

## THE HIGH COURT

[2014 No. 10273 P]

BETWEEN

FRANCIS HEALY

PLAINTIFF

AND

CAROLINE NOONAN

DEFENDANT

**JUDGMENT of Mr. Justice Noonan delivered on the 3rd day of April, 2017**

1. In the within motion, the defendant seeks an order dismissing the plaintiff's claim on the grounds that it is statute barred. The defendant alternatively seeks an order directing the trial of the same issue as a preliminary issue.

**Background Facts**

2. The plaintiff was involved in a road traffic accident on the 24th November, 2010, in Limerick City when he alleges that his stationary vehicle was rear-ended by the defendant's car. He claims to have suffered personal injuries as a result. The plaintiff is a taxi driver and suffers from dyslexia.

3. The plaintiff applied to the Personal Injuries Assessment Board ("the Board") for an assessment of his damages pursuant to s. 11 of the Personal Injuries Assessment Board Act 2003 ("the 2003 Act"). He made the application by way of submitting a *pro forma* document known as "Form A" prescribed by the Board for the making of such applications. The document was completed by the plaintiff himself without legal advice or assistance. In the document, the plaintiff stated that the date of the accident was the 30th September, 2010. He signed the document and thereafter in the blank space preceded by the word "Date:" he wrote "Friday". The Form A document completed by the plaintiff was accompanied by a report from his general medical practitioner who completed another document prescribed by the Board known as "Form B" which is a template medical report.

4. In this document, the plaintiff's G.P., in the box entitled "Date of accident" wrote: "our records – 24/11/10 his records – 30/09/10". Both of these documents, which were received by the Board, were date stamped the 12th November, 2012, by the Board. By letter dated the 14th November, 2012, the Board wrote to the plaintiff in the following terms:

"Dear Mr. Healy

In order to complete your claim we require additional information so that the time can stop running against the named respondent. You should be aware that the law only allows a limited time within which you can bring your personal injury claim (normally two years from the date of the accident), so it is important that you give this your urgent attention.

We are unable to acknowledge your claim as complete until we receive the following:

☐ Form A is incomplete. We return it for full completion and to assist we have highlighted the outstanding queries.

☐ As there is a discrepancy between the date of the incident on the Form A and that on the medical report card please confirm the correct date of incident....

Yours etc."

5. In response to this letter, the plaintiff re-submitted precisely the same Form A as previously submitted with the sole change that in the box entitled "Date of injury/accident" he struck through the previous date "30/09/2010" and substituted above it "24/11/10".

6. He returned the amended Form A to the Board who date stamped it the 20th November, 2012. At this juncture, the limitation period was due to expire four days later on 24th November, 2012.

7. By letter of the 3rd December, 2012, containing the same *pro forma* first paragraph as the earlier letter, the Board wrote:

"we are unable to acknowledge your claim as complete until we receive the following:

☐ Form A is incomplete. We return it for full completion and to assist we have highlighted the outstanding queries. Kindly have the LAST page dated correctly ..."

8. The emphasised sentence was a new addition from the previous letter. This letter was written after the expiry of the limitation period.

9. Ultimately, an authorisation was issued by the Board on the 17th June, 2014, which stated that the date of the relevant claim was "30/09/2010". Thereafter a plenary summons was issued on behalf of the plaintiff on the 5th December, 2014, which also stated erroneously that the date of the accident was 30th September, 2010. There is now no dispute about the date of the accident. The defendant contends that the accident occurred on 24th November, 2010, and the plaintiff agrees.

**The Arguments**

10. The defendant contends for two straightforward propositions. First, the defendant says that under the relevant legislation to which I shall refer, time does not stop running against the plaintiff for the purposes of the Statute of Limitations until an application is made to the Board. Such an application is only made when it has been received in a form specified in relevant Regulations and such receipt has been acknowledged in writing by the Board. In the present case, the correctly completed form was not received by the Board and acknowledged in writing by it as having been received within the limitation period and thus the claim is statute-barred.

11. Secondly, the defendant contends that the authorisation issued in this case is valid only in respect of an accident that occurred on 30th September, 2010, and does not authorise the institution of any proceedings relating to an accident that occurred on 24th

November, 2010, by consensus the correct date.

12. The plaintiff by reference to the authorities to which I shall refer argued that an appropriately completed form as required by the rules was submitted within time, thus the application was made within time and the statute stopped on the date of receipt of that application being the 20th November 2010. On the authorisation point, the plaintiff argues that this is clearly a simple error by the Board in circumstances where it had originally been given the wrong date, this was corrected by the plaintiff but the authorisation was incorrectly issued by the Board without taking the later date into account. That can be amended simply by the issue of a fresh authorisation if necessary. The reference in the personal injuries summons to the earlier date is simply a repetition of the previous error and can be amended with no prejudice to the defendant.

