Neutral Citation Number: [2007] IEHC 381

THE HIGH COURT

[2006 1305 J.R.]

BETWEEN

OLIVER HAYDE

APPLICANT

V.

RESIDENTIAL INSTITUTIONS REDRESS BOARD

RESPONDENT

Judgment delivered by Mr. Justice McCarthy on the 3rd October, 2007.

1. This is an application by way of judicial review by Mr. Hayde of a decision of the Residential Institutions Redress Board, to refuse an extension of time to him, for his application on the merits to that Board, pursuant to the provisions of article of Section 8 of that Act.

2. We know that the time period prescribed for applications under the Act is three years from the establishment day as prescribed by the Minster, and we know also, and the record shows, in or about six months or perhaps slightly more, subsequent to the expiry of the three year period for applications contemplated by the Act, an application was made by the applicant which meant that it was placed in the hands of the Board as to the exercise of the discretion vested in them by the Section 8(2) of the Act. Section 8(3) of the Act also contemplates an extension of the period of time for applications in respect of persons who were of unsound mind but he did not fall into that category.

3. Mr. Justice Peart made an order on the 20th of November, 2006 affording liberty to the applicant to seek judicial review on all grounds in his statement of grounds and thereafter, a notice of motion was duly issued for the 12th of December, 2006, seeking that relief. It comes before me today and it came before me yesterday for hearing. The relief which is set out in the statement of grounds and is as follows;

> (1) in determining whether to exercise its discretion under Section 8(2) of the Residential Institutions Redress Act, 2002, or in exercising that discretion the respondent is obliged by law and has a duty under a Constitution to give reasons for its decision.
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> (2) the respondent is obliged to give reasons for its determination that the grounds proffered by the applicant in his application pursuant to Section 8(2) do not amount to exceptional circumstances.
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> (3) the respondent is obliged to give reasons for its determination pursuant to Section 8(2) that there are not grounds in the applicant's case for extending the relevant period.
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> (4) alternatively the respondent has not given adequate reasons for its determination that the grounds proffered by the applicant do not amount to exceptional circumstances for its determination that there are not grounds for extending the relevant period.
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> (5) the applicant is severely prejudiced by the respondent’s refusal to give reasons.
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> (6) the respondent's failure to give reasons makes any challenge by the applicant to the respondent's decision, extremely difficulty and caused the applicant grave prejudice in that regard.
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> (7) the applicant's circumstances are such that the respondent ought to have exercised its discretion under Section 8(2) of the Residential Institutions Redress Act, 2002, in extending the time limit in which an application might be made.

4. I should say that of those grounds, number seven pertains to what I might term the substantive merits of the adjudication as to whether or not time should be extended and does not pertain to the question of reasons, and the necessity for giving reasons, which seems to me to be the core ground which is being pursued in this Court and was pursued in the hearing. I do not think that I misconceived in my view when I say that I think that any substantive attempt to quash the decision because, for example, it was irrational or alleged to be wrong was not pursued and, of course, it would not be possible to seek to quash a decision merely if it was thought that the discretion could have been exercised in a different way, - that would be to seek to convert a judicial review proceeding into a species of appeal.

5. The order which is sought to be quashed was an order of the 26th of September, 2006. A previous order had been made subsequent to the initial application, grounded on an affidavit of the applicant for that extension of time, but in or about the time when the matter was placed before the Board for that purpose Ms. Rosario Lee & Company sought a postponement of an adjudication for the purpose of submitting additional material. It seems there was a misunderstanding and the Board made an adjudication, quite properly, and the Board is not criticised, and in any way I do not do so: The Board agreed to retake the decision, because of that misunderstanding and accordingly, the relevant decision for the purpose of this case is that of the 26th of September, and it is necessary to refer to that decision, which is in the form of a letter, for the purpose of this judgment.

6. I'll read that because I think it should appear in *extenso* in the judgement. The document is headed "Decision of the Board" and it provides as follows in a substantive part:-

> "The Board had considered the request of the applicant for an extension of the application period in respect of this application. The Board has considered the request and decided; (A), the Board does not consider that there are exceptional circumstances within the meaning of Section 8(2) of the Residential Institutions Redress Act hearing after the Act, such as to allow the Board to exercise its discretion under the Act and/or the Board is not satisfied that the applicant was under a legal disability by reason of unsound mind at the time the application should have been made, and, therefore, the provisions of Section 8(3) of the same Act do not apply. In reaching the above decisions the Board has considered:-
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> (1) the application received from the applicant.
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> (2) all accompanied documentation.

