

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY COLIN JOHN JOHNSON
FOR JUDICIAL REVIEW

WEATHERUP J

The application.

[1] This is an application for judicial review of a decision made on behalf of the Chief Constable of the Police Service of Northern Ireland dated 18 May 2005 refusing the applicant an upgrade of sick pay entitlement during a period of sick leave between January 2003 and March 2004. The issue turns on the interpretation of Regulation 42 of the Royal Ulster Constabulary Regulations 1996 together with Regulation A10 of the Royal Ulster Constabulary Pensions Regulations 1988. Mr Keenan appeared for the applicant and Mr Maguire appeared for the respondent.

The background.

[2] The applicant is a Constable in the Police Service of Northern Ireland who was absent from work through illness between January 2003 and March 2004. During the initial weeks of absence he was certified as unfit for work by reason of a chest infection and thereafter on the basis of a work related stress. For the first six months of sick leave an officer is entitled to full pay and for the second six months of sick leave an officer is entitled to half pay and thereafter an officer is not entitled to any pay while on sick leave. Where an officer's sick leave is directly attributable to an injury received in the execution of his duty the Chief Constable determines the nature and extent of an upgrade in sick pay entitlement.

[3] The applicant applied for an upgrade to full pay during the period of his absence on sick leave. In a memorandum dated 18 May 2005 the head of personnel, on behalf of the Chief Constable, decided that by reason of his own

default the applicant had not sustained an injury on duty. The decision stated

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“I therefore consider that while suffering from a health condition as identified by occupational health, he actually contributed to and further exasperated his illness through his actions. I therefore consider him negligent and culpable for his injury and for this reason cannot accept his application as an injury on duty.”

[4] By letter dated 18 May 2005 to the applicant the personnel manager gave notice of the decision to the applicant.

The Regulations.

[5] Regulation 42 of the Royal Ulster Constabulary Regulations 1996 (replaced by the Police Service of Northern Ireland Regulations 2005 with effect from 13 January 2006) provided for pay during sick leave. Of particular note is Regulation 42(4) in italics below.

(1) Subject to paragraphs (2), (3) and (4), if, on any relevant day, a member has, during the period of 12 months ending with that day, been on sick leave for 183 days, he ceases for the time being to be entitled to full pay, and becomes entitled to half pay, while on sick leave.

(2) Subject to paragraphs (3) and (4), if on any relevant day a member has been on sick leave for the whole of the period of 12 months ending with that day, he ceases for the time being to be entitled to any pay while on sick leave.

(3) The chief constable may in a particular case determine that for a specified period-

(a) a member who is entitled to half pay while on sick leave is to receive full pay, or

(b) a member who is not entitled to any pay while on sick leave is to receive either full pay or half pay, and may from time to time determine to extend the period.

(4) *The chief constable, if he is satisfied after consultation with a registered medical practitioner appointed or approved by the Police Authority, that a particular case is exceptional, shall*

determine in consultation with the said medical practitioner that for a specified period-

- (a) a member who is entitled to half pay while on sick leave is to receive full pay, or*
- (b) a member who is not entitled to any pay while on sick leave is to receive either full pay or half pay.*

An exceptional case is a case in which the member's being on sick leave is directly attributable to an injury received in the execution of his duty, as defined in the Pensions Regulations or an injury received as a consequence of his service as a police trainee, as defined in the Pensions Regulations, as modified by paragraph 8 of Schedule 2 to the police trainee regulations.

The equivalent Regulations in England and Wales include paragraph (3) above but do not include paragraph (4) above.

[6] The Pension Regulations 1998 provide in the glossary of expressions in Schedule A that "injury received in the execution of duty" has the meaning assigned to it by Regulation A10. Of particular note are Regulation A10(2) and (3) in italics below. Regulation A10 provides under the heading "Injury received in the execution of duty" -

"(1) A reference in these regulations to an injury received in the execution of duty by a member means an injury received in the execution of that person's duty as a member.

(2) *For the purposes of these regulations an injury shall be treated as received by a person in the execution of his duty as a member if -*

- (a) the member concerned received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty, or*
- (b) he would not have received the injury had he not been known to be a member, or*
- (c) the Police Authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received as aforesaid.*

(3) *For the purposes of these regulations an injury shall be treated as received without the default of the member concerned unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct.*

(4) Notwithstanding anything in these regulations to a period of service in the armed forces, any injury received in the execution of duty as a member of the armed forces shall not be deemed to be an injury received in the execution of duty as a member.

(5) In the case of a member who has served as a police cadet in relation to whom Part III of the Police Cadets (Pensions) (No. 2) Regulations (Northern Ireland) 1973 had taken effect, a qualifying injury within the meaning of those regulations shall be treated as if it had been received by him as mentioned in paragraph (1); and, where such a qualifying injury is so treated, any reference to duties in regulation C3(1)(*widow's augmented award*) shall be construed as including a reference to duties as a police cadet."

[7] Further the Chief Constable by General Order no. 32/2003 dated 21 August 2003 ("Pay Related Sickness Absence - Particular and Exceptional Cases") replaced Force Order no. 53/95 of 11 October 1995. Paragraph 2 provides that a "particular case" is defined as a set of circumstances applicable to an individual officer which becomes an "exceptional case" if the circumstances applicable are determined as an injury in the execution of duty. Paragraph 8 under the heading "Exceptional Case" defines an exceptional case in the same terms as Regulation A 10(2) and adds "unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct".

