

Robert William James Plenderleith

Appellant

v.

The Royal College of Veterinary Surgeons

Respondent

FROM

THE DISCIPLINARY COMMITTEE OF THE
ROYAL COLLEGE OF VETERINARY SURGEONS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL OF THE 16TH OCTOBER 1995,
Delivered the 11th December 1995

Present at the hearing:-

Lord Browne-Wilkinson
Lord Slynn of Hadley
Lord Hoffmann

[Delivered by Lord Slynn of Hadley]

On 24th January 1995 the appellant was judged by the Disciplinary Committee of the Royal College of Veterinary Surgeons to have been guilty of two charges of disgraceful conduct in a professional respect. It was directed that his registration should be suspended for four months pursuant to section 16 of the Veterinary Surgeons Act 1966. At the conclusion of the hearing of his appeal their Lordships indicated that they would humbly advise Her Majesty that the appeal should be allowed and the finding of disgraceful conduct set aside. They stated that their reasons would be given later.

The appellant is a veterinary surgeon of long experience. With associates he provides veterinary services at a number of clinics in Lincolnshire. A cat called "Sharon" was taken to one of these clinics at Louth on 7th May 1994. There she was seen by a man who advised and injected a vaccine. He said that a second injection should be given in three to four weeks' time, but Sharon was not taken back to the clinic until 20th July 1994 when she was seen by a woman who gave an injection. On each occasion a certificate was signed by the person giving the injection stating that the vaccine had been administered.

Following investigation the two charges were brought by the respondent alleging that the appellant on the first occasion (wrongly stated to be 3rd May 1994) caused or permitted his employee, a Mr. C.J. Cornillesse, to provide veterinary care to Sharon when the appellant knew or ought to have known that Mr. Cornillesse was not registered in the Register of Veterinary Surgeons and alleging that, on the second occasion, another employee, Miss C.M. Bermingham, whom again the appellant knew or ought to have known was not so registered, had been caused or permitted to provide such services.

There was no doubt that Mr. Cornillesse was the man concerned on the first occasion. The appellant, however, challenged the allegation that Miss Bermingham had given the injection on the second occasion because of the alleged discrepancy between the owner's description and her appearance. After hearing evidence, including that of a handwriting expert, the Disciplinary Committee accepted that not only Mr. Cornillesse but also Miss Bermingham had been the persons concerned. There was clearly evidence on which the Committee could find as it did and their Lordships cannot interfere with that finding.

Nor was there any question as to whether either of the two persons was registered on the relevant dates. Plainly, neither was.

On the other hand, Mr. Cornillesse, a Netherlands national, had gained his Diploma of Veterinary Surgeon at the Faculty of Veterinary Medicine of Utrecht in the Netherlands on February 26th 1993, and he was a member of the Royal Netherlands Veterinary Association. Miss Bermingham obtained the degree of Bachelor of Veterinary Medicine from the National University of Ireland on 24th July 1993 and was entered on the Register of Veterinary Surgeons for Ireland, registration number 12/93.

The appellant contends, first, that these charges should never have been brought since the respondent had acted contrary to Council Directive 78/1026/EEC (concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services) as amended by Council Directive 89/594/EEC. The Directive was expressed to apply also to nationals of Member States who are pursuing as employed persons the activities of veterinary surgeons.

Subsequent to the 1989 Directive, section 5A of the Veterinary Surgeons Act 1966 (which was inserted by Article 3(2) of the Veterinary Surgeons Qualifications (EEC Recognition) Order 1980 (S.I. 1980/1951)) was amended.

The section thereupon provided that any national of a member State who holds a recognised European qualification in veterinary surgery as there defined shall be entitled to be registered in the Register of the College and, on being registered, shall become a member of the College. It is not suggested that the two persons concerned did not hold such a qualification or that having produced the relevant documents they were not entitled to be registered.

The appellant contends on the basis of the European Court of Justice's decision in *Auer v. Ministère Public* (No. 2) [1985] 1 C.M.L.R. 123 that the Directive itself can be relied on directly against the College even if all of its terms have not been incorporated into domestic law. In particular it is said that by only holding fortnightly sessions when the nationals of other member States could register, and by not registering Miss Bermingham when she first asked to be registered, the respondent caused delay contrary to Article 12 of the Directive so that the fault for, and the cause of, their non-registration is that of the College. Moreover it is said that in employing the two veterinary surgeons pursuant to the terms of Directive 78/1026/EEC the appellant could not be guilty of disgraceful conduct in a professional respect.

