City of Westminster – v – Leon Norrell

Cases nos. 1980279955 (PCN WE9177793A)
1980313827 (PCN WE91600839)

These consolidated cases raise the question of the ambit and correct construction of the loading/unloading exemption to the general prohibition on footway parking contained in s.15 Greater London Council (General Powers) Act 1974 and come before me on the application of the Local Authority as a review of previous Adjudicators' decisions under regulation 11(1)(e), Road Traffic (Parking Adjudicators) (London) Regulations 1993 I heard the cases on the 14th April 1999 with the City of Westminster represented by one of its officers, Mr McKee, and the Appellant in person.

The facts

The facts in each case are essentially the same and not substantially in dispute. Mr Norrell is by occupation a dealer in carpets and one of his outlets is Liberty's, the well known West End department store. He has an arrangement with the store whereby carpets are left for sale and he can change these from time to time removing unsold items and/or replacing them with others. On each of the occasions in question he was visiting the store for this purpose but was unable to park in the normal delivery area owing to building works in progress in Little Marlborough Street. Accordingly he parked nearby in Kingly Street. It is not disputed that on both occasions he parked with two wheels on the footway whilst he went into the store, and that he returned to find the respective Penalty Charge Notices attached to his vehicle. On each occasion he was alone throughout and there was nobody in or next to the vehicle whilst he visited the carpet department.

In the case of PCN no.WE91600839 relating to the 17th June Mr Norrell tells me, and I accept, that he had parked with a view to collecting a carpet or carpets. Having parked he made his way to the carpet department in Liberty's which is on the third floor. Although it is fair to say that Mr Norrell does not have a very detailed recollection of exactly what took place he is clear that his intention was to select and collect a carpet or carpets and remove them on his vehicle. On this occasion, in the event, the department was very busy as there was a sale on, and the staff were too busy to let him take the carpet(s); he returned to the vehicle empty handed.

In the case of PCN no. WE9177793A relating to the 2nd July, Mr Norrell was making a collection which had been pre-arranged with the store. In this case carpets were actually collected and a delivery note in confirmation has been produced.

The statutory provisions

S.15 Greater London Council (General Powers) Act 1974 so far as is relevant provides as follows:-

"(3) A person shall not be convicted of an offence under this section with respect to a vehicle if he proves to the satisfaction of the court that the vehicle was parked -

…(d) for the purpose of loading or unloading goods, and –

(i) the loading or unloading of the vehicle could not have been satisfactorily performed had it not been so parked: and

(ii) *the vehicle was not left unattended at any time while it was so parked.*

This is the sole exemption Mr Norrell relies on. In order to succeed he has to satisfy me (on the balance of probabilities) that 1) he was parked for the purpose of loading or unloading goods; 2) that this could not have been done satisfactorily if the vehicle had been parked in any other way and 3) that the vehicle was never left unattended.

Was the vehicle parked for the purpose of loading/unloading?

The short answer seems to me to be on balance "yes". There is no evidence to suggest that in ordinary language Mr Norrell had parked to carry out any activity other than the collection of carpets; no suggestion for example that he was taking the opportunity to do some shopping in the store. Mr Norrell is a businessman and I have no difficulty in accepting that the only reason he was there on each occasion was to collect carpets. The question arises whether the totality of the activity he intended to carry out (and largely did) amounts to "loading and unloading goods". I was referred to the Adjudicator's decision in the case of *City of Westminster – v – Jane Packer Flowers* where the ambit of what constitutes loading/unloading was exhaustively analysed. Applying the principles set out in that decision Mr Norrell's actions in going to the place where the items were located, identifying (or attempting to identify) them and transporting them down in the lift are all part of the loading process. Insofar as there is a dispute between the appellant and the Local Authority as to precisely how long Mr Norrell was absent from the vehicle I feel it is not necessary to resolve the question since it seems to me on any view no activity was taking place outside the process of loading actual or intended.

