral Citation Number: [2011] IEHC 152

THE HIGH COURT

2001 18234 P

BETWEEN

EAMON JONES

PLAINTIFF

AND

GROVE TURKEYS LIMITED

DEFENDANT

JUDGMENT of Mr. Justice Hogan delivered on 11th April, 2011

1. In these proceedings the plaintiff seeks damages for personal injuries which are said to have come about as a result of a serious occupational injury sustained by him when he was employed as an operative in the defendant's factory between 1997 and 2000. Specifically, the plaintiff claims that he sustained repeated strain to his fingers, hand, wrist, arms and shoulder by being required to pull turkey claws repeatedly. It is further pleaded that the defendants failed to modify their work practices despite the fact that they had become aware that at least two other employees had suffered similar complaints to whose which afflicted the plaintiff in relation to similar kinds of work.

2. The issue which arises before me concerns the extent of the discovery which is sought by the plaintiff. Before proceeding further, it is, however, appropriate to record that the defence - which was filed as long ago as 16th February, 2004 - is a complete traverse which, as pleaded, leaves the defendant more or less at large so far as the scope of its defence is concerned. As we shall now see, this is a matter of some materiality so far as the scope of the discovery is concerned. The Master of the High Court made an order for discovery on 1st July, 2010, and the defendant now appeals to this Court from that order.

3. Of course, a party seeking discovery must show that the documents sought are both relevant and necessary in the sense explained by Geoghegan J. in *PJ Carroll v. Minister for Health and Children* [2006] IESC 36, [2006] 3 I.R. 431. Issues of relevance are, moreover, determined by the scope of the pleadings.

4. Having regard to the defence as filed, it would have been open to the defendant to argue that the plaintiff could not succeed at trial because the type of injury he suffered was either not foreseeable or, even if foreseeable, was not the kind of injury in respect of which the employer might reasonably be expected to have taken advance precautions in the absence of complaints from, or incidents involving, other employees. In those latter circumstances, the failure to take such precautions would not constitute negligence on its part: see generally *Bradley v. Coras Iompair Éireann* [1976] I.R. 217 at 222-223, per Henchy J.

5. At the hearing of this motion, however, counsel for the defendant, Mr. Carroll, specifically confirmed that he was authorised to say that no such defence would be raised by the defendant. In effect, therefore, the defendant conceded that if the plaintiff did indeed suffer such injuries, they were foreseeable and, furthermore, they were of the kind against which a prudent employer should guard. This statement by counsel effectively supplements the defence filed and, moreover, curtails to a significant degree the range of issues which might otherwise have arisen. At trial, therefore, assuming that the plaintiff can establish that he suffered the injuries of which he complains in the manner alleged, the only remaining issue so far as liability in negligence is concerned is whether the defendant objectively breached the duty of care which the law imposes on the reasonable and prudent employer.

6. This development has, in turn, has significant implications for both questions of relevance and necessity in respect of the categories of discovery actually sought. In particular, in the light of this clarification of the scope of the defence, it is no longer necessary to consider whether documents dealing with incidents involving other employees are relevant. In the light of this, we may now turn to examine the categories of discovery actually sought by the plaintiff.

Category 1: All training, instruction or advisory documentation [supplied to or provided to the plaintiff] with regard to working on the crawline in the defendant's factory premises with regard to the prevention or avoidance of physical difficulties and/or repetitive strain type injuries and/or work related upper limb disorder therein between 1st January, 1994, and 31st October, 2000.

7. While the relief sought in the notice of motion did not originally include the words contained in the square brackets, at the hearing it was agreed that the request should be read as if it were made referable in that fashion. It follows that the supply of training or other similar documentation to *other employees* (apart from the plaintiff) is irrelevant to the case. Such documentation could only in any event have been relevant in order to counter-act a defence of foreseeability. But once the defendants undertook not to raise this defence, then the question of whether they supplied such documentation to other employees becomes irrelevant.

