

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1462 (QB)

Ref. QB-2022-001236

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY**

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL (Claimant)

-v-

RAJAN NAIDU (Defendant)

MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of the Defendant

Hearing date: 17th May 2022

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Mr Naidu, you appear before the court today in respect of two admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting on 14 April 2022, as amended on 5 May 2022.

2. You are represented by counsel today and I have heard what counsel has had to say on your behalf.

3. You face two matters of contempt: the first on 27 April 2022 and the second on 12 May 2022. The claimant has provided you with written particulars of each alleged contempt. You have admitted the breach in relation to 27 April 2022 in accordance with the written particulars. In relation to the allegation on 12 May, you have made an admission on a basis that is acceptable to the claimant but not as it was originally drafted. You accept breaching paragraph 1(b)(ii) of the injunction, namely “congregating or encouraging or arranging for another person to congregate at the entrance to the Terminal” but not that you obstructed the entrance so as to breach paragraph 1(b)(iii). I proceed on the basis of your admission. In light of those admissions, I am satisfied that the contempt matters before the court have been proved to the criminal standard.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was also granted against “persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA.” A power of arrest was attached to that order.

5. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. By paragraph 1(a) of the injunction:

“The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the “Terminal”), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the “buffer zone”).

For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone.”

6. Paragraph 1(b) of the order further prohibited “in connection with any such protest anywhere in the locality of the Terminal” a number of defined acts including at subsection (ii) “congregating or encouraging or arranging for another person to congregate at the entrance to the Terminal”.

7. The order was served on 14 April 2022 by alternative methods permitted by Sweeting J, including by placing signage in prominent locations around the site and on the claimant’s website and social media accounts.

8. The injunction was varied by Sweeting J on 5 May when he removed the 5-metre “buffer zone,” but the other material terms remained the same.

9. On 27 April 2022, at just after 4 pm, you were one of a group of 10 individuals who gathered on the grass verge outside the main entrance to the oil terminal to protest against the use and/or production of fossil fuels. It was a purely peaceful protest and caused no inconvenience to people using the oil terminal. It was however inside the “buffer zone” referred to in the original paragraph 1(a) of the interim injunction and therefore amounted to a breach of the injunction. You were arrested by the police and produced before the court on 28 April, when Sweeting J bailed you to attend on 4 May. You answered your bail on 4 May, admitted the breach on 27 April 2022 and were bailed to attend a hearing on 12 May alongside co-defendants whose cases were already listed that day.

10. You failed to attend court on 12 May and instead made the deliberate decision to return to the oil terminal to continue your protest. At around 2pm in afternoon you were part of a group of eight protesting outside the oil terminal. The buffer zone element of the injunction was no longer in force on that date. However, a number of your group started to walk across the site entrance and sit down in the middle of the road, blocking access. I proceed on the basis that you were not one of those sitting down in the road so as to obstruct traffic, but you were nonetheless were in breach of paragraph 1(b)(ii) of the injunction in that in connection with your protest you congregated or encouraged others to congregate at the entrance to the oil terminal.

11. The court has to determine the appropriate penalty for the admitted breaches. The objectives of penalties for contempt of court were considered in *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 where Pitchford LJ held as follows:

“The first objective is punishment for breach of an order of the court; the second is to secure future compliance with court orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective.”

12. The Sentencing Council do not produce guidelines for breach of a civil injunction. However, in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 the Court of Appeal held that the Definitive Guidelines for breach of antisocial behaviour orders were equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. There are important differences that need to be borne in mind. The criminal courts have far greater powers for sentencing: a maximum of five years as opposed to two years in the civil courts on any one occasion. The criminal courts also have a variety of community orders at their disposal; the civil courts do not. I also remind myself the injunction is not a true antisocial behaviour injunction under the Anti-social Behaviour, Crime and Policing Act 2014. However, following the approach in *Amicus Horizon*, the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order) is relevant to determining the appropriate penalty.

13. I agree with both counsel that each breach was deliberate and falls within culpability category B.

14. I also agree that each of the breaches caused little or no harm or distress and thus fall in lowest harm category 3. On 27 April your protest was wholly peaceful on the grass verge, causing no hindrance to any traffic trying to access the site. On 12 May you were congregating around the entrance. To that extent it would have caused some inconvenience, but I accept that you were not sitting in the road and blocking those wishing to use the site.

15. The Definitive Guideline gives a starting point in the criminal courts of a high level community order with a range from a low level order to 26 weeks in custody.

16. I have to consider any aggravating factors. The breach on 27 April is aggravated by the fact that it was committed only 13 days after the order was made. The breach on 12 May is further aggravated in that it occurred a short period of time after the first breach, whilst you were on bail and in circumstances where you had failed to attend the hearing that was listed the same day. I have been shown your antecedent history. You have got no convictions or cautions. It appears that you were the subject of police bail as of 27 November 2021. It is unclear whether you still would have been on that bail at the time of the breaches. I resolve the doubt in your favour and proceed on the basis that you were not on police bail at the time.

17. As to mitigation, I therefore proceed on the basis you are of good character. Your counsel tells the court that your protests were based on the strong moral grounds you believe

you have to protest in that way. I have no doubt that you feel very strongly about the matters as to which you were protesting. I accept that there is a distinction to be drawn between individuals who protest without causing significant criminal disturbance and those that commit criminal offences. Nonetheless, a High Court injunction was and remains in place and you have to accept that in exercising your asserted rights you knowingly acted in breach of it. The strongest mitigation in your case is your acceptance of both breach of the injunction at the earliest opportunity after seeking legal advice. Under the Definitive Guideline for Reduction of Sentence for a Guilty Plea you are entitled to a one-third discount on the penalty that would have been passed after a trial.

18. In my judgment, the most appropriate penalty for both breaches would have been a fine. This court has the power to impose unlimited fines. I have heard, through your counsel, that you have very limited means and have only state pension income. Any financial penalty would have had to reflect your very modest means. But for the fact you have been in custody, the appropriate level of fine in respect of the contempt on 27 April would have been £600, reduced to £400 to reflect your early admission. The fine for the breach on 12 May would have had a higher starting point because it occurred whilst on bail, only a matter of days after the first breach and in circumstances where you failed to attend court the same day. That would have had a starting point of £1,000, reduced by one third to £666.

19. You have however spent a total of six days in custody: one day following your arrest on 27 April and a further five days following your arrest on 12 May and subsequent remand in custody following your failure to attend court. You have served the equivalent of a 12-day sentence. The time you have spent on remand in custody is more draconian than the penalty you would have received had you simply answered your bail and been dealt with in relation to the breaches. In those circumstances, it would be unjust for you to pay a fine in addition to time that you have now spent in custody. I therefore make no order on each of the breaches. The order will record the time that you have spent in custody as equivalent to a 12-day sentence and detail what the financial penalties would have been but for your remand in custody.

20. The claimant does not make a costs application and has not provided a schedule of costs. There will thus be no order as to the costs of the contempt proceedings. If you go with the custodians, they will be able to process your paperwork and then release you.