



Neutral Citation No. [2022] EWHC 2844 (SCCO)

Case No: 202000831 B2

SCCO Reference: SC-2022-CRI-000082

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 4 November 2022

Before:

COSTS JUDGE LEONARD

R

v

TOMLINSON & MURRAY

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellant: **The Public Interest Law Centre (Solicitors)**

This Appeal has been dismissed for the reasons set out below.

COSTS JUDGE LEONARD

1. This Criminal Legal Aid costs appeal concerns the refusal by a Determining Officer to assess a claim for payment made by the Public Interest Law Centre (“the Appellant”) under schedule 3 to the Criminal Legal Aid (Remuneration) Regulations 2013.

2. I need to emphasise, for the purposes of this appeal, that my jurisdiction is a statutory jurisdiction conferred by the 2013 Regulations. I have no power to extend that jurisdiction or to depart in any other way from the provisions of the 2013 Regulations.

The Representation Order

3. On 23 March 2021, handing down its judgment in *R v Warren* [2021] EWCA Crim 413, the Court of Appeal quashed the convictions of 14 trade unionists who had been pickets during the national building workers' strike in 1972 and who had been convicted at the time, variously, of conspiracy to intimidate, unlawful assembly and affray.
4. The Appellant had, in the Court of Appeal instructed counsel on behalf of Ricky Tomlinson and Arthur Murray, two of the appellants in *R v Warren*. The Appellant had acted for Mr Tomlinson and Mr Murray under the terms of a Representation Order issued by the Court of Appeal's Criminal Division on 28 July 2020. The Appellant's right to payment from public funds for the work undertaken under the terms of that Representation Order is governed by the provisions of Schedule 3 to the 2013 Regulations.

The Rules

5. I will outline the pertinent provisions of the 2013 Regulations for the purposes of this appeal. For ease of reference I should mention that the Regulations divide legal "representatives" into "litigators" and "advocates". The provisions applicable to the Appellant, depending on the context, refer either to "litigators" or "representatives".
6. Paragraph 2 of Schedule 3 provides that:

"Subject to regulation 31, no claim by a litigator for fees and disbursements in respect of work done in proceedings in the Court of Appeal... must be entertained unless the litigator submits it within three months of the conclusion of the proceedings to which it relates."
7. Regulation 31 provides for extensions of time and is set out below.
8. Paragraphs 3 and 4 of Schedule 3 provide for a litigator's claim for payment, once submitted, to be determined by an "appropriate officer" (in this case, a Determining Officer in the Criminal Appeal Office).

9. Paragraph 11 of Schedule 3 provides for a representative who is dissatisfied with the fees determined by the Determining Officer in accordance with the provisions of Schedule 3, to follow the redetermination and appeal process set out at regulations 28 and 29 of the 2013 Regulations.
10. Regulation 28(7) provides for the Determining Officer, on the application of the representative, to undertake a redetermination of the claim. Regulation 28(8) provides the Determining Officer, if required by the representative, to provide written reasons for that redetermination.
11. Regulation 29 provides for a representative who, following the delivery of the written reasons, remains dissatisfied with the Determining Officer's decision to appeal to a Costs Judge. It may be helpful for me to set out paragraph (1) of regulation 29:

“Where the appropriate officer has given his reasons for his decision under regulation 28(8), a representative who is dissatisfied with that decision may appeal to a Costs Judge...”

12. All of these procedures are, as one would expect, subject to time limits. The claim for payment, as provided for in paragraph 2 of Schedule 3 quoted above, must be made within 3 months of the conclusion of the relevant proceedings. Any application to the Determining Officer for redetermination under regulation 28(7) must be made within 21 days of payment of the fee that has been determined. Any application for written reasons under regulation 28(8) must be made to the Determining Officer within 21 days of receiving notification of the redetermination.
13. Any appeal to a Costs Judge under regulation 29 must be made within 21 days of receipt of the Determining Officer's written reasons as provided under regulation 28(8). (The notice of appeal must be accompanied by a copy of the written reasons.)
14. Any of those time limits can be extended, by the appropriate person, under Regulation 31, which is headed “Time limits” and reads:

“(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done under these Regulations may, for good reason, be extended—

(a) in the case of acts required or authorised to be done under regulations 29 or 30, by a Costs Judge or the High Court as the case may be; and

(b) in the case of acts required or authorised to be done by a representative under any other regulation, by the appropriate officer...”

15. As the wording of Schedule 3, paragraph 2 indicates, the three-month period for submitting a claim for payment may also be extended by the Determining Officer under regulation 31.

