

CO/6826/2003

Neutral Citation Number: [2004] EWHC 1741 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
DIVISIONAL COURT

Royal Courts of Justice  
Strand  
London WC2

Tuesday, 29th June 2004

B E F O R E:

LORD JUSTICE KENNEDY

MR JUSTICE TREACY

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ADEBOWALE

(CLAIMANT)

-v-

(1) BRADFORD CROWN COURT

(2) THE SECRETARY OF STATE FOR TRANSPORT

(DEFENDANTS)

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Computer-Aided Transcript of the Stenograph Notes of  
Smith Bernal Wordwave Limited  
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(Official Shorthand Writers to the Court)

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The CLAIMANT appeared as a litigant in person  
The FIRST DEFENDANT was not represented

MR M CHAMBERLAIN (instructed by the Treasury Solicitor) appeared on behalf of the SECOND  
DEFENDANT

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J U D G M E N T  
(As Approved by the Court)

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1. LORD JUSTICE KENNEDY: Mr Adebowale, in this action, seeks to challenge decisions, first of the Bradford Crown Court to uphold his conviction for speeding offences, and second, of the DVLA on behalf of the Secretary of State for Transport to revoke his licence in the light of his conviction.
2. The background facts are these. On 9th December 2000 the claimant, who was then a provisional licence holder, was stopped when committing a driving offence. On 9th March 2001 he passed his driving test and he thus became a probationary driver for a period of two years. On 12th October 2001 he appeared in the Barnsley Magistrates' Court in respect of the incident of 9th December 2000, and he was then convicted of driving otherwise than in accordance with the terms of his licence. For that offence he was fined £100 and his licence was endorsed with six penalty points for three years.
3. On 3rd July 2002 he was caught by a speed camera, allegedly travelling in a vehicle at 41 miles per hour in a 30-mile per hour restricted area. On 14th April 2003 he appeared at Huddersfield Magistrates' Court in respect of that alleged offence. He was found guilty of it and he was then fined £100. It was ordered that his licence be endorsed with five penalty points. He appealed against that conviction and sentence to Bradford Crown Court which heard the appeal on 30th October 2003. The appeal was dismissed, save that the number of penalty points was reduced from five to four and the fine was reduced from £100 to £50.
4. On 23rd November 2003 the DVLA revoked his licence by a letter dated 18th November, but which was to take effect after five days. Mr Adebowale then commenced these proceedings on 18th December 2003 in respect of the decision of the Crown Court and the decision of the DVLA. Paragraphs 1 to 3 of his stated grounds relate to the hearing in the Crown Court. Paragraphs 4 to 6 relate to the decision of the DVLA.
5. On 12th March 2004 Sir Richard Tucker, as the single judge, granted permission to seek judicial review only in respect of the decision of the DVLA. As Mr Adebowale pointed out, the single judge recommended that the matter be heard at the same time as another case -- called Sutherland -- but that action was discontinued in March 2004, hence today we only deal with the claim of Mr Adebowale.
6. On 22nd March 2004 he renewed his application to seek judicial review in respect of the decision of the Crown Court. That renewal came before a different constitution of this court on 5th May 2004 when it was refused. On that occasion Maurice Kay LJ said:

"(10) In my judgment there is no arguable ground for challenging the decision of Bradford Crown Court by way of judicial review. All that we have are the claimant's assertions about the evidence and what transpired on the occasion of the hearing of his appeal. We do not have a transcript of the ruling. Nor, because this is an application by way of judicial review, do we have a case stated by the Crown Court.

(11) I agree with the observation made by Sir Richard Tucker. The matters sought to be raised on this renewed application in relation to the Crown Court are overwhelmingly of a factual nature."

He proceeded to decide that there should be no further proceedings in relation to that aspect of the matter and, sensibly, this morning Mr Adebowale has not sought to go behind that decision.

7. Accordingly, we are dealing only with the provisions of the Road Traffic (New Drivers) Act 1995 and the Road Traffic Offenders Act 1988 and their application to this case. So far as the 1995 Act is concerned, the most material provisions appear in sections 1, 2 and 3. Section 1 begins thus:

"(1) For the purposes of this Act, a person's probationary period is, subject to section 7, the period of two years beginning with the day on which he becomes a qualified driver.

(2) For the purposes of this Act, a person becomes a qualified driver on the first occasion on which he passes --

(a) any test of competence to drive mentioned in paragraph (a) or (c) of section 89(1) of the Road Traffic Act 1988 . . .

