Neutral Citation Number: [2010] EWHC 1161 (Admin)

Case No: CO/9104/2008

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2010

Before :

MR. JUSTICE BEAN

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Between :

NEIL HERRON	**1st Claimant**
PARKING APPEALS LIMITED	**2nd Claimant**
- and -	
THE PARKING ADJUDICATOR	**Defendant**
SUNDERLAND CITY COUNCIL (1)	**Interested**
PARKING AND TRAFFIC APPEALS (2)	**Parties**
TRAFFIC PENALTY TRIBUNAL (3)	
NCP SERVICE LIMITED (4)	
SECRETARY OF STATE FOR TRANSPORT (5)	

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Alun Jones QC and Rupert Bowers (instructed by Jeffrey Green Russell) for the Claimant
Ian Rogers (instructed by the **Treasury Solicitor**) for the Defendant
Stephen Sauvain QC and Jonathan Easton (instructed by the Solicitor, Sunderland City Council) for the **City Council**
Jessica Simor (instructed by the **Treasury Solicitor**) for the **Secretary of State**

Hearing date: 18 May 2010

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Approved Judgment

Mr. Justice Bean :

1. Neil Herron is a director of Parking Appeals Ltd, an organisation which in its own words, "advises, assists and campaigns on behalf of motorists". In 2006 one vehicle of which Mr. Herron was the registered keeper and another (whose registration number was changed to F1NED) of which the company was the registered keeper were parked on a total of 39 occasions on single yellow lines in Frederick St or St. Thomas St within the Sunderland city centre Controlled Parking Zone ("CPZ"). Penalty Charge Notices ("PCNs"), better known as parking tickets, were issued in each case alleging that the vehicle concerned had been involved in a parking contravention, namely that it had been "parked in a restricted street during prescribed hours".

2. Mr. Herron and the company did not pay the penalty charges. The traffic authority, Sunderland City Council, therefore issued in each case a Notice To Owner requiring the registered keeper either to pay the penalty charge of £60 or to make representations. Mr. Herron made representations asking for the PCNs to be cancelled. The Council refused to cancel them. Mr. Herron further challenged the PCNs by lodging appeals with the National Parking Adjudication Service ("NPAS", now known as the Traffic Penalty Tribunal).

3. The hearing before an adjudicator, Mr. Andrew Keenan, began on 12th September 2007. Mr. Herron produced 11 lever arch files of documents in support of his case. He also called an expert witness, a Mr. Bentley, who presented a report consisting of 156 pages. A large number of points were raised, including an attack on the independence of the NPAS and its adjudicators. The hearing continued on 20th November 2007. By a 45 page judgment dated 26 February 2008 Mr Keenan dismissed the appeals, save in one case where he directed the Council to cancel the PCN. Mr. Herron applied for a review and on 30 June 2008 another adjudicator, Ms. Kennedy, directed that Mr. Keenan's decision should stand and that the appeals should therefore remain dismissed.

4. This claim was issued on 25th September 2008. The Claimants sought judicial review of the decisions of Mr. Keenan and Ms. Kennedy on a number of grounds, one of which was that the NPAS infringed the Claimant's Convention right to a fair hearing by an independent and impartial tribunal, in breach of Article 6 of the ECHR. They also sought a declaration that "the Sunderland Controlled Parking Zone does not comply with Regulation 4 and Direction 25 of the Traffic Signs Regulations and General Directions 2002 (TSRGD)", and that "all single yellow line waiting restrictions contained with it are unenforceable". By an amendment to the Claim Form they further alleged lack of adequate reasoning in relation to Regulation 4 of the TSRGD.

5. At an oral hearing on 15th June 2009 Keith J refused permission for judicial review on the Article 6 and "lack of reasoning" grounds but granted permission on the question of statutory interpretation of Regulation 4 and Direction 25. He said:

> "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."

The statutory regime

6. By section 1(1)(c) of the Road Traffic Regulation Act 1984 the traffic authority for a road outside Greater London may make a traffic regulation order where it appears to the authority expedient for facilitating the passage on the road of traffic. By section 2(2)(c) such a traffic regulation order may include a provision prohibiting or restricting the waiting of vehicles or the loading and unloading of vehicles. There is no dispute that many years ago Sunderland City Council made traffic regulation orders which restricted parking in Frederick St and St. Thomas St, among other locations, and designated a substantial area of the city centre as a CPZ. The CPZ appears to have been established in about 1969.

7. Section 5(1) of the 1984 Act provided that contravention of a traffic regulation order was an offence. The Road Traffic Act 1991 provided for a decriminalised parking regime, with penalty charge notices of the kind used in the present case, where an order has been made extending the decriminalised regime to the area in question. A PCN may then be issued where a vehicle has been parked in the relevant area in circumstances such that a criminal offence would have been committed but for the decriminalisation order. Again, there is no dispute that a valid order has been made (SI 2002/3266) bringing the decriminalised regime into force in Sunderland city centre. (I was told that the relevant provisions of the 1991 Act have been repealed by the Traffic Management Act 2004 in respect of PCNs issued on or after 31 March 2008. This amendment does not affect the present case.)

