CO/3286/98, (Transcript: Smith Bernal)

R v Secretary of State for the Home Department ex parte Mbandaka

QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)

CO/3286/98, (Transcript: Smith Bernal)

HEARING-DATES: 9 DECEMBER 1998

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COUNSEL:
W Panton for the Applicant

PANEL: COLLINS J

JUDGMENTBY-1: COLLINS J

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COLLINS J: This is an application by three children for leave to move for judicial review of decisions made by the Governors of the School which they attend to exclude them in the case of two of them, for one day and in the case of the third, for two days, following alleged breaches of discipline.

The exclusions in question occurred as long ago as March 1998. There is an internal appeal process which the parents and the children very properly pursued. In two cases, that process ended towards the end of May. In the third, it was not concluded until the end of July.

The proceedings were then lodged on 26 August 1998. The first point to make is that in relation to school cases, it is essential, in my view, that applications be made as promptly as possible. They are not cases where it is appropriate to think in terms of three months. It should be a matter of days, a week or or two at the outside normally where judicial review is being sought of a decision when the child remains at the school. It may be that different considerations could apply when one is concerned with permanent exclusion. Of course the appeal process should be awaited but once the appeal process fails and it is believed that there is a remedy then the application should be made. After all, we are dealing here with children. They ought to be able to put the incidents behind them as soon as possible. It cannot be in their interests that matters are dragged up some considerable time after the event and there is on-going litigation in relation to them.

It seems to me, in those circumstances, that the delay here has been such that, in any event, I would have refused leave because the application, if it was going to be made at all, should have been made very much sooner after the appeals were dismissed than it was. So far as the third is concerned, it is true that that appeal was not dealt with until the end of July, but the decision no doubt had been made in relation to the others, so it should not have taken more than a matter of days to join it to them. In any event, it was probably too late. As far as the others were concerned, those proceedings should have been lodged much earlier if judicial review was to be sought. In my view, there has been undue delay and I see no good reason for extending time.

I have gone on to consider the merits. I accept that the papers do raise a ground for believing that there might have been and certainly it is arguable that there has been procedural impropriety in the way in which the matter was handled by the school and, more importantly, an underlying suggestion -- which Mr Panton has said is an important aspect of this case -- of possible racial discrimination. In the guidance that is given for determining the appropriateness of exclusion sanctions, there is reference to the 1993 Ofsted report that pupils of African or Caribbean origin, especially boys, are disproportionately excluded. It is said that head teachers must take particular care to ensure that they apply principles objectively and consistently across all cultural groups. Mr Panton tells me that the parents had, in January 1998, made a formal complaint that their children were being treated more harshly than other children and perhaps slightly paradoxically one of the main complaints was against a particular teacher, himself of African origin, who it is said was acting more harshly against black pupils because he found it difficult to discipline white pupils. For whatever reason, the result was disproportionate action against black pupils and this case is an example of that having happened because the exclusions arose in two cases as a result of alleged in discipline in class and the imposition of a detention. The parents were reluctant to accept that without explanation and no explanation was given so that the detention was not given. The decision that was made by the head teacher that temporary exclusion was the only possible course. It does seem, on the face of it, that that may have been a somewhat heavy-handed approach, bearing in mind that it is clear from all the reports and all the guidance that exclusion must be a last resort penalty. On the other hand, I have to bear in mind here that the exclusions were for one day, one day and two days respectively.

I have to ask myself, in those circumstances, whether, even if the applicant were to succeed in showing that there were breaches, either of procedural fairness or there was an irrationality in the decisions made, any relief could now benefit the children.

I, as Mr Panton has submitted, am quite happy now to state -- and it is clearly the case -- that there must not be discrimination against African or Afro-Caribbean pupils. If there is in any school an indication or evidence that there has been any such discrimination and, more importantly, in the context of this case, any disproportionate exclusion or victimisation of such children, it must not happen. It is contrary not only on the guidance but also to the law. If there is evidence that such conduct has occurred or is likely to recur then the court will have no hesitation in stepping in. That it is likely to recur concerns me in this case. Obviously, if a pupil is permanently excluded, the court will intervene if satisfied that it is arguable that the decision was flawed. But, the same does not apply if the sanction was such as here.

Mr Panton submits, and I see the force of this, that there may come a time when, albeit the penalty itself was a relatively minor one, nonetheless the pattern of the school's approach shows that there is a likelihood that this conduct will continue unless the court does intervene. I see no evidence of that here.

Mr Panton complains that the local education authority has not done anything about the complaint made last January. The remedy is not against the school in relation to that, it is against the local education authority and steps must be taken to pursue the local education authority to action if it has not acted. But that is no basis, in my judgment, for giving leave to move against the school.

I take the view, I am afraid, that these are proceedings which ought not to go ahead

because the result will be of no practical benefit to the children who are the applicants. The parents are not the applicants. It is the children who are the applicants and is the children's position which I have to consider. If it appears in the future that the school is victimising the children, then the past conduct can be used to build up a proper case, but this is not the time for it. I have no evidence before me that there is any continuing victimisation. The school is aware that the parents mean business as a result of of these proceedings. But it is not a proper use of this court, in my judgment, to permit a full-blown judicial review hearing and the cost that that involves to the school, quite apart from the cost to public funds, because I am told the applicants involved in such a battle are legally aided. Accordingly, I dismiss this application.

DISPOSITION:
Application dismissed.

SOLICITORS:
Yvonne Brown and Co