Neutral Citation No. [2002] NIQB 52 | *Ref:* **COGB3233**

Judgment: approved by the Court for handing down | *Delivered:* **09/10/2002**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

MARK ANDREW BELL

Plaintiff;

AND

CAUSEWAY HEALTH AND SOCIAL SERVICES TRUST

Defendant.

COGHLIN J

[1] By summons dated the 31st May 2002 the plaintiff herein, Mark Andrew Bell, sought an order for summary judgment against the defendant, Causeway Health and Social Services Trust, in accordance with the provisions of Order 14 of the Rules of the Supreme Court (Northern Ireland) 1980. The summons came on for hearing before Master McCorry on the 4th September 2002 when the Master granted the plaintiff's application for summary judgment and ordered the defendant to pay to the plaintiff the sum of £149,790.00 together with costs. On the 20th September 2002 I heard the appeal for the purposes of which the plaintiff was represented by Mr Francis O'Reilly BL while Mr Arthur Brangam QC appeared on behalf of the defendant.

[2] The plaintiff is a Consultant in Accident and Emergency medicine and from the 1st February 2001 he has been employed by the defendant. From the 1st February until May 2001 the plaintiff was employed at Coleraine Hospital and from May 2001 until the present date he has been employed at the Causeway Hospital.

[3] The plaintiff's Writ of Summons was issued on the 22nd April 2002 and his Statement of Claim was delivered on the 27th May 2002. On the 20th June 2002 a Defence was delivered on behalf of the defendant.

[4] For the purposes of the appeal hearing I read the pleadings together with the affidavits filed in support of the Order 14 application by the plaintiff, Neil Guckian and Doctor Wesley McGowan.

[5] It is common case between the plaintiff and the defendant that the Job Description relating to the plaintiff's employment included a provision that the plaintiff would participate in a senior doctor on-call rota with two other employees, Mr Wali and Doctor Cargin. In effect, this provided for a one in three on-call duty. However, before taking up his post, the plaintiff was informed that Mr Wali had been transferred to a different department and that Doctor Cargin would not be involved in the on-call rota with the result that the plaintiff himself was solely responsible for maintaining the on-call service.

[6] The plaintiff's case is that, subsequently, in or about September 2001, he negotiated an agreement with the defendant under the terms of which his additional on-call hours, that is, outside his share of the one in three rota, would be recognised and remunerated at a rate of £30.00 per hour. Further terms of this alleged agreement were that the plaintiff would submit a list of such hours prior to the end of September 2001 to Doctor McGowan FFACS, the defendant's Executive Director of Medical Services and that, thereafter, the plaintiff would submit monthly accounts of such hours. The plaintiff claims that he has not received any payment in accordance with the terms of the said agreement and that, at a meeting which took place in February 2002 in the Causeway headquarters, which was attended by Mr Tweed the defendant's Chief Executive, Doctor McGowan and Mr Guckian, the Financial Director of the Trust, he was informed by Mr Tweed that no payments would be made as there "… would almost certainly be objection from the Northern Health Board and the Department of Health."

[7] For its part, the defendant denies that any such agreement was made between it and the plaintiff, and, in support of this stance, affidavits have been filed by Doctor McGowan and Mr Guckian.

[8] In support of his case the plaintiff exhibited a number of the defendant's claim forms headed "retrospective claim for payments for duty performed on a locum basis". These forms set out the number of hours covered by the plaintiff during any relevant period and the rate per hour is stated therein to be £30.00. At the top of the form the direction appears that the document should be returned to "Director Medical Services" and the number of hours together with the rate set out on each of the forms has been signed by Doctor McGowan, the Director of Medical Services as "approved". At paragraph 10 of his affidavit Doctor McGowan explained the completion of these forms in the following terms:

> "I carried out a similar calculation and marking the document 'approved' I indicated my authentication of the hours claimed. By submitting the form I wished to bring matters to a head by elevating the importance of the problem for the consideration of other Director's within the Trust. I would wish to emphasis the documentation submitted by Doctor Bell was nothing more than a CLAIM for Retrospective payment. In accordance with the usual practice this Retrospective Claim Form was sent via Human Resources to Finance".

