Neutral Citation No.[2023] EWHC 216 (SCCO)

Case No: T20217126

SCCO Reference: SC-2022-CRI-000059 and SC-2022-CRI-000061

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 16th January 2023

Before:

COSTS JUDGE WHALAN

R
v
DANIEL WISNIEWSKI

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

Appellants: Tana Adkin KC and John Waller

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

The appropriate additional payment, to which should be added the sum of £500 (First Appellant) and £250 (Second Appellant) (exclusive of VAT) for costs, and the £100 x 2 paid on appeal, should accordingly be made to the Applicants.

COSTS JUDGE WHALAN

Introduction

1. Ms Tana Adkin KC and Mr John Waller ('the Appellants') appeal the decisions of the Determining Officers at the Legal Aid Agency ('the Respondent') in relation to claims submitted under the Advocate's Graduated Fee Scheme ('AGFS'). The common issue in dispute concerns the Banding of Offences in Version 1.2, as applied in Scheme 12 of the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'). The Appellants have claimed fees based on Band 1.1 whereas the Respondent has assessed the case as Band 1.2.

Background

2. The Appellants represented Mr Daniel Wisniewski (aka Sylvester Krajewski) ('the Defendant') who was charged at Reading Crown Court on an indictment alleging murder.

3. On 26th April 2021, the Defendant murdered Mr Clive Porter, a Boat Licensing Ranger employed by the Canal & River Trust. Mr Porter was a retired police officer; he had served with Hertfordshire Police for over 30 years. It was alleged that the Defendant had fallen into a disagreement with Mr Porter as he attempted to place an enforcement notice (or letter) on a boat moored next to that occupied by the Defendant. Eyewitnesses described a disagreement between the men, but no-one actually saw the assault which led to Mr Porter's death. His body was found subsequently in a shallow ditch. It was asserted that he had been strangled and/or drowned by the Defendant.

4. It was demonstrated by the Crown that the Defendant was a Polish national who had been previously convicted of murdering two people in Poland in 1992. He was sentenced to 25 years in prison, but he escaped after serving 13 years.

5. The Defendant was convicted of murder and sentenced to life imprisonment with a minimum term of 35 years.

The Regulations

6. The applicable regulations are the Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended.

7. Schedule 1 of the 2013 Regulations applies at paragraphs 1(7)/ (8) and 3, a categorisation of offences set out in a document entitled 'Banding of Offences in the Advocate's Graduated Fee Scheme'. (Equivalent provisions apply to the LGFS). Table A sets out three categories for murder as follows:

> Band 1.1 applies to cases involving "Killing of a child (16 years old or under; killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing"
>
> Band 1.2 applies in cases involving "Killing done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under).
>
> Band 1.3 applies to all other cases of murder.

Submissions

8. The Respondent's case is set out in Written Reasons dated 25th May 2022 (x2). No appearance was made at the hearing on 9th December 2022.

9. The Respondent, in summary, classifies this case as a Band 1.2 murder, insofar as the 'defendant" has a previous conviction for murder'. The Determining Officers rejected the Appellants' contention that this was a Band 1.1 case, on the grounds that the victim was 'a police officer, prison officer or equivalent public servant in the course of their duty'. It was accepted that Mr Porter 'was a public servant' and that his duties contained "an element of enforcement activity…which may bring (him) into conflict with users of the waterways". It was not accepted, however, that the role of a Boat Licensing Ranger assumed "an equivalence with a police or prison officer". The job could not be equated with, for example, a traffic warden, whose role would equate to that of a police or prison officer.

10. The Respondent cites the decision of Costs Judge Leonard in R v. Earnshaw & Gaukroger [2021] SCCO Refs: SC-2020-CRI-000226/227/211/212. This case concerned the murder of a Night Shift Supervisor at the factory of a pharmaceutical manufacturer. The victim had become embroiled in a confrontation with "a group of youths who had been drinking and taking drugs". CJ Leonard, rejecting the appellant's contention that this was a Band 1.1 case, noted that the victim 'was acting in the capacity of an employee of a private company, protecting his employer's property'. Thus:

> It is not correct to describe his duties, in that capacity, as of a public nature. They were of a private nature. The description of Mr Wilson's role as "public-facing" does not seem to me to be the point. A cashier employed by a supermarket would, for example, play a much more public-facing role than Mr Wilson is likely, on a day-to-day basis, to have done, but one could not possibly desscribe a cashier as a public servant. For those reasons, I cannot see how Mr Wilson can properly be said to have been a public servant performing a role equivalent to a police office or prison officer. The first part of that description does not fit.

11. The Appellants' submissions are set out in the Grounds of Appeal (x2), a Note for Taxation dated 1st March 2022 and a Further Note for Taxation dated 4th April 2022. Both Appellants attended the hearing on 9th December 2022. The Appellants, in summary, submit that Mr Porter, as a Boat Licensing Ranger for the Canal & Rivers Trust, was not only a uniformed public servant, but one engaged in legal enforcement, in the manner of, say, a traffic warden. As such, he was likely to 'come into conflict at times with members of the public' and, in turn, face 'a greater risk of conflict and danger to his position'. It is this element of legal enforcement that establishes the equivalence with a police and/or prison officer. The Appellants note that these elements were emphasised by the Crown in the prosecution opening and by the trial judge in his sentencing remarks.

12. The Appellants submit additionally that the decision of CL Leonard in Earnshaw & Gaukroger (ibid) can be distinguished and is of no instructive relevance to the facts of this case. In that case, not only was the victim not engaged in a public-facing role and he was not attempting to engage in any form of legal enforcement.

13. The Appellants note additionally the suspicion (raised by the prosecution) that it was Mr Porter's role as an enforcement officer that may well have motivated the

Defendant's vicious and unprovoked attack. He could not, in other words, run the risk of any form of legal identification, given that he was a double murderer, living under an assumed name as a fugitive from justice in Poland.

My analysis and conclusions

14. It is accepted by the Respondent that Mr Porter, the victim, was 'a public servant' who was killed in the course of his duties. As a Boat Licensing Ranger employed by the Canal & Rivers Trust, he was, it seems to me, engaged in a 'public-facing' role requiring interaction with the public and, periodically, duties of legal enforcement. My impression, moreover, is that the Canal & Rivers Trust performs a role which is primarily (if not exclusively) for the public good. As a Trust, it would not be correct, in my conclusion, to characterise its role as that of a private concern. These facts distinguish this case and that of Earnshaw & Gaukroger (ibid). I am satisfied, on the particular facts of this case, that Mr Porter was, at the time of his murder, a public servant engaged in duties which establish a sufficient equivalence to that of a police or prison officer. As such, this is a Band 1.1 case, and these appeals are allowed.

Costs

15. The Appellants have been successful in their appeals and I award costs of £500 (first Appellant) and £250 (second Appellant), plus any VAT payable, along with the £100 (x2) paid to lodge the appeals.

TO:

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