CO/9104/2008

Neutral Citation Number: [2009] EWHC 1702 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
The Strand
London
WC2A 2LL

Monday 15 June 2009

B e f o r e:

MR JUSTICE KEITH

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The Queen on the application of

(1) NEIL ANDREW HERRON
(2) PARKING APPEALS LIMITED

Claimants

- v -

THE PARKING ADJUDICATOR

Defendant

and

SUNDERLAND CITY COUNCIL
Interested Party

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Mr Oliver Mishcon (instructed by Kingsley Napley, London EC1M 4AJ) appeared on behalf of the Claimants

Mr Ian Rogers (instructed by the Traffic Penalty Tribunal, Manchester M1 3DZ) appeared on behalf of the Defendant

Mr Stephen Sauvain QC and Mr Jonathan Easton (instructed by the City Solicitor, Sunderland City Council, Sunderland SR2 7DN) appeared on behalf of the Interested Party

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JUDGMENT

Monday 15 June 2009

MR JUSTICE KEITH:

1. This is a claim for judicial review of a decision of a parking adjudicator of 30 June 2008 refusing the claimants' application for a review of the decision of another parking adjudicator of 22 February 2008 dismissing the claimants' appeals against the issue of a number of penalty charge notices. Permission to proceed with the claim was refused by Sir George Newman on 12 December 2008 on a consideration of the papers. The claimants renewed their application for permission to proceed with their claim. That renewed application came before Dobbs J on 7 May 2009, but the hearing was adjourned to enable the claimants to amend their claim form. Those amendments have now been made.

2. The case relates to the circumstances in which road markings have to be accompanied by an appropriate sign on the same side of the road within a controlled parking zone. The claimants' case is that the markings on the road where the parking contraventions are said to have occurred were not accompanied by the appropriate sign, and they had to have been accompanied by the appropriate sign to justify the issue of penalty charge notices, because of the extensive use of other traffic signs within the controlled parking zone which contravened the provisions relating to traffic signs and which might have confused the motorist as to what were the restrictions on parking where the parking contraventions were said to have occurred. The case of the Interested Party, Sunderland City Council, which is the body responsible for the enforcement of parking contraventions in the area where the parking contraventions in this case are said to have occurred, is that the presence of other traffic signs within the controlled parking zone is irrelevant, unless those signs in some way confuse the motorist and create uncertainty over whether restrictions on parking apply to where those road markings were, and in this case they did not.

3. Sir George Newman took the view he did because in his opinion motorists could not have been confused about whether this was an area governed by restrictions on parking. Whether that is so or not, the claimants' case is that that is not on its own a relevant consideration. It is said that on a proper construction of the primary legislation and the relevant regulations, the presence of other traffic signs within the controlled parking zone meant that the markings on the road where the parking contraventions were said to have occurred had to have been accompanied by the appropriate signs.

4. The success or failure of this argument depends upon a careful analysis of the appropriate statutory regime. That regime is relatively complex. Although I am very sceptical about the correctness of the approach to the legislation which the claimants advance, I cannot say that it is so unarguable that a full hearing to consider it is unwarranted. I therefore give the claimants permission to proceed with their claim for judicial review of the decision of the adjudicator of 30 June 2008, to the extent that she found "no reason to interfere with [the first adjudicator's] interpretation of the law or its application to the facts he found."

5. I note that in paragraph 52 of the claimants' amended statement of grounds for claiming judicial review, the decisions for which permission to proceed with the claim are sought are "the decisions of the adjudicator up to and including the final decision dated 30 June 2008". That mirrors what is said in section 3 of the judicial review claim form. The difficulty is that the

claim was received in the Administrative Court Office (if the date stamp is anything to go by) on 24 September 2008. Unless the claimants apply for and obtain an extension of time, no decision prior to 25 June 2008 can be challenged. It may be that challenging the decision of 30 June 2008 is sufficient to enable the issue to be addressed, but if it is not, the claimants will have to reconsider their position.

