



SENIOR COURTS
COSTS OFFICE

18 JAN 2016

SCCO Ref: 444/14

Dated: 12 January 2016

ON APPEAL FROM REDETERMINATION

REGINA v LAWLOR

BIRMINGHAM CROWN COURT

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20138250

LEGAL AID AGENCY CASE

DATE OF REASONS: 10 September 2014

DATE OF NOTICE OF APPEAL: 10 September 2014

APPLICANT: SOLICITORS

The appeal has been successful (in part) for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £600 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**COLUM LEONARD
COSTS JUDGE**

REASONS FOR DECISION

1. This appeal relates to travel and parking expenses. Although the amount involved is relatively modest, I understand that the issues involved are of general concern to criminal solicitors practising in the Birmingham area.
2. The Defendant in this particular case faced charges of affray, possession of an offensive weapon, possession of drugs and (for at least part of the proceedings) wounding with intent. He was, the Appellant says, a vulnerable client in that he suffered from Hepatitis C and severe depression.
3. The Representation order was made on 5 July 2013, so the claim is governed by the Criminal Legal Aid (Remuneration) Regulations 2013. The appeal was, unusually, filed before the written decisions of the determining officer were given so it has been treated as filed on the same date
4. Five journeys are claimed for. They are as follows:
5. 6 August 2013: 10 miles and parking expenses were claimed for travel to and from counsel's chambers (No 5 Chambers, which is close by Birmingham Crown Court) to attend a pre-arranged conference with the client. This started at 2pm and lasted 3 hours. Private transport was used, says the Appellant, to safeguard client confidentiality.
6. 9 October 2013: 10 miles and parking expenses for attendance at No 5 Chambers to watch and discuss CCTV evidence with the client and counsel, and to draft the basis of a plea. This started at 4pm and lasted 1.5 hours. Again, the Appellant says that private transport was used to safeguard client confidentiality.
7. 30 October 2013: 15 miles and parking expenses for attendance at Birmingham Crown Court, at which a hearing was listed for 10 am. A pre-hearing conference with counsel and the client had been arranged for 9.30 am. The conducting solicitor travelled direct to court from home. There would, says the Appellant, have been insufficient time to get to the conference from the office, which is 5 miles from the court and opens at 9.15 am, so the journey was made from home.
8. The journey was made by private transport rather than by public transport because, as experience had demonstrated, local traffic congestion on the bus route between the office and the court at one of the busiest times of day would have made it hopelessly inefficient. Further, buses are often full to capacity at that time. The choice would have been between leaving home at an unreasonably early time and being unable to attend the conference on time. In contrast local knowledge, and travelling from home, allowed the conducting solicitor to avoid traffic congestion and parking for private vehicles was readily available directly adjacent to the court.

9. 26 March 2014: 10 miles and parking expenses claimed for another pre-hearing conference before a 10 am sentencing hearing. Again and for the same reasons, the solicitor travelled from home direct to court by private transport.
10. The determining officer, on redetermination, refused the claim by reference to *R v Slessor* [1997] Costs L.R. (Core Volume) 438 and the provisions of the April 2013 Crown Court Fee Guidance and the Criminal Bills Assessment Manual.
11. In *R v Slessor* the Taxing Master laid down some principles in relation to claims for travel expenses:
 - (a) prima facie the amount to be allowed is the cost of the time expended on and the expenses incurred in making the journey by public transport, provided that public transport is available and is reasonably convenient, having regard to the relevant circumstances in each case;
 - (b) a solicitor is not entitled to claim the cost of the time spent or cost incurred in travelling to his office from his home; the journey should be deemed to start from the solicitor's office, unless he in fact started from his home and that was nearer to the court than his office;
 - (c) allowance made should include the time spent and expense incurred in getting from the starting point to the railhead or coach station and also the time spent and expense incurred in getting from the terminus to the court;
 - (d) a solicitor travelling by train may claim the cost of first class travel if he has actually incurred that expense;
 - (e) if the journey is one which could have been made by public transport, but is accomplished by motor car purely as a matter of preference, then the allowance to be made for travelling time should be the notional time which would have been taken by public transport, or the time actually spent, whichever is the less: expenses should be calculated on the basis of the "public transport" mileage rate (that rate is calculated by reference to the average cost of public transport per mile) as prescribed by regulations;
 - (f) if public transport is not available or not reasonably convenient, the actual time spent in travelling should be allowed and the expenses should be calculated on the basis of the standard mileage rate prescribed by regulations;
 - (g) what may be "not reasonably convenient" is a matter of discretion, dependent upon the relevant circumstances of each case, and what is reasonably convenient in one set of circumstances may not be in another; a factor which is always relevant is the time which may have been spent in getting from the starting point to the railhead, and from