Section 2:

"(1) Subsection (2) applies where --

(a) the person is the holder of a licence;

(b) he is convicted of an offence involving obligatory endorsement;

(c) the penalty points to be taken into account under section 29 of the Road Traffic Offenders Act 1988 on that occasion number six or more;

(d) the court makes an order falling within Section 44(1)(b) of that Act in respect of the offence;

(e) the person's licence shows the date on which he became a qualified driver, or that date has been shown by other evidence in the proceedings; and

(f) it appears to the court, in the light of the order and the date so shown, that the offence was committed during the person's probationary period.

(2) Where this subsection applies, the court must send to the Secretary of State --

(a) a notice containing the particulars required to be endorsed on the counterpart of the person's licence in accordance with the order referred to in subsection (1)(d); and

(b) on their production to the court, the person's licence and its counterpart."

I can go to section 3 which reads:

"(1) where the Secretary of State receives --

(a) a notice sent to him under section 2(2)(a) on particulars required to be endorsed on the counterpart of a person's licence, or

(b) a person's licence and its counterpart sent to him in accordance with

section 2(2)(b) or (4),

The Secretary of State must by notice served on that person revoke the licence."

8. So the position as it seems to me is this. The 1995 Act, as is clear from its long title, makes provision about newly qualified drivers who commit certain offences. Section 1(1) establishes a probationary period which, by virtue of section 1(2) begins when a person becomes a qualified driver by passing his test, and lasts for two years. Section 2 deals with surrender of licences. Where the section applies, section 2(2) requires the court to send to the Secretary of State a notice and the person's licence, together with its counterpart. The section applies where

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"(a) the person is the holder of a licence;

(b) he is convicted of an offence involving obligatory endorsement [and of course exceeding the speed limit is such an offence];

(c) the penalty points to be taken into account under section 29 of the Road Traffic Offenders Act 1988 on that occasion number six or more;"

Section 29 of the 1988 Act makes it clear that the penalty points to be taken into account are --

"(a) in the absence of an order of disqualification those attributed to the offence or offences of which he is convicted and [and the statute uses the word "and"] any that were on a previous occasion ordered to be endorsed on the counterpart of any licence held by him . . . "

Reverting to the 1995 Act, section 2-paragraph (d):

". . . the court makes an order falling within Section 44(1)(b) of the 1988 Act in respect of that offence;"

That is to say an order that the offender's licence be endorsed.

"(e) the person's licence shows the date on which he became a qualified driver, or that date has been shown by other evidence in the proceedings; and

(f) it appears to the court, in the light of the order and the date so shown, that the offence was committed during the person's probationary period."

That is the one they are dealing with during the probationary period.

9. Applying sections 1 and 2 of the 1995 Act to the facts of this case, first of all the claimant became a qualified driver on 9th March 2001. He therefore, on that day, began his probationary period which was due to last until 9th March 2003. Secondly, on 1st October 2001 at Barnsley Magistrates' Court, it was ordered that his licence be endorsed with six penalty points. On that occasion the court did not have to send the licence and its counterpart to the Secretary of State together with a notice of the conviction, because on that occasion the requirements of section 2(1)(f) were not complied with. The offence in question was not committed during the probationary period.
10. However, on 3rd July 2002, the claimant was caught by the speed camera, allegedly travelling at 41 miles per hour, and on 14th April 2003 he was convicted of that offence at Huddersfield Magistrates' Court when it was ordered, as it had to be, that his licence be endorsed with further

penalty points. The order on that occasion was initially five extra penalty points, reduced by the Crown Court to four. Because there were six penalty points already on his licence on 14th April 2003, and because the offence which brought him before the Huddersfield Magistrates' Court was convicted during the probationary period, the Huddersfield Magistrates' Court had no choice. It had to notify the Secretary of State of its order that the licence be endorsed, and it had to send to the Secretary of State, on production to it, the licence and its counterpart. Then, by virtue of section 3(1), the Secretary of State had to revoke the licence.

