



2024UT04

Ref: UTS/AP/23/0032

DECISION NOTICE OF SHERIFF COLIN DUNIPACE,
JUDGE OF THE UPPER-TIER TRIBUNAL FOR SCOTLAND (GENERAL REGULATORY
CHAMBER)

IN THE CASE OF

Fife Council

Appellant

- and -

Mrs Alison MacPherson

Respondent

FTS Case Reference - FP00024-2305

8 January 2024

Decision

1. The Upper Tribunal allows the Appeal and remits the matter back to the First-tier Tribunal.

Introduction

2. Fife Council, (hereinafter “the Council”) have submitted an Appeal against a decision of the First-tier Tribunal of the General Regulatory Chamber (hereinafter referred to as ‘the Tribunal’) dated 22 May 2023, allowing the Appeal of Mrs Alison MacPherson (hereinafter “the Respondent”) against the imposition of a Penalty Charge Notice at 10.24 on 27 March 2023 in Hunter Street, Kirkcaldy. In support of their Appeal the Council have submitted the following documents, namely:

- a. Form UTS-1
- b. Legal Member’s decision dated 29 May 2023
- c. Decision of First-tier Tribunal granting Permission to Appeal dated 24 July 2023

3. By way of background, the Respondent was issued with a Penalty Charge Notice (hereinafter referred to as the ‘PCN’) in relation to a parking contravention involving her motor vehicle registration number LT58JZG on 27 March 2023. The nature of the contravention was that the Respondent was:

“Parked without clearly displaying a valid pay & display ticket or voucher”

4. The Respondent elected not to have a telephone or oral hearing and the original appeal was decided by the Legal Member of the Tribunal on the basis of documentary and photographic evidence provided and the Council, together with the Respondent’s account of events on 22 May 2023. The original appeal was allowed by the Legal Member on that date, and full written reasons for this decision were provided by the Legal Member in their decision of that date.

5. The written reasons given by the Legal Member for the refusal of the Appeal were as follows:

“It is alleged that the Appellant’s vehicle (registration number LT58JZG) was parked inn Hunter Street Kirkcaldy in an area to which parking restrictions applied at the time of the alleged contravention. The restriction requires payment for parking.

The Council is required to establish the contravention on a balance of probabilities that justified the Parking Attendant to issue a PCN. In this instance they are required to show that the Appellant parked her vehicle at the location without adhering to the restrictions which applied.

Photographic evidence has been produced by the Council which shows:

- a. that the vehicle was parked at the location.*
- b. That he PCN was attached to the front windscreen of the vehicle*

The Appellants position is that

- 1. The parking ticket had been paid for on the Ringo system and instead of typing in an 8 a 9 had been inserted.*
- 2. The Appellant has lodged evidence that she has paid for parking for the vehicle LT59JG – it is valid at the time of the alleged contravention. It is also valid for that location.*

The Council submit that LT59 JG is for another vehicle all together an Audi.

Discussion

The Council are required on the Balance of Probabilities to prove that the Appellants vehicle was parked without payment of a charge.

If they do so the Appellant is able to submit evidence to the fact that she had actually paid for her parking. The Appellant has submitted the wrong digit in Ringo and has produced evidence of payment.

The Council have proved that the Attendant was justified in issuing the PCN and that has been sufficiently rebutted by the Appellant.

It is not relevant that the registration mark belongs to another vehicle as the Appellant has shown she has paid for parking in Hunter Street Kirkcaldy at the relevant time.

I shall allow the appeal.

Findings in Fact

- a. The vehicle was parked at the location on the date and time narrated in the PCN.*
- b. The PCN was correctly issued and attached to the vehicle.*
- c. The correct signage was in place.*
- d. The Appellant had paid for her parking on the Ringo system.*
- e. The Council has given the Appellant's previous requests due and proper consideration.*

Findings in law

- a. The Order applies.*
- b. A contravention not having occurred there is no penalty payable.*

The appeal is allowed."