The appellant contends in the alternative that in doing what he did, and leaving aside considerations of European Community law, the appellant cannot be said to have conducted himself disgracefully in a professional respect.

It is convenient to take this alternative ground first, involving as it does a consideration of the facts of the case and the scope of the provision "disgraceful conduct in a professional respect".

The appellant did not attend the hearing of the Disciplinary Committee but he swore an affidavit in which he explained the difficulty veterinary surgeons had at the time in recruiting qualified persons to fill permanent positions and even to find suitable "locums". In order to carry on his practice he had been willing to employ veterinary surgeons qualified in other member States, but he complained that as it took so long to get the registration through, he had gone ahead and employed both Mr. Cornillesse and Miss Bermingham even before they were registered.

Mr. Cornillesse faxed to the College a letter dated 26th April 1994 asking to be registered by the College and saying:-

"I am sending you the necessary papers as requested this morning when I spoke to your College on the phone."

The documents provided were his qualification certificate and an English translation, a document entitled "Getuigschrift" dated 26th February 1993 and an English translation certifying that he had obtained his final degree in veterinary medicine, a certificate of character and pages from his Netherlands passport, with a declaration of nationality. The College wrote to Mr. Plenderleith on 29th April saying that Mr. Cornillesse should cease practice forthwith as he was not registered. A similar letter was sent to Mr. Cornillesse on the same date. If the registration could have been dealt with on receipt, since as the Assistant Registrar of the College accepted: "in exceptional circumstances it could be done in one day", Mr. Cornillesse could easily have been registered before Sharon's visit on 7th May 1994. It was, however, the College's practice for administrative convenience to hold registration sessions every fortnight when a group of applicants would be dealt with together. In accordance with that practice, Mr. Cornillesse attended the College, completed the application form and was registered on 13th May 1994.

Miss Bermingham was provided with information indicating what documents should be supplied by Irish veterinarians who wished to become established or provide services in the United Kingdom before she attended the registration ceremony. These included a photocopy of her degree diploma and her registration certificate and proof of nationality. Miss Bermingham supplied two copies of a right of establishment certificate from the Irish Veterinary Council dated 9th May and 13th May 1994, a declaration of nationality dated 13th May 1994, which nationality she stated to be USA/Irish, and a certificate of her university degree dated 24th June 1993.

She attended at the College with Mr. Cornillesse on 13th May 1994 asking to be registered but she could produce only her American passport. Despite her declaration the College was not prepared to accept that her nationality had been proved. The provision of the documents and her visit to the College thus took place some two months before she treated Sharon on 20th July 1994, the subject matter of the second charge.

Miss Bermingham attended again at the College on 14th October 1994 but does not appear to have been in contact with the Registration Department in the meantime, though reference was made to her having written to the College on 9th August 1994. That letter has not been produced to the Board and its contents are not known. There is no evidence that the College was responsible for the delay and the reason for it is not known. It seems from a letter dated 6th September 1994 from Mr. Plenderleith's solicitors that Miss Bermingham needed to obtain a new Irish passport and that this had been made available by that

date. In that letter complaint was made about the refusal to register and about the delay in registering her.

In the meantime there was between Mr. Plenderleith and the College correspondence in which robustly, at times provocatively, Mr. Plenderleith criticised the College for their procedures; the College took the stand that these two veterinary surgeons could not practise until they were registered and that on the two dates in question Mr. Plenderleith had been in breach of the Act. The matter was then referred by the Preliminary Investigation Committee on 21st September 1994 to the Disciplinary Committee.

It should be said that it seems reasonable that for good administrative reasons the College organised registration on a fortnightly basis rather than allowing people to come in at any time. Nor can it be said to be unreasonable that the College was not satisfied as to Miss Bermingham's Irish nationality when all she could produce was an American passport.

Leaving aside the submission as to Community law, and assuming that Mr. Cornillesse and Miss Bermingham should not have been employed unless they were registered on the dates respectively referred to in the charges, the question remains as to whether Mr. Plenderleith's action in employing them in all the circumstances amounted to disgraceful conduct in a professional respect.

