Case No.2010000692

Tim Charles Schwarz
-v-
London Borough of Camden

Mr Tim Charles Schwarz appealed against liability for the payment of the Penalty Charge in respect of:

Vehicle Registration Number:	P374XGJ	Full Penalty Charge:	£ 60.00
Penalty Charge Notice:	CD98082032		
Date of Issue:	Fri 11 Aug 00	Time of Issue:	10:35
Parking Attendant:	516		
Location:	Mount Vernon		
Contravention:	Parked in a suspended bay/space or part of bay/space		

Adjudicator's Decision

This case comes before the Adjudicator under Regulation 11 of *The Road Traffic (Parking Adjudicators) (London) Regulations 1993* by way of an application for review of the original decision on the appeal.

The Adjudicator, having considered this matter on the basis of written evidence from the Appellant and written evidence from the Council, has determined that the appeal against liability for the charge should be refused.

The reasons for the Adjudicator's decision are attached.

The full penalty amount must be paid within 28 days to:

London Borough of Camden
PCN Processing
PO Box 20217
LONDON
NW1 1WP

If you do not pay the Council can issue a Charge Certificate increasing the full penalty charge by a further 50%.

Adjudicator's Reasons

I decided that the decision in this case should be reviewed because, in relation to the original hearing, the Appellant did not receive until after the hearing a copy of a press article that the Council had referred to. The Appellant contended that this had prejudiced him in arguing his case. I therefore considered that the interests of justice required a review, to ensure that justice was seen to be done.

In fact, the article is merely a press report, in 'Parking Review', relating to a Penalty Charge Notice that was apparently cancelled administratively by the Council. It was never the subject of an appeal and therefore there has been no judicial decision on it. As such the article is of no assistance in deciding this case.

This review was scheduled for a personal hearing. Unfortunately the Appellant chose not to attend and I have therefore not had the benefit of oral argument from him. The immediate reason for the Appellant not attending was, I believe, that I declined to accede to his request that at the hearing I should listen to the tape recording of the original hearing. That is a matter for him and entirely of his own choosing. It is a matter for me how the hearing should be conducted. I have not found it necessary to listen to the tape as, on this review, I have considered the issues entirely afresh for myself.

The essential facts are not disputed. The Appellant's vehicle was parked in a suspended residents' bay. The sign alerting motorists to the suspension was a yellow hood over the sign plate. The hood bore the no waiting symbol and stated 'No Waiting, Loading, Unloading'.

The first issue is that the Appellant says that he was doing none of these. There is no dispute that he was not loading or unloading. The question is whether he was 'waiting'. The Appellant had left his vehicle for several days. He contends this was not 'waiting' which he argues, adopting a definition in the New Oxford English Dictionary 1998, means to 'remain parked for a short time at the side of the road'. He says this is how 'waiting' would be commonly understood. He distinguishes 'waiting' from 'parking', in which he says he was engaged.

The term 'waiting' in the context of parking control in fact derives from the Road Traffic Regulation Act 1984, the Act that empowers local authorities to make traffic regulation and management orders. Its proper construction is therefore a matter of construing that Act. In the provisions prescribing what may be included in such orders, the Act consistently uses, and uses only, 'wait' and 'waiting': sections 2, 4, 7, 10, Schedules 1 and 2. They do not use 'parking' at all. If there had been a distinction to be made as the Appellant contends, it clearly would have been necessary to make it in these provisions. Significantly, in section 32 'parking place' is defined as 'a place where vehicles, or vehicles of any class, may wait.' It is clear that under the Act, waiting and parking are synonymous and that waiting is not limited as the Appellant argues.

Indeed, a moment's thought shows that the distinction is unsustainable. If waiting were limited to 'a short time', when would it cease to be a short time and thus cease to be waiting and become parking? It should be noted that whether or not the vehicle is attended is irrelevant. The Act speaks of *vehicles* waiting; and in Strong v Dawtry [1961] 1 WLR 841 it was held that a vehicle is left in a parking place when parked there and not when the motorist departs from it. The Appellant relied on Rodgers v Taylor [1987] RTR 86. This case does not assist him. It was to the effect that an exemption for taxis to use an authorised taxi stand was not applicable when the taxi in question was waiting for purposes other than operating as a taxi. The case therefore concerned the purpose for which the taxi was waiting, not the length of time.

The Appellant's vehicle was therefore waiting. Furthermore, the sign displayed was adequate to describe the restriction, using as it did the term found in the 1984 Act. I have to say I should be surprised if many motorists would believe that where such a sign appeared they were entitled to leave there vehicle for a long period of time but not a short one – whatever long and short might mean.

The Appellant also contends that there has been a breach of Article 6 of the European Convention on Human Rights and of Article 1 of the First Protocol to the Convention. The basis for this contention is that the Road Traffic Act 1991, which governs the decriminalised parking enforcement regime, provides (section 66) that if a penalty charge is paid within 14 days the amount of the charge is to be reduced by the specified proportion, that being 50%. It is to be noted that the provision is for a reduction for early payment, not a doubling for failure to pay as the Appellant believes. Since this is provided for in primary legislation, I have no power to make a declaration of incompatibility with the Convention under section 4 of the Human Rights Act 1998. If the Appellant wishes to pursue that point, he will have to take the matter to the High Court.

I will, however, say that in my view the scheme of allowing a discount for prompt payment is not incompatible with the Convention. Article 1 of the First Protocol provides that no one shall be deprived of his possessions 'except in the public interest'; and that 'The proceeding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties'. There is a clear public interest in providing an incentive to motorists to settle their parking penalties promptly and so minimise the need for the Council having to pursue enforcement through further action, ultimately through the County Court. The incentive provided is in my view proportionate. It is difficult to see what advantage there would be in the provision for the reduced penalty being removed. Motorists who did not dispute the penalty (far and away the majority) would have to pay the full penalty; and in all probability many more motorists would delay payment, since there would be no advantage in paying promptly, thus forcing Councils either to abandon enforcement of the penalties or incur the expense of taking further enforcement action.

Martin Wood
Adjudicator appointed under Section 73(3) of the Road Traffic Act 1991

17 December 2001
Case No. 2010000692
CD98082032