

THE HIGH COURT

CAPTAIN DEREK TURNER

.v.

THE PILOTAGE COMMITTEE OF DUBLIN PILOTAGE AUTHORITY

Judgment of Mr. Justice Barron delivered the 14th day of June 1988.

A collision occurred between m.v. Tipperary and m.v. Sumburgh Head in the Dublin pilotage district on the 18th February 1988. The Dublin pilotage district comes within the jurisdiction of the Dublin Port and Docks Board who are the appointed pilotage authority for the purposes of the Pilotage Act 1913. In pursuance of duly authorised powers the Dublin Port and Docks Board have delegated the entire of the duties of the pilotage authority to the pilotage committee. On the 25th February 1988, the pilotage committee heard reports from the pilotage superintendent concerning the collision. As a result this committee appointed an inquiry tribunal to:

- (1) establish the facts leading to the accident;
- (2) report its conclusions to the pilotage committee;
- (3) make recommendations as deemed appropriate.

The members of this tribunal were to be the pilotage superintendent, the deputy harbour master - neither of whom were members of the pilotage committee - and four members of the pilotage committee, including the chairman.

On the same day, the Applicant, who was the master of the m.v. Tipperary, was notified by letter from the secretary to the pilotage committee that the inquiry tribunal which had been appointed would meet on the 29th February 1988 and wished

to interview him regarding the incident. The inquiry tribunal met on the 29th February 1988. It interviewed five persons: the pilot and the master of the m.v. Sumburgh Head, the master and first mate of the m.v. Tipperary, and the berthing master Dublin Port. Of these, the pilot of the m.v. Sumburgh Head was accompanied by his solicitor. Having considered what was said to it, the inquiry tribunal was satisfied that it had been established that the m.v. Tipperary which was obliged to give way did not do so. The five persons, referred to in the decision of the inquiry tribunal as witnesses, were interviewed individually. None was made aware of the evidence which the others had given nor obviously was there any opportunity for cross-examination.

On the 1st March 1988 the pilotage committee met. Its four members on the inquiry tribunal were present as was the pilotage superintendent. The report of the inquiry tribunal was before it, and its findings were fully accepted. The committee then decided to hold a hearing under Section 26 of the Pilotage Act 1913 to determine what disciplinary action, if any, should be taken against the master of m.v. Tipperary. Section 26 of the Pilotage Act 1913 so far as is material to this case is as follows:

"A pilotage authority may suspend or revoke any pilot's licence or any pilotage certificate granted by them if it appears to them, after giving the holder thereof an opportunity of being heard, that he has been guilty of any offence under this Act or of any breach of any byelaw made by the authority, or of any other misconduct affecting his capability as a pilot, or that he has failed in or neglected his duty as a pilot, or that he has become incompetent to act as pilot; and a

licence or certificate, if so revoked, shall cease to have effect, and, if so suspended, shall cease to have effect for the period for which it is suspended."

On the same day the 1st March 1988 the secretary to the pilotage committee wrote to the Applicant as follows:

"Dear Captain Turner

Re: Collision between m.v. Tipperary and m.v. Sumburgh Head on 18th February 1988.

The inquiry tribunal, set up by the pilotage committee, heard the evidence of various witnesses at the hearing in Port Centre on 29th February 1988. Having considered the evidence given the inquiry tribunal decided that:

It was satisfied that it had been established that the m.v. Tipperary, which was obliged to give way, did not do so.

It was also satisfied that there was an error of judgment by the master of m.v. Tipperary in failing to take effective action to avoid this collision.

The findings of the inquiry tribunal were placed before the pilotage committee on 1st March 1988 and the committee fully accepted the findings of the tribunal.

The pilotage committee will consider the taking of disciplinary action which may result in the suspension or revocation of your pilotage certificate.

Accordingly, I am to inform you that the pilotage

committee will hold a hearing under section 26 of the Pilotage Act, 1913 to make a determination on this matter. This hearing will be at Port Centre on Monday, 7th March 1988 at 11 a.m. and I am to request your attendance at the hearing. You are entitled to be represented by a legal or other representative.