The words of the charge have their analogues in the disciplinary rules of other professions, as Lord Parker C.J. pointed out in *Marten v. Royal College of Veterinary Surgeons Disciplinary Committee* [1966] 1 Q.B. 1, 6 - thus, "disgraceful in his capacity as an architect", "conduct unbefitting a solicitor" and, in respect of doctors, "infamous in a professional respect". In that case Lord Parker C.J. referred to a number of decisions on these and similar words; e.g. *Felix v. General Dental Council* [1960] A.C. 704, *Hughes v. Architect's Registration Council of the United Kingdom* [1957] 2 Q.B. 550 and *Allinson v. General Council of Medical Education and Registration* [1894] 1 Q.B. 750. In the latter case, Lord Esher M.R. approved the test: "if it is shown that a medical man in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency", then it is open for the General Medical Council to say that he has been guilty of infamous conduct in a professional respect. It was said that what might not be infamous to a man in ordinary life might be infamous for a medical man to do. Lord Parker added at page 9:-

in *Marten v. Royal College of Veterinary Surgeons' Disciplinary Committee* [1966] 1 Q.B. 1, 9:

"It seems to me, although I do not put this forward in any sense as a definition, that the conception of conduct which is disgraceful to a man in his professional capacity is conduct disgraceful to him... as a practising veterinary surgeon."

These cases make it clear that what is done has to be done in a professional respect and that it is not a prerequisite of the charge being proved that what is done must involve some moral turpitude.

Their Lordships do not, however, consider that every breach of the disciplinary code or the statute or every commission of a criminal offence is necessarily to be regarded as "disgraceful conduct in a professional respect." However technical a meaning "infamous" or "disgraceful" conduct may have been given (so as to render unnecessary a morally blameworthy act) there must be a line below which conduct does not satisfy this test. It is to be observed that the provisions other than (b) in section 16(1) of the Act of 1966 which authorise removal from the register or suspension are in themselves of a serious nature. Thus (a) involves conviction of a criminal offence which, in the opinion of the disciplinary committee, renders him unfit to practise veterinary surgery, and (c) provides that where the name of a person has been fraudulently entered in the register, he may be so penalised.

Their Lordships bear fully in mind that the Board is reluctant to interfere with a finding by professional men of "disgraceful conduct in a professional respect" by one of their colleagues. On the other hand, as Lord Parker C.J. apparently accepted, the appeal is in the nature of a rehearing in exactly the same way as the Court of Appeal deals with appeals from a trial judge. Their Lordships appreciate the obvious importance from the point of view of both the profession and of the public that only registered veterinary surgeons should be employed. It has, however, to be borne in mind that in the present case, both individuals had genuinely sought to register and the appellant was aware of this. Both had the requisite qualifications. The delay was to some extent due to the administrative arrangements adopted. Mr. Cornillesse was registered within seven days of the offence charged; but for lack of a passport and despite the declaration of nationality Miss Bermingham would have been registered on 13 May, that is two months before she treated Sharon. Both were registered before proceedings were brought. The appellant seriously thought that the college was preventing the employment of veterinary surgeons qualified in the member states by the procedures which it adopted.

Their Lordships concluded that, upon all the evidence in this case, it could not reasonably be said that the appellant's conduct was "disgraceful in a professional respect," albeit he was in breach of the statute in employing these two veterinary surgeons.

This was described at the hearing before the disciplinary committee as "a unique case." Their Lordships regarded it as a special case in which they considered it right humbly to advise Her Majesty that the appeal should be allowed.

It was also argued that the activities of the two veterinary surgeons could have been carried out pursuant to the Veterinary Surgeons (Practice by Students) (Amendment) Regulations 1993, which permits overseas veterinarians not registered in the United Kingdom to gain experience for the purposes of the M.R.C.V.S. examination. The two individuals in the present case were not acting or purporting to act as students for that purpose, and that argument must be rejected. Whether

or not it would have been relevant in relation to the sentence imposed need not be considered.

In the circumstances, it is unnecessary to decide the issues of Community law which have been raised and argued – e.g. whether the decision in *Auer v. Ministere Public* (Case 271/82) [1983] E.C.R. 2727 applies, so that the Directive (78/1026/E.E.C.) in so far as not specifically incorporated into British law can be relied on by the appellant against the college, and whether article 12 of the Directive, which applies to services and not to establishment because of the temporary nature of the activity, also applies to employment which is continuous and not transient or irregular.

The college must pay the appellant's costs.