

DISABLED PERSON'S BADGE; CORRECT SETTING OF CLOCK

SUDHIR SINGH BEHAL V LONDON BOROUGH OF REDBRIDGE

Case No. : 2090232156
PCN Number: RB34761733
Contravention: Parked in a restricted street during prescribed hours
Adjudicator: Hugh Cooper
Decision: Allowed
Decision date: 14 September 2009

Statutory Register entry:

The Civil Enforcement Officer (CEO) noted all the details of Mr Behal's car and recorded that this Penalty Charge Notice (PCN) was issued at 9:04. The car was parked on a single yellow line displaying a disabled person's badge (Blue Badge) and disc. The CEO made a note which read, "Set clock ahead 9.15".

Mr Behal attended the hearing with his mother, who was the driver of the car at the time. Mrs Behal gave evidence in the same terms as the earlier representations to the Enforcement Authority and the Notice of Appeal, adding further details to her account.

She did not dispute the CEO's record, or that she had parked her car before 9:15. She said that she has been the holder of a disabled person's badge since 1995. On this occasion she arrived at about 9:05 by her watch, and set the clock at 9:15. She said that it was her normal practice to set the clock at the end of the quarter hour period in which she had parked. I asked her if she had been advised to do this, or had read instructions to that effect. She said she could not recall where she had gained the belief that this was the correct approach, but it was the one she had always followed. She pointed out that, although on this occasion she only parked for about 45 minutes, had she wanted the benefit of the full 3 hours parking permitted to disabled badge holders she would have "lost" some of that time if she had set the clock at 9:00. Having had the advantage of hearing from Mrs Behal in person I found no reason not to accept the truth of her evidence.

The Authority refer in their Case Summary to Regulation 4 of the "Disabled person (sic) (Badges for Motor Vehicles)(England) Regulations 2000, (it should be the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (the Badges Regulations)) but it is evident that they intended to refer to Regulation 4 of the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000 (the Exemption Regulations).

The effect of the Exemption Regulations is summarised in the Explanatory Note attached to those regulations, the opening paragraph of which reads:

"The Regulations concern orders made by local authorities under the Road Traffic Regulation Act 1984 which, inter alia, prohibit vehicles from waiting at all times or during specified periods on roads marked by yellow lines, or prohibit beyond a certain period the waiting of vehicles in roads or in street parking places, whether a charge is made or not. The Regulations require the orders to which they relate to include an exemption from waiting prohibitions in certain circumstances, and from charges and time-limits at places where vehicles may park or wait, in respect of vehicles displaying a disabled person's badge."

The Authority claimed that Regulation 4 of the Exemption Regulations "requires that the clock (or "parking disc") be displayed in the "relevant position" and set to show the arrival time" [my emphasis].

In fact Regulation 4 provides as follows:

- (1) A vehicle displays a disabled person's badge in the relevant position if it is displayed in the manner prescribed by regulation 12 of the Badges Regulations.
 - (2) A vehicle displays a parking disc in the relevant position if-
 - (a) the disc is exhibited on the dashboard or fascia of the vehicle; or
 - (b) where the vehicle does not have a dashboard or fascia, the disc is exhibited in a conspicuous position on the vehicle,so that, when marked to show the quarter-hour period during which a period of waiting began, that period is clearly legible from the outside of the vehicle.
- The relevant parts of Regulation 8 provide:
- (2) An order to which this regulation applies shall include an exemption from the prohibition in accordance with whichever of paragraphs (3) and (4) is appropriate in favour of any vehicle displaying a disabled person's badge in the relevant position.
 - (3) Where the period of the prohibition does not exceed 3 hours the exemption shall be for the whole of that period.
 - (4) Where the period of the prohibition exceeds 3 hours the exemption shall be for a period of 3 hours subject to the conditions that-
 - (a) the period of exempted waiting does not begin less than one hour after a previous period of exempted waiting by the same vehicle in the same road on the same day;
 - (b) a parking disc is displayed in the relevant position on the vehicle marked to show the quarter hour period during which the period of exempted waiting began.
 - (5) In this regulation "parking disc" means a device which-
 - (a) is 125 millimetres square and coloured blue, if issued on or after 1st April 2000 or orange, if issued before that date;
 - (b) has been issued by a local authority and has not ceased to be valid; and

(c) is capable of showing the quarter hour period during which a period of waiting has begun. [my emphasis in italics]

It is clear therefore that the Exemption Regulations do not require the badge holder to set the clock to show the precise arrival time (even if that is possible since, as Mrs Behal said in evidence, the clock is a fairly crude instrument), but only the quarter hour period during which the period of waiting began. Curiously the time when the exempted 3 hour exempt period is to be calculated from is not defined in the regulations; in the absence of any definition, the only practical inference is that it must be from the end of the quarter hour period during which the waiting began. Whilst that may in practice often give the badge holder a few extra minutes, to calculate it from the beginning of the quarter hour period would result in less than 3 hours being allowed; this would not comply with the requirement imposed by the Exemption Regulations.

