

Rubin v London Borough of Barnet

Case No: 2050255881

PCN: BA11601866

I have today considered applications for review by this Appellant in twelve cases. He was represented at the hearing by Mr Segal.

The grounds of the application were essentially the same in each case. The other important common factor was that the applications were all made substantially out of time. Regulation 11(3) of the *Road Traffic (Parking Adjudicators) (London) Regulations 1993* provides that an application for review "shall be made ... within 14 days after the date on which the decision was sent to the parties ..." The appeals in question were decided at various dates between 15 April 2005 and 3 November 2005. The applications for review were made by letters from Mr Segal dated in some cases 30 March 2006 and in others 31 March 2006. These letters were supplemented by a letter dated 2 May 2006 raising further points. In that letter Mr Segal asked for a personal hearing of the applications. So every application was well out of time, ranging between 11 months and over four months. The first hurdle Mr Segal had to get over, therefore, was to persuade me to extend the time for making these applications, as I had power to do under regulation 14(1) of the 1993 regulations.

In all but one case another Adjudicator, Mr Wilkinson, considered the applications and refused to extend the time, for the reasons set out in letters dated 5 May to the Appellant.

In one case, 2050030509, the application made by letter dated 31 March 2006 was considered by Adjudicator Oxlade on 21 April 2006 she refused to extend the time for making it. Mr Wilkinson then considered the letter of 2 May 2006 in relation to this case and treated it as a further separate application for review and rejected it, his reasons again being set out in a letter dated 5 May. It appears that Mr Wilkinson may not have noted the request for a personal hearing in the letter of 2 May. In any event, he made the decisions on the papers only. Accordingly, the personal hearing before me was scheduled.

Mr Segal essentially put forward before me the same arguments as set out in his letters of 30 and 31 March. He indicated he did not wish to pursue the points raised in his letter of 2 May relating to the identity of the Appellant. As to those points I would only say that the Appellant had not previously argued that he was not the owner of the vehicle, and it is clear he was.

The time limit for making an application for review is there for a good reason. It reflects the principle that there is a public interest in the finality of proceedings. It also accords with the principle of proportionality; the penalties in question are relatively small, and the proceedings relating to them need to be proportionate to what is at stake. It is not desirable for such proceedings to be unduly time consuming or protracted. The time limit serves these aims. If Adjudicators were freely to extend the time limit, this would undermine the purposes for which it is in place. Adjudicators

are therefore slow to extend the time limit and will only do so in exceptional circumstances.

I agree with Mr Wilkinson's reasons for not extending time in these cases and need not repeat them. The Appellant has put forward no good reason for the very long delay in making these applications. The applications amount in substance to no more than "I have belatedly thought of new arguments that I wish I had put forward at the time of the appeal". That is not a good reason for extending the time for making an application. Indeed, even if the applications had been made within time, it is very doubtful whether any of the grounds for review would have been satisfied. New arguments are not new evidence, of which there is none relevant to the issues in the appeals. For completeness, I should say that issues about the validity of the charge certificates issued following the refusals of the appeals are not new evidence relating to the appeals. Nor do the interests of justice generally require that an Appellant should be allowed to re-argue his appeal putting forward fresh arguments that he could perfectly well have put in the first place.

But in any event, even if the Appellant might have had good grounds for a review if he had applied within time, that is not a reason for extending time so long after the appeals were refused. If it were, it is difficult to see why any Appellant would not be able to seek to reopen their appeal at any time, thus effectively rendering redundant the time limit prescribed by the 1993 regulations and completely undermining the public interest in the finality of proceedings.

I accordingly reject all the applications. The original decisions to refuse the appeals therefore stand.

Martin Wood
Adjudicator
19 July 2006

Original Decision Subsequently Reviewed Under Regulation 11 of The Road Traffic (Parking Adjudicators) (London) Regulations 1993

The Local Authority has referred to the Adjudicator a statutory declaration made by Abraham Rubin on 16th November 2004 saying that he made representations to the Local Authority but did not receive a rejection notice. The Local Authority, however, received no representations. 'Representations' means, in this context, representations in response to the Notice to Owner served in the course of the statutory enforcement procedure, which is as follows:

1. The Local Authority serves a Penalty Charge Notice.
2. The Local Authority then serves a Notice to Owner on the person it believes to be the owner of the vehicle.
3. The recipient then has 28 days to make representations to the Local Authority. The Local Authority may disregard any representations not made within this time.
4. The Local Authority must then serve a notice in response rejecting or accepting

the representations.

5. If the Local Authority serves a Notice of Rejection, the recipient of the notice then has 28 days to appeal to the Parking Adjudicator.

The motorist must follow this procedure correctly in order to be entitled to continue to contest liability and ultimately appeal to the Parking Adjudicator. If he fails either to make representations or appeal within the required time, he will have no right to contest liability further, however strong the merits of his case might have been.

Since the Local Authority received no representations it has never issued a Notice of Rejection. I asked Abraham Rubin to clarify when he sent the representations and provide a copy. He was allowed 21 days to reply. He has not done so. I am not satisfied on the evidence that he preserved his right to contest liability by making representations within the 28 days allowed. He is therefore liable for the penalty charge in this case.

I should emphasise that this decision is made because Abraham Rubin failed to follow the required procedure. I have not considered, and in the circumstances have not needed to consider, the merits of his case.

Finally, I should make it clear that, this decision is made pursuant to the Adjudicator's power to give directions when a Local Authority refers a statutory declaration. The references on the first page of this decision to an "appeal" are an inaccurate description produced automatically by the computerised adjudication system and cannot be altered. It should read "has made a direction" rather than "has refused this appeal".

Jo Oxlade
Adjudicator
22 August 2005