the terminus to the court; if it is considerable, the use of a car may be justified. The taxing master urged determining officers to adopt a flexible and broad approach to the problem.

12. The 2013 guidance referred to by the determining officer (since updated, but for present purposes effectively unchanged) refers to *R v Slessor*, though it qualifies the reference to first class travel to the extent that the cost may be claimed only when it is shown to be the most economical fare available at the time.
13. The guidance emphasises the need to balance claimed disbursements against claimed travel time, given that cheaper methods of transport may be slower and result in greater overall cost. It recognises that on some occasions a fee earner may have to travel with bulky case papers and reference books, so that travel by public transport may be unsuitable for reasons of confidentiality and security. The question is what is reasonable in the circumstances, bearing in mind that the most economical fare may not always be appropriate.
14. I am grateful to Mr Anthony Edwards for these submissions on behalf of the Appellant.
15. Mr Edwards points out that the Legal Aid Agency ("LAA") does allow some discretion even in its own interpretation of *R v Slessor*. It will allow travel at private transport rates (£0.45 as oppose to £0.25 per mile) at weekends and out office hours. However, he suggests, this case demonstrates that there is no consistency. Guidance is needed.
16. The context is relevant. With reductions in rates and so reductions in salaries it is not as easy now to require staff to work outside their contractual hours, and the payment of overtime reduces low profit margins.
17. Whilst travel time is no longer paid for, it is a relevant consideration in determining whether the use of private transport is reasonable. This is because the time is still recorded but is merely paid at a zero rate. Solicitors therefore reasonably seek to use the fastest means of movement so as to reduce unremunerated time.
18. On the facts of this case the solicitor is entitled to use his knowledge of traffic conditions in his local area and if significant time is saved, and arrival on time better guaranteed, private transport is reasonable along with the parking that involves. The more so when it is at overtime rates that time on public transport will be spent.
19. Under the older costs regimes the LAA balanced the extra travel time paid for against the lower fare so that if there was an overall saving of costs when travel time was reduced by using private transport. Even at a higher mileage cost everyone benefited. Since it has stopped paying travel time the LAA has overlooked this balance. It is submitted that there is no justification for doing so, The Regulations on disbursements have not been amended.

20. Use of private cars also avoids the travel to and from railheads specified in *R v Slessor*.
21. Confidentiality of papers is a real concern in the modern age. Whilst every case turns on its own facts the issues summarised above are material. In this case the journeys by private car were reasonable because of the travel conditions at the relevant times of day, the need to reduce overtime, and the need for confidentiality of papers in a substantial matter.

CONCLUSIONS

22. Regulations 5(2) and 14 to 17 of the 2013 regulations provide for the payment of disbursements. Regulation 17 requires the determining officer to allow such disbursements as appear to have been reasonably incurred.
23. Although *R v Slessor* was decided in 1977, it seems to me that most of the principles outlined in that case still hold good, particularly those set out at paragraph (g) above. Some may have been superseded, the obvious example being the reference to first class travel. It seems to me right, in the present economic climate, for first class travel cost to be payable only, as the LAA guidance states, when it is the most economical available option.

