



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 248/14

Dated: 28 November 2014

ON APPEAL FROM REDETERMINATION

REGINA v SANA

WOOLWICH CROWN COURT

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

CASE NO: T20137266

LEGAL AID AGENCY CASE

DATE OF REASONS: 9 JUNE 2014

DATE OF NOTICE OF APPEAL: 24 JUNE 2014

APPLICANT: SOLICITORS Petherbridge Bassra
DX 11706
Bradford

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 £200 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**J. SIMONS
COSTS JUDGE
REASONS FOR DECISION**

1. Messrs Petherbridge Bassra Solicitors appeal against the decision made by the Legal Aid Agency to reduce their claim for pages of prosecution evidence ("PPE") in their Litigator Graduated Fee Claim.
2. The solicitors represented Rene Sana and Viktoria Sanova at the Woolwich Crown Court. Sana and Sanova were charged, with another Defendant, with conspiracy to traffic and conspiracy to assist unlawful immigration. Sana was also charged with rape. At the conclusion of the case, the solicitors submitted their Litigator Graduated Fee Claim in which they claimed a total of 9,973 PPE. The LAA reduced the claim to 2,694 PPE but, following a redetermination, allowed a further 750 PPE.
3. The disputed PPE related to documentary exhibits contained on discs and the Determining Officer considered that the discs would not have been provided in paper format prior to the CPS starting to work digitally as there would be no purpose in printing out this type of evidence.
4. The solicitors appealed on the grounds that they disputed the statement by the Determining Officer that this evidence would not have previously been served in paper format. They also submitted that the Regulations required the Determining Officer to take into account the nature of the documentation and the circumstances of the case, and the Determining Officer had failed to do so.
5. This appeal was listed for hearing before me on 17 November 2014. On 14 November 2014 the Legal Aid Agency carried out a new determination and stated:

"We have reviewed your claim on the basis of your appeal to the Costs Judge and a further concession is now made. Having considered the nature of the documents and exhibits, we now agree that in total 4,668 pages of electronic evidence should be paid as PPE (750 pages allowed previously, plus a further 3,918 pages). These pages of prosecution evidence were important to the prosecution case.

The pages of electronic evidence that we have not allowed appear on exhibit PSL/1531/13 which contain phone data for three phones that belonged to your clients. In particular, we have not allowed the pages which are described as follows:

1,597 pictures, 95 pictures (device), 902 pictures (memory card), 13 pictures for contacts, 5 pictures. (A total of 2,611 pages)".

6. The Determining Officer stated that she now accepted that the 3,918 pages that had now been allowed related to billing records relating to the Defendants in the case. The pages not allowed were pictures taken from the phones and appeared to have no relevance to the offences with which the Defendants were charged with. As the pictures had nothing of relevance to the case and were not printed out, the Determining Officer had a discretion as to whether or not to allow these pages as PPE, and had decided that the lack of relevance

was a circumstance that was, in the exercise of her discretion, appropriate to be taken into account. The Determining Officer indicated that she would consider a claim for special preparation for the time involved by the solicitors in ascertaining that the pictures were of no relevance.

7. Notwithstanding the concession made by the LAA, the solicitors have decided to continue with the appeal with regards to the outstanding 2,611 PPE. Mr Andrew Keogh of Counsel attended before me at the hearing of the appeal and submitted that it was not known prior to the commencement of the analysis of the pictures as to whether or not they were going to be relevant. Consequently, it required a similar degree of consideration as the consideration of the raw telephone data that has now been conceded by the LAA should form part of the page count. He submitted that it was not possible to make an electronic search to ascertain the relevance of these pictures. They had to be looked at in the same way as the other documentation contained on the disc as this evidence could have been pivotal to the case.
8. The Lord Chancellor was represented by Miss Weisman, a solicitor instructed by the LAA. Miss Weisman submitted that by way of an analogy, the consideration of this pictorial evidence was similar to analysing unused material in order to see as to whether or not it would be of any relevance. She submitted that the LAA had made a concession by agreeing to consider a claim for special preparation in respect of this evidence.

Criminal Legal Aid (Remuneration) Regulations 2013

Schedule 2

Part 1

1(2) *For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).*

(3) *The number of pages of prosecution evidence includes all –*

- (a) witness statements;*
- (b) documentary and pictorial exhibits;*
- (c) records of interviews with the assisted person; and*
- (d) records of interviews with other defendants,*

which form part of the committal or served prosecution documents or which are included in any Notice of Additional Evidence.

(4) *Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.*

(5) *A documentary or pictorial exhibit which –*

(a) *has been served by the prosecution evidence in electronic form; and*

(b) *has never existed in paper form,*

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence, taking into account the nature of the document and any other relevant circumstances.

9. If a claim is made by a litigator (or an advocate) for electronically served exhibits to be included in the number of pages of prosecution evidence, the Determining Officer is required to take into account the nature of the document and any other relevant circumstances. This is something which the Determining Officer failed to do when making her original determination after the Litigator Fee Claim was submitted. However, the Determining Officer has corrected her error in her new determination carried out on 14 November 2014. She has analysed the whole of the electronically served documentation and has concluded that 3,918 pages related to telephone billing records of the Defendants should be included as PPE. I am satisfied that she correctly applied the same test with regard to the remaining 2611 PPE relating to the pictorial evidence. The criticism of Determining Officers in the past has been that they have not taken into account the nature of the documentation or the relevant circumstances. In this case, the Determining Officer has done, belatedly, what she is required to do under the Regulations and has considered the pictorial evidence and has decided that in view of its limited relevance that it is not appropriate to include them as PPE. She has indicated that a claim by the solicitors under the special preparation provisions could be considered in respect of these exhibits.
10. I cannot find fault with that decision. A line has to be drawn as to what evidence can be considered as PPE and what evidence can be considered to be the subject of a special preparation claim. Each case depends on its own facts. The regulations do not state that every piece of electronically served evidence, whether relevant or not should be remunerated as PPE. Quite the contrary, as electronically served exhibits can only be remunerated as PPE if the Determining Officer decides that it is appropriate to do so, taking into account the nature of the documentation and all the relevant circumstances. The Determining Officer has taken into account the nature of the documentation and all of the relevant circumstances and has decided, in my judgement correctly, that it is not appropriate to include this evidence as PPE.
11. I am satisfied that the Determining Officer has carried out her function in accordance with the regulations in the proper manner. Accordingly, the appeal in relation to the additional 3,918 pages conceded by the LAA in their letter of 14 November 2014 is allowed, but the appeal in respect of the balance of 2,611 pages is dismissed.

12. In view of my decision, the solicitors are only entitled to the costs of making this appeal, but not their costs of attending before me at the hearing of the appeal.

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