8. Next, it must be recalled that the plaintiff commenced employment in August, 1997. In these circumstances, the only relevant documents are those which were supplied after that date, because, as we have just seen, the documentation which was supplied to other employees (whether before or after that date) is, in any event, irrelevant.

9. Subject to these qualifications, I nonetheless consider that the discovery of the training documentation supplied to the plaintiff during the period of his employment between August, 1997 and October, 2000 is both relevant and necessary. It is true that the plaintiff can himself give evidence on this topic, but given the lapse of time, the fallibility of memory and, indeed, the fact that it would be possibly unfair to expect any litigant to recall the details of such minutiae, this is no substitute for the actual discovery of this documentation.

Category 2: All risk assessment and/or safety statement documentation with regard to working on the crawline in the defendant's factory premises with regard to the prevention or avoidance of physical difficulties and/or repetitive strain type injuries and/or work related upper limb disorder therein between 1st January, 1994, and 31st October, 2000.

10. If the defendant did commission or prepare a risk assessment or safety statement in relation to working on the crawline, then this would be relevant only to the question of foreseeability of the injury. Such a documentation would tend to show only the degree to which the defendant either did or might have anticipated or avoided the injury in question. But since the defendant has undertaken not to raise this defence, then these documents cease thereafter to have any relevance. I would accordingly refuse to order discovery of this category of documents.

Category 3: All records evidencing reports, complaints and/or incidents which the Defendant was informed of either by the plaintiff and/or his fellow workers or otherwise with regard to working conditions, physical difficulties and/or repetitive strain type injuries and/or work related upper limb disorder therein between 1st January, 1994, and 31st October, 2000.

11. Here again the importance of the defendant's clarification with regard to the scope of its defence comes into play. Records concerning accidents, complaints and incidents involving the plaintiff's fellow employees could only be relevant insofar as questions of foreseeability and the extent of the employer's duty in the light of such past complaints and incidents were at issue. Again, in the light of the clarification of the scope of the defence, such records would not seem to be relevant so far as incidents involving other employees are concerned. As Henchy J. pointed out in *Bradley*, past accidents involving other employees *are* often relevant to the question of the foreseeability of the injury and the scope of the employer's duty of care may often in practice be calibrated by reference to its response to such incidents. But if, as here, the defendant does not seek to advance this particular defence, then incidents involving other employees are no longer relevant.

12. Of course, the situation is otherwise with regard to the plaintiff himself. Prior complaints made by him in relation to work practices and his employment generally are relevant, if only to show consistency and credibility in the legal sense of that term. Given the nature of the injuries allegedly sustained - which include repetitive strain injury - discovery of this category of documents so far as they concern the plaintiff is relevant and may well assist in demonstrating that a breach of duty has been made out.

13. Of course, it may be said that the plaintiff can give evidence himself of his own complaints. But the discovery of such documentation will assist him to refresh his own memory and, as already indicated, it may tend to re-inforce his own case by showing consistency and in rebutting any challenge as to credit.

14. In these circumstances, I will direct discovery of the documentation contained in this category so far as it concerns the plaintiff. I will disallow this category so far as it concerns employees *other* than the plaintiff.

Category 4: All records, accident reports, medical reports, pleadings, instructions, correspondence and orders relating to all injuries and/or complaints and/or accidents suffered with regard to working conditions, physical difficulties and/or repetitive strain type injuries and/or upper limb disorders on the crawline in the defendant's factory premises between 1st January, 1994, and 31st October, 2000.

15. Passing over for present purposes the fact that at least some of this documentation is likely to be privileged, the documents contained in this category - save those that relate to the plaintiff personally - are irrelevant for the reasons which have just been canvassed in relation to Category 3.

Category 5: All records, notes and documents relating to the Defendant's awareness of the need for the prevention and/or avoidance of physical difficulties and/or repetitive strain type injuries and/or upper limb disorder in relation to working in the defendant's factory premises between 1st January, 1994, and 31st October, 2000.

