CO/3422/2006

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

Royal Courts of Justice
Strand
London WC2

Monday, 26 March 2007

B E F O R E:

MR JUSTICE CALVERT-SMITH

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THE QUEEN ON THE APPLICATION OF TRANSPORT FOR LONDON
(CLAIMANT)

-v-

THE PARKING ADJUDICATOR
(DEFENDANT)

SIMON ADEMOLAKE
(INTERESTED PARTY)

- -

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MR JAMES PEREIRA (instructed by TfL Legal) appeared on behalf of the CLAIMANT
MR IAN ROGERS (instructed by the Parking Adjudicator) appeared on behalf of the DEFENDANT

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J U D G M E N T

1. MR JUSTICE CALVERT-SMITH: At about 11.45am on 29 April 2005 a Mr Ademolake stopped his car on double red lines in Commercial Road in east London. A parking attendant saw the car and began to write down some details prior to writing out a parking ticket and putting it on the windscreen or handing it to the driver or the person appearing to be in charge of the car. As he was doing this, Mr Ademolake got into the car, said "I am going now", and drove off. These last facts were recorded by the parking attendant in a note he made at the time. Because the parking attendant was unable to fix a ticket on the windscreen or to give it to Mr Ademolake, the claimant then sent a parking ticket -- and in due course, a Notice to Owner -- to the address of the keeper of the car. Rather than paying the sum demanded, the owner of the car, Mrs Ademolake, made representations to the claimant as to why in her view the ticket should be withdrawn. These representations were rejected.

2. The ground of the representations, indicated by a "tick box" in the appropriate form, was that the parking attendant "was not prevented" from serving a PCN. Paragraph 2(1) of Schedule 6 of the Road Traffic Act 1991 allows the keepers of vehicles to make representations and, as the result of its insertion by section 5(4)(d) of the London Local Authorities Act 2000, one of the reasons -- (g) in paragraph 2(4) -- is:

> "that, in the case of a penalty charge notice served under section 5 of the London Local Authorities Act 2000, the parking attendant was not prevented from serving the penalty charge notice in accordance with section 66(1) of this Act."

3. In rejecting the representations and refusing to withdraw the ticket, the claimant said this:

> "I have noted your comments that the issuing officer was not prevented from issuing the penalty charge notice. However, the officer has noted that upon being informed that a penalty charge notice was being issued, the driver of your vehicle immediately drove away, therefore preventing the officer from serving the notice.
>
> Please be advised that as from 14/02/2005, an amendment was added to the LLA/TFL [London Local Authorities Act] 2000 allowing us to enforce penalty charge notices when the driver has driven away."

4. On receipt of that rejection, Mr Ademolake appealed to the Parking Adjudicator. Paragraph 5 of Schedule 6 to the 1991 Act deals with the ability of aggrieved persons to mount such an appeal and for the Parking Adjudicator to consider the representations and any additional representations, and to give directions which must be complied with.

5. In this case, the Parking Adjudicator allowed the appeal. The appeal was based on the same ground -- once again, a tick box which reads: "The parking attendant was not prevented from serving the PCN", and in his written grounds Mr Ademolake took issue with the allegation that the driver was aware before driving away that the parking attendant was issuing a ticket. He said that not much of his car was on the red line and he was picking up suits from a shop.

6. The claimant put in a document headed "Parking Appeal Case Summary", in which the claimant made its case to the adjudicator. I quote briefly from that summary:

> "Section 5 of the London Local Authorities Act 2000 provides that where a parking attendant attempts to issue a PCN by attaching it to a vehicle or giving it to the driver but is prevented from doing so by any person the authority may serve a PCN on the owner of the vehicle by post.
>
> TFL's interpretation is that 'prevented from' applies in a situation where the driver purposely drives away to prevent the notice being handed to him/her or placed on the vehicle.
>
> In this case, the Issuing Officer was prevented from serving the penalty charge notice as he states in his notes that the driver was made aware of the ticket and then the driver drove off."