6. The Council thereafter lodged an application for a Review of that decision in terms of Rule 17(3)(b) of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 (hereinafter referred to as 'the Rules') on 6 June 2023. This application for Review was refused by another Legal Member of the Tribunal on 29 June 2023. However the reasons for the refusal of the Review are of no relevance to the determination of this present application for Leave to Appeal, given that that this was an excluded decision having regard to the terms of sections 51 and 52 of the Tribunals (Scotland) 2014 Act.

7. On 20 July 2023 the Appellant thereafter timeously sought permission to appeal against the original decision of the Legal Member in terms of section 46 of the Tribunals (Scotland) Act 2014, and in terms of Rule 18 of the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Rules of Procedure 2020 (contained in the Schedule of the Chamber Procedure Regulations 2020 (SSI No 98) ("the Procedure Rules"). The two grounds of appeal as stated were that:

“i. The decision fails properly to interpret the 2013 Order that requires an appellant to prove that a parking charge has been paid for “that [particular] vehicle”. Accordingly the appellant must prove payment for the vehicle with registration LT58 JZG. The appellant was only able to prove that she had paid a parking charge for LT59 JG which contains both an incorrect number and a missing letters. In any event whether the registration entered is similar to the correct registration number is not relevant as a matter of law, even if that may appear to some as harsh or inequitable. For these reasons it is submitted that the Legal Member erred in the interpretation of the 2013 Order and by so doing erred in law.

ii. The second ground of appeal is connected to the first ground, namely that the Legal Member failed to take into account a relevant consideration et separatim took into account an irrelevant consideration. The decision concludes that it is not relevant that the registration number is incorrect as the appellant has shown that she has paid for parking. Proof of payment only may be a relevant consideration for a private parking charge arising from a breach of contract where no loss could be demonstrated. However the present charge is a penalty notice issued under Road Traffic legislation.

Indeed the Legal Member identified the correct test namely whether the appellant’s vehicle was parked without payment, but then only took into account whether payment for any vehicle had been made, and in so doing erred in law”

8. The application for leave to appeal was considered by the President of the First-tier Tribunal on 24 July 2023, at which time leave to appeal was granted on both grounds. The President of the Tribunal concluded that the grounds of appeal raised arguable points of law.

9. The terms of section 46(1) the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provide that the Upper Tribunal for Scotland may only hear Appeals in cases where permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the

Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to Appeal.

10. The Council subsequently lodged their appeal on form UTS-1 on 22 August 2023.

The Grounds of Appeal as stated thereon were as follows:

“The points of law on which the applicant wishes to appeal are: (i) that the Tribunal did not correctly apply the relevant legislation; and (ii) that the Tribunal took into account an irrelevant consideration and/or failed to take into account a relevant consideration.”

11. The Council also lodged a detailed Notice of Appeal in support of their position. In this Notice the Council accepted that the after mentioned facts were not in dispute, namely:

- On 27 March 2023 the Respondent parked a silver Mercedes motor vehicle registration number LT58 JZG in a parking bay on Hunter Street, Kirkcaldy.
- The Respondent elected to pay for this parking sessions utilising a remote payment parking system known as RingGo. This is a system operated by the Council allowing persons to pay for parking sessions through the use on an App, rather than purchasing a conventional parking ticket.
- RingGo requires the user to enter the registration number of their vehicle to be entered.
- The Respondent entered an incorrect registration number in respect of the vehicle, having entered LT59 JG. This sequence of numbers and letters contained an error in relation to the number (59 instead of 58) and also missed the letter “Z”.
- The registration number entered by a driver of a vehicle is the only means by which a parking attendant can identify a vehicle who has paid for a parking session. The system does not record any other vehicle details such as make, model and/or colour of the vehicle.
- At 17.33 hours on 27 March 2023 a parking attendant employed by the Council issued a Penalty Charge Notice numbered. This PCN recorded the contravention as

being: "Parked without clearly displaying a valid pay & display ticket or other type of permit".