It is, of course, true that on the 17th June no carpets were, in the event, loaded but in my view this is not a situation where Mr Norrell parked, as it were, purely on the offchance to see if there might be any goods to collect: he went into the store with the bona fide intention of loading one or more of his own carpets following his established practice and would doubtless have done so had it not been for the particular circumstances It seems to me that all this time he can fairly be said to be parked for the purpose of loading.

Westminster raised the question of whether it would not have been possible, for example, for the goods to have been brought down in advance and signed for on the ground floor. I need not deal in detail with why, in Mr Norrell's view, this would not have been practicable as the

issue is whether what *actually* took place is covered by the exemption; and the answer to this question is unaffected by considering alternative scenarios.

Could the loading have been satisfactorily performed had the vehicle not been parked on the footway?

This is a more difficult question. There is in my view no doubt that Mr Norrell could have put the carpets into his vehicle just as easily if his vehicle had been parked on the carriageway and in that sense the loading could have been "satisfactorily" performed. Mr Norrell , however states that if he had parked on the carriageway he would probably have caused an obstruction to other traffic in a quite narrow street and I accept that this might well be the case. By implication Mr Norrell argues that a loading operation which causes obstruction cannot be said to be "satisfactorily performed".

It seems to me that some assistance can be derived in construing the words "satisfactorily performed" by putting them in the context of the list of other exemptions set out in S.15(3). They are very restrictive and it appears the intention of the draughtsman was to limit footway parking to situations of emergency or similar, where footway parking was the only option. Even in the case of rendering assistance at the scene of an accident or breakdown S15(3)(c) the exemption is limited to situations where the assistance "could not have been *safely or* satisfactorily rendered…". The addition of the word "safely" in this context suggests that the rendering of assistance could in certain circumstances be "satisfactory" even if unsafe – otherwise the extra word would not be necessary. And this in turn suggests that considerations of danger to road users (and, a fortiori, mere inconvenience) are not encompassed by the words "satisfactorily performed". It seems to me therefore that a restrictive construction is to be preferred here. To adopt the meaning for which Mr Norrell contends would in practical terms - subject to S.15(3)(d)(ii) – create a very extensive exception and one not intended by the draughtsman since virtually every motorist who parks on a footway to load/unload in London's congested streets does so to avoid causing an obstruction . In my view S.15(3)(d)(i) is confined to situations where there would otherwise be a real problem - perhaps for physical or geographical reasons peculiar to a particular load or location - in moving the goods to or from the vehicle. As that is not the case here I am not satisfied Mr Norrell has brought himself within this part of the exemption.

Was the vehicle left unattended?

It is common ground that on each occasion Mr Norrell was away from his vehicle for a matter of several minutes whilst he went up to the third floor carpet department, and that during this time the vehicle was not within his sight. When asked specifically by Mr McKee, Mr Norrell agreed that the vehicle was "unattended" but later submitted that in this context "unattended" had to be given a broader meaning, taking into account the circumstances that the vehicle was not causing an obstruction; and he submitted that in any event the vehicle does not have to be in view to be "attended" and that intermittent attendance would be sufficient to satisfy the meaning of the subparagraph.

The meaning of the word “attended” has fallen to be considered in a number of cases in the High Court and Court of Appeal in the context of insurers seeking to avoid liability for a claim on the basis that the small print in the policy required the goods or vehicle to be attended.

In *Starfire Diamond Rings Ltd – v – Angel [1962] 2 Lloyds Rep, 217* a jewellery salesman left his car containing a case of samples parked in a lay-by whilst he went 111 feet away to answer a call of nature during which time the goods were stolen. Insurers could limit liability if the vehicle had been “left unattended”. Denning, L.J. said

> *“I do not think the words “left unattended” are capable of any precise definition. It is a mistake for a lawyer to attempt a definition of ordinary words and to substitute other words for them. The best way is to take the words in their ordinary sense and apply them to the facts. In this case the meaning of "left unattended" is, I think, best found by considering the converse. If a car is “attended” what does it mean? I think it means that there must be someone who is able to keep it under observation, that is, in a position to observe any attempt by anyone to interfere with it, and who is so placed as to have a reasonable prospect of preventing any unauthorised interference with it. …..It seems to me the distance that Mr Hall went and the obscurity of his view was such that this car was "left unattended"*

