

THE HIGH COURT**[2006 No. 1729 P.]****BETWEEN****JOHN MOLLOY****PLAINTIFF****AND****ALBERT REID****DEFENDANT****JUDGMENT of Mr Justice Ryan delivered the 18th January, 2013**

The issue on this motion is whether the plaintiffs claim is statute barred. A plaintiff wishing to institute proceedings for personal injury must seek authorisation from the Personal Injuries Assessment Board. Time for the purpose of limitation is suspended while the application is considered and for a further period of six months from the date of issue of the authorisation. The point that arises is the meaning of the date of issue of an authorisation. Is it the date on which the document is posted, as the defendant and applicant contends, or is it the date when the letter containing the notice of authorisation would be delivered in the ordinary course of post? The difference in time is actually no more than one day but in the circumstances of this case that is the critical period which determines whether the claim falls under the statute of limitations or survives. The facts are not in dispute and the matter is entirely one of statutory interpretation as to the meaning to be given to the word "issued" in s. 50 of the PIAB Act. By order of this Court, made on the 20th December, 2010, the preliminary issue as to the statute of limitations was directed.

It may be helpful to tabulate the relevant dates.

15th June 2002:

this is the date on which the plaintiff alleges that he suffered a significant injury. The relevant limitation period was three years and in the normal way that would have expired on the 14th June 2005.

22nd July 2004:

the Personal Injuries Assessment Board Act 2003, came into effect- pursuant to Statutory Instrument 438/2004.

17th May 2005:

the Personal Injuries Assessment Board received the plaintiffs completed application for authorisation under the Act.

22nd September 2005:

the Board's authorisation was posted to the plaintiff by registered post. Under s. 50 the plaintiff had six months from the issue of the authorisation plus such unexpired time as there was when he made his application- strictly, from the date of receipt by the Board of his application for authorisation. In fact, there was a period of 29 days that was still unexpired of the original limitation period.

19th April 2006:

this was the last day for issuing proceedings, if time re-started on the 22nd September, 2005 when the Board posted its authorisation to the plaintiff.

20th April 2006:

this was the last day for issuing proceedings if the time re-started under s. 50 following the expiration of six months from the date when the authorisation issued to the plaintiff, if that means that it did so on the day when in the ordinary course of post, the authorisation would have been delivered to the plaintiff's address.

20th April 2006:

personal injuries summons issued.

An unfortunate complication which does not have to be addressed on this motion is that the plaintiff mislaid the authorisation when it arrived and when the Board furnished a copy authorisation by letter of the 26th October, 2005, it was erroneously stated that the time limit would continue to be suspended for six months from the 26th October, 2005, i.e. the date of the issue of the copy authorisation which would have given until the 26th April, 2006.

The question can be simply stated in light of the above dates. If the date of issue of the authorisation as provided by s. 50 is considered to be the 22nd September, 2005, when it was actually put into the post, the plaintiff's claim is statute barred. If the relevant date is the following day, the 23rd September, when it would have arrived in the ordinary course of post at the plaintiff's address, the claim is not statute barred. Counsel's arguments on this motion focused on a number of statutory provisions which it is necessary to set out. Section 50 of the Personal Injuries Assessment Board Act, 2003 is as follows:-

"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 six months from the date of issue of an authorisation under, as appropriate, ss. 14, 17, 32 or 36, rules under s. 46(3) or s. 49 shall be disregarded."

The relevant reference in this case is to s. 14, which applies if the respondent does not consent to an assessment being made by the Board. Section 14(2) provides:

"If a respondent states in writing, in response to a notice under s. 13, within the period specified in it, that he or she does not consent to an assessment being made under s. 20 of the claimant's relevant claim, it shall be the duty of the Board, as soon as may be after that statement is received by it, to issue to the claimant a document that contains the statement and operates to have the effect mentioned in subsection (4)."

Subsection (4) gives the claimant authorisation to bring proceedings.

Section 79(1) provides:

"(1) A notice or other document that is required to be served on or given or issued to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given or issued to the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address."

We are concerned in this motion with s. 79(1)(c). The authorisation was sent to the plaintiff by registered post on the 22nd September, 2005.

The Interpretation Act that was in force at the relevant time is the 1937 Act, of which s. 18 is as follows:-

"Where an Act of the Oireachtas or an instrument made wholly or partly under any such Act authorises or requires a document to be served by post, whether the word 'serve' or any of the words 'give', 'deliver', or 'send', or any other word is used, then, unless the contrary intention appears, the service of such document may be effected by properly addressing, prepaying (where requisite), and posting a letter containing such document, and in such case the service of such document shall, unless the contrary is proved, be deemed to have been effected at the time at which such letter would be delivered in the ordinary course of post."

Counsel for the defendant moving party, Mr. Michael Delaney S.C., submits that "issued" in s. 50, means the date of posting and not the date of presumed receipt. The provisions of s. 79 are specific to the 2003 Act and do not require to be interpreted in accordance with s. 18 of the 1937 Interpretation Act. Indeed, this specific provision that appears in s. 79 excludes the 1937 Interpretation. Moreover, that fact that the 2003 Act requires registered post, whereas the 1937 provision in s. 18, refers to ordinary post, by necessary implication --since it does not mention registered post-- confirms this interpretation. Mr. Mark Harty S.C., for the plaintiff, relies on s. 18 as being the applicable provision. There is nothing as he submits to exclude it by necessary provision or implication or interpretation and in those circumstances it is of general application and must be read as applied. The fact that s. 79 provides for registered post rather than ordinary post is, he argues, of no materiality to the issue of interpretation.