7. In allowing the appeal the Parking Adjudicator said this:

> "In this appeal, the facts are not in dispute. Mr Ademolake parked his vehicle (at least partially) in a clearway where no stopping is allowed. He went into a shop to buy some sweets(sic), and when he returned he found that a parking attendant was noting the details of his vehicle. The notes made by the parking attendant read as follows: 'Driver returned and said: 'I'm going now'. I informed driver of ticket. He then drove away'.
>
> The question therefore is whether, by driving away, the motorist has prevented the parking attendant from issuing a Penalty Charge Notice. I am not satisfied that he has. I am not told exactly how far the parking attendant had got in preparing to issue the PCN. If he actually had it in his hand and this was knocked away by the motorist as he drove off, then this could reasonably be considered preventing him from issuing the PCN. However, in this case, it may well be the situation that the attendant had only begun to make notes when the driver returned ... I am not satisfied that the parking attendant had got far enough in the process of issuing a PCN that it can be said that Mr Ademolake had prevented him from actually issuing the PCN. I am therefore not satisfied that section 5 of the London Local Authorities Act 2000 can be relied upon by the Authority. For those reasons I will allow this appeal."

8. The claimant asked for a review of that decision. That is permitted by Regulation 11 of the Road Traffic (Parking Adjudicators) Regulations 1993; one of the grounds for such a view being that "the interests of justice require such a review". The claimant put in a longer document in support of its application, repeating in substance its case to the original Parking Adjudicator. Mr Pereira, who has presented the case for the claimant to the court, draws the court's attention to what he suggests is actually a mistaken view of the law to which reference has already been made in their earlier submission.

9. On the second page of the submission the following words appear:

> "The matter in dispute is whether in circumstances where a parking attendant having observed that a vehicle has illegally parked and therefore in contravention of parking regulation and where having started the process of issuing the PCN, the driver rushed to the vehicle and drove away, is capable of amounting to 'prevented from issuing the PCN' within the meaning of the 2000 Act.
>
> It is clearly our view that this conduct can only amount to prevention, on the simple grounds that had the driver not driven away the vehicle following the contravention, the PCN would have been properly served. In this particular case the driver, despite being placed on notice by the parking attendant that the PCN is ready for service, still got into the vehicle and drove away. This act, in our view, is a clear indication of a deliberate prevention. If this is not to be accepted as the correct interpretation of the law, drivers will be able to avoid the consequence of illegal parking, clearly undermining the intention of parliament in enforcing compliance with road traffic laws and regulations."

10. In fact, Mr Pereira contended that "prevention" can occur without any deliberation on the part of the driver. Whether the driver knows that a ticket is being issued or whether he is driving away deliberately in order to avoid the ticket being given to him or put on his windscreen makes no difference in his submission.

11. Later on in its submission to the Adjudicator, the claimant set out the normal steps taken by a parking attendant in these circumstances:

> "• The parking attendant observes a vehicle in contravention of the parking regulations and makes a note of vehicle details.
>
> • He begins to issue a penalty charge notice using his computer hand-held device which could take anything between three and five minutes.
>
> • Once the ticket is produced, he proceeds to either paste a copy of the ticket on the vehicle windscreen or hand it over to whoever appears to him to be the driver of the vehicle.
>
> • However, he is unable to do so if the vehicle is driven away."

12. In fact, whoever composed this document was in error, or at very least out of date, it seems. First of all, in the case with which we are concerned no computer hand-held device was used. This apparently was a situation in which a written note was made and retained in the notebook for future use if necessary and the written penalty charge notice was also written out. Second, in cases in which a hand-held device is used, the first document to emerge from it is actually the penalty charge notice, and it is only after that has come out of the computer that the background notes, including things said by the driver and so on, are produced.

13. The application for review was considered by another adjudicator. Her decision was that there would be no such review. Her reasons were:

> "The decision made by the Adjudicator was one he was reasonably entitled to make on the evidence before him, and the decision discloses no error of law on the interpretation of the term 'the parking attendant was prevented'.
>
> Your application for a review is therefore rejected."

14. The claim form in this case was issued in April 2006 and permission to bring the claim was given on 8 June 2006. On 15 June, a week later, there was a meeting, to which I will return, which, among other things, discussed the very issue before the court, in the context of a draft Code for authorities.

15. So far as Mr Ademolake is concerned, the urgency of the decision has gone out of the case since the claimant has fairly indicated that, whether it wins or not, it will not seek to enforce the penalty. In spite of that concession and the lack therefore of any need, if successful, for the court to refer the matter back to the Parking Adjudicator, both parties have agreed that these proceedings may serve a useful purpose in clarifying the circumstances in which the claimant and other authorities may resort to posting a penalty notice if the parking attendant has been unable to serve the notice, either by fixing it on the windscreen or handing it to the driver or person appearing to be in charge.