11. Mr Adebowale, in his forceful submissions to this court, has contended that when the Huddersfield Magistrates' Court was dealing with the matter, it was required by the statute to disregard the six penalty points which had been ordered to be endorsed at Barnsley. In my judgment, it is simply impossible to read the statute in that way and it would be surprising if it were so. Accordingly, in my judgment, this claim must be rejected and I therefore would dismiss this application for judicial review.
12. MR JUSTICE TREACY: I agree.
13. MR CHAMBERLAIN: My Lord, I do have an application. Your Lordship will not have had a schedule of costs. I do have an application for costs. This has been a substantive judicial review application, permission having been granted. My instructions are to apply that the costs be summarily assessed in the sum of £1,000 including VAT, which is considerably lower than that actually incurred by them.
14. LORD JUSTICE KENNEDY: Mr Adebowale, you have effectively two things to say to us. First of all, is there any reason you can think of why you should not pay the costs? Secondly, if we do make that order, how should they be assessed? We can assess them summarily or we can order that they go for detailed assessment. You have that right and you can put any argument about the figures to the costs judge. I do have to warn you, as Mr Chamberlain has indicated, that that means they would then be entitled to put in their full bill and you might be faced with a request to pay more than £1,000. Can you think of any reason why you should not pay, given that the normal consequences of an action is the party who loses is ordered to pay the costs?
15. MR ADEBOWALE: Your Lordship, this was an application brought before you because my livelihood depends on my having a drivers licence.
16. LORD JUSTICE KENNEDY: Sadly that is often the case.
17. MR ADEBOWALE: That is the case. I would ask the court to take notice of the fact that as a lawyer and advocate I needed my drivers licence to travel.
18. LORD JUSTICE KENNEDY: I am bound to say that I would not take notice of that. That is one of the occupations where it is possible to manage without a drivers licence.
19. MR ADEBOWALE: I work as an Employment Tribunal advocate. I do not have the privilege of working from chambers yet.
20. LORD JUSTICE KENNEDY: Some of us have had to travel many distances. You would like it for your work, and I understand it but that does not help very much.
21. MR ADEBOWALE: In my area, with the greatest respect it would not be late for you to -- I invariably am provided with a company car and you have to drive from one tribunal to another tribunal and do the things. This case against that backdrop was not brought for a frivolous reason or a frivolous case. Indeed, your Lordship, the fact that permission was granted shows that there is some merit.

22. LORD JUSTICE KENNEDY: It was arguable.
23. MR ADEBOWALE: I would also, against that backdrop, respectfully request the court that the implication of granting a costs order against me would be to dissuade any British citizen whose livelihood is threatened and who seriously believes that the decision may have been wrong, dissuade them from challenge on the basis of the rules of law.
24. LORD JUSTICE KENNEDY: You know perfectly well that the normal consequence of losing an action is that the party who loses pays the costs. The difficulty you encounter is not going to make much difference.
25. MR ADEBOWALE: My Lord, with greatest respect, I know that is the general rule. I know that the court has a discretion. What I am basically trying to say is that just because the rules say -- I have had a case that I won and I had costs awarded against me. It may well have been said it was unreasonable and contrary to the general rule which the court follows that the loser pays. The point that I am bringing out is the court has a discretion, having stated that general rule, to look at the particular facts of a particular case and make the decision accordingly. That is the point that I am making with respect to that. Your Lordship, I would still, with the greatest respect, maintain that section 29-paragraph (e) says that any previous point to be endorsed on any --
26. LORD JUSTICE KENNEDY: We have decided the case. We are not going to deal with that.
27. MR ADEBOWALE: The point I am making is these are the reasons that made me continue after the permission was granted. It was my view, and I took preliminary advice which I can submit to the court, that a provisional licence does not have a counterpart which is something I had already stated in my submissions to the court. It may well be that has not been taken into consideration. Those were the issues that were in my mind. Section 29 is very clear. A provisional licence does not have a counterpart. That is why the Road Traffic (New Drivers) Act that I referred the court to, and that is why I continue --
28. LORD JUSTICE KENNEDY: Not only was it not a point taken, it was not an arguable point. Do you want to say any more about costs?
29. MR ADEBOWALE: I feel it would be in the interests of justice to allow a citizen of the United Kingdom, where his livelihood is threatened and a decision has been made under a new Act, or under an Act of Parliament, which was accepted by Sir Richard Tucker, to have the opportunity of making the court take the decision to clarify the position of the law as opposed to punishing a citizen.
30. LORD JUSTICE KENNEDY: You are entitled to come, but if you lose you pay. Nobody stops you coming. That is what happens at all actions.
31. MR ADEBOWALE: That gives the courts the opportunity to clarify the law. I am sure that the court or the judges could use their discretion in that particular case, to determine whether this is a case where costs may well be refused.
32. LORD JUSTICE KENNEDY: Yes, thank you. We order that this claim is dismissed with costs. There remains the question about the form of the order. Are you content that we summarily assess them? If you are, we would be minded to do it in the figure asked. If you want a detailed assessment then you can have one. That is simply your choice.
33. MR ADEBOWALE: I would ask that the court reduces the £1,000.

