

Neutral Citation No.: [2008] NIQB 126

Ref: **STE7314**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **10-11-08**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

ALFRED BERESFORD

Plaintiff;

And

SHORT BOMBARDIER plc

Defendant.

STEPHENS J

Introduction

[1] The plaintiff, Alfred Beresford 51 (dob 13 February 1957) brings this action contending that he contracted contact irritant dermatitis as a result of exposure to "black dust" in the course of his employment as a fitter with the defendant Short Bombardier plc.

[2] Mr Hunter QC and Mr McKenna appeared on behalf of the plaintiff. Mr Ringland QC and Mr Connor Campbell appeared on behalf of the defendant. I am grateful to both sets of counsel for the clear and concise manner in which the case was presented.

[3] It was agreed between the plaintiff and the defendant that the only issue in the case was whether the plaintiff's skin condition was caused or contributed to by his working conditions. If it was then the defendants are liable on the basis of negligence and breach of statutory duty. If it was not then the plaintiff's action fails.

The plaintiff's work

[4] The plaintiff, having previously worked for the defendant, commenced his present period of employment with them in October 1999. His job included work on avionic shelves which were components to be fitted to Lear jets in the course of their construction. About 50% of the plaintiff's time was spent working with these shelves which arrived at the plaintiff's work area in bubble wrap. The bubble wrapping had Marlborough Engineering stickers on them and accordingly the shelves were manufactured by another company engaged by the defendant. These shelves required to be modified by the plaintiff prior to installation. The modifications involved fine work. The plaintiff was provided with and wore gloves but for a substantial proportion of his work the fine manipulation required for some aspects of his work meant that he could not wear gloves. Furthermore if he was cleaning a surface with, for instance MEK cleaning solvent, he found that his gloves quickly melted so that they were ineffective.

[5] The plaintiff found that the avionic shelves ordinarily arrived in a satisfactory state of cleanliness. However approximately 3 to 4 months prior to the plaintiff's skin condition developing a batch of avionic shelves arrived which were "dull and dusty". The shelves were covered in a "black dust". The plaintiff recounted that if this "dust" was rubbed it would leave a residue on his fingers. I accept the evidence of Mr Thomas Loughran, who also worked with these avionic shelves. His evidence was that the "black dust" was a grime on the surface of the shelves. This was not a fine loose particular matter which could easily become airborne but rather a thin film of a black substance which remained adherent to the surface of the shelves unless it was rubbed. The term dusty gives an incorrect impression. The substance on the shelves was not capable of rising in a cloud. I will use the term "black substance" to describe the dirt which was on the shelves upon which the plaintiff was required to work as a method of emphasising that this was not a substance which could become airborne. It was a film. The quantity of this black substance on the avionic shelves was not such as to cause all the plaintiff's hands to become visibly dirty.

[6] David Waugh, the plaintiff's lead hand, agreed that the plaintiff spent a considerable amount of time working with avionic shelves in that condition. I find as a fact that the plaintiff's hands were exposed to the black substance on a daily basis for a period of 3 to 4 months prior to the onset of his condition.

[7] The washing facilities in the defendant's premises were satisfactory. There was hot and cold running water. Clean towels were available. There were adequate supplies of hand creams. The plaintiff regularly used the washing facilities. He had received instructions and accordingly was aware of the importance of skin care. The defendant provided health and safety

booklets backing up the instructions. The plaintiff availed of the facilities washing his hands and using the skin creams at breaks, lunch time and before going home. The provision of those facilities and the plaintiff's use of them does not detract from the fact that he was exposed to this black substance in the course of his employment and that for considerable periods his hands were not protected by gloves.

[8] The defendants never tested the black substance. There was only one batch of shelves affected by the substance and accordingly the plaintiff's solicitors had no opportunity to have tests carried out on the substance. It is not possible to say whether the black substance was of such a nature as to be irritant or highly irritant to the plaintiff's skin.

The distribution, nature and duration of the plaintiff's skin condition

[9] The exact distribution, progression and characteristics of the plaintiff's skin condition are important components of diagnosis.

[10] Dr Grace Allen MD, FRCP, Consultant Dermatologist, examined the plaintiff on 2 December 2005. At that stage the plaintiff gave a history that in March 2002 he developed two small lesions on the proximal adjacent side of the left small and ring fingers. That within 7-10 days the condition had spread and he had developed further lesions on the backs of both hands and the sides of the fingers. So far as he can remember it was not in the webbed spaces between the fingers. He then developed lesions on both arms to just where his sleeves ended. He describes the lesions as small red dots and he also developed some on the 'V' on his neck and on his face. The plaintiff informed Dr Allen that there was an association in time between his skin condition developing and his exposure to the black substances on the avionic shelves. Furthermore that the rash almost cleared when he was off work for five weeks in May and June 2002. When he came back to work there was no further contact with the black substance and that his skin cleared within about two months. Accordingly that there was an association in time not only between commencement of the skin condition and his exposure but also between resolution of his skin condition and his withdrawal from exposure. Dr Allen considered that the plaintiff had a contact irritant dermatitis. She recognised however that he subsequently developed a constitutional skin condition. The plaintiff is asthmatic.

