[1998] EWCA Civ 1254 (22nd July, 1998)

IN THE SUPREME COURT OF JUDICATURE LTA 98/5644/3
IN THE COURT OF APPEAL (CIVIL DIVISION)
APPLICATION FOR LEAVE TO APPEAL

Royal Courts of Justice
The Strand
London WC2

Wednesday 22nd July, 1998

B e f o r e:

LORD JUSTICE MUMMERY
LORD JUSTICE MAY

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MRS AND MRS COWELL (T/a The Stables)
Respondents

- v -

GWILYM WILLIAMS
Applicant

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(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
Tel: 0171 421 4040
Official Shorthand Writers to the Court)

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MR R ALLEN and MISS J MONAGHAN (Instructed by Messrs Merion Jones, Gwynedd LL55 2NN) appeared on behalf of the Applicant

THE RESPONDENTS DID NOT APPEAR AND WERE NOT REPRESENTED

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J U D G M E N T
(As approved by the Court)

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Wednesday 22nd July, 1998
JUDGMENT

LORD JUSTICE MUMMERY: This is a renewed application for leave to appeal. The appellant, Mr Gwilym Williams, wishes to appeal against the order made by the President of the Employment Appeal tribunal, Morison J, on 6th March 1998.

The order was made on the application of Mr Williams. He is the respondent to an appeal by his former employers, Mr and Mrs Cowell, trading as The Stables. Two applications were made by Mr Williams in relation to Mr and Mrs Cowell's appeal: first, that the hearing of the appeal be in Wales and, secondly, that translation facilities be made available for the full hearing of the appeal. Both applications were rejected. The relevant part of Morison J's reasoning is on pages 3 and 4 of the transcript, where he says:

"It seems to me that I should not accede to the application which has been made to me. This is not a case where one of the parties to the proceedings is incapable of speaking the English language. Although I accept that Mr Williams' first language is Welsh, there is no evidence before me that he will be prejudiced if the appeal is to be conducted in the English language. Secondly, I take into account the fact that Mr Cowell who is the other party to these proceedings does not speak Welsh. Thirdly, I take into account the costs which is involved in the appeal proceedings. Ms Monaghan [counsel for Mr Williams] says that I should not take cost into account, I think with respect she is mistaken. It would be odd if the Employment Appeal Tribunal were required to move to Wales purely and solely to fulfil Mr Williams' desire that the Welsh language should be used on the appeal; and it would be yet more odd if we were not entitled to consider the considerable costs involved in moving the court. The Employment Appeal Tribunal is a court which normally sits in England and Scotland. It seems to me that it would be as wrong to move the court to Wales just because one party wished the hearing to be conducted in Welsh, as it would to be transfer a case from a court in Wales to one in England, purely to ensure that the proceedings were conducted in English. The Welsh Language Act should not be used as a ground for dealing with a case differently from what would normally occur in practice.

Accordingly, as it seems to me this is not an application which I should accede and I dismiss it."

An application was then made, following the ruling that the Employment Appeal Tribunal would hear the appeal sitting in England, that the proceedings should be conducted in the Welsh language at least so far as Mr Williams' submissions were concerned. On that application, Morison J said that:

"I reject that application. S.22 of the Act specifically applies to any legal proceedings in Wales. It seems to me that the usual position of this Court will apply, namely that the language of this Court is English, unless this Court were to be sitting in Wales, in which case other considerations might apply. I do not

think it is necessary for Mr Williams to have his submission advanced in the Welsh language. I believe this is an application which has not merit."

Mr Robin Allen QC has been instructed only since last Friday to make this application for leave. He and Miss Monaghan have advanced in a skeleton argument detailed and interesting reasons as to why leave should be granted. It is necessary to consider those submissions against the background of this dispute, which is concerned with a Welsh language issue.