Private Transport and Parking

24. In my view the balancing exercise between travel time and travel costs emphasised in *R v Slessor* is required whether the cost of time added by using slower means of transport is borne by the solicitor or by the LAA.
25. If a saving in direct travel cost will be outweighed by the additional cost of time wasted in travelling by less efficient means, then the less efficient means will not be not a reasonable choice for the solicitor. It follows that, in such cases, the cost of the more efficient form of transport should be allowed.
26. For that reason it seems to me that the claimed cost of travel on 30 October 2013 and 26 March 2014 should be allowed at private rates, and the parking costs allowed in addition. The Appellant has demonstrated that travel by private transport was the most efficient option on both those dates. I do not regard Google as a reliable substitute for local knowledge of typical traffic conditions and public transport difficulties at a particular time of day.
27. I am not persuaded that the cost of travel on 6 August and 9 October 2013 should be allowed at private rates, or that the cost of parking should be allowed. Both of the conferences referred to took place in the afternoon and the ground given for using private transport is client confidentiality. I agree with the LAA's guidance that travel by public transport may be unsuitable in cases where the volume of materials carried may mean that security and confidentiality may be compromised, but such will not always be the case and there is no evidence that it was the case here.

Mileage

28. I take the view that the principle set out at paragraph (b) above still holds good. The point of deeming that a journey from home starts from the solicitor's office (unless home is closer) is that the office is where the solicitor is expected to be.
29. No-one is insisting that the solicitor must actually make every journey from the office. The point is that a solicitor's base, during the working week, is the office and the solicitor is not paid to travel to the office. If the solicitor travels direct to court from home then some of that travel would otherwise have been spent, unpaid, going to the office. The practical way to address that is, as in *R v Slessor*, to allow travel costs only from the office. In this particular case the solicitor appears to have passed the office on the way to court, but the principle would be the same even if that were not the case.
30. The LAA rightly recognises that there must be exceptions to this rule. A solicitor is not expected to attend the office at the weekend. If it is necessary to attend a client on a Saturday then the cost of the travel is of necessity incurred exclusively for the benefit of the case and should be paid in full. The same would apply to an attendance late at night or in the early hours of the morning. I see no inconsistency in that.
31. I am not persuaded, with respect, by the argument put to me in relation to office hours and overtime. The exact opening hours of the Appellant's practice are a matter for the Appellant and are not to the point. The question is whether the solicitor was expected to attend the client at a time which could properly be described as falling within the normal working week. 9.30am is an unexceptional time for a meeting and cannot to my mind justify a claim for full mileage from a home address more distant than the office.
32. The Appellant's office is 5 miles from Birmingham Crown Court. The conducting solicitor's home is 10 miles from the court. It follows that the private travel I have allowed should be allowed on the basis of mileage between the office and the court.

Summary

33. I have concluded that travel on 30 October 2013 and 26 March 2014 should be allowed at private rates, and parking costs paid in full. The mileage on 30 October is claimed at 15 miles: 10 miles from home to court, and 5 back to the office. It should be allowed at 10 miles. Mileage for 26 March 2014 seems to have been claimed only for the journey to court and so should be allowed at 5 miles.
34. The remainder of the appeal is dismissed.
35. Costs of the appeal have been claimed at £1727. I note that rates of £200 per hour are claimed for the Appellant and £250 for Mr Edwards as their agent.

36. Those are akin to civil rates, but costs awarded on appeals under the 2013 regulations tend to reflect the rates allowed under those regulations. An award of costs compensates practitioners at rates that reflect the fact that the time they have spent on the appeal might otherwise have been spent on other work governed by the regulations. Civil hourly rates have no obvious application in that context and applying them may produce a disproportionate result.
37. I also bear in mind that the appeal has not been wholly successful.
38. For those reasons I have allowed costs of the appeal at £600 (to include travel time) and the court fee.

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