This decision was followed in *Ingleton Ltd – v – General Accident Fire & Life Assurance Corporation [1967] 2 Lloyds Rep, 179.* A delivery driver left his van with the keys in it parked right outside the off-licence where he was delivering and it was stolen whilst he was inside waiting for a signature. He was in the shop for about 15 minutes in all. The insurance company could avoid liability under the policy if the vehicle had been "left unattended" Phillimore, J said

> “*The fact is that from where he was of course he could not see the far side of the van, he had no view of the driver’s door he could not see if anybody got into the driver’s seat, he was not in a position to keep it under observation, that is to say in a position to observe any attempt by anyone to interfere with it or so place as to have a reasonable prospect of preventing any unauthorised interference with it”*

Phillimore, J then went on to say

> *In my judgement this is a hopeless claim. The van on the facts was quite clearly unattended….”*

Also worth noting is the case of *Attridge and another – v – Attwood[1964] Crim LR 45* where a taxi driver left his taxi in the street locked, and went into a nearby office with the vehicle in constant view. The High Court held that the Justices had properly convicted him of the offence of leaving the taxi in the street without someone proper to take care of it under the Town Police Clauses Act 1847 Although the wording of the provision here is, of course, different the ambit of the words “take care of” is rather wider than the concept of attendance; and it seems to me to follow that if a driver is not “taking care” of his vehicle in this situation he could hardly be said to be attending it.

Although I have to bear in mind none of these cases were decided under the Greater London Council (General Powers) Act 1974 it seems to me they do give useful guidance as to the matters one needs to consider in deciding in a particular case whether a vehicle is "left unattended". In particular the question of distance from the vehicle, whether it could be seen, and whether the driver was in a position to exercise any control over it are important. In the insurance cases the question was whether the driver was close enough or in a position to prevent the thefts that occurred. In the present context it seems to me the equivalent test is

whether the driver was in a position to move the vehicle should it be necessary or answer any questions from police or attendants as to, for example, the reason for its being on the footway and the likely duration of the loading/unloading.

In both these cases applying these principles and, indeed, common sense, it seems to me quite impossible to say that Mr Norrell was in any sense in attendance on his vehicle. He was inside Liberty's, going up to the third floor and remaining there for some minutes. He could not see the vehicle and was not in a position to exercise any control over it during this time. A Parking Attendant was able to observe the vehicle and issue a PCN without Mr Norrell having any knowledge of it at the time. Although each case turns on its own facts, it is worth noting that in all the decided cases the driver was closer to the vehicle than Mr Norrell was and was still held not to be in attendance.

I do not accept any suggestion that intermittent attendance will satisfy the Act which specifically states that the vehicle is not to be "left unattended *at any time*". Nor does the fact that the vehicle was not causing any actual obstruction of the footway have any bearing on the point – it is a totally separate issue.

Mr Norrell also made the general point that it would be absurd if the law required a sole trader to have someone else in the vehicle to attend it. Absurd or not, that is clearly exactly what the law does require of those who wish to park on an area which is, after all, generally set aside for pedestrians. The fact that a particular provision might cause inconvenience in particular cases is not a ground for saying that the law should not apply.

Conclusion

For the reasons given in detail above I arrive at the conclusion that although Mr Norrell was parked on the footway for the purpose of loading goods he has failed to satisfy me either that the loading could not otherwise be satisfactorily performed or that the vehicle was never left unattended. The issue of both Penalty Charge Notices was therefore lawful and the City of Westminster is legally entitled to payment of the full amount outstanding. In view of the fact that Mr Norrell was clearly a bona fide trader attempting to do his best in what were difficult circumstances, and that the law has perhaps only now been clarified for him I leave it to the City of Westminster to consider whether this is a case where the element of discretion that I do not have as an adjudicator might,on this occasion only, be exercised in his favour. That is of course entirely a matter for the Local Authority.

Edward Houghton
Parking Adjudicator
12th May 1999

EH/Q/D/Reason/Norrell