12. The position of the Council is that the present appeal relates to the correct interpretation of The Fife Council (Waiting and Loading Restrictions and On-Street Parking Places) Consolidation Order 2013 ("the 2013 Order"). Specific reference was made to the terms of Article 19(1) of the 2013 Order which states:

19. (1) On leaving a vehicle in a metered parking place during the charging hours the driver of the vehicle shall make payment of the appropriate parking charge by:

(a) inserting in a parking meter relating to that parking place a coin or coins of the denominations listed on the parking meter as valid for use in that parking place to the value required to meet the parking charge and displaying on the vehicle in the manner provided in the following Article the ticket issued by the parking meter; or

(b) using the remote payment parking system (where available) to register such payment; or

(c) using any other method of payment as may be authorised by the Council and indicated by instructions on a parking meter relating to that parking place and displaying in the manner provided in the following Article any ticket issued by the parking meter.

13. The Council submitted that the foregoing provision identified the various options available to vehicles when parking in a metered parking plane within Fife, one option being "using the remote parking system," and that where this is option was selected by the vehicle registration, and payment of the parking charge is identified on the handheld devices used by parking attendants. Reference was made to Article 21(1) of the 2013 Order, which provides that:

"If at any time while a vehicle is left in a metered parking place during the charging hours...and no indication appears on a hand-held device that the parking charge has been paid, it shall be presumed unless the contrary is proven that the parking charge has not been duly paid in respect of that vehicle."

14. The Council also state that Article 2(3) provides that the hand held devices used by parking attendant(s) are programmed to interface with the remote payment parking system, namely RingGo.

15. The Council proceed on the basis of two Separate Grounds of Appeal.

First Ground

16. The Council assert that the decision of the Legal Member fails to properly interpret the 2013 Order which requires an appellant to prove that a parking charge has been paid for “that [particular] vehicle,” which in the present case was the vehicle with registration LT58 JZG. The Respondent had provided evidence that she had paid a parking charge for a vehicle with the registration number LT59 JG. However this was doubly incorrect, containing as it did an incorrect number and a missing letter. The Council maintain that even if it appears harsh or inequitable, that whether the registration entered is similar to the correct registration number was irrelevant as a matter of law, and accordingly the original Legal Member erred in law in their interpretation of the 2013 Order.

Second Ground

17. In relation to the second ground of appeal, it was submitted that the Legal Member had failed to take into account a relevant consideration and also taken into account an irrelevant consideration. The original decision had concluded that it was not relevant that the registration number was incorrect given that the Respondent had demonstrated that she had paid for parking. It was submitted that proof of payment was only relevant consideration for private parking charges arising from a breach of contract. The present case related to a penalty notice issued under Road Traffic legislation, and the Legal Member had erred by taking into account whether payment for any vehicle had been made.

18. It was submitted that the appeal could succeed on either or both grounds, given that the first ground was concerned with the proper interpretation of the 2013 order, and the second ground concerned whether the Legal Member applied the correct test and taken into account irrelevant considerations and/or failed to take into account relevant considerations.

19. In particular it was submitted that the Tribunal had failed to make a finding in fact that payment was in respect of a different registration number being a different sequence of both letters and numbers, which was not a matter which was in dispute. Rather the Tribunal had made a finding in fact to the effect that the Respondent had paid for her parking, and had reinforced this error by stating that "It is not relevant that the registration mark belongs to another vehicle as the Appellant shown she has paid for parking." The Tribunal appeared to have treated the parking ticket/charge as being something personal to the Respondent which was transferable and could be applied to any vehicle, which was an error in law, given that the Tribunal have misinterpreted the 2013 Order by finding that the parking was personal to the Respondent and could be allocated (or transferred) to any vehicle. It was said to have been in error that the Tribunal had taken into account an irrelevant consideration, namely whether the Respondent made a payment for another vehicle. The Council also pointed out that any errors can be rectified not only when using the remote system but also for 15 minutes following the parking charge having been paid using the remote system. It was stated that the Respondent had not availed herself of those opportunities.

20. The Council invited the Upper Tribunal to find that the First-tier Tribunal had erred in law and allow the appeal, thereafter quashing the decision, and thereafter re-making the decision, or alternatively that the decision is quashed and the cause remitted to the Tribunal for further procedure with any such directions as the Upper Tribunal deemed appropriate.