16. The documents sought here relate exclusively to the defendant's state of knowledge of the risk of injury. But such documentation would be relevant only if the issue of foreseeability was a live one. Now that the defendant has clarified that no defence will be advanced along these lines, these documents are no longer relevant. I will therefore refuse discovery in respect of this category of documents.

Category 6: All records, notes and documents relating to the identity, the working times and productivity rate of the workers engaged and of the equipment used in working on the craw-line in the defendant's factory premises between 1st January 1994 and 31st October 2000.

17. The relevance of this category of documents must be regarded as extremely doubtful, even if the defendant had remained entirely at large in its defence. In any event, even if relevant, it is hard to see how such far-reaching and potentially oppressive discovery would have been "necessary" in the sense explained by Geoghegan J. in *PJ Carroll*. It is far from obvious why the plaintiff would really need such material in the context of a routine personal injuries cases, even if those injuries had serious consequences for the plaintiff.

18. At all events, whatever the position might have been prior to the clarification of the scope of the defence, it is now absolutely plain in the wake of that clarification that documents pertaining to other employees have simply no relevance whatever to the claim.

19. I will accordingly disallow this category of discovery.

Delay

20. Neither party has canvassed the issue of delay. It is, however, somewhat troubling that what ought to be a routine personal injuries claim is still outstanding over ten years since the plaintiff left the defendant's employment in October, 2000. If the plaintiff did suffer the injuries alleged by reason of the defendant's negligence, then the delay in compensating him is unconscionable. Conversely, if the claim is not well founded, then the defendant will be forced to defend a very stale personal injuries claim many years after the incident, with all the attendant extra costs which this entails. Neither situation is satisfactory and the resulting delay is not consistent with the effective administration of justice in the manner necessarily envisaged by Article 34.1 of the Constitution or, for that matter, the obligations cast upon this State by Article 6 ECHR.

21. In my own judgment in *Donnellan v. Westport Textiles Ltd*. [2011] IEHC 11 I observed that:-

> "....quite apart from any considerations of the personal rights contained in Article 40 and *Re Haughey*-style basic fairness of procedures, the speedy and efficient dispatch of civil litigation is of necessity an inherent feature of the court's jurisdiction under Article 34.1. As I ventured to suggest in my own judgment in *O'Connor v. Neurendale Ltd*. [2010] IEHC 387, this constitutional imperative means that the courts have a jurisdiction (and, in an appropriate cases, a duty) to exercise their powers in a way which will best ensure that a litigant's right to a hearing within a reasonable time is best vouchsafed. In any event, and for good measure, the same right is guaranteed by Article 6 ECHR: see *Gilroy v. Flynn* [2004] IESC 98, [2005] 1 ILRM 290 and *McFarlane v. Ireland* [2010] ECHR 1272. One might add that this duty also

extends to protecting the public interest in ensuring the timely and effective administration of justice..."

22. Given that neither party has raised this issue and since I am not in a position to adjudicate on whether the plaintiff or the defendant (or perhaps even both) have been culpable in this regard, I propose to pass over for present purposes any delays which occurred in the past. What, perhaps, is of more immediate concern now that the matter has come to my attention is that this court should be proactive to ensure that this unsatisfactory state of affairs does not continue and that the matter is quickly brought to trial.

23. Subject to any suggestions which the parties may make, I propose therefore to list this case for mention before the judge having charge of the personal injuries list on Tuesday, 7th June, 2011. This eight week interval ought to enable both parties to ensure that the matter is ready for trial. It is earnestly to be hoped that the matter can quickly proceed to a full hearing as shortly thereafter as is reasonably possible.

Conclusions

24. In conclusion, therefore, I would allow the appeal to the extent of varying the order of the Master in the manner indicated. I would disallow categories 2, 5 and 6 in their entirety, while permitting discovery of categories 1, 3 and 4 so far as the documentation in question concerns the plaintiff alone.