

DAY 11 P.M.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

1997 I No.139

Royal Courts of Justice
Tuesday, 14th March 2000

Before:

MR. JUSTICE MORLAND

BETWEEN:

- (1) INDEPENDENT TELEVISION NEWS LTD.
- (2) PENNY MARSHALL
- (3) IAN WILLIAMS

Claimants

- and -

- (1) INFORMINC (LM) LTD.
- (2) MICHAEL HUME
- (3) HELENE GULDBERG

Defendants

*Transcribed by BEVERLEY F. NUNNERY & CO.
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Telephone: (0171) 831-5627*

MR. T. SHIELDS Q.C. and MR. M. BARCA (instructed by Messrs. Biddle) appeared on behalf of the Claimants.

MR. G. MILLAR and MR. A. HUDSON (instructed by Messrs. Christian Fisher Solicitors) appeared on behalf of the Defendants.

PROCEEDINGS - DAY 11 P.M.

I N D E X

Page No.

VERDICT

19

1 2.00 p.m.

2
3 (In the absence of the jury)

4
5 MR. JUSTICE MORLAND: Mr. Shields and Mr. Millar, two requests
6 from the jury. The first is: "We wish to see the ITN and
7 Channel 4 news broadcast with only the operator present.
8 Channel 4, 6th August, evening" -- that is the 7 o'clock --
9 "Channel 3, 6th August, early evening and News at Ten." It is
10 not possible for them to see that with only the operator
11 present because the operator is, I gather, a personal
12 assistant or secretary to the editor in chief, and she has
13 been handling the rushes quite brilliantly, I think. So we
14 will have to do it in the normal way, that is no comments from
15 the Bar or myself when the programmes are shown, but they will
16 have to be shown in open court and I will say to the jury that
17 if they want a sequence to stop at any particular time, if
18 they put their hand up -- can you stop it pretty quickly, say
19 if they wanted it in a sort of still version? They can do
20 that? Are there any points about that?

21
22 MR. SHIELDS: No ...

23
24 MR. JUSTICE MORLAND: Right. The next matter is: "Could you
25 clear up when you advised compensation not in excess of
26 £150,000 did you mean as a basic payment before aggravated
27 compensation or as an overall total of both?" What I was
28 proposing to say was: "When I suggested an award of more than
29 £150,000 would be excessive I had in mind a total of £150,000
30 to include both basic and aggravated compensation." Are there
31 any comments about either of those?

32
33 MR. SHIELDS: That is how I understood it anyway.

34
35 MR. JUSTICE MORLAND: Yes. Well, that is what I did say, but
36 I mean ---

37
38 MR. SHIELDS: That is ...

39
40 MR. JUSTICE MORLAND: Fine. Are you happy about that, Mr. Millar?

41
42 MR. MILLAR: Yes.

43
44 MR. JUSTICE MORLAND: Could we have the jury back, please.

45
46 MR. SHIELDS: My Lord, they say "the broadcast" ---

47
48 MR. JUSTICE MORLAND: Well, they say "the broadcast"; they may
49 well want to see it in context.

50
51 MR. SHIELDS: I am obliged to your Lordship. I am only saying
52 that ---

53
54 MR. JUSTICE MORLAND: They say "the broadcast", they do not just
55 say the Bosnian clips.

1 MR. SHIELDS: I am trying to avoid any communication once they
2 come into the court, that is all.
3

4 MR. JUSTICE MORLAND: Yes. I think the very beginning. I would
5 have thought the best way would be to start with the Channel
6 3, 5.40/5.45 news, then the Channel 4, 7 o'clock, and then the
7 10 o'clock in that order. That would seem to be the logical
8 way of doing it.
9

10 MR. SHIELDS: Is your Lordship going to find out what part they
11 want to see or not? I know it is difficult ---
12

13 MR. JUSTICE MORLAND: It is difficult. I think it is probably
14 easier just to do it straight. It does take a bit of time
15 but ---
16

17 MR. SHIELDS: It takes a long time with Channel 4 ---
18

19 MR. JUSTICE MORLAND: Channel 4 takes about 40 minutes, does it
20 not, the whole programme?
21

22 MR. SHIELDS: It does.
23

24 MR. JUSTICE MORLAND: Yes. Well, I think I will ask them whether
25 they want -- but they will certainly want the opening and
26 closing shots. What do you say, Mr. Millar? Do you think
27 they should just see all the programmes, the whole lot?
28

29 MR. MILLAR: Does the answer to this lie in the wording of the
30 question? I am not sure I have ---
31

32 MR. JUSTICE MORLAND: I will read it out: "We wish to see the ITN
33 and Channel 4 news broadcasts" -- then they say with only the
34 operator present. Then they say: "Channel 4, evening,
35 Channel 3, early evening, and News at Ten."
36

37 MR. MILLAR: I think we would take that as being a request to see
38 those parts of those programmes that have been shown that
39 relate to this issue and obviously not the chunks that do not
40 relate to this issue.
41

42 MR. JUSTICE MORLAND: Yes. If you are happy with that ---
43

44 MR. SHIELDS: Does my learned friend mean by that that part which
45 relates to what Penny Marshall did and Ian Williams did?
46

47 MR. JUSTICE MORLAND: No, I would have thought it must relate to
48 the whole of the Bosnian, including what Dr. Karadzic said,
49 and so forth.
50

