

Challenge to injury board over legal fees dismissed

THE HIGH Court has dismissed a challenge to the Personal Injury Assessment Board's refusal to pay the full amounts sought for legal advice obtained by two males for their actions which were processed by the board.

Mr Justice Seán Ryan ruled the board had acted properly in refusing to pay some or all of the legal fees sought by Grzegorz Plewa and Krzysztof Giniewicz, both Polish nationals.

He also noted that solicitors who had provided advice to the men had not provided itemised bills for their fees.

The pair had claimed the legal advice obtained by them in making their claims to the board were expenses reasonably and necessarily incurred on grounds including they were not native English speakers, and should be paid for in full.

Some 20 similar cases have been brought against the board over its decision not to pay the full amount of the legal fees paid.

In their proceedings the pair claimed the board had made no adequate response to letters from their solicitors requesting an explanation for the cut in fees.

They claimed the board failed to act in accordance with the principles of natural justice, and also breached their rights to fair procedures under the Constitution and the European Convention on Human Rights.

It was alleged the board's decision was tainted by bias as reflected in comments made by chief executive Patricia Byron to the Oireachtas Joint Committee on Enterprise, Trade and Employment.

The board rejected all the claims and said it acted reasonably. It said it had complied with all its legal obligations in a manner consistent with fair procedures and denied bias.

In his application to the board for damages arising from a road traffic incident in which he suffered serious injuries, Mr Plewa, a minor, also sought €2,420, including VAT, for a legal advice fee. In July 2008, the board assessed substantial damages for Mr Plewa but allowed nothing for fees incurred for legal advice.

Following an inquiry by Mr Plewa's solicitors, the board expressed its opinion the legal fees were not reasonably incurred.

As part of his claim for injuries sustained in a workplace incident in 2007, Mr Giniewicz sought legal fees of €1,331, including VAT, but the board allowed €484.

In his judgment Mr Justice Seán Ryan said both had failed to establish the injuries board had acted unreasonably or in breach of fair procedures. While their solicitors had argued the legal fees were reasonably and necessarily incurred because the men were not English speakers, did not have a knowledge of the law, and were not

qualified lawyers, these arguments about their difficulties were unimpressive and without substance.

It was the function of the injuries board to decide what it thought was reasonable and necessary, he said. It was not for the pair's solicitors to generate expense for the board and then for the board to show why that should not be incurred.

The judge also noted that the solicitors had not provided the board with an itemised bill for their services.

- The injuries board last night welcomed the judgment, *writes Colm Keena*.

Ms Byron said where claimants use a solicitor to pursue their application there was no right to recover those costs.

"With this in mind, claimants should be aware that they can apply directly to the board and save themselves legal expense," she said.

Brendan Butler of the employers' group Ibec also welcomed the judgment. He said if it had gone the other way it could have opened the "floodgates" to legal costs for non-national claimants which would in turn have had an impact on insurance costs to business.