APPEAL FROM DECISION OF MEDICAL APPEAL TRIBUNAL ON A QUESTION OF LAW

Principles of natural justice—provisions of Interpreters

The claimant, a Ukrainian married to an English wife, appealed to the Medical Appeal Tribunal from the decision of a medical board. The claimant and his wife attended the hearing before a Tribunal which upheld the decision of the board. An application was made for leave to appeal on the ground that after the hearing the Tribunal had received documentary or verbal evidence not made available to the claimant. But at an oral hearing of the application this ground of appeal was virtually abandoned, the claimant amending his application to an allegation that he spoke and understood little English while his wife did not speak Ukrainian and no interpreter was present, with the result that he did not understand what was happening at the hearing, there being, therefore, a breach of the requirements of natural justice. Leave to appeal was granted. The Commissioner requested the Chairman of the Tribunal, whose decision was the subject of appeal, for his recollections of what had occurred at the hearing and in a letter the Chairman stated, *inter alia*, that he had made it clear both to the claimant and his wife that if at any stage any difficulty was experienced in understanding what was being said, they should say so and that he had taken great pains to ensure that the claimant and his wife fully understood what was going on.

Held, dismissing the appeal, that the allegation made on behalf of the claimant that he had not understood that the proceedings of the Medical Appeal Tribunal were proceedings before an appellate Tribunal was, on the evidence, impossible to believe. That the claimant himself was in the best position to know whether an interpreter was necessary ; that neither he nor his wife had suggested at or before the hearing that an interpreter was necessary ; that no authority had been cited in support of the proposition that there was a legal duty on anyone other than the claimant to provide an interpreter, though as a matter of practice the Ministry would no doubt assist a claimant in obtaining the services of an interpreter if so requested; and that even if the claimant had a right to have an interpreter provided, that right could have been and in this case was, waived.

The Commissioner reiterates that where an allegation is made that a Medical Appeal Tribunal have in some way misconducted the proceedings it should be made promptly not only in the interests of the claimant and the Minister but in fairness to the Tribunal.

The Commissioner indicates that he took into account the contents of the Tribunal Chairman's letter although the claimant and his Solicitor had no opportunity of cross-examining the Chairman and discusses the practice in these matters referring to R(I) 29/61 and R(I) 10/62.

1. My decision is that the decision of the medical appeal tribunal dated the 15th June 1962 is not erroneous in point of law.

2. On the 21st February 1961 the claimant suffered an industrial accident. He became incapable of work on the 19th April 1961 and was paid injury benefit from that date to the 21st August 1961.

3. He claimed disablement benefit and on the 26th July 1961 he was examined by a medical board. They had before them a precis of hospital case notes, which recorded a diagnosis of disc degeneration of the lumbar spine. The board found injury to the back with pre-existing disc degeneration of the lumbar spine to be partly relevant. They assessed the degree of disablement at 20 per cent for three months after offsetting from a gross assessment of 30 per cent 10 per cent for pre-existing disc degeneration. On the 18th October 1961 a further board made an assessment at 10 per cent for a further period of six months to the 21st May 1962.

4. On the 6th April 1962 a further medical board decided that the relevant condition was injury to the back with pre-existing disc degeneration of the lumbar spine partly relevant, but that the effects of the relevant conditions

were minimal and that there was no longer any relevant loss of faculty. They therefore made no assessment. They remarked that any residual disability was due to the pre-existing disc degeneration (part of generalised osteo-arthritis).

5. The form on which claimants are in the ordinary way notified of such decisions is form B.I.131, and I have no reason to doubt that this form was sent to the claimant. It explains his right to appeal to the medical appeal tribunal against the decision of the medical board and to the local appeal tribunal against the decision of the insurance officer, and the necessity for stating the grounds of appeal. On the 24th April 1962 a letter signed by the claimant but probably written by someone else was received, in which he expressed his wish to " make an appeal against the decision of the medical board on the following grounds " ; the letter set out his grounds.

6. The next step would have been for the Ministry to prepare observations in writing and copies of the relevant documents for the medical appeal tribunal and the claimant. In the ordinary way these are sent out to the claimant with a form B.I.258 which begins " I enclose copies of the documents which will be presented to the medical appeal tribunal considering your case. If you wish to make any written observations they should be submitted as soon as possible." The Minister's observations in this case were contained on form B.I.256, which contained a schedule of the evidence including all the medical board's three reports and the precis of hospital case notes. I have no doubt that these forms together with the copies of documents were sent to the claimant.