8. Regulation 18(1)(a) of the Local Authorities Orders (Procedure) (England and Wales) Regulations 1996 requires the traffic authority to take such steps as are necessary to secure that, where a traffic regulation order has been made relating to any road, traffic signs are placed and maintained "on or near the road… in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road."

9. The definition of "traffic sign" in section 64 of the 1984 Act includes not only objects such as traffic lights, but also lines or marks on a road conveying a prohibition. Section 64(2) requires that traffic signs shall be of the size, colour and type prescribed by regulations. Section 65(1) says that the traffic authority "may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with such general directions as may be given" by the appropriate Ministers.

10. The TSRGD is a 447 page book containing regulations, directions and a large number of diagrams. Direction 25(1) provides that, subject to direction 25(2), certain road markings may be used only in conjunction with, and on the same side of road as, certain upright signs. The all too familiar single yellow line, diagram number 1017, may only be used in conjunction with one of five upright signs, the one relevant to the present case being that shown in number 639 which has the prohibited hours (for example 8am to 6pm) shown in black against a yellow background with a no waiting sign and an arrow. Direction 25(2), however, provides:

> "Paragraph (1) shall not apply to a road marking placed on a road within a controlled parking zone if signs shown in diagram 663 or 663.1 [upright signs saying "controlled zone" or "voucher parking zone" with a no waiting sign and indicating

> the prohibited hours] have been placed at the entrances for vehicular traffic into the zone, except where the road marking is placed to indicate restrictions different from the restrictions indicated on those signs."

11. It can be seen that the effect of Direction 25 is to create a general rule that a yellow line restricting parking must be accompanied by an upright sign, but to allow an exception in a CPZ. The question I have to decide is whether the area including Frederick St and St. Thomas St was a lawful and effective CPZ. This turns on Regulation 4 of the TSRGD, the interpretation section, which defines a CPZ as follows:

> "....an area (i) in which, except where parking places have been provided, every road has been marked with one or more of the road markings shown in diagrams 1017 [single yellow line], 1018.1 [double yellow line, indicating no waiting at any time], 1019 [no loading or unloading at certain times] and 1020.1 [no loading or unloading at any time]; and (ii) into which each entrance for vehicular traffic has been indicated by the sign shown in diagram 663 or 663.1...)." [There is an alternative definition which does not apply.]

12. Nothing turns on the entrance signs requirement in subparagraph (ii) since there is no suggestion of failure to comply with it; nor on diagrams 1019 and 1020.1 relating to loading and unloading, since these are not in practice used independently of single or double yellow lines. The Claimant's case is that the prohibitions in a controlled parking zone can only be enforced if every part of every road has been marked with either parking places, a single yellow line or a double yellow line.

13. There is no dispute that there were single yellow lines on the road at the locations in which Mr. Herron parked in Frederick St and St. Thomas St. The Claimant's case, however, is that a departure from the strict terms of Regulation 4 *anywhere* in the CPZ means that the area ceases to be a CPZ as defined by that regulation.

14. In the skeleton argument on behalf of the Claimant settled by Michael Caplan QC the main example relied on was the approaches to pedestrian crossings, where (as required by the TSRGD) there are white zig-zags which prohibit not only waiting and stopping, but also overtaking. In oral argument Mr. Alun Jones QC relied not only on this, but also on defects, for example in relation to the delineation of specific parking and loading bays, elsewhere in the CPZ. Mr. Jones was prepared to concede that a *de minimis* exception might apply where a yellow line had faded over a very short stretch of road some distance from the relevant location, and perhaps also where a yellow line had not been repainted for a very short time after the completion of road works; but otherwise, he submitted, the rule is an absolute one. If the CPZ includes any part of any road which has no single or double yellow line and which is not a parking bay, the entire CPZ is invalidated.

15. Mr. Jones sought to bolster what might otherwise seem a surprising submission by reference to an operational guidance document issued by the Department of Transport in March 2008. This says at Annex E, paragraph E5:

> "The Secretary of State's view is that motorists cannot reasonably be expected to read, understand and remember the parking restrictions at the entrance to a Controlled Parking Zone that covers an area of more than a dozen streets. CPZs rely solely on zone entry signs to give times of operation and to remove the need for time plates within the zone, except on lengths of road where the restrictions apply at different times to the rest of the zone. The area of a CPZ should, therefore, be restricted to, for example, a town centre shopping area. A single zone covering a whole town, or suburb of a conurbation would be much too large. Conventional time plate signing, without zone entry signs should accompany the yellow sign markings where large areas have waiting restrictions. Time plates are not necessary where there are double yellow lines."

