Neutral Citation: [2015] IEHC 20

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 762 JR]

BETWEEN

NOEL RECRUITMENT (IRELAND) LIMITED

APPLICANT

AND

THE PERSONAL INJURIES ASSESSMENT BOARD

RESPONDENT

AND

MORO ISSAK, OTHERWISE KNOWN AS MICHAEL CHAPWANYA

NOTICE PARTY

JUDGMENT of Kearns P. delivered on the 23rd day of January, 2015

In these proceedings the applicant seeks an order of *certiorari* quashing the authorisation granted by the respondent to the notice party on the 25th July, 2013 which purported to authorise the notice party to bring proceedings against the applicant in respect of a work place accident which occurred on the 23rd October, 2009. The application has been brought in circumstances where the respondent had previously granted an authorisation to the same notice party in respect of the same accident in 2011. The issue, therefore, is whether or not the respondent is entitled to issue a second authorisation in such circumstances. Other parties named as potential defendants in both applications to the respondent have not sought to raise a similar point and the position of the respondent in relation to the present application is a neutral one, it neither objects nor consents, but specifically does not oppose the making of an order consisting of a declaration that the authorisation dated the 25th July, 2013 is invalid insofar as it authorises the notice party to bring proceedings in respect of the relevant claim against the applicant (as distinct from the other named parties).

The position of the third party is a simple one: as there is no express prohibition in the legislation which precludes a second authorisation, it must be permissible for the respondent Board to so act, as otherwise the constitutional right of access to the court of the notice party would be curtailed.

BACKGROUND

The notice party claims to have been injured whilst lifting bags of potatoes in a warehouse on the 23rd October, 2009. The accident is stated to have occurred at Keelings warehouse in Ballymun in Dublin where the notice party worked since December 2007. Both the applicant herein and Tesco Ireland Ltd. are stated at different points in the notice party's application to have been his employer on the date in question.

Using the name Michael Chapwanya, the notice party made an application dated the 30th August, 2010 for an assessment of damages under s.11 of the Personal Injuries Assessment Board Acts 2003 – 2007 (hereinafter "the Act") in respect of this alleged work place accident. The applicant was named as a respondent "employer" to the first application, as were Keelings Ltd. The applicant was notified of the first application pursuant to s.13 of the Act by notice of the respondent dated the 1st October, 2010.

The applicant did not respond to the said notice and was deemed to have consented to an assessment under s.14 of the Act. By letter dated the 16th March, 2011 the respondent notified the applicant of the decision to authorise proceedings against the applicant and stated in its letter:-

> "As this concludes our involvement in the matter, we have closed our file."

This authorisation bore a reference number EL0906201040898. However, no proceedings were issued on behalf of the notice party on foot of this authorisation and any potential proceedings on foot thereof are now statute-barred pursuant to the provisions of the Statute of Limitations Act 1957, as amended and s.50 of the Act.

The notice party, using the name Moro Issak (aka Michael Chapwanya) made a second application dated the 5th March, 2011 which was received by the respondent on the 5th October, 2011 for an assessment of damages under s.11 of the Act in respect of the same work place accident of 23rd October, 2009 which was the subject matter of the first application. The applicant was named as a respondent in the second application, as was Keelings Ltd. Additionally, however, Tesco Ireland Ltd. were also named as a respondent in this second application.

The applicant was notified of the second application pursuant to s.13 of the Act by notice from the respondent dated the 30th August, 2012. By email dated the 1st October, 2012 a representative of the applicant replied to the correspondence indicating that the applicant did not consent to the respondent assessing the matter. Thereafter by letter dated 25th July, 2011 the applicant was notified of the decision to authorise proceedings by the notice party against the applicant, notwithstanding that the purported authorisation was in respect of the same accident which was the subject matter of the first authorisation. Both authorisations now carry the same reference number.

It is beyond dispute therefore that the respondent entertained two successive applications for the assessment of damages brought by the same person in respect of the same accident, and in respect of which the respondent has issued two successive authorisations dated respectively the 16th March, 2011 and the 25th July, 2013.

The applicant has now been served with a personal injury summons dated the 30th July, 2013 in respect of a personal injuries claim brought by the notice party as plaintiff and purported to be permissible on foot of the second authorisation issued by the respondent on the 25th July, 2013.

On taking the matter up with the respondents, the applicant through their solicitor were advised that the Board was of the view that the second authorisation would not be invalid and that proceedings would be strenuously defended. However, the respondents have come into court with a modified position to the effect that any invalidity extends only to so much of the second authorisation as permitted the notice party herein to bring proceedings against the applicant.

STATUTORY FRAMEWORK
The Personal Injuries Assessment Board Act 2003 states in its preamble that it is:-

> *"An Act to enable, in certain situations, the making of assessments, without the need for legal proceedings to be brought in that behalf, of compensation for personal injuries (or both such injuries and property damage), in those situations to prohibit, in the interests of the common good, the bringing of legal proceedings unless any of the parties concerned decides not to accept the particular assessment …."*

Part 2 of the Act prescribes mandatory assessment procedures in respect of the civil action to which the Act applies.