34. LORD JUSTICE KENNEDY: I have given you the indication that if we assess them, we will assess them at £1,000. If they go to the costs judge I cannot say what the costs judge will say, but you do risk those instructing Mr Chamberlain asking for more and more being awarded.
35. MR ADEBOWALE: With respect, your Lordship, the permission --
36. LORD JUSTICE KENNEDY: Mr Adebowale, which way do you want to go? Do you want to us assess them or do you want to go to the costs judge?
37. MR ADEBOWALE: My submission really is if the costs are based only on this hearing, and basically as Mr Chamberlain stated, there has been no dispute with regard to the facts, indeed, the submission --
38. LORD JUSTICE KENNEDY: Mr Adebowale, I am not going to go down that road any further. You have to decide, are we summarily assessing them or are they going to a costs judge?
39. MR ADEBOWALE: With respect to your Lordship, the point that I am making --
40. LORD JUSTICE KENNEDY: No. I want that question answered. Which is going to happen? If you do not make any submissions we will decide for you.
41. MR ADEBOWALE: What I am trying to clarify is what the costs relate to.
42. LORD JUSTICE KENNEDY: I think Mr Chamberlain made that quite clear. If the order is made for summary assessment, that is for the whole proceedings.
43. MR CHAMBERLAIN: My Lord, that is exactly the position.
44. LORD JUSTICE KENNEDY: That is the position.
45. MR ADEBOWALE: This morning's proceedings.
46. LORD JUSTICE KENNEDY: The bill so far is £1,000. Was it inclusive of VAT?
47. MR CHAMBERLAIN: Yes. That relates to the whole claim, not just today.
48. MR ADEBOWALE: With respect, where permission was granted I would not think the whole claim would have involved the permission stage.
49. LORD JUSTICE KENNEDY: If the matter goes any further it would be astonishing if you were paying as little as that. Are you prepared to accept the order in those terms?
50. MR ADEBOWALE: I feel, your Lordship, that the court still has jurisdiction to reduce that amount.
51. LORD JUSTICE KENNEDY: We do have jurisdiction, I agree.
52. MR ADEBOWALE: That is my point.
53. LORD JUSTICE KENNEDY: Therefore, I take it. You are asking us to assess the costs.
54. MR ADEBOWALE: I take a view as to the £1,000 --

55. LORD JUSTICE KENNEDY: Mr Adebowale, we are assessing the costs. You have decided that the matter is not going to the costs judge. I have given you the opportunity and that is what it has come to. Otherwise, there is no point in making submissions.
56. MR ADEBOWALE: I do not mean to aggravate the court. Basically my experience is that where a court indicates, or there has been an indication from the opposing side, as regards a cost that they are minded to request, it is for the other side to request or it is within the other side's --
57. LORD JUSTICE KENNEDY: Do you want to say anything about the amount?
58. MR ADEBOWALE: Yes, I think with all due respect, counsel has already told the court that there is no dispute with regard to the facts and the skeleton submission rehearsed the argument. There is nothing new except for a copy of the Butterworth submitted today. He rightly stated that the facts are straightforward. Therefore, even if the court were minded to upset the figure put forward by counsel, it is my view -- it may well be that counsel takes the view that costs are for the whole hearing but in actual fact, with the greatest respect, counsel has been present today and produced the skeleton argument which rehearses the arguments we have.
59. I would feel that something far less than that, than the £1,000, would be something reasonable and in the interests of justice because I still have a right as a citizen to bring a case that affects my livelihood, especially when the decision was purportedly being made under the new provision of an Act of Parliament. I would submit that the court should -- indeed I have not been able to work because of this drivers licence issue. I would submit it would be in the interests of justice to reduce that £1,000 against all these reasons that I have stated, and the points that counsel has made at the beginning of these submissions.
60. LORD JUSTICE KENNEDY: Thank you. Costs are summarily assessed at the figure sought; £1,000 inclusive of VAT.