51 MR. SHIELDS: Yes. I am ... on this, as your Lordship knows.
52

53 MR. JUSTICE MORLAND: Yes. Right. Thank you. Can we have the
54 jury in, please.
55

56 (The jury returned)
57

1 MR. JUSTICE MORLAND: Ladies and gentlemen, thank you for your two
2 notes. The first was a question: "Could you clear up when
3 you advised compensation not in excess of £150,000 did you
4 mean as a basic payment before aggravated compensation or as
5 an overall total of both?" The answer to that is this. When
6 I suggested an award of more than £150,000 would be excessive
7 I had in mind a total of £150,000 to include both basic and
8 aggravated compensation.
9

10 Your second note was in these terms: "We wish to see the
11 ITN and Channel 4 news broadcast with only the operator
12 present, the Channel 4, 7 o'clock evening broadcast on the 6th
13 and the Channel 3 broadcast, the early evening one at 5.40 and
14 News at Ten." You can certainly see them. You cannot see
15 them, I am afraid with only the operator present. You will
16 have to bear with the public and ourselves and watch them in
17 silence except for listening. If at any time you want the
18 sequence stopped, if you would put your hand up the operator,
19 the young lady down there, will do her best to stop it quickly
20 at that stage. What I would like to know from you is -- the
21 Channel 4 news, for example, goes on in total for about 40
22 minutes. Do you just want those parts relating to Bosnia, the
23 reports, the camps and of course the introduction and the end,
24 which may have shots of Alic, and so forth?
25

26 THE FOREMAN OF THE JURY: That is correct.
27

28 MR. JUSTICE MORLAND: That is what you want; and the same with the
29 early evening news and the News at Ten? Right. We will start
30 then in sequence, I think, with the early evening news, that
31 is on Channel 3. If you could limit it, if possible, to the
32 Bosnian parts, including of course the introduction and the
33 end.
34

35 (Videos shown)
36

37 MR. JUSTICE MORLAND: Right. If you would like to go back to your
38 room and continue your deliberations, please.
39

40 (The jury retired)
41

42 (The jury returned)
43

44 THE ASSOCIATE: Will the Foreman of the jury please stand. Mr.
45 Foreman, are you all agreed upon your verdict?
46

47 THE FOREMAN OF THE JURY: We are.
48

49 THE ASSOCIATE: To my next question would you simply answer yes or
50 no. Have ITN established that the press release, the LM
51 article and the accompanying editorial taken together are
52 defamatory of ITN as a company?
53

54 THE FOREMAN OF THE JURY: Yes.
55

56 THE ASSOCIATE: To my next question would you simply answer yes or
57 no. Have the defendants established that Penny Marshall and

1 Ian Williams had compiled a television footage which
2 deliberately misrepresented an emaciated Bosnian Muslim,
3 Fikret Alic, as being caged behind a barbed wire fence at the
4 Serbian run Trnopolje camp on 5th August 1992 by the selective
5 use of video tape shots of him?
6

7 THE FOREMAN OF THE JURY: No.

8
9 THE ASSOCIATE: What sum by way of damages do you award ITN?

10
11 THE FOREMAN OF THE JURY: £75,000.

12
13 THE ASSOCIATE: What sum by way of damages do you award Penny
14 Marshall?

15
16 THE FOREMAN OF THE JURY: £150,000.

17
18 THE ASSOCIATE: What sum by way of damages do you award Ian
19 Williams?

20
21 THE FOREMAN OF THE JURY: £150,000.

22
23 MR. JUSTICE MORLAND: Ladies and gentlemen, thank you for your
24 very careful consideration of this case. Yes, Mr. Shields?

25
26 MR. SHIELDS: My Lord, in those circumstances I ask for judgment
27 to be entered for ITN for £75,000 and for Ms. Marshall and
28 Mr. Williams in the sum of £75,000 --
29

30 MR. JUSTICE MORLAND: No, £150,000 each.

31
32 MR. SHIELDS: I am obliged to your Lordship. I also ask obviously
33 for an order for costs, my Lord. I also would ask for an
34 injunction having regard to that being part of our prayer.
35

36 MR. JUSTICE MORLAND: Yes.

37
38 MR. SHIELDS: If I could take your Lordship to the rationale
39 behind that, your Lordship will see what the reaction was to
40 the initial letter before action to the press release.
41

42 MR. JUSTICE MORLAND: Yes.

43
44 MR. SHIELDS: Your Lordship will see that the defence of
45 justification has been maintained with fortitude up to the
46 very last line of my learned friend's closing speech. Your
47 Lordship also ought to know that as far as I can see it was
48 still available, the article, as of not very long ago on the
49 defendants' website. So against that background and against
50 the stance they have adopted we would submit this is a very
51 appropriate case for an injunction as prayed against the LM,
52 against Mr. Hume and against the third defendant.
53

54 MR. JUSTICE MORLAND: Mr. Millar, have you any submissions about
55 the application for an injunction in the terms sought?
56

57 MR. MILLAR: Subject to it being within the terms of the prayer

1 for relief, it is a matter for your Lordship. It is a
2 discretionary remedy.

3
4 MR. JUSTICE MORLAND: Yes.

5
6 MR. MILLAR: Nothing that my learned friend has put as a matter of
7 fact is incorrect.

8
9 MR. JUSTICE MORLAND: No. In my judgment the claimants are
10 clearly entitled to the injunction sought in the terms of the
11 prayer asked.

12
13 MR. SHIELDS: I am obliged to your Lordship.

14
15 MR. JUSTICE MORLAND: I thank counsel for their assistance and
16 I will rise.

17
18 (The court adjourned)