Section 11 of the Act sets out provisions governing the making of an application by a claimant to the Personal Injuries Assessment Board (hereinafter "the Board").

Section 12 of the Act provides as follows:-

> *"(1) Unless and until an application is made to the Board under section 11 in relation to the relevant claim and then only when the bringing of those proceedings is authorised under section 14, 17, 32 or 36, rules under section 46 (3) or section 49 and subject to those sections or rules, no proceedings may be brought in respect of that claim."*

At this juncture it must be noted that the date of issue of an authorisation has significant implications for the time period within which proceedings must be commenced. As enacted, section 50 of the Act (as amended) provides:-

> *"In reckoning any period of time for the purposes of any applicable limitation period in relation to a relevant claim (including any limitation period under the Statute of Limitations 1957, section 9 (2) of the Civil Liability Act 1961, the Statute of Limitations (Amendment) Act 1991 and any international agreement or convention by which the State is bound), the period beginning on the making of an application under section 11 in relation to the claim and ending six months from the date of issue of an authorisation under, as appropriate, section 14, 17, 32 or 36, rules under section 46(3) or section 49 shall be disregarded."*

On the basis of the application made on behalf of the notice party to the Board on the 5th October, 2011 and the authorisation which issued on the 25th July, 2013, the notice party has a period of approximately six and a half months thereafter to commence proceedings against the first and third respondents named in the authorisation. If *certiorari* is granted in respect of the authorisation insofar as it relates to the first respondent and/or if the court grants a declaration that the Board acted *ultra vires* in issuing the authorisation, the notice party will be deprived of any authorisation required to pursue proceedings against the other named respondents, namely, Keelings and Tesco Ireland Ltd. and any proceedings against the first respondent (Keelings) on the basis of the authorisation issued on the 16th March, 2011 will be statute-barred. However, any consequences of that nature are avoidable in the event that the court grants only the second relief sought by the applicant, namely, a declaration that the authorisation dated the 25th July, 2013 is invalid insofar as it authorised the notice party to bring proceedings in respect of the relevant claim against the applicant herein. The decision of the Board in those circumstances to authorise the notice party to commence proceedings against the other two respondents would remain operable and effective. The Board's contention, as per its written submissions is that it could – if it wished - have issued three separate authorisations entitling the notice party to commence proceedings against each of the respondents. It was further argued on behalf of the respondent in the Board's submissions that the present applicant would in any event lack *locus standi* to have the second authorisation altogether quashed.

Section 46 of the Act is also relevant. This section enables the Board to make rules concerning the procedure to be followed in relation to the making of applications under s.11 of the Act. Specifically, s.46 (3) is relied upon by the notice party to argue that the Board may amend an authorisation or grant an additional authorisation in circumstances where a genuine oversight or mistake has occurred. The section in relevant part provides:-

> *"(3) Rules under this section shall enable the Board (subject to rules under subsection (4) to issue to a claimant a document (in this Act also referred to as an 'authorisation'), in circumstances where the claimant is not otherwise authorised under a provision of this Act to bring proceedings in respect of his or her relevant claim, in either or both of the following cases, namely –*
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> > *(a) section 18(3) or (6) applies in respect of one or more of the respondents to the relevant claim and the claimant wishes to bring proceedings in respect of that claim against that respondent or those respondents (acting, unless he, she or they are no longer of unsound mind, by a guardian or a committee),*
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> > *(b) the claimant wishes to bring proceedings in respect of his or her relevant claim against one or more persons whom he or she omitted, through a genuine oversight or ignorance of all the facts relating to the matter, to specify in his or her application under section 11 as being a person or persons liable to him or her in respect of that claim.*
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> *(4) Rules under this section shall enable the Board to defer making a decision as to whether to issue an authorisation referred to in subsection (3) unless and until the relevant claim concerned has been the subject of an assessment or, as appropriate, a fresh assessment under this Act (which rules under this section may include a requirement for (but subject to those rules permitting the Board to waive that requirement where, due to lapse of time or other circumstances, compliance with that requirement would unduly interfere with the claimant's right to bring proceedings)).*
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> *(5) An authorisation referred to in subsection (3) shall state that the claimant is authorised to, and operate to authorise*

the claimant to, bring proceedings in respect of his or her relevant claim against the person or persons concerned and such an authorisation shall be in addition to any authorisation issued under another provision of this Act to the claimant."

DISCUSSION
Dr. Forde, S.C., on behalf of the notice party, argues that, having regard to the constitutional right of access to the courts, the terms of the Act must be narrowly construed and, given that they contain no express prohibition on the issuing of a second authorisation, must be construed as permitting the respondent Board to do so in circumstances where it deems it appropriate. He placed reliance on s.46 as being indicative of such a power being available to the respondent Board.

On behalf of the applicant it was submitted that a statutory body, having been granted power to determine a particular question or application, exhausts its power once it determines that question and will be prevented from reconsidering or re-determining that application by virtue of the doctrine of functus officio. Absent an express power to do so, a statutory tribunal should not have power to revisit its own decisions.

