

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**2007 1395 JR**

**BETWEEN**

**JOHN AHER**

**APPLICANT**

**AND**

**THE CRIMINAL INJURIES COMPENSATION TRIBUNAL FOR PERSONAL INJURIES CRIMINALLY INFLICTED ON PRISON OFFICERS**

**RESPONDENT**

**JUDGMENT of Mr. Justice Garrett Sheehan delivered on the 27th day of April, 2009**

**Introduction**

1. In these proceedings the applicant seeks an order of *certiorari* quashing the decision of the respondent ("the Tribunal") made on the 30th April, 2007, refusing to grant the applicant compensation pursuant to the Scheme of Compensation for Personal Injuries Criminally Inflicted on Prison Officers ("the scheme") in relation to injuries which the applicant claimed had resulted from a violent incident involving a prisoner under escort in Middleton Garda Station on the 16th May, 2002. The applicant contends that there was a clear breach of fair procedures by the Tribunal in arriving at its decision in refusing to compensate him.

**Background**

2. The applicant is a prison officer and has worked as a prison officer for almost 30 years.

3. On the 16th May, 2002, he was detailed with two other prison officers to bring a number of prisoners from Cork Prison to Middleton District Court. The prisoners were detained in holding cells in Middleton Garda Station until they were called to appear before the Middleton District Court. On this particular occasion a prisoner made an attempt to escape when the door of the holding cell was opened by the prison officers in order to handcuff him. The applicant claimed that he suffered injuries to his back and neck while attempting to stop the prisoner escaping.

4. On the 6th June, 2002, the applicant applied to the respondent for compensation for the injuries inflicted on him by the prisoner pursuant to the provisions of the scheme. On the 30 April, 2007, the Tribunal made a determination against the applicant refusing to compensate him on the following three grounds:-

1. That the applicant had not submitted an up to date medical report and had had plenty of time to do so;
2. That the respondent was not satisfied that a violent struggle had taken place given the incident went unnoticed by gardai;
3. That the respondent was not satisfied that the applicant had followed correct procedures relating to the handcuffing of prisoners.

5. The applicant was granted leave for judicial review seeking, inter alia, an order of *certiorari* quashing the said decision of the 25th October, 2007, by Peart J., who granted leave to the applicant to apply for judicial review on the following grounds:-

1. That the respondent breached the principles of natural and constitutional justice and/or fairness of procedures in irrationally refusing to compensate the applicant in circumstances where the literal facts at issue, as verified by independent witnesses, contradict the reasons given by the respondent for refusing the applicant's claim for compensation.
2. That the reason given by the respondent for refusing the applicant's claim for compensation by reason of the fact that he was not satisfied that a violent struggle took place and went unnoticed by gardai is irrational on account of the fact that the prisoner was convicted of assaulting the applicant and sentenced to a term of imprisonment in respect of the said offence, and by reason of the fact that the prisoner was disciplined for the assault at Cork Prison by being denied privileges.
3. That the reason given by the respondent for refusing the applicant's claim for compensation by reason of the fact that he did not submit an up to date medical report is irrational on the basis that the respondent received a full booklet of medical reports relating the applicant's condition and, furthermore, in circumstances where the applicant voluntarily offered to undergo a medical examination by a consultant of the respondent's own choosing.
4. That the reason given by the respondent for refusing the applicant's claim for compensation by reason of the fact that the applicant did not follow proper procedures in relation to the handcuffing of prisoners is irrational given the fact that the applicant is an experienced prison officer working since 1979, and that he followed the official guidelines for the escort of prisoners which was verified by independent witnesses, being his prison officer colleagues on duty at the time of the attempted escape.

6. The background to this matter is that the applicant submitted a claim for compensation under the scheme through his solicitor. The application was reviewed by the secretary to the respondent who carried out some inquiries, entered into correspondence with the applicant's solicitor and then submitted a report and file to the Tribunal member selected to consider the application.

7. In his replying affidavit filed in these proceedings Mr. David Hickey, secretary to the Tribunal exhibits the report which he prepared for the Tribunal member.

8. In the course of this report, Mr. Hickey stated with reference to a report of the applicant's doctor:-

"This is the only medical report submitted to the Tribunal in relation to the applicant's physical injuries as a result of the alleged incident on the 16th May, 2002."

The respondent agrees that this was an error. This error, however, is then repeated in the judgment of the Tribunal member who states:-

"I have carefully considered the medical report of Dr. Brian Mulcahy. I do not think it appropriate to request an up to date medical report for the reasons outlined below. The applicant has had ample time to submit an up to date medical report. Therefore under Article 12 of the Scheme of Compensation, I am rejecting the applicant's claim."

9. Further on in the report, the secretary Mr. Hickey states:-

"It is alleged that a vicious fight took place when the prisoner attempted to escape. The Gardaí were unaware that a vicious fight was taking place."

