

Case Search

R v French and Others

Year

2014

Citation

[2014] 4 Costs LR 786

legal aid

Costs

LGF

Special preparation

AGF

Summary

1. This is an appeal by Mr Graham Trembath QC against the decision of the Determining Officer when exercising powers under the Advocates' Graduated Fee Scheme (implemented via the Criminal Defence Service (Funding) Order 2007 (as amended)) whereby none of his claim for 182 hours special preparation was allowed. The reasons for this given by the Determining Officer on 14 October 2013 are that:

"I have completed a redetermination of your claim for special preparation. As you are unable to provide a work log, I am unable to assess the claim and therefore cannot make any payment. It is impossible for me to assess the reasonableness of your claim without an understanding of how long you spent on each aspect of the special preparation claim."

2. At the appeal, Mr Trembath appeared on his own behalf. I also had the benefit of representations on behalf of the Lord Chancellor, advanced by Mr Ford and Mr Dove.

3. By way of background, French was one defendant in a multi-hander, which concerned a series of conspiracies to rob that centred on West and North West London over a five year period between 2006 and 2011. In this respect, I can conveniently extract the following observations made by a trial judge, His Honour Judge Southwell:

"The defence in the case of two defendants was unusual and complex. It was one of, and I would use the phrase, fit up or plant. That was the defence from the outset. It came against a background of allegations that there had been fit up of at least two of these defendants, certainly one (this was a direct reference to George French), in the past, though a number of years ago ... I would go as far as to say that this case, in my experience, and that is not as long as many others, was unique and it is required the exploration of every conceivable opportunity of police misconduct. The allegations by the defendants were wide-ranging and grave ..."

4. Following the conclusion of the case, Mr Trembath lodged his claim under the Scheme, which, as I have said, included 182 hours special preparation. This figure was broken down as to 144 hours pre-trial work and 38 hours conferences during the five month trial. The Determining Officer was satisfied that the criteria set out in the Funding Order which permits payment of special preparation were met (see para 14 of the Funding Order 2007 (as amended)). However, when the claim was presented to the Determining Officer, it was her view upon undertaking the determination on 12 July 2013 that Mr Trembath had not provided a detailed work log. She therefore directed Mr Trembath to lodge the following in support of his claim:

- examples of the observation logs;
- examples of the telephone evidence;
- examples of the schedule of robberies.

5. The Determining Office also requested a description of the work conducted on each day, page counts of material considered and a record of whether the material considered was served or unused.

6. In view of this direction, Mr Trembath then proceeded to draft a note jointly with this junior (Mr Morgan) which, in his view, detailed the dates, times and hours spent when preparation was undertaken. It was also his belief that a detailed and lengthy written note describing the work undertaken and giving reasons why it had been necessary, had met the determining officer's requirement. In this respect, he adopted the same framework that he had used in another case in which special preparation had been claimed and allowed (*R v Michael Shepherd* at the Southwark Crown Court). For the reasons given on 14 October 2013, the determining officer took the view that the additional material had not met the requirements that she had set out on 12 July 2013 and for that reason none of the hours of special preparation were allowed.

7. During the course of the hearing of the appeal, the court, Mr Trembath and Messrs Ford and Dove all reviewed the material in question. Following that examination, it was Mr Ford's view that, had he been looking at the claim now, it would have been accepted. Having reached this decision, it followed that the appeal must necessarily succeed. That said, Mr Ford indicated that the Legal Aid Agency in claims such as this, ideally would prefer to have rather more detail than Mr Trembath had presented. Mr Ford stressed, in particular, the importance of providing dates, times and descriptions of the work completed, and the page count of the material considered. In addition, in so far as there are any documents produced as a result of the special preparation, these should be annexed to the advocate's claim form in order to assist the determination. In this context, it was also important to identify each item of special preparation in so far as it related to the very unusual or novel point of law or very unusual or novel fact which had given rise to the need for special preparation in the first place.

8. These are helpful suggestions. If they can be followed and adopted by advocates in the future when making claims under the Scheme, the need for appeals such as this one would hopefully decline. However, for the reasons I have given in para 7 above, Mr Trembath's appeal succeeds and the Legal Aid Agency must now pay him the appropriate additional sum for his special preparation in this case.

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