### **The Legislation**

13. Section 11 of the 2003 Act, insofar as relevant to this case, provides as follows:

"11. – (1) A claimant shall make an application under this section to the Board for an assessment to be made under s. 20 of his or her relevant claim.

(2) That application shall be in the form specified by rules under s. 46 and be accompanied by such documents as may be so specified. ..."

14. Section 50 of the 2003 Act provides:

"50. – In reckoning any period of time for the purposes of any limitation period in relation to a relevant claim specified by the Statute of Limitations 1957 or the Statute of Limitations (Amendment) Act 1991, the period beginning on the making of an application under section 11 in relation to the claim and ending 6 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."

15. The relevant rules were enacted by the Personal Injuries Assessment Board Rules 2004 (S.I. 219 of 2004) ("the Rules"). Rule 3 insofar as relevant provides as follows:

"3. (1) an application under s. 11 of the Act shall –

(a) be made in writing or by electronic mail,

(b) contain such information as may from time to time be specified by the Board, and

(c) be accompanied by the following documents ...."

16. Those documents include a pro forma medical report. Rule 3 (2) also requires that the application be accompanied by such charge as may be imposed by the Board.

17. Rule 3 (3) provides as follows:

"(3) In relation to a relevant claim, the date of –

(a) the receipt by the Board of an application under s. 11 of the Act for the purposes of s. 13 of that Act, and

(b) the making of an application under s. 11 of the Act, for the purposes of s. 50 of that Act,

shall be the date on which the application in a form specified in sub rule (1) (a), containing the information specified in sub rule (1) (b) is acknowledged in writing as having been received by the Board."

### **Discussion**

18. On their face, the Rules confer what appear to be potentially quite draconian powers on the Board insofar as the computation of the limitation period in any particular claim is concerned. The Rules appear to suggest that a failure to comply with the Board's requirements in respect of any of the matters within its competence under the Rules can result in a plaintiff losing his or her right to bring a claim. Thus the Board has the power to require a claimant to provide any information it specifies and any document it or its staff considers relevant to the claim. Whilst these powers are discretionary under the Rules, they are not unfettered and must be exercised in a manner conforming to the requirements of constitutional justice.

19. In *Kiernan v. J. Brunkard Electrical Ltd* [2011] IEHC 448, the plaintiff was involved in an accident on the 11th June, 2007. On the 27th May, 2009, the plaintiff's solicitors faxed an application form, copy medical report and copy cheque to the Board. On the same date, the original documents were sent by registered post. The Board subsequently wrote to the plaintiff's solicitors confirming that the application was completed on the 29th May, 2009, presumably being the date when the originals were received. One of the central issues in the case was whether the application, for the purposes of the Statute of Limitations, was made on the 27th May, 2009, or the 29th May, 2009. In dealing with this point, White J. said:

#### **"MAKING OF CLAIM**

Section 50 states 'the period begins in the making of an Application under Section 11 in relation to the claim'.

The rules state 'the making of an application under Section 11 of the Act, for the purposes of section 50 of that Act, shall be the date on which the application in a form specified in sub rule(1)(a) containing the information specified in sub rule(1)(b) is acknowledged in writing as having been received by the Board'.

In my opinion there is a conflict between the two. In construing when the claim was made the Court must have regard to the Act in preference to the Rules made pursuant to the Act. This is clear from the Case Law precedent.

In *Frascati Estates Limited V Marie Walker* [1975] IR P177 at Page 187 Henchy J in the Supreme Court Judgment stated

'Much of the necessary procedure is laid down by regulations made pursuant to the Act, but these I ignore in determining the scope of the Act. As Lord Diplock said in the context of another Act 'It is legitimate to use the Act as an aid in construction of the regulations. To do the converse is to put the cart before the horse' *Lawson -v- Fox* [1974] A.C. 803, 809.

Examining the ordinary meaning of 'making of an Application' the essential components were in place after the fax had been successfully delivered on the 27th May, 2007. The Board had a copy Application Form and a copy of the Medical Report. The payment was not made but a copy of the cheque was in the Board's possession and the original cheque was sent by registered post on the 27th May, 2009 for the appropriate fee.

The Court comes to the conclusion the appropriate date in respect of the making of a claim for the purposes of the Statute was the 27th May, 2009."