7. A letter was received, signed by the claimant and dated the 20th May 1962 ; it begins : " With reference to the documents received by me on May 17/1962 in connection with my appeal to the medical appeal tribunal, you state that I may make any written observations . . ." The letter goes on to set out the claimant's observations about the allegation of a pre-existing degeneration of the spine.

8. The next step would have been to send the claimant a form B.I.252 notifying him of the time and place of the hearing of his claim by the medical appeal tribunal. I have no doubt that this form was sent to the claimant, since he and his wife did attend at the correct time and place.

9. The tribunal on the 15th June 1962 upheld the decision of the medical board, recording their reasons as follows :

> " The Tribunal having heard the contentions put forward by the claimant and his wife and having also had before them the claimant's letter of 20.5.62 are quite satisfied that there is now no loss of faculty due to the relevant accident. The claimant's present disability is due entirely to his pre-existing disc degeneration as recorded in the Hospital Notes of 12.7.61."

10. On the 10th August 1962 the claimant's solicitors wrote, saying that from what their client told them no evidence was received by the tribunal as to a pre-existing disc degeneration (which condition the claimant denied) in the claimant's presence, and they had advised him that if the tribunal received documentary or verbal evidence after the close of the hearing he was entitled to appeal to the Commissioner. The claimant formally applied for leave to appeal on the ground that the proceedings were contrary to natural justice for that reason.

11. At the oral hearing on the 3rd October by a differently constituted medical appeal tribunal of the claimant's application for leave to appeal,

the above ground was in effect abandoned by the claimant's solicitor. It was said however that the claimant, who is a Ukrainian, spoke and understood little English ; that his wife, who is English, was with him but did not speak Ukrainian ; that the claimant did not understand what was happening at the hearing and that it was contrary to justice that a decision should be reached after such a hearing. The tribunal granted leave to appeal to the Commissioner.

12. In his grounds of appeal the claimant repeats these allegations, saying that although it may be that medical evidence as to a pre-existing condition of lumbar disc degeneration was received by the tribunal in his presence, he did not appreciate what was going on due to his very slight knowledge of the English language. He submits that " Steps should have been taken for an interpreter to be present and the findings of the tribunal in the absence of such interpreter are in the circumstances against natural justice."

13. On the 17th December 1962 the claimant's solicitors wrote : " [The claimant] and his wife are quite firm in their recollection that the only occasion on which the Chairman of the Tribunal of 15th June 1962 asked [the claimant] if he understood was after he had read through the papers. When [the claimant] stated that he understood, he was under the impression that the question was designed to ascertain whether he understood that it was alleged that he was suffering from a pre-existing condition of the spine. He did not understand that the proceedings at which he was attending were an appellate tribunal. In fact before the Tribunal sat, he was under the impression that he was merely going to be subjected to a medical inspection to ascertain whether he was still suffering from the effects of his accident. The [claimant's wife] has extreme difficulty in explaining matters of this complexity to her husband as she does not speak Ukrainian and her presence at the hearing was, from this point of view, valueless to our Client."

14. In the same letter the solicitors referred to the fact that the chairman of the medical appeal tribunal which granted leave to appeal had spoken to the chairman who had presided on the 15th June 1962 who had given him an account of what had happened then. The solicitor submitted that this account should be disregarded on the ground that they had not been given any notice that such a conversation would take place nor " Any opportunity of examining the earlier chairman or challenging his recollection ". The solicitors have submitted to me medical evidence in writing tending to show that before the relevant accident there was no disc degeneration, but it has never been suggested that the claimant had such evidence in his possession when he attended before the medical appeal tribunal or that he wished to put medical evidence before them.

15. The Commissioner caused a communication to be addressed to the chairman who had presided on the 15th June, and in a letter dated the 3rd January he was good enough to give his recollection. It was that he had expressly asked the claimant whether he could understand English. The claimant told him that he did. He asked the lady with the claimant if she could speak English and she said that she was in fact English and could interpret if necessary. The chairman made it clear to both that if at any stage any difficulty was experienced in understanding what was being said they should say so. He was certain that he was at great pains to make sure that the appellant and his companion were fully understanding what was going on. He concluded with the comment that it may of course be that the appellant may not have understood everything fully but was too shy to say so but the impression which the chairman got was as he had indicated above.

The contents of this letter were of course communicated to the claimant and the Ministry.

16. The claimant did not attend and was not represented at the oral hearing of his appeal before me. Accordingly I have not had full argument on the two questions of legal procedure which arise in this case.