(3) all medical reports submitted.

(4) all explanations tendered by or on behalf of the applicant together with any submissions made on the applicant's behalf. The application is, therefore, not validly received within the statutory period provided in the Act and will not be further considered."

7. The applicant took the view that no reasons were given by that letter, indeed I think mistakenly, but nonetheless that view was taken and by letter of the 3rd of October, 2006, Ms. Lee sought the reasons for the refusal. Indeed a subsequent letter was written in that regard on the 16th of October, 2006. A reply to that letter was received dated the 19th of October, 2006, from the Board and the substantive part, which I will again quote in *extenso*, is as follows:-

> "The provisions of the Residential Institutions Redress Act, 2002. relating to the period in which an application for redress to the Board must be made and extensions of time in relation thereto are contained in Section 8 thereof."

8. That Section states as follows:-

> "Section 8.
>
> (1) An applicant shall make an application to the Board within three years of the establishment day.
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> (2) The Board may, at its discretion and where it considers there are exceptional circumstances, extend the period referred to in subs. 1.
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> (3) The Board shall extend the period referred to in subs. 1 where it is satisfied that the applicant was under a legal disability by reason of unsound mind at the time when such application should otherwise have been made and the applicant concerned makes an application to the Board within three years of the cessation of that disability.
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> By order of the Minister of Education and Science made on the 16th of December, 2002, that date was appointed as the establishment day for the purpose of the Act. Accordingly, applications for redress were required to be received by the Board on or before the 15th day of December, 2005. Your client's application was not received by the Board until the 8th of June, 2006. As regards Mr. Hayde's application, clearly the provisions of Section 8(3) of the Act are not of relevance on the basis of the medical evidence provided to the Board. Under the provisions of the 2002 Act, the Board has a discretion under the terms of Section 8(2) to extend the time period referred to in Section 8(1) where there are exceptional circumstances. In any application by an applicant to extend the period specified in Section 8(1) of the Act it is incumbent on the applicant to establish that there are exceptional circumstances which require the Board to exercise its discretion to extend the period.
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> Having carefully considered all the papers furnished on behalf of the applicant, together with all submissions made by or on his behalf, the Board considers that no exceptional circumstances have been established which require it to exercise its discretionary power in favour of extending the period referred to in Section 1. Accordingly the extension of time sought has not been granted."

9. Now, the Board has filed and delivered a statement of opposition. In relation to that document, it seems to me that at Paragraph 1 of it is largely irrelevant. I will not read it out in full but it sets out, substantively speaking, the efforts made by the Board to afford information to prospective applicants, and with special reference to the closing date, being the 15th of December, 2005, for such applications. It refers to advertisements, including advertisements in the United Kingdom, where the plaintiff has resided for many years. Obviously that goes to the merits. It was quite proper for it to be included when it was contended, having regard to the terms of Paragraph 7 of the statement of grounds, that there might be a challenge to the decision on the merits but it is not relevant now having regard to the nature of the case as it proceeded.

10. It proceeds to deal with the law pertaining to extensions of time, referring to the fact that such extensions might be given in exceptional circumstances as well in the case of legal disability and that is a matter for the applicant to demonstrate exceptional circumstances to the Redress Board. The fourth paragraph asserts that the Board had no obligation to give reasons but if it did have such obligations, it gave adequate reasons, being the reasons set out in correspondence which I have already quoted. It also pleads, at Paragraph 5, that the Board's discretion is wide and it is only subject to limited review and, further, that the documents disclose that the Board considered all of the relevant material and in the exercise and proper exercise of its discretion, it refused to extend time.

11. The statement goes on to plead that the circumstances are not such as to constitute exceptional circumstances. In particular, and I accept that this goes to the merits, it says that as to the plaintiff's deafness "such a disability as this is not unique or unusual among claimants or potential claimants and does not, therefore, in itself, gives rise to exceptional circumstances within the meaning of Section 8(2)". It further asserts that, similarly, many of the claimants or potential claimants under the statutory scheme reside in the United Kingdom and the Redress Board has taken extensive steps to notify parties resident there of the situations with regard to vindication of their rights. Again, I think that goes to the merits.