[11] The sequence given by the plaintiff to Dr Allen is in the main borne out by the contemporaneous documents. The first attendance of the plaintiff at the defendant's medical department was on 10 May 2002. The record reveals that the plaintiff stated that the rash appeared that morning. I consider that the record is more accurate than the plaintiff's recollection and I therefore hold that the onset of the plaintiff's skin condition was on 10 May 2002. The plaintiff gave his outside interests and hobbies as gardening. The rash was on

the backs of his hands and were described as “small round dry patches backs hands, spot like”. The plaintiff saw his general practitioner on the same day. On examination the general practitioner found an itchy rash on both the plaintiff’s hands and forearms. The plaintiff was referred by the defendant’s occupational health physician to Dr H Jenkinson, MD FRCP, Consultant Dermatologist. The plaintiff was seen by her on 24 May 2002 within 14 days of the rash commencing and at a time when it was still active. The plaintiff gave her a two week history of a rash affecting the dorsum of the hands, forearms and exposed areas of the neck and face. On examination she found a patchy slightly scaly rash on exposed areas. The palm and web spaces of the hands were clear. The medial aspect of the forearm was affected as well as the dorsum. The sides of the neck were affected but the area under chin was clear. She considered that the distribution of the rash would be in keeping with a photosensitivity. She labelled the plaintiff’s skin condition as a photosensitive eczema of unknown cause.

[12] I hold that the plaintiff’s skin condition lasted for the period between May 2002 to August 2002.

The medical evidence

[13] The differential diagnosis in respect of the plaintiff’s skin condition are as follows:-

- (a) Contact irritant dermatitis occurring in a person who has a constitutional tendency to eczema which made him more susceptible to irritant reactions.
- (b) A photosensitivity eczema of unknown cause.
- (c) A constitutional eczema.
- (d) An idiopathic skin condition.

Dr Allen supported diagnosis (a). Dr Jenkinson supported diagnosis (b). Dr McMillen FRCP, Consultant Dermatologist, supported diagnosis (c).

[14] In support of her preferred diagnosis Dr Allen referred, inter alia, to the association in time between onset and exposure on the one hand and resolution and the cessation of exposure on the other. Furthermore that a photosensitive eczema would ordinarily start on the face and affect the nose and pinnae of the ears. Those are the areas ordinarily most exposed to sunlight. In the plaintiff’s case the condition commenced between his fingers and then progressed to his hands, forearms and face. All those areas are exposed to sunlight but it is unusual for a photosensitive eczema to affect the

hands before the face. Furthermore the areas most exposed to sunlight and most sensitive namely the plaintiff's nose and the pinnae of his ears were not affected. She conceded that the area under the chin, which would be shaded from the sun, was not affected by the condition and this pointed towards photosensitive eczema. Furthermore that the web spaces between the plaintiff's fingers were not affected. In a contact irritant dermatitis the web spaces are particularly vulnerable. The skin is thin in the web spaces and the washing process is frequently inadequate in the sense that the web spaces are either not cleaned or dried properly. The rash itself was not typical of a contact dermatitis in that it was patchy rather than uniform but similarly a photosensitive eczema should also be uniform. There have been no prior or further instances of photosensitive eczema and this was a pointer against that diagnosis. She agreed that the biopsy of the plaintiff's skin which was undertaken was not helpful in the investigation of contact dermatitis because histology cannot distinguish between an eczematous and a dermatitic condition.

[15] Dr Jenkinson maintained her diagnosis of photosensitive eczema whilst conceding in effect that some of the factors in relation to the plaintiff's skin condition would describe an irritant contact dermatitis. She had an undoubted and considerable advantage in that she saw the rash at the time. I find as a fact that what she saw was atypical of contact irritant dermatitis but that it was also not an obvious or typical photosensitive eczema.

[16] Dr McMillen emphasised that the photosensitive eczema can present in unusual ways. He concluded that the absence of involvement of the web spaces was significant and in particular he found it hard to explain the involvement of the plaintiff's face and neck given that the black substance was not a free floating dust. He also considered that the involvement of the back of the plaintiff's arms was a pointer towards constitutional eczema. There was a reference in the contemporaneous records to involvement of the plaintiff's chest and if this record was accurate it was hard to explain the involvement of that site on the basis of an irritant contact dermatitis. Dr McMillen considered that on balance the plaintiff had a constitutional eczema.

Conclusion

[17] All the consultant dermatologists emphasised that diagnosis in respect of a skin condition requires a global view balancing features some of which may be conflicting. That there are very few diagnostic features which are conclusive. Each of the dermatologists has ultimately arrived at a diagnosis, *in the particular circumstances of this case*, by attributing greater significance to one or more of the particular features. I will adopt the same approach. The plaintiff has suffered from constitutional eczema after 2002 and on balance I hold that his condition in 2002 was entirely a constitutional condition without any element of a contact irritant dermatitis. In arriving at that global view I

have balanced all the conflicting features and taken into account the entirety of the evidence. I recognise that in this case no one feature is decisive. However in the overall picture I place greater significance on the finding that the black substance was not a dust that could become airborne but was rather grime. The significance of that feature is that it is improbable that the plaintiff could have had a contact irritant dermatitis due to the black substance involving his face, neck and chest. At the very least those sites were a constitutional eczema. I have considered the potential for the plaintiff having had contemporaneously both a constitutional condition involving his face, neck and chest and a contact irritant dermatitis to other parts of his body. However I accept the evidence of Dr McMillen that on balance his condition, which is his whole condition, was a constitutional eczema. In that respect I place greater significance, in the particular circumstances of this case, on the feature that the web spaces between his fingers were never involved in his skin condition. Again I recognise that no one feature is decisive and I have balanced all the features in this case in arriving at my decision.

[18] The plaintiff has not established on the balance of probabilities that his skin condition was caused or contributed to by exposure to a substance at work. I dismiss the plaintiff's claim. I will hear counsel in relation to the question of costs.