



Neutral Citation No. [2024] EWHC 2865 (SCCO)

Case No: T20190346

SCCO Reference: SC-2024-CRI-000050

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 25 October 2024

Before:

COSTS JUDGE ROWLEY

R

v

FRIZELL

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

Appellant: Amber Walker (Counsel)

The appeal has been dismissed for the reasons set out below.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is the appeal of Amber Walker of counsel against the decision of the determining officer to calculate her graduated fee using band 17.1 under the Criminal Legal Aid (Remuneration) Regulations 2013.
2. Counsel was instructed to represent Ann Frizell who faced one count of an eight count indictment concerning the unlawful dumping of waste on premises in Staffordshire called Bonnie Braes Farm.
3. I have dealt with the circumstances of these proceedings in detail in my decision on the appeal of Gregory Johnson of counsel in the case of R v Bowden ([2024] EWHC 1321 (SCCO)) and there is no need for me to rehearse the detail of the proceedings.
4. Both Mr Johnson and Ms Walker appealed the determining officer's classification of the offences with which their respective clients were charged. In Mr Johnson's case, the offences did not expressly appear in the Banding of Offences in the Advocates' Graduated Fee Scheme document which has governed counsel's fees since 2018. As such, the 2013 Regulations required the banding to be deemed to be band 17.1 unless it was reclassified by the determining officer. Mr Johnson sought that reclassification and, although the determining officer agreed that 17.1 was not the correct band, she decided that the correct band was 16.3 rather than 6.1 as contended for by Mr Johnson. For the reasons I have given in the separate decision, I have upheld Mr Johnson's appeal in this respect.
5. The offences faced by Ms Walker's client, however, were expressly set out in the Banding of Offences document in Table B. In such circumstances, the determining officer does not have any power to reclassify the offences and so had no option but to calculate the graduated fee based on band 17.1. In fact, the calculation was originally based on band 16, presumably in line with other decisions in this multi-handed case. However, the graduated fee has since been recalculated in accordance with band 17.1.
6. There are, in fact, three separate statutory provisions referred to in the count faced by Ann Frizell. In addition to the two which are expressly referred to in Table B, there is also section 157(1) of the Environmental Protection Act 1990. That provision deals with bodies corporate which have committed an offence under the Act with the consent, connivance or neglect on the part of an office holder such as a director acting in the course of their office. Such an office holder would also be liable of the offence as well as the body corporate. In this case Ann Frizell was a director of TW Frizell (Haulage and Plant Hire) Ltd (and which company faced count 7 on the indictment).
7. The determining officer laconically describes section 157(1) as doing "nothing to widen the scope of the offence to allow re-banding." As such, she declined to revise the calculation based on band 17.1.
8. For the reasons I have given in Mr Johnson's appeal, if an offence with which Ann Frizell was faced could be re-banded, then it would be possible for me to direct that Ms Walker's remuneration should be calculated in accordance with band 6.1 in the same way as Mr Johnson and, no doubt, other advocates in the case.

9. An advocate (or indeed litigator) is entitled to decide on which offence their graduated fee should be based. Ms Walker has understandably concluded that she ought to base her remuneration on section 157(1) since that is the only offence on which a re-banding is possible.
10. Paragraph 3 to Schedule 1 of the 2013 Regulations deals with re-banding. Subparagraph 2 gives the advocate the entitlement to apply to the determining officer for a re-banding to take place. Subparagraph 3 then says:

“The appropriate officer must, in light of the objections made by the advocate –(a) confirm the banding of the offence within band 17.1; or (b) re-band the offence, and must notify the advocate of the decision.”
11. As I have set out above, the determining officer did not think that the section 157(1) offence added anything to the other statutory provisions faced by the defendant. In such circumstances, the determining officer simply confirmed the banding of the offence within band 17.1 as described in option (a) above.
12. Ms Walker submitted that this was the wrong approach. Whilst Ann Frizell admitted that she was a director of TW Frizell, her defence was that she was a director in name only and that the company was run by Joe Frizell, the first named defendant in respect of Count 8 on the indictment.
13. Submissions of no case to answer were made on Ann Frizell’s behalf during the trial on the basis that the prosecution had put forward no evidence of any active participation on the part of Ann Frizell. Consequently, it could clearly be seen that the section 157(1) offence – the need to prove consent, connivance or neglect on the part of the director – was at the heart of the case. Indeed sections 33(1) and 33(6) only apply to a body corporate and not the directors themselves.
14. On this basis Ms Walker submitted that not only does the section 157(1) offence not appear in the Banding of Offences document, but it should be reclassified from the default 17.1 category to 6.1 as reflects this fraud case.
15. As I have said above, it is certainly the case that the section 157(1) offence, unlike the other two statutory provisions which appear on the count faced by Ann Frizell, could be reclassified to a different band in the Banding of Offences document. The question is simply whether it is appropriate to do so?
16. In the R v Bowden case, the fraud involved a company – Jumbo Waste and Metals Ltd – operating an illegal waste operation and hiding behind a “front man” to attempt to disguise the vast amount of illegal deposits being placed on the land. The prosecution note indicated that Jumbo Waste was estimated to have made £10million in profits from its use of the land. TW Frizell were said to have been the haulage company which paid the largest sum (£519,000) to Jumbo Waste.
17. It seems to me that there is a considerable difference between the fraud perpetrated by the Bowden family and their company Jumbo Waste and the part played by the Frizell family and their eponymous company. The latter appears to be no more than being willing to take advantage of an opportunity to get rid of waste more cheaply than if it

had been disposed of properly. The fact that it was illegal to do so caused the Frizells to find themselves on the indictment but their role goes no further than that. I do not see that there is a clear case for deciding that the count faced by the Frizells is sufficient to merit a re-classification to Band 6 on the basis that it is really a fraud case.

18. The other argument raised by Ms Walker is that section 157(1) requires more than strict liability which is the essence of the two other sections referred to in the indictment. That is not pressed as a reason to re-classify with any vigour and, having looked at the standard cases allocated to Band 17.1 set out in the Banding of Offences Document, there are numerous cases where active participation or the equivalent would need to be shown.
19. Therefore, whilst the determining officer was able to re-classify the s157(1) offence, I consider that she was right to conclude that it was not justified on the facts of this case, even if my reasons for so doing differed from hers.
20. It remains only for me to say that, whilst I have sympathy with Ms Walker in her fee being calculated on a different basis from others involved in this case, the rules are clear that payment is to be based upon the offences faced by the particular defendant and, as is commonly said, there is no equity in the regulations which would allow me any discretion to override that result.
21. Accordingly this appeal is dismissed.