12. There were a number of affidavits sworn by or on behalf of the applicant for the purpose of pursuing the application before the Board. They substantially set out the sequence of events which gave rise to the application with particular reference to the date upon which he said he knew for the first time that redress might be open to him. He said that he first heard of this on the 22nd of May of the year in which he applied and it appears clear that he moved with great expedition after that, apparently being interviewed on behalf of his Irish solicitors with the aid of a person versed in interpreting for the deaf. On the 8th of June as a matter of urgency, an application was made. I hesitate to go into the applicant's personal circumstances but I'll return to those in a moment insofar as they are relevant to this application.

13. In an affidavit sworn on his behalf, the sequence of events is set out by his solicitor in her affidavit and he adds to the information which is contained in it. That effectively sets out the background and circumstances of his time in one of the residential institutions caught by the Act. There, set out, are the facts that he left this country in 1963, the fact that he was born in 1939, the fact that he subsequentially married but was divorced and now is married again, that his deafness seems to be acute, that he has difficulty in reading, that he has certain health problems, for example, ischaemia, but which might not be of great significance. He does appear also to have had mental treatment. He asserts that he had mental treatment on the basis that he was voluntarily committed to a mental institution. He says that the main source of news which he obtains from television and, to a very limited

extent, from newspapers. He obviously can't listen to the radio. He says that he is a member of a club for the deaf where he resides in Nottingham and that this club affords him only very limited social outlets. He says that two of his friends from the residential institutions in question visited him on the 22nd of May, which was his birthday, and gave him information. He sets out clearly that he had not seen them for a number of years. He refers to the fact that his parents are deceased, that his father died on the 16th of April, 1971 and his mother on the 20th of July, 1987. He says he has not returned to Ireland since 1987.

14. In response, there are a number of affidavits and, indeed, there is a replying affidavit also by Rosario Lee and I am going to pass over that affidavit as it is nothing that I haven't said already. The principal replying affidavit is that of Patricia Kavanagh. Understandably she sets out the sequence of events, though it had already been already done and she also gives information about extensive advertising campaigns which were conducted on behalf of the Board or by the Board, in order to make persons aware of their rights. She also refers to the amount which was involved in terms of payment of costs in that regard. She refers to the late applications, which were received up to the time of swearing of that affidavit on the 31st of January, 2007, and their outcome; 24 were allowed, 83 were disallowed, 1 was withdrawn, 72 were pending and 5 were awaiting a decision of the Board. Attention has been drawn to the fact that the Board's web-site contains extensive information about applications to the Board with little or nothing about late applications. I myself do not think that is of any significance one way or the other.

15. A number of authorities have been opened to me. I fully accept that my decision in *Foley v. Judge Murphy* (as reported 2nd July, 2007), deals with a criminal case. Reference is made, in that case, to *O'Malley v. Ballagh* [2002] 2IR 410 which is a well known decision about the necessity for a court to give reasons. Whilst I will not quote directly from Foley, however, I think it is proper to refer to the fact that the obligation upon courts is to engage intellectually with arguments and not to make or give bald conclusions without engaging with evidential or legal issues in a case where any significant number of such issues arise. The question of what is the obligation of a Board such as the respondents can be gleaned on the basis of the Irish authorities and clearly so understood. My attention has been drawn in the first instance by Mr. Cross to the decision *in McCormack v. An Garda Síochana Complaints Board* [1997] 2IR 489, which I think is a very helpful decision inasmuch as it set out the ambit of the circumstances in which it might be necessary for reasons to be given. The first thing I should say, however, is this; it seems to me that a distinction can properly be drawn between an administrative act or an administrative inferior body, a tribunal, even if there is an obligation upon it to apply the principles of natural justice, and a body which is exercising in quasi judicial functions. There can be no doubt that the respondent falls into that category in the nature of the respondent's work and, of course, its decision as to an extension of time does not constitute a merely administrative act.