Any other construction or interpretation of the statutory scheme would lead to absurdity. If an applicant was permitted to lodge a fresh application against a particular respondent in respect of a particular claim after his first application had already been authorised or assessed, an application could never truly be completed. It would also have the indirect effect of conferring on the respondent Board the power to effectively extend the limitation period applicable to the institution of claims for damages for personal injuries, absent any statutory power to that effect.

DECISION
The Court is quite satisfied that no restriction of the constitutional right of access to the courts has arisen on the facts of this case. On the contrary, the first authorisation granted to the notice party specifically authorised the bringing of a personal injuries claim before the courts. That right is not one exercisable forever or in all circumstances, not least because of the existence of the Statute of Limitations, the constitutionality of which has not been challenged in this application.

The Court is also satisfied that no facts have been made out in the particular circumstances of this case as might have brought the provisions of s.46 of the Act into play. There is no evidence of any "genuine oversight or ignorance of all of the facts relating to the matter" nor is there any suggestion that the claimant is not of sound mind or lacked capacity to bring forward a claim. Section 18(1) of the Act expressly provides that the Board may presume that the claimant and the respondent or respondents are each of full capacity.

The applicant has referred the Court to a number of authorities in support of its contentions as to the powers of the respondent Board. In the first instance, reliance is placed on the passage in Hogan & Morgan *Administrative Law in Ireland*, 4th Ed., where at para. 19-132 it is stated as follows:-

> *"If a public authority has statutory powers to determine some question, its decision will generally be final and irrevocable. This is not because of the operation of res judicata, but rather because the authority lacks jurisdiction to alter its original decision and has become functus officio."*

In *Re War Damage Act 1943: Re 56, Denton Road* [1952] All ER 799, the Chancery Court held that the War Damage Commission was *functus officio* once it had reached a particular determination (in that case the classification of the plaintiff's dwelling house which had been damaged by enemy action), the determination must be regarded as final and conclusive, in the absence of an express statutory power or the consent of the plaintiff to the contrary.

Similarly, in *Akewushola v. Immigration Officer, (Heathrow)* [2000] 1 WLR 2295 the Court of Appeal held (per Sedley L.J.) in relation to the question of whether an immigration tribunal could reopen its decision in order to correct an error:-

> *"The limit in point of time of this power to cure irregularities is thus the point at which a decision is reached. From then on the maximum power must be to correct accidental errors which do not substantively affect the rights of the parties or the decision arrived at. [Counsel] has drawn our attention to a passage at p.262 of the current (7th) Ed. of Wade & Forsyth on Administrative Law. Having instanced cases where powers of review are expressly conferred on administrative tribunals, the authors say:-*
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> > *'Even when such powers are not conferred, it is possible that statutory tribunals would have power, as has the High Court, to correct accidental mistakes; to set aside judgments obtained by fraud; and to review a decision where facts subsequently discovered have revealed a miscarriage of justice.'*
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> *… For my part I do not think that, slips apart a statutory tribunal – in contrast to a superior court – ordinarily possesses any inherent power to rescind or review its own decisions."*

Similar reasoning was adopted by the Court of Appeal in *Aparau v. Iceland Frozen Foods plc* [2000] 1 All ER 228. In that case the Employment Appeal Tribunal in the U.K. had remitted a matter to an industrial tribunal to reconsider a question of whether an express mobility clause in a contract of employment was enforceable. The industrial tribunal had already decided the substance of the case, and the order remitting the matter to the tribunal was limited to the issue concerning the mobility clause. The Court of Appeal decided that the Industrial Tribunal was incorrect, upon the matter being remitted, to go on to reconsider the substance of the case afresh. In effect, the court decided that the tribunal was *functus officio* in relation to all matters other than the issue which was remitted for it to decide.

The Court of Appeal indicated that the industrial tribunal was not entitled to reconsider matters already decided even had the parties consented to doing so, stating as follows:-

> *"It is a jurisdiction which falls to be exercised in accordance with statutory rules of procedure and within the framework of a system which provides for an appeal to the employment appeal tribunal. I do not think that the parties can by acquiescence or agreement enable the industrial tribunal to act outside the boundaries of the rules laid down by the statutory scheme so as effectively to clothe it with a jurisdiction which it would not otherwise possess."*

I am satisfied that the statutory scheme governing the respondent does not, either expressly or implicitly, permit the respondent to consider a second application against the same respondent in respect of the same accident once an authorisation in respect of that

accident has issued. I am fortified in reaching that conclusion having regard to the implications of any other interpretation in terms of the effect it would have on the provisions of the Statute of Limitations. The Act does not purport to extend periods fixed for bringing claims under the Statute save as expressly provided for by the Act. There can not otherwise be a rolling back of the Statute. A scenario whereby time limits prescribed by the Statute could be indefinitely deferred by repeated applications to the respondent Board is the very antithesis of the speedy resolution to claims which the respondent Board was set up to bring about.