London Tribunals | Environment & Traffic Adjudicators

Case Reference: 2250094583

NORBERT GOGIEL
-v-
London Borough of Southwark
(The Enforcement Authority)

This is an application for costs by the Appellant. The application was heard in a video hearing. The Appellant and Mr Morgan who represents the Appellant attended... The Authority did not attend.

The application refers to three grounds which I reproduce in verbatim:

1. Ab initio, the council has provided no primary evidence at all of the alleged contravention.
2. The council's response to the issues of the PCN is similarly wholly unreasonable.
3. Furthermore, it provided at least two photographs which have no relevance whatsoever to the case because they pertain to a completely different road not associated with the alleged contravention.

Regulation 12 (1) of the Road Traffic (Parking Adjudicators) (London) Regulations 1993 provides:

"The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2) make such an order -

(a)against a party (including an appellant who has withdrawn his appeal or a local authority that has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b)against the local authority, where it considers that the disputed decision was wholly unreasonable."

A number of tribunals have regulations containing a power to order costs where a party has conducted proceedings "unreasonably" or "wholly unreasonably".

In *Dannermann v Lanyyon Bower LLP [2017] EWCA Civ 269*, the Court held that "'conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting in a practitioner's judgment, but it is not unreasonable."

The claimant in the *Dannermann* case was described by the Court of Appeal as "barking up the wrong tree" but the Court of Appeal still says that costs should not be awarded because the claim was not unreasonable.

The *Dannermann* guidance is about unreasonableness. We deal with wholly unreasonable decisions or behaviour so arguably a higher bar than "barking up the wrong tree" applies.

In *Isabella Shipowner SA v Shagang Shipping Co Ltd [2012] EWHC 1077 (Comm)*, the Court considered a number of authorities on the distinction between "unreasonable" and "wholly unreasonable" and the true meaning of the latter concept. This is, of course, a very different context to the jurisdiction to order costs in this tribunal, but the judge, Cooke J, thought that "wholly unreasonable" was analogous to "extremely

unreasonable" or "perverse" (see [44]). If this yardstick is to apply, then a "wholly unreasonable" decision by the enforcing authority means something more than an unreasonable decision. It means a decision that is at the extremes of unreasonableness.

In relation to Ground 1, Mr Morgan argued that a motorist cannot properly understand and mount a defence unless evidence is provided before an appeal to the adjudicator is made. This may be correct but Mr Morgan was unable to offer any legal authority for the proposition that there is such a requirement, so it is clear that Parliament does not agree with Mr Morgan. There is no evidence that the failure to disclose evidence at an earlier stage is misconduct in any way, let alone conduct which is wholly unreasonable.

As the Authority has failed to supply a copy of the PCN, I am bound to accept that the PCN was, or may well be, non-compliant. That said, the first time the issue was raised was in the Notice of Appeal in which no particulars were given. The challenge proper came over a month later on 1 April. The Authority offered no evidence two weeks later.

If the Appellant chose not to disclose with sufficient particulars its case that PCN was defective, despite having the PCN by the end of January 2025, I do not see how it can be argued that the Authority dropping the case two weeks after it was put on notice of the argument can be said to be wholly unreasonable conduct, or that the decision to contest the appeal was wholly unreasonable.

Furthermore, as costs cannot be claimed before the commencement of the adjudicator's proceedings, the argument that a party can claim costs based on late disclosure encourages ambush arguments. This is completely at odds with the statutory enforcement regime, and against the overriding objective for litigation.

I bear in mind also that the award of costs is discretionary. I am not of the view that I should exercise my discretion in favour of party who argues unreasonableness when in my view, it too has acted unreasonably.

I do not agree that the photographs referred in Ground 3 (photographs in Section H of the Authority's evidence) are of no relevance whatsoever. Even if there were irrelevant, I do not see how this can amount to wholly unreasonable as envisaged in *Dannermann* and I*sabella Shipowner SA* above. Furthermore, the disclosure of the photographs took place three days before the Authority decided not to contest the appeal. There is no evidence of what, if any, costs were incurred between 11 and 14 April.

The application is refused.

Anthony Chan
Adjudicator
27th May 2025