16. It is said in particular that it is important to achieve such clarification because regulations similar to those in force in London with which we have been concerned are in the near future apparently to be issued in respect of all those authorities, and they represent the majority in the country, the court was told, which have decriminalised parking contraventions.

17. All parties are agreed that the road in question was a road subject to the restriction on parking, and that all the powers thereby invoked subject to the argument over the particular meaning of section 5(1) were correctly invoked.

18. Section 5(1) was amended by Schedule 2, paragraph 3, of the Transport for London (Consequential Provisions) Order 2005 so that Transport for London became one of those authorities covered by section 5. The order came into force on 14 February 2005, the date referred to in the claimant's original rejection of the keeper of the vehicle's representations.

19. The questions which have occupied the mind of the claimant when first rejecting the appeal and the two Parking Adjudicators, who on the one hand allowed the appeal and on the other refused to review the decision on appeal, and the questions upon which the parties have sought the guidance of this court, are: (1) what do the words "attempts to issue" mean in the particular context of section 5 of the 2000 Act? And (2) what do the words "prevented from doing so by any person" mean in the same context?

20. I was referred to one authority, but it did not deal with any of the points which are central to the decision today, which, perhaps surprisingly, does not seem to have been before the court for decision before. It is worth pointing out however, and the reasons

for this will become apparent later, that in this case, R(London Borough of Barnet Council) v Parking Adjudicator [2006] EWHC 2357(Admin); [2007] RTR 14, one of the factual situations with which the court was concerned was one in which the driver had driven away before the parking ticket had been affixed to the windscreen or given to the driver and the Council concerned had clearly not taken the next step of sending it by post under section 5. In deciding what the words "attempt to issue" mean, it is necessary to discover what constitutes "issue". When a parking attendant comes across a vehicle parked on a double red line, he or she will no doubt start the process by noticing the vehicle and possibly by writing some details. Next, he or she will continue the process either by inputting details into the computer or by writing out a ticket. He or she will then continue the process by tearing the ticket out of the end of the computer or out of the pad or notebook in which it was being written and make his or her way to the car with a view to fixing it on the windscreen or, if the driver is there, handing it to him or her. Finally, the parking attendant will complete the process by handing the ticket to the driver or sticking it on the windscreen.

21. What is "issue"? The obvious meaning to a lay person would be to fix it at the moment when the ticket has been completed and "issued" in normal parlance, either in handwriting or by being printed out from the hand-held device. But both sides before me have agreed that while that might be the obvious answer, it is in fact the wrong answer. This is because of the wording which links the concept of "issue" to section 66(1) of the Road Traffic Act, which reads:

> "Where, in the case of a stationary vehicle ... a parking attendant has reason to believe that a penalty charge is payable with respect to the vehicle, he may
>
> (a) fix a penalty charge notice to the vehicle; or
>
> (b) give such a notice to the person appearing to him to be in charge of the vehicle."

22. That is related to section 5(1) of the London Local Authorities Act 2000, which reads:

> "(1) Where a parking attendant attempts to issue a penalty charge notice in accordance with section 66(1) of the Act of 1991 but is prevented from doing so by any person—
>
> (a) Transport for London, if the attendant was acting on its behalf; or
>
> (b) in any other case the council on whose behalf the attendant was acting,
>
> may serve a penalty charge notice on the person appearing to it or them to be the owner of the vehicle."

And "service", as is accepted by all, in that instance may be by post.

23. Hence it is said by both sides that "issue" must mean the act of fixing the penalty charge notice to the vehicle or giving it to the person appearing to him to be in charge of the vehicle. That being the case, one has to look to see how far back before the actual issue it can be said that the parking attendant was attempting to issue. The claimant contends that the attempt starts from the moment that (with the intention of eventually fixing the ticket on the windscreen or giving it to the driver) the parking attendant starts to write or to input into his hand-held device. Any other interpretation, the claimant submits, defeats the object of the whole exercise, and the process, once started, is effectively inexorable so that everything done from the first writing, up to the moment before the parking ticket is actually issued, constitutes the attempt.