[9] In the course of a concise and helpful submission Mr Brangam QC referred me to paragraph 14/4/49 of the White Book which sets out the principles upon which a court hearing an appeal of this type should act. In particular, Mr Brangam QC referred me to that part of the paragraph which, referring to the case of Alliance & Leicester Building Society v Gharemani, states:

> "If the court below holds '… there is a triable issue on questions of facts, the Court of Appeal will not interfere unless … satisfied that there is no fair or reasonable probability of the defendant having a real bona fide defence, for example, because the evidence on which the defendant relies is inherently incredible, or because it is inconsistent with contemporary documents or other compelling evidence. In its evaluation the court must look at the overall situation and the evidence as a whole, and not merely confine its attention to the conflicting affidavits … for this Court to disturb … unconditional leave to defend is only permissible in the exceptional circumstances laid down by the authorities …'".

[10] Bearing in mind the contents of this paragraph from the White Book, together with Mr O'Reilly and Mr Brangam QC's submissions, I have reached the conclusion that there is no reasonable probability of the defendant having a bona fide defence to at least part of the plaintiff's claim. I regret to say that I am inclined to the view that Doctor McGowan's affidavit is neither credible nor consistent with contemporary documents. The memorandum from Causeway's Chief Executive, W S Tweed, dated the 15th October 2001 required an explanation from Doctor McGowan as to why he had "entered into" and "approved" "this arrangement". This raises the clear implication that, prior to the date of the memorandum, Doctor McGowan had not made the case to Mr Tweed that he was merely trying to "bring matters to a head" and, further more, such an argument does not appear to have played any part whatsoever in Doctor McGowan's response to Mr Tweed on the 18th October 2001.

[11] Even if Doctor McGowan's exchanges with the plaintiff and the claim forms did not amount to an agreement, about which I remain sceptical, to say the least, it seems to me that by the meeting of the 7th January 2002, at the latest, the Trust, through its Chief Executive, Mr Tweed, had agreed to remunerate the plaintiff for the additional hours of cover. This seems clear from the memorandum from Mr Tweed to Doctor Bell of the 8th January 2002. No affidavit has been filed by Mr Tweed to suggest that this document bears any other reasonable interpretation.

[12] In my view, the affidavit sworn by Mr Guckian does not assist the defendant. At paragraph 2 Mr Guckian averred that he did not believe that the plaintiff could expect that "Doctor McGowan was in a position to approve any substantial payments in favour of the plaintiff …". The documentation clearly confirms that this is precisely what Doctor McGowan did. In addition, Doctor McGowan's own calculation of the hours of cover corresponded with that of the plaintiff and the memorandum of the 8th January 2002 confirmed that the out of hours commitment was to be honoured.

[13] The memorandum of the 8th January 2002 did record that "the detail of this payment will be discussed, as soon as possible, with Doctor McGowan Director of Medical Services." While, as I have already noted above, Doctor McGowan's signatures on the claim forms recorded his approval of a rate of £30.00 per hour I note that paragraph 14 of Doctor McGowan's affidavit alleges that the meeting of the 7th January 2002 did not reach agreement as to the amount by which the plaintiff was to be recompensed. Paragraph 4 of the plaintiff's second affidavit exhibits further documentation which he submits confirms the defendant's agreement with Doctor Jaffrey, the relevant authority at the Faculty of Accident

and Emergency Medicine, that the defendant operated a one in three rota system with "anything outside" the individual share of the rota being paid at "locum consultant rate". The plaintiff maintains that locum consultant rate is £30.00 per hour.

[15] Taking account of the principles set out at paragraph 14/4/49 of the White Book I am just persuaded that the defendant may have an arguable case in relation to the rate of compensation to which the plaintiff is entitled.

[16] Accordingly, I dismiss the appeal of the (defendant) respondent in so far as it relates to the number of on-call hours in respect of which the plaintiff is entitled to be compensated under the alleged agreement and give leave to the (defendant) respondent to defend the plaintiff's claim in so far as it is related to the rate per hour. This leave will be conditional upon the (defendant) respondent paying to the plaintiff within a period of six weeks a sum calculated by applying a rate of £15.00 per hour to the calculated number of hours.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

MARK ANDREW BELL

Plaintiff;

AND

CAUSEWAY HEALTH AND SOCIAL SERVICES TRUST

Defendant.

J U D G M E N T

OF

COGHLIN J