In Mrs Behal's case the quarter hour period when waiting began was between 9:00 and 9:15, so her obligation under the Exemption Regulations was to set the pointer of the clock somewhere in the space between the points where those two times were marked on the clock. On seeing the clock set precisely at 9:15 the CEO could theoretically have formed the view that the waiting started either in the quarter hour period between 9:00 and 9.15 or in that between 9.15 and 9.30. However in practice the CEO had to proceed on the basis that the indication given by the clock was that the waiting had started in the earlier quarter hour period, because the vehicle was already present at 9:04. Accordingly no PCN should have been issued at that time. (A PCN could only have been issued if the vehicle had remained in the position after 12:15.)

In considering the case I looked at the pamphlet entitled "The Blue Badge scheme: rights and responsibilities in England" produced by the Department for Transport (Reprinted January 2008 - Product Code T/INF/1214) to see what advice was given regarding how to set the clock. I noted that in the section headed "When you need to use a parking disc/clock" the advice is simply "...you need to display the blue parking disc to show your time of arrival". It

may be that the Department should reconsider the drafting of these instructions to make the actual requirements of the Exemption Regulations clear.

In light of apparent lack of clear instructions to badge holders it is perhaps not surprising that Mrs Behal developed her own approach to where to set the pointer on the clock. In future she should simply place it between the quarter hour markings. She can then calculate her 3 hour period of exempt waiting from the end of that quarter hour period. The Enforcement Authority should instruct their CEOs and staff who consider representations to adopt the same approach.

I find that the PCN was issued during the period when Mrs Behal was entitled to leave her car on the yellow line with the benefit of the Blue Badge and disc, and so I allow this appeal.

COSTS DECISION

I allowed Mr Behal's appeal against liability for the above Penalty Charge Notice (PCN) on 14 September 2009 following a personal hearing on 12 September 2009.

Mr Behal has now applied for an order for costs and expenses to be made against the Authority on the basis that their conduct in rejecting his original representations and resisting his appeal has been frivolous and wholly unreasonable.

The issue in this case was whether the driver, Mr Behal's mother, had correctly set the time on the disc or clock used in conjunction with her disabled badge. The Civil Enforcement Officer (CEO) had seen the car parked at 09:04 with the clock set at 09:15, which the Authority in their Notice of Rejection and Case Summary described as being "set forward".

In a decision letter running to three pages I concluded in effect that the CEO and the Authority had misinterpreted the effect of the *Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England) Regulations 2000* when they insisted that the clock should have been set to the time of arrival.

The basis on which I allowed the appeal was not in fact one that was expressly raised by Mr Behal in his original representations or his Notice of Appeal, although he and his mother did attend the hearing with a folder which included extracts from the above regulations, and so the issue was raised at that point.

In allowing the appeal I recommended that in future Mrs Behal should set the pointer of the clock between the quarter hour marks, rather than on one of them, as she had done on this occasion. I commented also on the fact that the wording in the section headed "When you need to use a parking disc/clock" of the pamphlet produced by the Department for Transport for Blue Badge holders read simply "... you need to display the blue parking disc to show your time of arrival". I said, "In light of apparent lack of clear instructions to badge holders it is perhaps not surprising that Mrs Behal developed her own approach to where to set the pointer on the clock".

Although I did not say so in the decision, that comment could equally apply to the Authority; they were under the misapprehension that a badge holder must try to set the clock precisely at the time of arrival, i.e. as described in the Department for Transport pamphlet. Whilst I have advised them that this is not the correct interpretation of the relevant regulations, I do not find that their rejection of Mr Behal's representations and resistance to his appeal on the basis of that mistaken misinterpretation amounted to an approach that could be described as frivolous or wholly unreasonable.

It should be emphasised that the starting point for any determination of a costs application is

that an Adjudicator, "*shall not normally make an order awarding costs and expenses*"; i.e. it is only in exceptional circumstances that such an order will be made. The threshold of "wholly unreasonable" is a high one. In this case I do not find that that threshold has been reached, and so I refuse Mr Behal's application for costs.