20. In *Figueredo v. McKiernan* [2008] IEHC 368, the plaintiff was involved in a road traffic accident. The relevant limitation period expired on the 30th March, 2007. The plaintiff's solicitor posted the relevant documents to the Board by prepaid registered post on the 29th March, 2007. The evidence did not establish when the Board received those documents. The Board however issued an acknowledgment in writing on receipt of the documents which was dated the 2nd April, 2007, thus outside the limitation period. The defendant accordingly contended that the plaintiff's claim was statute barred. Dealing with this point, Dunne J. said (at p.6):

"The defendant however, contends that having regard to the provisions of Rule 3, sub-rule 3 of the Personal Injuries Assessment Board Rules 2004, the date of making of the application under s. 11 is 2nd April, 2007 being the date on which the application was acknowledged in writing as having been received by the Board.

If the contention on behalf of the defendant is correct, it would appear that the effect of Rule 3(3) of S.I. No. 219 of 2004 is that a plaintiff could be statute barred in circumstances entirely outside their control. Clearly, such a consideration could result in significant hardship for a plaintiff. Whilst one might be critical of a plaintiff for leaving the issue of proceedings or, in the case of personal injuries applications the making of an application under s. 11 until the last moment, nonetheless the Statute of Limitations 1957 has fixed a specific period within which to commence one's proceedings and it seems somewhat harsh, to say the least, that having taken every step that one can take in order to commence proceedings, that one could become statute barred by the actions of a third party over whom one has no control, in this case, the Personal Injuries Assessment Board."

21. Dunne J. went on to say (at p.10):

"I find it difficult to accept the argument of the defendant herein, that the plaintiff in these proceedings is statute barred by reason of the provisions of Rule 3, sub-rule 3 of S.I. No. 219 of 2004, in circumstances where the Oireachtas has fixed by statute the limitation period at 30th March, 2007. Having regard to the provisions of s. 7 of the Civil Liability and Courts Act 2004 and s. 26 of the Interpretation Act 2005, I cannot see how a plaintiff could find themselves statute barred in circumstances where they have made the necessary application to P.I.A.B. under s. 11 of the Personal Injuries Assessment Board Act 2003, within time, by post, in circumstances where in the ordinary course of post, the application would have been in time. There is nothing before me to indicate that the application under s. 11 was not in fact delivered in the ordinary course of post. I do not see how the administrative act of affixing a date stamp on the application by P.I.A.B. can oust the statutory provisions in relation to the limitation period.

In the circumstances, I am not satisfied that the plaintiff herein is statute barred."

22. Accordingly, as can be seen from these two cases, the court was satisfied that in each case, the failure to comply strictly with the letter of the Rules which on their face appeared to suggest that the relevant applications had not been made within time, did not in fact prevent the court from considering whether the applications had been made within time for the purposes of s. 50 of the 2003 Act.

23. There are clearly good reasons why this should be so. A claimant's constitutional right of access to the court cannot in my view depend solely on the administrative act of the Board in determining when it considers that an application is complete no matter how arbitrary, capricious or unreasonable that decision may be. Were it otherwise, the Rules would clearly be of doubtful constitutional validity and both s. 50 of the 2003 Act and the Rules must be construed in a manner that is consistent with the Constitution. The cases to which I have referred appear to me to implicitly recognise that underlying principle and suggest that those aspects of the Rules to which I have referred are directory rather than mandatory in nature.

24. In the present case, the Form A originally submitted by the plaintiff was received by the Board on the 12th November, 2012. It contained two errors, the first relating to the date of the accident and the second being the failure to properly date the form. However, the Board wrote to the plaintiff on the 14th of November, 2012, drawing his attention to the first error but not the second. As he had been requested to do, the plaintiff then corrected the first error, re-submitted the form and it was received on the 20th November, 2012, by the Board. The Board then proceeded, outside the limitation period, to draw the plaintiff's attention to the second error which of course it could have done when it first wrote to him. Quite apart from the fact that it would be manifestly unjust if the plaintiff were now to find himself statute barred as a result of a failure on the part of the Board to draw his attention to a flaw in the form of which they ought to have been aware from the outset, I am satisfied that on a correct analysis of s. 50 of the 2003 Act, this application was made for the purposes of that section on the 20th of November, 2012.

25. As regards the authorisation issued by the Board bearing the incorrect accident date, this was a manifest error on the part of the Board, the plaintiff having by then furnished the correct date. Here again, I cannot see on what basis it could be said that the Board's error somehow negates the plaintiff's summons when it can readily be remedied by the issue, if necessary, of an authorisation duly amended to provide for the correct date.

26. It follows therefore that the plaintiff's claim is not statute barred and this motion must be dismissed.