Yours faithfully."

The pilotage committee met on the 7th March 1988. An adjournment was sought on behalf of the Applicant upon the ground that he had not had sufficient time to consider his position. Objection was also taken to the fact that the committee had already reached a conclusion on the facts. The committee considered this application and adjourned the matter for hearing to the 21st of March 1988. On the 11th March 1988 the law agent for the pilotage committee wrote to the Applicant's solicitors as follows:

"Re: Collision between m.v. Tipperary and m.v. Sumburgh Head at Dublin Port on 18th February 1988.

Your client: Captain D. Turner

Dear Sirs

The hearing under section 26 of the Pilotage Act 1913 was adjourned to Monday 21st March 1988 at 2 p.m. at Port Centre, Alexandra Road, Dublin 1. On the resumption of this hearing the pilotage committee will be requested to hear evidence relating to the collision between the m.v. Tipperary and the

m.v. Sumburgh Head which occurred on the 18th February 1988 and thereafter to decide the facts of the collision.

Immediately following such decision the pilotage committee should consider whether or not any disciplinary action is to be taken under Section 26 of the Pilotage Act 1913 i.e. whether to suspend or revoke a pilot's licence and/or a pilotage certificate.

Will you please advise your client accordingly.

Yours faithfully."

This letter changed the entire complexion of the adjourned hearing. Up to then, the pilotage committee was satisfied as to the person to blame for the collision. Now it was indicating that a decision on the facts still had to be determined. It did not indicate, however, whether the Applicant would be entitled to call witnesses or cross-examine other witnesses, or generally what type of hearing was to take place. There is no suggestion that the Applicant or any other party was being charged with any of the matters which are set out in Section 26 of the Pilotage Act 1913 as grounds for the suspension or revocation of a pilot's licence or a pilotage certificate. The reference in the second paragraph of the letter to both a pilot's licence and a pilotage certificate suggests that not only the Applicant, who, as a master of a ship, was the holder of a pilotage certificate but not of a pilot's licence, but also the pilot of the m.v. Sumburgh Head, as the holder of a pilot's licence, would be on trial.

Nevertheless, there is nothing in the letter to suggest other than that the hearing would continue against the Applicant only and, if he was still found to be responsible, that the pilotage committee would then pass on to consider disciplinary action.

Following the receipt of this letter the Applicant applied on the 15th of March 1988 for leave to apply by way of Judicial Review for an Order of Certiorari to quash the decision of the inquiry tribunal and for an Order of Prohibition to prevent the pilotage committee from continuing with the hearing purporting to be held under Section 26 of the Pilotage Act 1913. Liberty to apply for Judicial Review was granted upon the grounds that, inter alia, the pilotage committee had acted in breach of the dictates of natural and constitutional justice and in breach of the provisions of the Pilotage Act 1913 and the regulations made thereunder by:

- (a) Determining the issue of fault for a collision between the Applicant's vessel and another vessel in advance of hearing the Applicant;
- (b) Purporting to conduct a hearing under Section 26 of the Pilotage Act 1913 for the purpose only of considering the appropriate disciplinary action for a predetermined default of the Applicant;
- (c) Appointing without jurisdiction to do so an inquiry tribunal to determine the issue of fault for the said collision.

The Respondent has opposed the application and by a statement dated the 19th April 1988 opposes the application on the following grounds:

"(1) The proposed hearing under Section 26 of the Pilotage Act 1913 is independent of and concerns matters other than those investigated by the inquiry tribunal which is complained of;

(2) The inquiry tribunal did not concern an investigation against the Applicant but was a preliminary investigation into the circumstances of the collision between two vessels in Dublin Port.