The Events Leading to This Appeal

16. It is accepted by the Appellant that the case in the Court of Appeal concluded on 23 March 2021. Under paragraph 2 of Schedule 3, the Appellant's claim for payment should have been submitted within 3 months of that date, i.e. by 23 June 2021. Instead it was submitted on behalf of the Appellant by McKenzie Webster, a solicitor advocate at North Kensington Law Centre, on 7 September 2021, over two months late.
17. On 21 September 2021 the Determining Officer requested the attendance notes and correspondence file in support of the Appellant's claim. Ms Webster advised him on 23 September that he would have all the papers by the following week. They were not, however, sent to him until 22 June 2022, when they were forwarded by courier.
18. The Determining Officer was notified by email on 22 June 2022 that the papers were being sent to him. He replied to the effect that in the nine months since he had requested the papers, counsel had been pressing for assessment of their own fees without having to wait for the Appellant's papers. After more than six months had elapsed since the conclusion of the appeal, as a matter of fairness to counsel the decision had been taken to assess counsel's fees independently. Determination and Re-determination of counsel's fees had concluded several months previously.
19. The Determining Officer pointed out that the assessment of all fees and costs of a given case at the same time (especially a complex multi-handed case like this) not only avoids duplication of effort but is the accepted practice, allowing as it does a Determining Officer to compare and contrast the work done by the various legal representatives on the case. Piecemeal, "ad hoc" assessments had, he said, been criticised by Costs Judges.
20. In the absence of any explanation for the Appellant's delay, the Determining Officer explained that he was extremely reluctant to determine the Appellant's costs. As a matter of fairness however he invited an explanation for the delay within 7 days.
21. Mr Paul Heron, senior solicitor in and founder of the Appellant law centre, who had handled the appeal for Mr Tomlinson and Mr Murray, replied apologising for the delay, and explaining it by reference to the burdens on him personally, in particular extreme pressure of work, some of it on very high profile and demanding cases; the administrative burden of managing the practice; and a lack of resources and administrative support endemic to law centre work.
22. The Determining Officer did not consider this to be an adequate explanation for a nine-month failure to comply with a simple request for the papers. He confirmed that he was not prepared to assess the costs, but advised the Appellant that there was a right of appeal against his decision to a Costs Judge at the Senior Court Costs Office. The Appellant, accordingly, filed this appeal.

Conclusions on my Jurisdiction to Hear the Appeal

23. I am sorry to say that I do not agree that the Appellant has a right of appeal to a Costs Judge in respect of the Determining Officer's refusal to determine the Appellant's costs. I do not believe that I have any jurisdiction either to alter or to hear an appeal from, that decision. I say that for these reasons.
24. The Appellant submitted a claim for its costs over two months late. In consequence, under paragraph 2 of Schedule 3 to the 2013 Regulations, no claim for payment could be entertained unless the Determining Officer was willing to exercise his discretion under regulation 31 to extend time for submitting the claim.
25. It is evident that the Determining Officer, on 21 September 2021, was willing to extend time for the Appellant's claim. Hence his request, on that date, for the papers. After a further nine-month delay, however, he was no longer willing to extend time.
26. As I have already emphasised, my jurisdiction under the 2013 Regulations is determined solely by those regulations. It will be apparent, from the wording of regulation 31 quoted above, that I can extend time for an appeal to a Costs Judge under regulation 29, but I cannot extend any other time limit set by the regulations. It is not open to me to extend time for the Appellant to file a claim for costs with the Determining Officer, because the 2013 Regulations do not give me that power.
27. Nor do I have any jurisdiction to step into the Determining Officer's shoes and undertake my own determination of the Appellant's costs and disbursements. My jurisdiction is confined to extending time for an appeal to a Costs Judge, and to hearing any such appeal.
28. That takes me to the specific appeal provisions of the 2013 Regulations, as set out above. It is a prerequisite to an appeal to a Costs Judge under regulation 29 that the procedures set out in regulation 28 have been followed. There must have been a determination by the Determining Officer (in this case under paragraphs 3 and 4 of Schedule 3), a redetermination by the Determining Officer under regulation 28(7) and the delivery of written reasons by the Determining Officer under regulation 28(8). That is the point at which I can exercise the jurisdiction conferred on me by regulations 29 and 31.
29. None of that has happened. There has been no redetermination in respect of which I can hear an appeal. What has happened is that the Determining Officer has refused to determine a claim made out of time. I do not have any jurisdiction to hear an appeal from that decision.

Conclusions on the Merits of the Appeal

30. For the avoidance of doubt, I should add that even if I did have jurisdiction to hear this appeal, I would still dismiss it.
31. That is not because I doubt anything Mr Heron says about pressure of work and the difficulties of managing a law centre, or because I underestimate the importance of the work that the Appellant does.

32. The point is rather that I entirely agree with the Determining Officer that the explanation offered by Mr Heron is insufficient to excuse a wholesale failure, over a period of nine months, to comply with a simple request for the papers in support of the Appellant's claim. Whatever the background, this was really a case of neglect.
33. The consequence of the Appellant's long and avoidable delay is that the determination of the Appellant's costs now would, as the Determining Officer observed, be an unsatisfactory piecemeal exercise, inevitably duplicating the work already undertaken by him on determining other legal representatives' fees. I agree with the Determining Officer that that is unacceptable.
34. For all those reasons, this appeal must be dismissed.