6. The next set of issues which the claim raises are those raised by the amendments to the claim form. Those amendments allege that the first adjudicator's decision of 26 February 2008, and the second adjudicator's decision of 30 June 2008, failed properly to address the claimants' arguments, and failed to give sufficient reasons for their findings. I cannot give the claimants permission to proceed with the claim in respect of the first adjudicator's decision because that challenge is out of time. But again it may be that that does not matter because the challenge to the second adjudicator's decision may be sufficient to enable the issue to be addressed. I say that not only because the second adjudicator found no reason to interfere with the first adjudicator's interpretation of the law, or its application to the facts which he found, but also because that amounted to the adoption by the second adjudicator of the reasons the first adjudicator had given for dismissing the appeals.

7. However, whether or not either or both of the adjudicators properly addressed the claimants' arguments, or whether they gave sufficient reasons for their findings, are questions which, in my judgment, do not need to be decided. If the claimants are correct in their argument on the issue which the case raises, they will succeed whatever the reasoning (or lack of it) on the part of the adjudicators, and whether or not they addressed the claimants' arguments properly. Likewise, if the claimants are not correct in their arguments on the issue, they will fail even if the criticisms of the form which the reasons took are well founded. I therefore decline to give the claimants permission to proceed with their claim on the basis of the grounds introduced by the amendments.

8. The final issue which the claim raises relates to the argument that the parking adjudicator was not an independent and impartial tribunal, and that accordingly the claimants' right to a fair hearing of their appeals under article 6 of the Convention was infringed. The basis of this claim is that the appellate system in which the adjudicators operate is wholly funded by the local authorities who are responsible for issuing penalty charge notices, of which Sunderland City Council is one, and is funded from the revenue which the penalty charge notices produce. These local authorities also provide venues for the hearing of the appeals, and offices for the adjudicators and administrative staff. The independence of the adjudicators is said further to be compromised by the fact that the local authorities appoint them through a joint committee of which they are all members. The adjudicators are appointed, so it is said, on fixed-term contracts which cannot exceed five years, and they therefore do not enjoy security of tenure. The argument is that these circumstances are such as to lead a fair-minded and informed observer to conclude that there is a real possibility that the adjudicators are biased.

9. The allegation of lack of independence on the part of parking adjudicators was considered by Collins J in R (Crittenden) v National Parking Adjudication Service [2006] EWHC 2170 (Admin) and on appeal by Scott Baker LJ at [2006] EWCA 1786 (Civ). Permission to proceed with the claim for judicial review was refused. The claim was academic in that case because the parking adjudicator had allowed Mr Crittenden's appeal, but in any event the court rejected as

unarguable the allegation of lack of independence. However, the principal point taken in that case was that the whole system of penalty charges was unlawful because it contravened the prohibition in the Bill of Rights against fines or forfeiture before conviction or judgment against the persons upon whom the fines and forfeiture were to be levied. That is a different issue from the adjudicators' independence. One cannot tell from the judgment of either Collins J or Scott Baker LJ whether the arguments about the parking adjudicators' lack of independence were the same as in this case.

10. Having said that, I am entirely satisfied that it is not arguable that a fair-minded and informed observer would conclude that there is a real possibility that the adjudicators are biased. My reasons mirror those which are set out in the defendant's summary grounds for resisting the claim, but it would be wrong to be too influenced by the technical position. It is important to attach due weight to what happens in practice.

11. The defendant's summary grounds, which Mr Oliver Mishcon for the claimants has not really engaged with at this hearing, show that parking adjudicators are appointed following open competition by a selection panel, and only then with the Lord Chancellor's consent. Indeed, their appointment is actually made by the Chief Parking Adjudicator, pursuant to powers delegated to him by the committee which represents those local authorities outside London responsible for the enforcement of parking contraventions. It is he who determines the terms and conditions of parking adjudicators and where they are to sit. Moreover, it is wrong to say that they do not enjoy security of tenure. They can be removed from office in very limited circumstances only, and even then only with the consent of the Lord Chancellor and the Lord Chief Justice. Their appointment is automatically renewed for a further five years, save again in very limited circumstances, and again only with the consent of the Lord Chancellor and the Lord Chief Justice. Additional factors safeguarding their independence are that since they must be either barristers or solicitors of at least five years' standing, they are subject to professional codes of conduct, and their decisions are subject to judicial review.