17. The only ground of appeal to the Commissioner against a decision of a medical appeal tribunal is that it is erroneous in point of law (section 2 of the Family Allowances and National Insurance Act, 1959). It may be so erroneous if the proceedings before the tribunal contravene the fundamental requirements of justice.

18. The first question for my decision is one of fact : whether I can accept the allegation made on behalf of the claimant that he did not understand that the proceedings which he was attending were those of an appellate tribunal. I find this completely impossible to believe. In view of the letters which he had himself signed and the forms which he must have received I am satisfied that he knew that he was appearing before the medical appeal tribunal on the hearing of his appeal against the decision of the medical board.

19. On the question of an interpreter, as at present advised I am not prepared to accept the solicitors' contention, in support of which no authority has been cited, that in these proceedings it was the duty of anyone other than the claimant to provide an interpreter. I have no doubt that in practice, if a claimant asked for the help of the Ministry (or of the insurance officer in an appeal before the statutory authorities) in obtaining the services of an interpreter, that help would be given, whether the claimant was legally entitled to it or not. But that is quite a different matter from contending as a matter of law that, as steps were not taken for an interpreter to be present, the proceedings were contrary to natural justice. In any event however the claimant himself was in the best position to know whether one was necessary. It is not suggested that at any stage before the tribunal gave their decision the claimant or his wife asked that an interpreter should be available, or suggested directly or indirectly that one was necessary. The claimant, when asked, indicated that he understood. It is not alleged that his wife at any stage explained to the chairman that she could not interpret : the chairman has recorded that she said that she could. The solicitors' description of what the claimant thought was happening does not seem to me to imply anything like a complete ignorance of the English language. And the tribunal of course had before them the claimant's letters, which indicated the nature of his case. This appears to me to be one of a number of cases which come before the Commissioner, where the claimant attends the medical appeal tribunal's hearing and takes his chance of success, but, when he is unsuccessful, it is said on his behalf that he was not properly heard or he did not understand. The allegation made on behalf of the claimant that he understands little English is an allegation of something which is a matter of degree, which in the circumstances it has been impossible for me to test. The chairman, who had the advantage of seeing and speaking to the claimant, was evidently aware of the importance of the claimant's understanding what was going on. Having fully considered the whole of the circumstances, including the letter of the 3rd January 1963 from the chairman, I feel driven to the conclusion that it is impossible in this case to hold that it is shown that the proceedings were contrary to natural justice or that the decision was erroneous in point of law on the

only ground now alleged, namely the absence of an interpreter. I think that even if the claimant had had a right to have an interpreter provided, that right could have been and in this case was waived.

20. I think it right to repeat what has been said in earlier cases that, where an allegation is made that a medical appeal tribunal in some way misconducted the proceedings, this should be alleged promptly, not only in the interests of the claimant and the Minister, but in fairness to the tribunal. The complaint about an interpreter was not hinted at in the letter of the 10th August and was first made in October, nearly 4 months after the event.

21. The solicitors' comment on their having had no opportunity to examine the earlier chairman or challenge his recollection as conveyed by the other chairman, if it applies also to the letter of the 3rd January 1963 from the chairman to the Commissioner, raises a point of considerable practical importance as to the method by which the Commissioner is informed of the facts on an appeal under section 2. In determining this appeal I have taken into account the contents of the chairman's letter of the 3rd January 1963, even though the claimant and his solicitors have had no opportunity of cross-examining the chairman. In many other jurisdictions, e.g. an appeal to the Court of Appeal against the decision of a County Court judge, the parties would not be permitted to cross-examine the County Court judge on his note of what had happened. The practice hitherto on appeals against decisions of medical appeal tribunals has been to rely on information supplied by the chairman or the tribunal (see Decision R(I) 10/62) though on occasion this has been supplemented by evidence or information from other sources (see Decision R(I) 29/61). I see no reason to depart from that practice.

22. With regard to the claimant's final suggestion that the tribunal may have heard evidence of pre-existing degeneration in his presence, but that he did not understand it, this appears to me to be based on a misconception.

There are no grounds for suggesting that any such oral evidence was given. The original medical board, who had examined the claimant and seen the hospital case notes, as the medical appeal tribunal did, had decided that there was pre-existing disc degeneration. The tribunal were of course fully entitled to take into account the matters in the case papers before them in forming their own conclusion, as they did, on this question.

23. The claimant s appeal must be dismissed.