[8] The applicant contends that an injury received in the execution of duty is defined in Regulation A10(2) as modified by A10(4) and (5), and does not include the "default of the member" provision set out in Regulation A10(3). The respondent contends that the definition of injury received in the execution of duty embraces the whole of Regulation A10(1) to (5).

Interpretation of the Regulations.

[9] In Quintavalla v Secretary of State [2003] 2 AC 687 Lord Bingham at paragraph 8 stated in relation to statutory interpretation -

" The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions

which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

[10] Regulation A10(2) provides for those injuries that "shall be treated" as received in the execution of duty as being those specified in sub paragraphs (a), (b) and (c). Regulation A10(4) deals with an injury received in the execution of duty as a member of the armed forces and provides that such an injury "shall not be deemed" to be an injury received in the execution of duty as a police officer. Regulation A10(5) applies to police cadets and provides that a qualifying injury under the relevant Police Cadets Pensions Regulations "shall be treated" as an injury received under Regulation A10(1). Each of the above provisions deals with the scope of an injury received in the execution of duty by specifying those injuries that "shall be treated" or "shall not be deemed" to be so received. Thus paragraph (2) specifies the circumstances in which an injury would be treated as received by a person in the execution of his duty; paragraph (4) excludes an injury received in the execution of duty as a member of the armed forces; paragraph (5) includes a qualifying injury received within the meaning of the Police Cadets Pensions Regulations.

[11] Regulation A10(3) is dealing with an injury received "without the default of the member concerned". It provides for the circumstances in which an injury shall be treated as received without the default of the member concerned. It provides that an injury shall be so treated unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct. Accordingly Regulation A10(3) is not specifying those injuries that are to be treated as, or deemed not to be, received in the execution of duty, but rather is specifying those injuries that are to be treated as received without the default of the member concerned.

[12] When is it relevant to ascertain whether an injury has been received without the default of the member concerned? That becomes apparent from a consideration of the remainder of the 1988 Regulations. By way of example the following benefits are payable under the 1988 Regulations where the officer has suffered “an injury received without his own default in the execution of his duty” namely, members injury award under Regulation B4, widows special award under Regulation C2, widows augmented award under Regulation C3, child’s special allowance under Regulation D2, child’s special gratuity under Regulation D3 and adult dependant relatives special pension under Regulation E1. All of those benefits are not stated to be payable in respect of an injury received in the execution of duty but rather to be payable in respect of an injury received “without his own default” in the execution of his duty. In respect of claims for such benefits it is necessary to ascertain whether the injury was received without the officer’s own default and Regulation A10(3) provides the circumstances in which an injury shall be treated as received without the default of the officer. Regulation A10 is therefore dealing not only with the scope of injury received in the execution of duty but also with the scope of an injury received without the default of the member concerned in the execution of duty. Accordingly I am satisfied that the basic definition of injury received in the execution of duty is set out in Regulation A10(2) of the 1988 Regulations, as modified by Regulations A10(4) and (5), and that Regulation A10(3) is providing a definition of the default of the member concerned.

[13] It is therefore necessary to turn to the provision under which a benefit is payable to determine whether it is payable in respect of an injury received in the execution of duty or an injury received without his own default in the execution of duty. Regulation 42(4) of the 1996 Regulations provides for the “exceptional case” of an upgrade of sick pay where the officer has an injury received in the execution of duty. Regulation 42(4) does not provide for an upgrade in respect of an injury received “without the default of the member” in the execution of duty. Therefore an exceptional case under Regulation 42(4) is a case where sick leave is directly attributable to an injury received in the execution of duty, as defined in Regulation A10(2) of the Pension Regulations – Regulation A10(3), (4) and (5) not being applicable in the present case.

[14] As certain benefits payable under the 1988 Regulations are subject to the injury not being wholly or mainly due to the officer’s own serious and culpable negligence or misconduct, the respondent contends that entitlement to an upgrade of sick pay should similarly be subject to the same default provision. That would be an entirely reasonable outcome but it is one that must be achieved within the terms of the Regulations, whether expressly or by necessary implication. For the reasons set out above I am satisfied that Regulation A10 does not admit of that conclusion.

[15] The Chief Constable's Force Order and General Order adopted the definition of exceptional case contended for by Counsel for the respondent. The Orders cannot directly or indirectly be inconsistent with the Regulations. In Sheil's Application (2003) Lord Bingham at paragraph 7 stated:

"Where, as here, the Secretary of State has chosen to exercise his regulatory powers in a very limited way, it is open to the Chief Constable to fill in the gaps provided he does so in a way which is not, directly or indirectly, inconsistent with the Secretary of State's prescription."

The Chief Constable's Force Order is not competent to produce the definition of injury on duty contained therein as it is a definition that goes beyond that contained in the Regulations.

[16] While the definition of injury received in the execution of duty does not include the default provision contained in Regulation 10(3) the Chief Constable does retain discretion under Regulation 42(4) as to the upgrade of sick pay. If the Chief Constable is satisfied, after consultation with a registered medical practitioner, that a particular case is exceptional, in that it involves an injury received in the execution of duty, he is required to make a determination in consultation with the registered medical practitioner. That determination affords discretion to the Chief Constable to determine, in the first place, the specified period for which he will grant an upgrade to full pay or half pay, and secondly, in respect of an officer whose sick pay has expired, whether he should be upgraded to full pay or half pay.

[17] The decision made on behalf of the Chief Constable will be quashed. A further decision should be taken on the applicant's application for an upgrade of sick pay, in accordance with the definition of injury received in the execution of duty as set out above, and in the exercise of the discretion accorded to the Chief Constable under Regulation 42(4).