12. Finally, statistics are said to show that almost two in three appeals are allowed. That is an impressive indicator of independence. Adjudicators, of course, have no financial incentive to uphold particular penalty charge notices, and it is important to note that the funding provided by each participating local authority is based on the number of penalty charge notices issued, not the number of penalty charge notices upheld.

13. For these reasons, I refuse the claimants permission to proceed with this claim on the basis that the parking adjudication system lacks independence.

14. Directions for the hearing, and time estimate for the length of the hearing now that the issue has been limited to the one core issue of principle. What is your estimate, realistically, Mr Mishcon?

MR MISHCON: My Lord, I would have said certainly within a day. If one is optimistic one might say half a day; but if one is cautious, a day.

MR JUSTICE KEITH: Mr Sauvain?

MR SAUVAIN: Well, including judgment, I would say a day and a half.

MR JUSTICE KEITH: I would have thought it is more likely that judgment would be reserved. I cannot speak for the judge who decides the case. He might be able to deliver an ex tempore judgment. But you would say a day and a half?

MR SAUVAIN: I would say out of caution a day and a half in any event. As your Lordship has made clear, it is necessary to go through this in some careful detail.

MR JUSTICE KEITH: Yes, it is. Yes, on balance I think that is right. I am going to say a day and a half for the time estimate for the hearing. Time for the judge to read the papers beforehand? I spent six hours on the papers over the weekend. Admittedly, the judge would have to read less because of the issues that are no longer being addressed. I would have thought four hours might be realistic. What would you say?

MR SAUVAIN: My Lord, we have not given our attention as to whether we will need to put in any evidence. I suspect, in fact, we may not need to as it is really a matter of law, but I reserve my position on that.

MR JUSTICE KEITH: Yes. You have 35 days.

MR SAUVAIN: Yes.

MR JUSTICE KEITH: My only question is: how long should the Administrative Court Office set aside for reading time?

MR SAUVAIN: Yes, I understand that, my Lord, but whether we put in evidence affects that --

MR JUSTICE KEITH: You are right.

MR SAUVAIN: -- but probably only marginally, I suspect. I would say certainly four hours, my Lord. Possibly five actually.

MR JUSTICE KEITH: I will say four hours. Four hours for the judge to read the papers. I will say not to be tried by a Deputy High Court Judge. I think it should be tried by a High Court Judge. I know nothing about the Dickinson case, but from what the two of you know about the Dickinson case, is this a case in which, in view of the only issue which now remains to be addressed, the Dickinson case, if it has not already been heard, should be heard at the same time as this?

MR SAUVAIN: My Lord, I know very little about it, but what I do know suggests to me that it is on a different issue, in fact.

MR MISHCON: My Lord, can I just read one line? It is point number 6 signed by Mr Dickinson in his particulars: "The adjudicator had no regard to the Traffic Signs Regulations and General Directions 2002".

MR JUSTICE KEITH: I do not know whether or not permission to proceed with the case has been given on that ground.

MR MISHCON: It was adjourned. It was not limited in any way.

MR JUSTICE KEITH: Often they are. Often they are. You are saying in this case Miss Davies did not?

MR MISHCON: No, I have seen the order. There was no proviso or qualification or limitation.

MR JUSTICE KEITH: I see. It may be immaterial because she gave permission to proceed last December and it may be that it has already been decided. Do you know whether it has been decided?

MR MISHCON: No, it has not. I think the Administrative Court are aware of this case, and obviously no one knew what would happen until today, but I think Mr Dickinson, who is also aware of these proceedings, has been notified in order that should there be two cases before the court for a full hearing, at least the possibility could take place.

MR JUSTICE KEITH: It is plain that I cannot decide today whether or not the case actually does raise the same issue because one would have had, I think, to look at the detailed grounds submitted by Mr Dickinson in any skeleton argument now submitted to see the extent to which there is an overlap with our issue. So I am not going to make an order that the two cases be listed together, but both sides, I think, should ask to see the pleadings and the skeleton argument in that case to decide whether or not an application should be made to the Administrative Court Office for them to be listed together.

