

THE HIGH COURT

[2005 No. 534 J.R.]

BETWEEN

CATHERINE BURKE

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Richard Humphreys delivered on the 12th day of October, 2015

1. This *ex parte* application for leave to apply for judicial review relates to the refusal by the Respondent Minister of an application by the Applicant, Garda Burke, for authorisation to seek compensation under the Garda Síochána (Compensation) Act 1941.

2. The first question to be asked on an *ex parte* leave application is whether the application is in time. The date of the final letter of decision was 25th June, 2014, O. 84 r, 21(1) of the Rules of the Superior Courts provides that in the case of an order or "proceeding", the time should run from the date of that proceeding as opposed to the date it was received by the applicant. I do not consider that an administrative decision such as this is a "proceeding" and, in any event, papers were filed in the Central Office on 24th September, 2015, which is therefore within the three month period. I would be of the view that filing papers in the Central Office of the High Court is sufficient to constitute the making of an application to the Court for the purposes of stopping the clock (see *KSK Enterprises Ltd. v. An Bord Pleanála* [1994] 2 I.R. 128; *McK. v. A.F.* [2005] 2 I.R. 163). A practice has developed whereby parties seek to mention such cases to the duty judge during vacation periods, and the applications are then frequently adjourned back to the *ex parte* list at the start of term. This is essentially a "belt and braces" approach, but I would be of the view that the act of filing is the critical date so far as time is concerned. This application is made within time.

3. Secondly, I am concerned, on reading the papers, that Garda Burke suffered her injury on 26th April, 2007 and it has taken until 25th June, 2015 for the consideration of the application under the Garda Síochána (Compensation) Act 1941 to be finalised. While I am only at this stage dealing with a leave application, the extent of the delay (which counsel has suggested may not be entirely exceptional in terms of practice under the Act) is certainly something that troubles me greatly. Of course for the purposes of a leave application I am not expressing any view as to the responsibility for that delay in this case. Fair procedures would suggest that the determination of an issue as to whether an injury was minor would take place within a period measured in months rather than years. That this process took so long that the time involved took the applicant beyond the limitation period for a personal injury action (which presumably would be the alternative remedy available to an applicant in the event of a refusal) may have significant implications for how the Minister must approach the question of whether to give or not to give a permission under the Act in such a case. That the result of such a process is that, more than 8 years on from her injury, an applicant receives a decision that such injury is minor must only intensify those concerns.

4. Thirdly on the question of whether the injury was properly found to be minor, I have had opened to me the judgment of Geoghegan J. in *Merrigan v. Minister for Justice* (Unreported, 28th January, 1998) where he stated that if a member "*sustained an injury of a kind which would otherwise be compensatable but which cleared up after say two months with no ill-effects such an injury would be considered to be of a minor character*". That statement, however, refers to a two month period as being the period for the clearing-up of the injury rather than the period during which the member was unable to work. I do not read Geoghegan J. as having addressed the question of an injury which gives rise to a complete absence from work. It would seem to me in terms of the ordinary use of language that an injury giving rise to a complete absence from work for a number of weeks could not be described as minor, even if that period of absence was less than eight weeks.

5. On that basis, and having regard to the submissions made on behalf of the applicant by Mr. Joseph O'Connor B.L., there is an arguable case for relief and I grant leave to apply for judicial review for the relief set out in para. (d) of the statement on the grounds set out in para. (e) of the statement. I reserve the costs. Service on the Minister is to be effected by service on the Chief State Solicitor's office.