10. The Tribunal member in his report states:-

"I have carefully considered the submissions of the solicitor for the applicant.

I am not satisfied that a violent struggle took place given that the incident went unnoticed by the Gardaí. For this reason I am also rejecting the applicant's claim."

11. Mr. Hickey also stated in his report:-

"On the 10th November, 2004, the prisoner authorities stated that:-

"It would be normal for prison staff to stand in the door of a cell and then handcuff the prisoner.

The applicant's solicitor disagrees with the above and is of the view the applicant adopted the correct procedure. However, no professional evidence has been introduced to support this contention."

12. The Tribunal member, in his report, states:-

"I am also not satisfied that the applicant followed correct procedures relating to the handcuffing of prisoners while on escort duty. I am also rejecting the applicant's claim under Article 14 of the scheme of compensation."

13. In the course of his replying submissions, Mr. Ferriter, counsel for the respondent, accepted that it was difficult to stand over the Tribunal's finding that no violent struggle had ensued in light of the fact that the prisoner was subsequently charged with an offence in relation to this matter and sentenced to four months imprisonment. However, he went on to say that even if the applicant was correct in his assertion that this particular finding could not be sustained by the evidence, the applicant was still faced with the position that he did not fully cooperate in respect of the medical evidence, and further, that while the material before the Tribunal relating to the correct handcuffing procedures to be deployed permitted of a different view the Tribunal member was nevertheless entitled to come to the conclusion that he did on the material that was before him.

14. He submitted that the applicant was entitled to a full hearing on appeal under the scheme, and this was the appropriate route for the applicant to take. In this regard, he relied on the *ex tempore* judgment of Finlay C.J. in *Robert Garvan v. Criminal Injuries Tribunal* delivered on the 20th July, 1993, in the course of which the then Chief Justice stated:-

"I would accept as a general contention that having regard to the informal nature of this administrative process and the administrative Tribunal that is there and the specific method by which it is dealt with, that there should be very few circumstances under which the Court should intervene by way of judicial review except to correct the final decision from the Tribunal such as occurred in the *Creedon* case [*Creedon v. Dublin Corporation* [1984] I.R. 428] in this Court."

15. He also relied on the decision of the Supreme Court in *Stefan v. Minister for Justice* [2001] 4 I.R. 203, in which Denham J. stated:-

"Once it is determined that an order of *certiorari* may be granted, the court retains a discretion in all the circumstances of the case as to whether an order of *certiorari* should issue. In considering all the circumstances, matters including the existence of an alternative remedy, the conduct of the applicant, the merits of the application, the consequences to the applicant if an order of *certiorari* is not granted and the degree of fairness of the procedures, should be weighed by the court in determining whether *certiorari* is the appropriate remedy to attain such a result."

16. Mr. Ferriter went on to submit that before the court could consider granting relief to the applicant, it had to be satisfied that the decision of the Tribunal flew in the face of fundamental reason and common sense in respect of each of the three grounds of refusal. He further submitted that even if the court concluded that this was a case where *certiorari* lay, it should exercise its discretion in favour of the respondent.

17. In his second affidavit, Mr. David Hickey avers at para. 3 that the decision of the Tribunal member was a written decision which was made on the basis of the material in the report and the file sent to him. This statement which appears to be intended to convey to the court that the Tribunal member considered the file given to him is not evidence that he did, in fact, consider all documents put before him and accordingly, no weight can be attached to this statement.

18. In considering the finding of the Tribunal member in this case and considering them in the light of the report of the secretary, I am left with the distinct impression that the Tribunal member did not give the case adequate and proper consideration and that his judgment simply amounts to an adoption of the implicit suggestions contained in the report of the secretary. How else is one to explain the omission of any reference to the second medical report of Dr. Mulcahy by the secretary and the Tribunal member? Is this simply co-incidence? I do not accept that it is.

19. The Tribunal finding which the respondent agrees is difficult to sustain, namely that the member was not satisfied that a vicious struggle took place because it went unnoticed by the gardai mirrors the secretary's report. The finding in relation to the applicant's failure to employ proper handcuffing procedures also echoes the secretary's report. As I am not satisfied that the Tribunal gave proper consideration to the material before it, the fact that there may have been sufficient material on some grounds to enable the Tribunal to properly refuse the application does not get over this problem. I find that there was a fundamental want of fair procedures accorded to the applicant, and that this is a case in which an order of *certiorari* may be granted.

20. In considering how the court should exercise its discretion in this case in light of the judgment of Denham J. in *Stefan v. Minister for Justice* [2001] 4 I.R. 203, it seems to me that the failure to afford fair procedures to the applicant far outweighs any of the factors suggested by the respondent as grounds for exercising the courts discretion in its favour, and in particular the suggestion that the applicant's right of appeal ought to weigh heavily in favour of the respondent. Accordingly, I hold that in the particular circumstances of this case the interests of justice require that I grant the applicant the relief sought.