MR MISHCON: My Lord, could I -- I know that Mr Rogers wants to address you on this and he should -- my understanding is that he is instructed in the case of Dickinson, only recently, but he has been instructed. I have seen all the papers and, without meaning to be rude at all to Mr Dickinson because we know that he is a litigant in person and he is just doing things as best he can, the papers that were lodged with the court were served on the Parking Adjudicator. There was a carrier bag full of miscellaneous statements and photocopies -- article 6 being one of them -- and references to the regulations to which we have referred today.

MR JUSTICE KEITH: Is he still unrepresented?

MR MISHCON: He is, my Lord.

MR JUSTICE KEITH: In that case is not the best order to make that this case be heard before Mr Dickinson's case, and whether Mr Dickinson's case should proceed should be decided after judgment has been handed down in this case.

MR SAUVAIN: My Lord, that does not affect me at all --

MR JUSTICE KEITH: No, it does not.

MR SAUVAIN: -- although it affects Mr Rogers.

MR JUSTICE KEITH: Mr Dickinson himself is not here and so it is difficult for him, and therefore, having raised the issue, I have not thought about whether or not that would be appropriate. What do you want to say, Mr Rogers?

MR ROGERS: My Lord, I will be very brief. As on the last occasion, I did bring along the pleadings from the Dickinson case. It is fair to say that the defendant did not attend either of the permission hearings in that case. Mr Dickinson is unrepresented, but I think physically, as I understand it from the pleadings, there is no issue about instruction of regulation 4 of the CPZ issue. It may be a TSRGD issue, but there are lots of those issues. So to say that this is a case on the same point -- it is really for the claimant to do a lot more. The only thing I am asked to mention is that there is consideration being given as to whether the Dickinson case should be transferred to the Upper Tribunal, and there has been no decision on that as yet.

MR JUSTICE KEITH: I understand.

MR ROGERS: So, my Lord, simply to assist the court, it is our position that this is not the same issue. It is fair to say I have a note prepared by Hull County Council and Deputy Judge Davies QC asked -- it says in the order that she has asked that the defendant consider whether to grant a full oral hearing. There is nothing from the note to say that this is a common issue. My Lord, I am happy to show you that.

MR JUSTICE KEITH: No. I think the more we have talked about it, the right course is for me to make no order in relation to Mr Dickinson's case. I certainly do not order that it be tried with this case, but it may be that consideration should be given as to whether or not, if Mr Dickinson's case remains in the Administrative Court, rather than in the Upper Tribunal, it should be heard after this case rather than before it. I cannot make any order about that.

Are there any other directions that anyone wants? No? Costs have to be addressed at some stage. I am inclined to say at the moment that the costs should be reserved to the judge who hears the claim for judicial review. I am concerned with the costs of the defendant in relation to the issues upon which they have succeeded because supposing Mr Mishcon succeeds on the core issue of principle? That does not necessarily mean he should get all his costs against the defendant because he has failed on an issue which today I have said is the issue that the defendant had wanted to address me. So I think all in all, unless anyone thinks otherwise, the right course to take about the costs of today is that they should be reserved to the judge who hears the application. Do you wish to say anything against that?

MR MISHCON: My Lord, not.

MR JUSTICE KEITH: Mr Sauvain?

MR SAUVAIN: No.

MR JUSTICE KEITH: Mr Rogers?

MR ROGERS: My Lord, no.

MR JUSTICE KEITH: That is the order I make then. Thank you all very much. Could you find out why it was that there was no reference in Dobbs J's order to the fact that half a day was reserved for this hearing? Why was no attempt made to have the order rectified to show that she had said it was to be half a day because then the lawyer in the Administrative Court Office would not have listed it for an hour? Can you find out why that was --

MR MISHCON: My Lord, of course.

MR JUSTICE KEITH: And let me know in due course because if what you are saying is right and that is what she did direct, it should have been in the order and it would have been taken into account by the lawyer when he fixed this case.

MR MISHCON: My Lord, I will.

MR JUSTICE KEITH: Thank you very much.