24. I was asked by Mr Pereira to disregard other legal definitions of "attempt", in particular those contained in the Criminal Attempts Act 1981 and the cases decided under it, and indeed the common law before it. I was asked instead to rely on the Concise Oxford Dictionary (rather than the Shorter Oxford Dictionary) definition of "attempt", ie "make an effort to achieve or complete". It seems to me that that really was a distinction without a difference. Clearly in common usage, as in the law, merely preparatory acts accompanied by the relevant intention will not amount to attempts.

25. The defendant takes an opposite view and contends that "attempt" to issue must be confined to the moments between the completion of the writing or the printing of the parking ticket and its fixing or giving. He answers the claimant's contention that the whole process from first making a note to fixing is a single process by pointing out that, up to the very moment that the fixing takes place, one or other of the events which in fact mean that no contravention has actually taken place may occur or become known to the parking attendant: for instance, the possibility that unloading is taking place or that the driver of the vehicle is disabled. There are of course a number of points between those two extreme positions contended for by the parties which might trigger the beginning of an attempt; the most obvious of which perhaps is the moment when the parking attendant actually begins to write or type the ticket.

26. In my judgment, and accepting the definition of "issue" for which both sides have contended, merely jotting down some details before putting them into the computer to print the ticket or writing the ticket by hand cannot amount to an attempt to issue -- it is simply a preparatory act. The attempt to issue must, in my judgment, start either when the attendant begins to put the details into the computer in order to generate the ticket or to write the ticket, or, when he has removed the completed ticket from the computer or the pad and starts to approach the driver or the windscreen.

27. Once again, to a layman the obvious point might be that the writing of the ticket would amount to an attempt. In particular, if for instance the driver or some other person were to take the hand-held computer or the notebook or pad on which the ticket was being written and to disable it or throw it away, a bystander might well come to the conclusion that the attendant, at that moment, was attempting to issue a ticket. However, once again the statutory language, in my judgment, gets in the way of that and makes the obvious answer the wrong answer.

28. If "issue" is confined to the act of fixing the ticket or giving it to the driver, then it cannot be an attempt to do that merely to input the details into the computer. That too is simply getting ready to attempt rather than attempting. This conclusion is one that I have reached with reluctance because it is clearly in the public interest that those who have the duty of writing out tickets or entering the details into their computers have some protection. It seems to me, as the defendant submitted, that the only protection which they have is the protection of the general criminal law, there being no offence, within the legislation creating the duties and obligations in respect of parking, of obstructing a parking attendant in the execution of his or her duty.

29. I turn now to the question of "prevention". The claimant contends that the natural meaning of the words is apt to include what I was informed is known in the world of parking adjudicators as "drive aways", and certainly should not exclude them, although there is a discretion to let off a particular person if the "drive away" turned out to be excusable by reference to an emergency of some kind.

30. The claimant further contends that, in principle, as I have already indicated, neither knowledge of the intention to issue the ticket nor an intention to avoid the issue of the ticket are necessary to prove prevention. The only requirement is that set out in the statute of a human agency of some kind. The mere fact that a person -- subject of course to the discretion of the claimant in an individual case -- has in fact prevented issue is sufficient. Somewhat surprisingly perhaps, in view of his unwillingness to allow the court to rely on the legal definition of "attempt", I was referred to *Stroud's Legal Dictionary* in order to assist me on the definition of "prevention". It was conceded by the defendant that many of the ways in which "prevent" has been defined in other parts of the law would undoubtedly cover the sort of situation with which we are concerned.

31. As a general policy matter, Mr Pereira submits that to hold that drive aways are not caught by section 5(1) would be to turn the whole issue into a game of "cat and mouse". In fact, of course, the enforcement of parking restrictions will always be a game of "cat and mouse" to an extent. As Mr Pereira concedes, even on the most extreme view, if the driver sees the parking attendant before the parking attendant sees him and drives away, then the mouse will have got away. The defendant, while conceding as I have said that the meaning of the words clearly could cover somebody in the position of the driver in this case who drives away and therefore prevents the issue of the ticket, relies on a number of matters of custom and practice. First of all, he submits that the fact is that for years now the majority, at the very least, of parking adjudicators have acted on the basis that "drive aways" do not amount to preventing the issue of penalty charge notices under section 5. Not only that, but nobody seems to have challenged this way of looking at drive aways for many years. The Act has now been in force for five years or so.