Mr. Jones submitted that the larger the CPZ, the greater the risk of confusion. If traffic authorities designate large areas as CPZs and in consequence fall foul of the technical interpretation of Regulation 4 for which he contends, he argued, they have only themselves to blame.

16. But this is not a challenge to the designation of a substantial part of central Sunderland as one CPZ. We are about 40 years too late for that. Moreover, there is no evidence of confusion, either individual or general. Mr. Herron knew perfectly well that on each of the occasions in question he was parking on a single yellow line during restricted parking hours. There is no evidence of more general confusion either. I accept that there is a risk in the case of a large CPZ of a motorist forgetting the exact hours indicated at the entry point by the time he reaches his parking place. But that risk is neither increased nor decreased by the presence in the zone, otherwise than at the location where he parks, of pedestrian crossings with white zig-zags on the approaches, or parking bays with defective delineation.

17. Mr. Keenan had his attention drawn to a number of such features or defects in places within the CPZ other than where Mr. Herron had parked. He found that they "should be considered trivialities which could not mislead a driver who parked on a clearly marked restriction." That is a finding of fact with which I cannot interfere, and which seems to me in any event plainly correct.

Authorities

18. In *Davies v Heatley* [1971] RTR 145 the appellant motorist had been convicted of crossing continuous double white lines in the middle of the carriageway at a bend in the road. Contrary to the diagram set out in the Regulations the double white lines had an intermittent white line between them, and the distance between the two continuous white lines was also incorrect. Lord Parker CJ said:

> "One asks, therefore, here, whether this was the prescribed sign. I thought at one point that it might be said that the older intermittent line on a sensible approach forms no part of the double white line sign, that it is old and it is just not completely rubbed out, but, as was pointed out, even if one assumed that it was subtracted and formed no part of the line itself, the distance

> between the two continuous white lines is a long way different from that prescribed by the Regulations. Accordingly, as it seems to me, and apart from authority, much as one sympathises with the approach of the Justices it is impossible to say that an offence was committed."

19. In that case the defect was more than trivial and was at the very spot where the alleged offence was committed. Similarly, in *O'Halloran v DPP* [1990] RTR 62, another double white lines case, the mandatory warning arrow at the beginning of the sequence had been omitted. Again, the motorist's appeal to the Divisional Court succeeded; but the defect was in or very close to the relevant location. In *French v Dover District Council*, Case no. DD05005E, 8 January 2007, by contrast, the Chief Parking Adjudicator, Caroline Sheppard, held that where the defect was in a different location from the one where the motorist had parked it could be treated as immaterial. I agree with that decision.

20. In the Claimant's Grounds annexed to the Claim Form, Mr. Caplan QC cited some observations of the late Professor Glanville Williams:

> "The ancient rule was that penal statutes are to be construed strictly... on the theory that the legislature must make its intention clear if it proposes to have people punished. The rule was important at a time when many crimes were punishable by death, but it has not necessarily lost all its value in these more lenient days."

21. I am prepared to assume that a statute, regulation or direction which permits the issue of a penalty charge notice must be construed strictly, in the sense that where there is a genuine ambiguity in the language used the motorist is entitled to the benefit of the doubt in interpreting it. But that does not mean that it has to be construed so literally as to produce an absurd result. The question "did the draftsman of the Regulations and Directions intend that the presence of a pedestrian crossing within a CPZ should render the zone wholly ineffective?" only has to be asked for the answer "of course not" to be obvious.

22. Mr Sauvain QC, for the City Council, pointed out that if one is going to adopt a truly literal construction of the definition of a CPZ in Regulation 4, it does not support the Claimant's case. The requirement is that every *road* must be marked with a single yellow line, double yellow line or parking bays. It is not that every part of every road has to be so marked. That is a possible construction of the regulation, but Mr Sauvain did not advance it as his primary case, and I do not accept it.

23. In my judgment regulation 4 on its proper construction means that every part of every road in a CPZ, other than a parking bay, must be marked with a single or double yellow line (with or without the "loading and unloading" equivalents), *except* where an alternative parking prohibition is marked out such as that imposed by the zig-zags on the approach to a pedestrian crossing. Furthermore, I consider that any non-compliance, whether accidental or (if I am wrong on the previous point) arising from the presence of an alternative parking prohibition, is immaterial if it is too far from the location of the particular motorist's contravention to have led him or her into error.

24. In *Canadine v DPP* [2007] EWHC 383 (Admin) Sir Igor Judge P, as he then was, said:

> "It is something of a relief to be able to conclude that an appeal, so entirely based on technicality, and so utterly devoid of merit should be dismissed."

25. Despite Mr Jones' elegant presentation of the Claimant's case I conclude that it, too, is entirely based on technicality and utterly devoid of merit. The application for judicial review is dismissed.