21. In her response the Respondent's representative stated that the appeal was opposed as there had simply been a genuine mistake made as a result of human error on the part of

the Respondent. It was stated that the Respondent did not deny that a number had been incorrectly entered, that being a “9” being entered instead of an “8.” It was submitted therefore that LT59 JZG had been entered instead of LT58 JZG which was the correct registration. The Respondent’s representative indicated that the vehicle left before the expiry of the parking session paid for. The Respondent accepted the registration number LT59 JZG related to another vehicle (an Audi A3). The Respondent’s representative concluded by stating that evidence demonstrating the location, time and date, payment and registration had been previously exhibited.

Authorities referred to by the Council

22. Legislation

1. The Fife Council (Waiting and Loading Restrictions and On-Street Parking Places) Consolidation Order 2013
2. Sections 46 and 47 of the Tribunals (Scotland) Act 2014
3. The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016
4. The First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020

Case Law

5. Advocate General for Scotland v Murray Group Holdings Ltd 2016 SC 201
6. Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591
7. Lawrie v The Banknock Coal Co Ltd 1912 SC(HL) 20
8. Wordie v Secretary of State for Scotland 1984 SLT 345

Discussion

23. The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of its rolling programme of reform on 1 April 2020. Prior to that date there was no statutory right to seek permission to Appeal decisions of adjudicators to the Upper Tribunal for Scotland. On that date the Adjudicators of the Parking and Bus-Lane Tribunal for Scotland became Legal Members of the General Regulatory Chamber of the First-tier Tribunal for Scotland. In the present application there is a statutory right to seek permission to Appeal to the Upper Tribunal for Scotland in relation to this matter.

24. This appeal is brought by the appellant under the provisions of section 46 of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) and the procedural rules contained within The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (“the 2016 Regulations”). Permission to appeal has been granted in accordance with the decision of the First-tier Tribunal for Scotland (General Regulatory Chamber) (“the Tribunal”) dated 24th July 2023 (“the permission decision”) (Appendix 7). The Tribunal reference is FP00024-2305. The permission decision grant permissions to appeal the decision of the Tribunal dated 29th May 2023 (“the decision”).

25. The terms of section 46(1) the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provide that the Upper Tribunal for Scotland may only hears Appeals in cases where permission to Appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted in accordance with section 46(2)(b) of the 2014 Act if the Appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal

Conclusion

26. The Appellant has been granted permission to Appeal to the Upper Tribunal. The procedural history of this appeal, is as above narrated. Neither party has indicated that they wished a full oral hearing in relation to this matter.

27. In terms of the relevant law, Section 46 of the Tribunals (Scotland) Act 2014 (hereinafter referred to as “the 2014 Act”) provides:

46. *Appeal from the Tribunal*

(1) *A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be Appealed to the Upper Tribunal.*

(2) *An Appeal under this section is to be made—*

(a) by a party in the case,

(b) on a point of law only.

(3) *An Appeal under this section requires the permission of—*

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

28. Accordingly from application of the foregoing Section 46 of the 2014 Act, it is apparent that the Council may only Appeal to the Upper Tribunal on a point of law (section 46(2)(b)).

29. The grounds of this application for leave to Appeal are as stated above. The Council state that the point of law that they now raised is to in effect to assert that the decision of the Legal Member failed to adhere to and to apply the full extent of the provisions of The Fife Council (Waiting and Loading Restrictions and On-Street Parking Places) Consolidation Order 2013, and in particular the terms of Articles 19(1) and 21(1) of the aforementioned Order.

30. Having regard to the terms of the foregoing Order, Part 4 specifically relates to the question of “Metered Parking.” The terms of Article 18(1) state that:

“A parking charge will be payable for a vehicle left in any metered parking place described in Schedule 9 during the charging hours relating to that parking place.”

31. Thereafter Article 19(1) provide the basis upon which to pay for a vehicle to be left in a metered parking space. The terms of Article 19(1) specifically state that:

“On leaving a vehicle in a metered parking place during the charging hours the driver of the vehicle shall make payment of the appropriate parking charge...”

32. Provisions are thereafter made in Article 19(1) for a number of payment methods, one of which is to use a remote payment parking system (where available) to register such a payment (Article 19(1)(b)).

