Neutral Citation Number: [2022] EWHC 1518 (QB)

Case No: QB-2022-001236

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Sitting at
Birmingham Crown Court,
1 Newton Street,
Birmingham, B4 7NA

Date: 11/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

NORTH WARWICKSHIRE BOROUGH COUNCIL	**Claimant**
- and –	
BARRY MITCHELL	**Defendant**

- -

MR SHEPHARD of Counsel appeared for the Claimant
MR JONES of Counsel appeared for the Defendant

- -

NOTE OF JUDGMENT

(No transcript is available as the recording cannot be retrieved.)
This note of judgment has been prepared and approved by HHJ Emma Kelly)

- -

HER HONOUR JUDGE EMMA KELLY:

1. Barry Mitchell appears before the court to be dealt with in relation to two admitted breaches of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Mr Mitchell is represented by Mr Jones of Counsel. Mr Jones has explained to the court that he has had a conference with Mr Mitchell in the cells, but Mr Mitchell is refusing

to leave his cell to come into the courtroom. The hearing has thus proceeded in the absence of Mr Mitchell but with Mr Jones representing him in court.

3. The particulars of the breaches have been provided to the defendant by the claimant in writing. Through Mr Jones, Mr Mitchell admits breaches of the interim injunction on 26 April 2022 and 4 May 2022. The court has to be satisfied of any breach to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions and having read the witness evidence from the police officers, I am so satisfied.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. The defendant was not a named defendant. The injunction was however also granted against *"persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA."* A power of arrest was attached to that order.

5. By paragraph 1(a) of the injunction:

> *"The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):*
>
> *(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the "buffer zone").*
>
> *For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone."*

6. Paragraph 1(b) of the order further prohibited *"in connection with any such protest anywhere in the locality of the Terminal"* a number of defined acts including at subsection (iii) *"obstructing any entrance to the Terminal…"*

7. On 14 April 2022 the order was served by alternative methods permitted by Sweeting J, including by placing signage in prominent locations around the site and on the claimant's website and social media accounts.

8. On 26 April 2022, at approximately 07.45hrs, the defendant was one of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on the grass verge to a private road. A peaceful protest took place for approximately 2 hours with signs and placards

being held. The location of the protest was within the buffer zone referred to in paragraph 1(a) of injunction. The protestors did not move when asked to do so by the police. One of the group referred to the injunction and their knowledge that they were acting in breach of it. At approximately 10am, some protestors spread out and sat down across road obstructing the site entrance. I accept the defendant was not one of those named in the evidence as sitting down on the road. The protestors were arrested 15-30 mins later and removed. Each defendant was produced in court on 27 April and bailed on condition to comply with terms of injunction.

9. On 4 May 2022 the defendant failed to attend court for the adjourned hearing and instead returned to the oil terminal to continue to protest. At approximately 2pm the defendant and 10 others stood on the grass verge at the side of the entrance to the site, again with placards and banners. The protest was peaceful but inside the buffer zone such that it amounted to a further breach of paragraph 1(a) of the interim injunction. Some of the defendants then walked across the road junction slowly, such that it hindered vehicular access to the site.

10. When determining a penalty for contempt of court, the court has to consider the objectives of the exercise as identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699. Pitchford LJ, at para. 20, held:

> "The first objective is punishment for breach of an order of the court; the second is to secure future compliance with the court's orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective."

11. The Sentencing Council do not produce guidelines for breach of a civil injunction. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 found that the criminal Definitive Guideline for breach of antisocial behaviour orders was equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. One does however have to bear in mind that the maximum sentence in the criminal courts for breach of an anti-social behaviour order is 5 years and thus greater than the 2-year maximum under s.14 of the Contempt of Court Act 1981. The criminal courts also have options such as community orders that are not available in the civil courts. I also take note of the fact that the injunction in this case was not an anti-social behaviour injunction in the true sense under the Anti-Social Behaviour, Crime and Policing Act 2014. I do however conclude that reference by analogy to the Definitive Guideline for breach of a criminal behaviour order does provide useful insight into the appropriate approach.

12. In their report of July 2020, the Civil Justice Council prepared draft guidance as to the appropriate penalties when dealing with contempt of civil orders. Those draft guidelines are not yet in force, and I am mindful that the Court of Appeal guidance remains that it is the criminal Definitive Guidelines that the court should have regard to.

13. As to the breach on 26 April, the breach was a deliberate breach which puts it into culpability B. The breach on 4 May also falls category B. Although it was a second breach, only a short period after the first, I do not consider such conduct persistent so as to warrant upward movement to category A. Both of the breaches fall into the lowest harm category, namely 3. A culpability B, category 3 harm case in the criminal courts would give rise to a starting point sentence of a high level community order, with a category range of a low level community order to 26 weeks' custody.

14. I turn to consider any aggravating factors. The breach on 26 April was committed only 12 days after the interim injunction was made. The breach on 4 May is aggravated by its timing only days after the first breach and occurring whilst on bail. The defendant has one previous conviction, for failing to comply with conditions imposed on public assembly, dating to September 2020. The defendant's antecedent history suggests he was on police bail at the date of both breaches.

15. As to mitigation, the defendant admitted the breach from 26 April at an early but not the earliest opportunity. The first opportunity would have been at the hearing on 4 May that the defendant failed to attend. That admission entitles the defendant to a 25% reduction in the penalty that would otherwise have been appropriate. The admission in relation to the breach on 4 May was at the earliest opportunity, taking into account the need for the defendant to take advice. He will therefore receive a one-third discount on the penalty for that breach.

16. In my judgment the most appropriate penalty, had the defendant not spent time on remand in custody, would have been a fine. The court has the ability to impose unlimited fines. Mr Jones has provided some brief details as to Mr Mitchell's means. If he had not been on remand, the breach on 26 April would have warranted a fine of £450, based on a provisional sentence of £600 but reduced by 25%. The breach on 4 May would have warranted an additional fine of £600, from a starting point of £900 but discounted by one-third to reflect the admission.

17. However, the court has to have regard to the time the defendant has spent in custody. The defendant has spent 8 days in custody: one day following arrest on 26 April and seven days following his arrest on 4 May and subsequent remand in custody. Those eight days are

the equivalent to a 16-day term of imprisonment. The time spent in custody, stemming largely from the failure to surrender and subsequent breach on 4 May, is a more draconian sanction than the breaches warrant. It would therefore be unjust to order the defendant to also pay a fine. I therefore propose to make no order on the breaches.

18. The court order will record the time spent in custody and what the financial penalty would have been but for the time spent in custody. The approach taken today in no way condones the breaches. The court treats disobedience with its orders very seriously, as will have been evident from the remand in custody.

19. The claimant has failed to provide a schedule of costs to either the court and or to the defendant. The defendant is disadvantaged by that failure, as it the court. Although the general rule is that costs follow the event, in light of the failure to provide a costs schedule and the court therefore lacking the information to make an informed summary assessment, there will be no order as to costs on the contempt.