I was referred to a number of cases, but only one refers to the question that arises here and that is by way of *obiter* comment. In *Figueredo v. McKiernan* [2008] IEHC 368, Dunne J. decided that the commencement of the period under s. 50 was the date of receipt by the Board of the application, which would in the normal way be the date on which the applicant's letter would have been expected to arrive in the ordinary course of post. She therefore rejected as being applicable rules made by the Board providing for a later date when the Board had got around to acknowledging receipt of the application. That decision provided certainty as to when an application was received by the Board and accordingly identified the starting point of the suspension of time running for the purpose of the statute of limitations.

In *Fogarty v. McKeogh Brothers (Ballina) Ltd* [2010] 41.R 374, Clarke had to consider a different question under s. 50 and one closer to the point that now arises, but not the same. The learned judge rejected the Board's contention that it was the actual date on which the authorisation was generated or produced internally that was the date on which it was issued and held that the earliest time at which an authorisation could be considered to have been issued was when it was posted. In arriving at this decision, Clarke J. contrasted the words in s. 14 "issue to" the applicant and the provision ins. 50 which merely referred to "issue". He did not of course decide that the day of posting of authorisation was actually the date of issue because that was unnecessary in the circumstances of the case, as he decided. It was sufficient to rule out the day on which it was produced in favour of a later time. The judge said at para. 13:

Firstly, it seems to me to be important to note that s. 50 does not speak of the issue of an authorisation *simpliciter*. Rather the section speaks of an authorisation under one of the relevant sections (in the circumstances of this case under s. 14). Section 14 refers to an authorisation being issued to a claimant and in those circumstances it seems to me that it is necessary to construe s. 50 in the light of s. 14 of the Act of 2003. I have come to the view that counsel for the plaintiff was correct when he argued that there is a distinction between documents which can be said to have simply been issued, such as, for example, proceedings issued from the Central Office of the High Court, on the one hand, and documents which can only properly be said to have been issued when they have been directed towards an appropriate recipient. Section 14, in my view, makes clear that the term "issue" in the sense in which it is used both in that section and by necessary implication in s. 50, is of the latter type. A document containing an authorisation under s.14, can only be said to have been issued when it is issued to the claimant concerned. There may be some room for legitimate debate as to whether that event occurs when the document is actually sent to the claimant or whether that event occurs when the document is received by the claimant. It is, however, unnecessary to resolve that question on the facts of this case for in either event the plaintiff is in time. Without deciding the matter, I am inclined to the former.

Mr Delaney was happy to rely on the learned judge's last *obiter* sentence in this passage.

Another case that was cited was *Knight v Nicholls and anor* [2004] 1 WLR 1653, a decision of the Court of Appeal in England in the circumstances of a challenge to the conduct of a Returning Officer in his handling of postal votes. The court in that case held that the statutory requirement of sending postal votes imported some element of consideration of receipt of the votes but rejected an interpretation that the Returning Officer was obliged to ensure actual delivery to the voter.

As I mentioned above, none of these cases is directly in point.

Obviously, the 2003 Act does not answer the question that arises in this case directly. There is no express provision as to whether the time begins to run on the date when the document is sent or when it would be received in the ordinary course of registered post. Section 79(1) includes as one mode of issuing a document sending it by post in a pre-paid registered letter.

It seems to me that there is nothing ins. 79(1) of the 2003 Act, to exclude the operation of s. 18 of the Interpretation Act 1937. The fact that it is registered post that is required under para. (c) of the subsection is not sufficient. The terms of the paragraph refer to "sending it by post in a pre-paid registered letter". This provision is expressed in precise terms as sending by post in a pre-paid registered letter. Registration does not take the matter out of the category of sending by post but merely is a particular mode of sending something by post. If this is correct, it is the answer to the question that arises in the case. Section 18 of the Interpretation Act refers to a requirement or an authorisation that a document be served by post and that is precisely the expression that is used in section 79(1)(c). It follows accordingly, that "the service of such document shall, unless the contrary is proved, be deemed to have been effected at the time at which such letter would be delivered in the ordinary course of post"- section 18.

My interpretation is in a nutshell as follows. Time is reckoned from the date of issue of an authorisation - s. 50 of the PIAB Act. The obligation on the Board in the circumstances of this case is under s. 14, which requires at subs. (2) the Board "to issue to the claimant a document". A document that is required to be issued under the Act may be issued by sending it by post in a pre-paid registered letter- section 79(1)(c). That is what happened. Section 18 of the Interpretation Act 1937, provides that where an Act of the Oireachtas authorises or requires a document to be served by post, which is the case under s. 79(1)(c), service is deemed to be effected at the time when the letter would be delivered in the ordinary course of post. If that happens to be by post in a pre-paid registered letter, the provision as to the ordinary course of post is not displaced by the fact of sending by post in a registered letter. There is simply no warrant for making that exclusion in provisions which are otherwise clear and unambiguous.

My conclusion is that the relevant date is that of presumed receipt in ordinary course of post and not on the date when it is actually put into the post. It follows therefore, that the defendant's motion must fail and the case is not statute barred.

This motion is accordingly dismissed.