33. The Council submitted that the foregoing provision identified the various options available to vehicles when parking in a metered parking plane within Fife, one option being “using the remote parking system,” and that where this is option was selected by the vehicle registration, and payment of the parking charge is identified on the handheld devices used by parking attendants. Reference is made to Article 21(1) of the 2013 Order, which provides that:

“If at any time while a vehicle is left in a metered parking place during the charging hours...and no indication appears on a hand-held device that the parking charge has been paid, it shall be presumed unless the contrary is proven that the parking charge has not been duly paid in respect of that vehicle.”

34. In relation to the terms of the aforementioned subsection it is noted that the fact that no ticket is displayed on the vehicle and no indication appears on the hand-held device referred to that the parking charge has been paid, means that a presumption has been raised to the effect that no parking charge has been paid for that vehicle, unless the contrary is proved. The position of the Respondent appears to be that in the present case that the contrary

has been proven given that evidence, which I do not understand to be disputed, has been lodged to the effect that the Respondent did purchase a parking session, via the remote payment system, to cover the relevant parking session. Whilst it is understandable that the Council would be concerned that one parking session could in certain circumstances be used to cover multiple vehicles, in this case there is no suggestion that the Respondent was also seeking to pay for a parking session for a separate vehicle, in this case apparently an Audi A3 vehicle.

35. The position appears to be that whilst the Respondent has clearly acted in good faith (and again I do not understand that this is disputed) by simply entering one wrong digit on her keypad, however the terms of the relevant Order clearly make reference to the parking session being purchased for a vehicle and not an individual. There is nowhere within the Order any reference to the parking session being personal to the purchaser, independent of any vehicle. There is also no suggestion contained within the Order to the effect that the parking session is in any way portable or transferable between various vehicles. The terms of the Order are clear in that the parking session is to be purchased for a vehicle. Whilst the respondent has demonstrated that a parking session was purchased, due to her understandable error, it was not purchased for this particular vehicle. Again it is also understandable that having not realised that an error had been made, given the relatively minor nature of this error that she did not avail herself of one of the methods to rectify this error.

36. In these circumstances I cannot therefore agree that the Legal Member was entitled, on the basis of the evidence before the Tribunal to make Finding in Fact 11 d. to the effect that “the Appellant has paid for her parking on the Ringo system.” Whilst the Respondent has in good faith paid for a parking session, by error she has purchased this session for an entirely separate vehicle and not for the vehicle which she intended to purchase this session for. This was clearly due to an error on her part and it is unfortunate that in circumstances where such an obvious error of transcription has clearly occurred in entering digits into a remote payment system that a degree of discretion cannot be applied by the Council where it is clear that there

has been no attempt made to abuse the system by seeking to register multiple vehicles for a single purchased parking session. The exercise of discretion however is not an option available to the First-tier Tribunal who must apply the law as it stands. Proof of a payment to the Council via their remote payment system does not necessarily mean that this payment was made for the specific purpose of paying for a parking session for that vehicle at that time. To the extent that the Legal Member has concluded that proof of a payment demonstrates that the Respondent has paid for a parking session for that particular vehicle for that specific parking session, I am satisfied that this is erroneous in law and fails to apply the terms of the Order which clearly make reference to the payment being in relation to a specified vehicle. By taking this information into account in reaching their decision the Legal Member has also erred in law.

37. By an unfortunate error the Respondent did not purchase a parking session for her vehicle and as such the contravention took place. Accordingly I also find that Finding in Law 12 b. was also made in error.

Decision

38. In these circumstances I am satisfied that the Penalty Charge Notice was validly issued and accordingly I uphold the appeal on the grounds stated by the Council.

39. In these circumstances I am also satisfied that there has been an error of law and as such the appeal should succeed, and the original decision of the Legal Member is quashed.

36. Having reached this decision, I have considered the appropriate disposal in terms of Section 47(2) of the 2014 Act. I am satisfied therefore that it would be appropriate to remit the case to the First-tier Tribunal to deal with the matter as they see fit.

Parties Aggrieved by Decision

35. A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff Colin Dunipace

Sheriff Colin Dunipace

Sheriff of South Strathclyde Dumfries and Galloway at Hamilton