16. In *McCormack v. The Garda Complaints Board*, the applicant made a complaint against a member of An Garda Síochana, alleging that such Garda had come to the prison where the applicant, then a convicted person, was detained in order to persuade him not to pursue an appeal then pending from his conviction based upon evidence given by that member of An Garda Síochana and, in particular, evidence of certain alleged admissions. The Chief Executive of the Board took the view that the complaint was admissible and the statutory procedures contemplated by the Act establishing the Board, were pursued and that involved an investigation of the facts alleged under the Garda Síochana Complaints Act 1986. Subsequently, a letter was written to the applicant, on the 6th of October, 1995, to the effect that the decision of the Board as to the communicating of their decision and this was to the effect that the Board had considered a report from the investigating officer and it was of the opinion that neither an offence or breach of discipline on the part of the member complained of had been disclosed and that the Board would take no further action in the matter.

17. It was sought to quash the decision of the Board *inter alia*, on the grounds that no decision had been given. Mr. Justice Costello held there was no obligation on the Board to do so. He referred to a number of other case including the *State (Creedon) v. Criminal Injuries Compensation Tribunal* (1988) I.R. 51 and the *State (Lynch) v. Cooney*, (1982) I.R 237 and *International Fishing Vessels v. The Minister for Marine* (1989) I.R 149 and he took the view that different requirements might arise depending on the nature of the decision and the body in question. He pointed out that in some cases it was required by statute that reasons be given but, of course, equally there were circumstances where in the application of constitutional justice or in common law, reasons were necessary as well. He took the view that in the nature of the role of the Board it was not necessary to give reasons. I think it is not to attenuate the matter unduly to say that he felt that the case before him fell into the category of purely administrative procedure rather than a quasi-judicial one and that he took the view that, in such circumstances, there was no obligation to give reasons. It is quite evident there could be no doubt that it is miles away, so to speak, from the responsibility of the Board in this particular instance or, for example, An Bord Pleanála or any other organisation of that nature. It was merely an organisation that was set up to investigate complaints and to take limited action. Thereafter, nothing more could be done. Even if action was taken under the Act in favour of the complainant to the Board, he would be left only with remedies that he might have under the general law, in respect of the matters in complaint. So, it is fair to say that no right of his was in question or in issue, unless one calls it right in a broad sense to make a complaint like any other citizen, which I do not think is anything like the situation here.

18. In relation to *International Fishing Vessels v. The Minister of Marine*, Mr. Justice Blaney deals with the question of the obligations in respect of an administrative procedure. But I think a more helpful case is the *State (Ganley) v. Minister for Agriculture* (1987) I.R.165, deals with the position in relation to the dismissal of a probationary public servant. The *State (Creedon) v. Criminal Injuries Compensation Tribunal* (1988) I.R. 51 is however, I think, a decision which is of considerable significance in the present category. In it, and it is a well known case, an application was made under the administrative scheme of compensation for personal injuries criminally inflicted for compensation for the dependants of a deceased person on the basis that he had died because of or in the course of attempting to save human life. The Board very baldly rejected his application on the grounds and the reason given was, that it was not satisfied that the death of the deceased arose because of or in the course of attempting to save life. There were other matters relevant to the decision of the Supreme Court but Mr. Justice Finlay took the opportunity to say as follows at Page 55:-

> "Once the Courts have a jurisdiction, and if that jurisdiction is invoked, it is fair to say a supervisory jurisdiction in the nature of a judicial review, an obligation to inquire into, and if necessary, correct the decisions and activities of a tribunal of this description, it would appear necessary for the proper carrying out of that jurisdiction if the courts should be able to ascertain the reasons why the tribunal came to its determination."

19. Apart from that I am satisfied that the requirement which applies to this tribunal as it would to a Court, that justice should appear to be done necessitates that the unsuccessful applicant before it should be made aware in general and broad terms of the grounds on which he or she has failed. Merely as was done in this case to reject the application and when that rejection was challenged subsequently to what he cites was the reason for it, does not appear to me to be consistent with the proper administration of functions which are of a quasi judicial nature. I think it is fair to say that there is a reasonable analogy between the Criminal Injuries Compensation Board and the Residential Institutions Redress Board and, therefore, that decision to me is the most helpful decision.