The Industrial Tribunal heard an application made by Mr Williams against Mr and Mrs Cowell. They held the hearing in Abergele. The hearing was conducted at least in part in the Welsh language. The extended reasons of the Tribunal, which were sent out to the parties on 9th June 1997, were translated into the Welsh language. The Tribunal unanimously held that Mr Williams had been discriminated against on racial grounds. Those racial grounds existed in relation to Mr Williams' dismissal from his employment as head chef in the restaurant known as The Stables Restaurant run by Mr and Mrs Cowell. Welsh speaking staff were employed there. Mr Williams' dismissal on 14th May 1996 followed an instruction given by Mrs Cowell, which was not complied with by Mr Williams. That instruction was that he should speak English with the staff in the kitchen. Mr Williams wishes to have his appeal heard in Wales so that it is governed by the provisions of the Welsh Language Act 1993. In particular, reliance is placed on section 22 of the 1993 Act which concerns the use of Welsh in legal proceedings. Subsection (1):

"In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, ..."

That is subject to such prior notice as may be required by the rules of court and any necessary provision for interpretation shall be made accordingly.

"(2) Any power to make rules of court includes power to make provision as to the use, in proceedings in or having a connection with Wales, of documents in the Welsh language."

It is submitted that, if the appeal to the Employment Appeal Tribunal by Mr and Mrs Cowell against the decision of the Industrial Tribunal is heard in Wales, then these provisions will apply. They would include conducting the proceedings in Welsh and having interpretation supplied. In support of that, reliance is also placed on the statutory discretion which the Appeal Tribunal has under section 20(2) of the Industrial Tribunals Act 1996:

"The Appeal Tribunal shall have a central office in London but may sit at any time and in any place in Great Britain."

There is a discretion for the Tribunal to sit in Wales. It is that discretion which Morison J refused to exercise. There is, quite apart from that, a general discretion in the courts in England (whether it is an Industrial Tribunal, Employment Appeal Tribunal or any other court) to provide, where appropriate, interpretation facilities, so that people who have problems in understanding the English language have the proceedings or the relevant part of them interpreted into their own language.

The case put by Mr Allen on the application for leave is that the decision of Morison J raises fundamental questions for minority language speakers, such as Mr Williams. Mr Allen puts the matter in a number of ways. First, he has a point on the construction of the 1993 Act. He would seek to argue that the Act applies to a hearing of the appeal in the Employment Appeal Tribunal as a legal proceeding "in Wales". If proceedings have been instituted in Wales, and are governed by the Act, then any appeal in those proceedings down to the date of the ultimate conclusion of them, is also governed by section 22. This argument faces obvious difficulties, particularly in the light of section 22(2) in its reference to "proceedings in or having a connection with Wales." That wording reinforces the natural meaning of the word "in" in section 22(1) as meaning proceedings being heard in Wales, as opposed to proceedings being heard in England.

Mr Allen has a more substantial point on the exercise of the discretion of the court. First, as to where it should sit, the discretion as to venue under section 22 of the Industrial Tribunals Act and, secondly, in relation to the provision of the facilities of an interpreter at public expense. In addition to the arguments on interpretation and general submissions in relation to the exercise of discretion by Morison J, Mr Allen deploys more wide-ranging arguments on the human rights aspect and the rights of minority language speakers.

I shall not examine those arguments because I have reached the conclusion on this application that leave to appeal should be granted. This is, however, subject to a number of reservations. It appears from enquiries, which have been made from the Employment Appeal Tribunal, that the papers in this case are not in proper order. In the present state of the case, as it appears to the documents before us, there is a danger that a great argument on principle will be erected on a case which does not in fact raise any substantial question of law on appeal from the decision of the Industrial Tribunal that there had been racial discrimination by Mr and Mrs Cowell against Mr Williams.

Having lost the case, Mr and Mrs Cowell lodged with the Employment Appeal Tribunal a Notice of Appeal. The Notice of Appeal is dated 15th July 1997. An attached letter sets out a number of grounds on which Mr and Mrs Cowell claim to have legal questions on the appeal. They do not appear to raise arguable legal points. This was the view of the Employment Appeal Tribunal, chaired by His Honour Judge Hargrove, when a preliminary hearing of Mr and Mrs Cowell's appeal took place on 14th November 1997. The purpose of a preliminary hearing is to determine whether there is an arguable point of law for an appeal to the Employment Appeal Tribunal, which only has jurisdiction to hear appears on questions of law from decisions of Industrial Tribunals. The Employment Appeal Tribunal took the view that the grounds of appeal set out in the Notice of Appeal, which had been served, did not disclose a legal point that was reasonably arguable. But, nevertheless, the Employment Appeal Tribunal ordered that the appeal should be allowed to proceed to a full hearing, limited to one point which is not mentioned in the Notice of Appeal. That is whether the failure of the Industrial Tribunal to consider whether there had been any attempt to coerce a Mrs Lewis to sign a document of 5th July by falsely representing that Mr Pugh had signed, vitiated the decision.