32. Secondly, the defendant relies on the terms of the draft Code to which I referred briefly earlier. On 15 June 2006 the Association of London Government (Transport and Environment Committee) held a meeting at which, according to the minutes, the Committee noted the contents of a Code of Practice on parking and traffic enforcement. Importantly the minute reads: "Agreed that all London Boroughs' parking and traffic

enforcement operations should make reference to the Code while carrying out their functions, pending its formal adoption dependent on publication of Governmental statutory guidance".

33. The meeting was attended by councillors or their deputies from the City of London and all the London Boroughs with the exception it seems of Brent and Southwark. The claimant was represented by a Mr Plowden. The Code, part of which only has been before the court, contains the following at paragraph 51 under the heading "Service of Penalty Charge Notices":

> "A PCN must be served by fixing it to the vehicle or handing it to the driver ('the person appearing to be in charge of the vehicle') at the time and location of the observed contravention (s.66 RTA 1991). Except as noted below, a PCN cannot be served by post, even if the driver drives the vehicle away while the PCN is being produced. The exceptions to this are either if the attendant is prevented from serving the PCN in the normal way by violence or threats of violence (s.5 London Local Authorities Act 2000) or if the enforcement is taking place following observation by CCTV (see below). In cases where a PA is prevented from serving a PCN on street so it has to be served by post following violence or threats of violence, the attendant should make full notes of the incident including any discussions or conversations, and the nature of the intimidation in the pocket book."

34. It follows from that document and its apparent adoption (unanimously so far as those present were concerned at the meeting on 15 June) that it would be impossible to criticise the Parking Adjudicators who adjudicated upon this matter. They were simply following what their colleagues had been doing for years and, it seems, the universal practice of local authorities.

35. Effectively I am asked to rewrite the Code and to issue guidance to adjudicators in the future that their way of interpreting section 5(1) must change. I have considered this carefully. Parking regulations and their enforcement affect a vast number of the citizens of London, and of course, picking up what I was informed of earlier, most of the rest of the country as well. All currently understand that if you drive away before a ticket is actually put on the windscreen, through the window of your car or into your hands, and you have not inflicted violence or the threat of violence on the attendant, effectively you have, in spite of contravening the parking regulations, got away with it. That understanding seems to me to be so well-established that now is not the time for the court to make a declaration which reverses it: in particular, as I made plain when I went through the chronology, bearing in mind that a week after leave was given to bring these judicial review proceedings, the claimant seems to have been supporting the exact opposite stance to the one currently claimed. Had the matter been litigated soon after the passage of the Act it may be that there would have been a different result.

36. For those reasons, I do not make the declaration sought by the claimant in this case.

37. Mr Pereira, Mr Rogers, I will undoubtedly have made a large number of grammatical -- probably hundreds -- and numerical and other types of errors in what is almost an extempore judgment. Could I trouble you to receive a copy of my transcript and send it back with obvious sections and sub-sections and things which I may well have got wrong.

38. MR ROGERS: My Lord, indeed.

39. MR JUSTICE CALVERT-SMITH: Thank both very much, and thank you both for your arguments today.

40. MR ROGERS: My Lord, it only remains formally to ask you to dismiss the application for judicial review.

41. MR JUSTICE CALVERT-SMITH: Which I do.

42. MR ROGERS: And as the Parking Adjudicator's expenses are actually met by the London Boroughs and, I think, Transport for London, we seek no order for costs.

43. MR JUSTICE CALVERT-SMITH: This is clearly not a case where costs orders are appropriate.

44. MR PEREIRA: My Lord, my clients are grateful for that clear judgment. No doubt they will give it consideration. I am formally instructed to ask for permission to appeal. I do not do so on the basis that there is a reasonable prospect of success because I do not see any prospect of persuading your Lordship to change his mind or to be with me on that.

45. MR JUSTICE CALVERT-SMITH: I do not think that leave is appropriate. It would certainly be more appropriate on point 2 than point 1, where it seemed to me that, had we started out on the right course first off and everybody had understood what the position was, then drive aways would have been in, but not on the other points. But I do not think it is appropriate to grant leave at this stage.

46. MR PEREIRA: I am grateful. Thank you.