20. Of course the matter does not end there because Mr. Cross has referred to a number of other decisions and, in particular, he has drawn my attention to a decision of the Supreme Court in *FP & Anor v. The Minister for Justice Equality and Law Reform*. The

applicants in that case applied for asylum in the state but were refused and there was ultimately an application for leave to seek judicial review and the application for judicial review was refused. One of the issues in the case hinged on the fact that an application was made after the conclusion of what I might shortly describe as the asylum "process" or "scheme" prescribed by law for considering asylum applications to the Minister not to make a deportation order, an opportunity having being afforded as required by law to the applicants in that respect. The law prescribes that the Minister, in making a decision as to whether or not he will make a deportation, must notify and give reasons for the proposed deportation order and the issue arose there as to whether or not the reasons were adequate. That was addressed by Mr. Justice Hardiman and in the course of his judgment he quoted with approval an earlier decision of Mr. Justice Geoghegan and in that regard Mr. Justice Hardiman at pages 172 and subsequent pages says as follows:-

> "It seem clear that the question of the degree to which a decision must be supported by reason stated in detail and vary with the nature of the decision itself."

21. I'll pause there and say this is in accordance with the decision which Costello J. made and that is why I have sought to address the similarity and the analogy between the Criminal Injuries Compensation Scheme and the Board's activities. Hardiman J. went on to say:-

> "The situation may require a more ample statement of reasons than in a similar case where the issues are more defined. Thus in a case dealing with a response to representations of precisely the kind in question here *were given* prior to the coming into force of the Act of 1999, Geoghegan J considered the adequacy of the decision, that was in *Laurentiu v. The Minister for Justice* (1999) 4 I.R. 26 where the decision was in the following form, (Page 34):-
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> > "I am directed by the Minister for Justice Equality and Law Reform to refer to your request for permission to remain in Ireland on behalf of the above named and to inform you that having taken all the circumstances of this case into consideration, including the points raised in your submission, it has been decided not to grant your client permission to remain."

22. He further quoted Mr. Justice Geoghean as follows:-

> "I do not think there was any obligation, constitutional or otherwise, to set out specific or more elaborate reasons in that letter as to why the application on humanitarian grounds was being refused. The letter makes clear that all the points made on behalf of the applicant had been taken into account and, of course, they were set out in a very detailed manner. The letter is simply stating that the first respondent did not consider the detailed reasons sufficient to warrant granting permission to remain in Ireland on humanitarian grounds. It was open to the first respondent to take that view and no court can interfere with a decision in those circumstances."

23. Now, it must be borne in mind in that particular case the applicant was a person who had no title to remain in the State and this was considered to be of significance. Mr. Justice Hardiman concluded his judgement on the point relevant here as follows:-

> "Where an administrative decision must address only a single issues its formulation will often be succinct. Where a large number of persons apply on individual facts for the same relief, the nature of the authorities consideration in the form of grant or refusal may be similar or identical. Adequate statement of reasons in one case may thus be equally adequate in others. This does not diminish the statements essential validity or convert it into in a mere administrative formula."

24. I think what it is fair to say here is that the contention of the respondent, apart from the contention that there is no need to give reasons, is that this is the sort of case which calls for what was contemplated in *FP*. Brief reasons will suffice without, as it were, an engagement with the evidence or legal material which might perhaps in a given case be placed before the Board. There was merely evidence in this particular instance.

25. Mr. Cross has stated that were the Board to go into more detail, it might be condemned for one of the very things it should not do, which was to have a fixed policy who would fetter its discretion in that it might be misled into adopting a fixed policy reason, thereby I think that is a misconception. If it had no fixed policy rule or anything which will otherwise fetter its discretion, it simply could not arise that it would be, as it were, entrapped by the giving of reasons into being erroneously seen to adopt such a thing and, indeed, if it were to give any reasons disclosing such a policy of rule it would have afforded this Court an opportunity for intervention.

26. It seems to me, having regard to all that I have said, that there was an inadequacy as to the reasons. I do not think it can be asserted that this was a case that there was no need for reason. It is not an administrative decision, it is a decision, effectively, to exclude or shut out from the opportunity for compensation under a statutory scheme the applicant and I think that he is entitled to know the reasons for the rejection, even if those reasons were to be relatively brief.