It is quite impossible for me, or I think anyone else, to understand what that point is, without knowing exactly what was said by Mr Cowell when he appeared in person on the preliminary hearing. Inquiries have been made from the Employment Appeal Tribunal to decide whether Judge Hargrove gave a judgment in relation to the disposal of that preliminary hearing. It appears that he did not. The matter is

obscure, because it seems from further documents produced to us after a short adjournment this morning, that the Notice of Appeal was served on Mr Williams in its unamended form on 26th June 1998. He has put in a respondent's answer to that appeal, but, as far as he and his legal advisers are concerned, nothing has been received which sets out, by way of amendment, the ground which the Employment Appeal Tribunal considered raised an arguable question of law deserving of a full appeal. All that they know is what we know, namely what appears from 14th November 1997 order.

It is a matter of concern that the fundamental points which Mr Allen wishes to canvass about where the hearing of the appeal takes place and whether interpreters are to be provided at that hearing to translate from and into the Welsh language, may be an interesting but weighty and costly structure, built on what may turn out to be a flimsy appeal. The appeal may be determined without Mr Williams and his representative even being called upon to address the Tribunal. I am not deciding whether that is a good appeal or not. But from what I have seen it is a matter of concern that this appeal may not be the best vehicle for a test case to determine the rights of Welsh language speakers in the courts and Tribunals of England and Wales.

We are told by Mr Allen that this point is of interest to the Commission for Racial Equality. They are supporting the application for leave to appeal. We are told that the Welsh Language Board have taken an interest in the case. They have formed the view that once proceedings have begun, which are governed by section 22 of the Welsh Language Act 1993, then on the basis of equality set by that Act the Act should continue to apply beyond the original hearing of the proceedings, down to the time when they are finally concluded.

There is a question of principle which, as Mr Allen puts it, will inevitably arise at sometime. So, he says, it would be desirable to have it decided in this case. This court is also concerned about the additional costs which will be incurred. I understand that the Commission for Racial Equality support this application and that the Welsh Language Board are interested in the general point. But the point, as set out by Mr Allen and Miss Monaghan in a 10-page skeleton argument, could well occupy the court hearing this appeal for a considerable amount of time. Substantial costs will be spent. The court expressed concern whether Mr Cowell, who has appeared in person in these proceedings and in the Employment Appeal Tribunal, should be exposed to the risk of having to pay for the cost of a decision on this more general question. Mr Allen told us that he would advise his clients not to seek an order for costs against Mr Cowell in relation to the full hearing of the appeal. He would also advise his clients to review the merits of this case in view of the points recorded in this judgment and raised during the course of argument.

With those reservations that I would grant leave to appeal. I make it clear, speaking for myself, that I am not expressing any view about the prospects of the Welsh Language points succeeding. The normal practice of this court is only to grant leave to appeal in a case which has reasonable prospects of success. The reason for granting leave to appeal in this case is not related to whether the point raised in this case has reasonable prospects of success. It is related to the general interest of the point and the nature of the arguments deployed by Mr Allen on the exercise of the court's discretion, having regard to the provisions of the Welsh Language Act and to Articles 3, 6 and 14 the Convention of Human Rights. I am influenced in granting leave to appeal by the possible repercussions of Mr Allen's arguments, if correct, on the practice and procedure of other courts. The general points are not peculiar to Industrial Tribunals and the

Employment Appeal Tribunal. The logic of his argument leads to similar questions in the conduct of proceedings in the High Court and in the Court of Appeal, even beyond.

It is for those reasons that I would grant leave to appeal.

LORD JUSTICE MAY: I agree.

ORDER: Application allowed, 14 days to serve the Notice of Appeal.
(Order not part of approved judgment)
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