(3) The pilotage authority for the Dublin pilotage district is Dublin Port and Docks Board and by virtue of Article 4 of the 1925 Dublin Pilotage Order the pilotage committee of the Dublin pilotage authority has been established. The pilotage authority was given power to delegate to the pilotage committee any of their powers and duties under the Pilotage Act 1913 by virtue of Article 5 of the 1925 Order. Section 16 of the Pilotage Act 1913 empowers the Respondent as the pilotage committee to do all things as may be necessary or expedient for carrying into effect their powers and duties and the said powers and duties include the conducting of necessary enquiries as to incidents involving pilots within the jurisdiction of Dublin Port.

(4) Prior to the commencement of this application the Applicant was informed by letter dated the 11th day of March 1988 that the proposed hearing under Section 26 of the Pilotage Act 1913 would not adopt the findings of the inquiry tribunal but would hear all the evidence and permit the Applicant to be legally represented and call witnesses on his behalf and cross-examine all

witnesses called to give evidence on the issue.

- (5) The Respondent is expressly authorised by Section 26 of the Pilotage Act 1913 to suspend or revoke the Applicant's pilotage certificate after giving the Applicant an opportunity of being heard and the Applicant has been informed that such an opportunity will be afforded to him."

It occurred to me that provisions of the Merchant Shipping Acts in relation to the investigation of collisions at sea might have been relevant not only to the present collision but also to the powers of the pilotage authority in relation to it. I have been told and I accept that the provisions of these Acts have already been applied and that an inquiry could be directed. No point has been taken by the Applicant that the procedures under the latter Acts in any way affect the powers of the pilotage authority. In any event for the purposes of the present application it is not necessary to consider what, if any, interdependence there is between the powers of a pilotage authority and those given to other authorities under the Merchant Shipping Acts.

The hearing before the inquiry tribunal may have taken the form of an investigation of the collision, but its terms of reference and its findings show that it was intended to and did act very differently. Section 16 of the Pilotage Act 1913 is pleaded as the authority for the procedure adopted. This section is as follows:

"Subject to the provisions of this Act, a pilotage authority may license pilots for their district, and do all such things as may be necessary or expedient for

carrying into effect their powers and duties."

In my view this section does not authorise the pilotage committee to delegate to a different body the power to determine blame for a collision within the area of its jurisdiction whether or not some or all of the members of that other body are members of the pilotage committee. I refer to the pilotage committee since the pilotage authority has delegated the entirety of its powers to this committee.

The power of investigation appears from the bye-laws to be vested in the pilotage superintendent. Under Bye-law 59, there is an obligation on the holder of a pilotage certificate in the event of a collision to make a report as soon as possible to the pilotage superintendent, who, in turn, must report to the pilotage committee.

In the present case, the inquiry tribunal acted totally without jurisdiction and also totally without fair procedures.

The disciplinary jurisdiction of the pilotage committee is contained in Section 26 of the Pilotage Act 1913. This section contains an express provision that the holder of the licence or certificate, as the case may be, must be given an opportunity to be heard before that person's licence or certificate can be suspended or revoked. In my view, it is essential for the exercise of jurisdiction under Section 26 that the person likely to be affected by a decision under the section should be told the ground upon which the proceedings are being instituted, be given sufficient time to prepare his case, be given an opportunity to present that case under fair procedures, and be assured of an independent tribunal.

In the present case, in relation to the adjourned hearing none of these elements is present. The Applicant has not been told the charge against him. Undoubtedly, he is aware that it

has been found that his vessel when obliged to give way did not do so. But it has never been made clear whether this is something which affects his capabilities as a pilot. It has never been put to him that his conduct comes within any of the five grounds set out in Section 26 and if so which one. Not having been told the charge, he is unable properly to prepare his case. There is nothing in the letter dated 11th March 1988 to indicate that the procedure at the hearing when resumed would be altered in any way. Finally, the proposed tribunal could not be independent. Four members have already decided the facts; another four members have already considered evidence which has neither been available to the Applicant nor the subject of cross-examination on his behalf. Having regard to all these factors, I am satisfied that the pilotage committee is not at present entitled to entertain proceedings under Section 26, and, if it was, is not entitled to do so because all of its members save the member absent on the 1st March 1988 are no longer independent.

Accordingly, the reliefs sought will be granted.

Henry Barber
14/6/88