27. As I said, in *Foley v. Judge Murphy*, if reasons are capable of being deduced from the totality of material before the decision-maker, then of course the decision-maker can give his reason in an attenuated form or may indeed not to give any explicit reasons at all. It is perfectly proper to marry a series of documents together so that a party will know what the reason might be. It seems to me that there is a free-standing right to a reason because justice must not only be done but be seen to be done, and the benefit of the obligation on a tribunal such as the defendants to give reasons, if there is an obligation to give reasons, it that it concentrates the mind and ensures that they do not fall into error. I have rejected the proposition that this is one of those cases where reasons are not required. It is quite different, at the risk of repetition, to any administrative decision. It is certainly analogous to the Criminal Injuries Compensation Scheme, which itself is analogous to an application for or to actions for damages for personal injuries.

28. The question then arises to the adequacy of the reasons. I have considered the entirety of the documentation which was before the Board. Before saying anything more on this matter, even in *O'Malley v. Balla* as referred to in Foley, the Court was clearly mindful of the fact that a District Court is a court of summary jurisdiction which will, in fact, by the very nature of summary jurisdiction, be called upon to proceed perhaps with great expedition in disposing of business and it is implicit, to put it at its lowest, in that decision, that the extent to which reasons were given or the form of reasons which might be given in the District Court might accordingly be quite limited. The Supreme Court, in other words, did not ignore the fact or reality of how a court of summary jurisdiction might legitimately dispose of its business. That type of difficulty, however, does not arise where the Board is concerned. Those decisions are given after written submissions or applications and there is ample time for the Board, if it thinks fit and should give reasons, and it is not one of those cases either where the Board is entitled to give reasons of great brevity or attenuated form.

29. It seems to me in this particular case that the Board has not reached the standard which the law requires in terms of giving reasons. What the Board actually said was "We have considered," -- to put in shortly -- "all the material before us." If they hadn't

considered all the material before them they would have acted unlawfully. They openly told us that they did nothing unlawful and that they considered only the material before them. There is no question of *mala fides* here. No one considered for a moment that they might have considered irrelevant factors and that they might not have fairly considered the material before them. Of course, the question does then arise as to whether or not one could marry all the materials in order to reach a conclusion as to the reasons and I do not think one can reach a conclusion. Of course one can say it is perfectly obvious, and the Board can say, that the factual circumstances advanced by the Plaintiff were not such as to bring him within what I call "the exceptional category." What a court must really want, what the party is entitled to know for the purpose of vindicating its rights, is why they reached that conclusion, why having regard to those facts, why having regard to the relevant principles of law, they came to that conclusion. It is, to put it shortly, not enough merely to say that the applicant, of course, must have known that from the nature of the submissions and the decision that he can be assured that the matter was *considered bona fide*, that all relevant matters were considered and, thirdly, that his particular circumstances were not exceptional circumstance. What a Court and an applicant really need to know is why they didn't think why they were exceptional circumstances; what factors were weighing in the balance in judging what were or were not exceptional factors; what weight - as a matter of law what weight was or was not given to particular pieces of evidence. What weight, for example, was given to the fact of extensive advertising? What circumstances would in principle would constitute exceptional circumstances.

30. I have already referred to Mr. Cross' feeling that the Board might be placed in a situation of being mislead into the imposition of a fixed policy role but every administrative or quasi judicial tribunal may have to consider legal issues and there is no reason why this body should be any different and it may well elaborate the law which is applicable to what does or does not constitute exceptional reasons and it might or might not be correct in its evaluation of the law. It seem to me that fundamentally there is a failure on the Board to say why it took the view that, on the facts in question, there were no expectational circumstances.

31. I want to be absolutely clear about this; I am not for a moment suggesting in any way how the Board should exercise its discretion and I will try to take examples which do not do so,but if, for example, the Criminal Injuries Compensation Tribunal decided in a given case not to award compensation when a given set of facts had been placed before it, would the test of whether or not it had given reasons not be did they explain why they rejected the application by virtue of those facts? What were the legal obligations? What were the legal principles to decide on the case in the matter and in this case what are exceptional circumstances? We simply don't know what they are.

32. In these circumstances I will quash the decision of the Board and I will remit the matter to the Board to be considered in accordance with law.