



**TRIBIWNLYS Y GYMRAEG
Achos TyG/18/3**

ALED POWELL
(Ceisydd)

v

COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Ar ôl ystyried cais y Ceisydd, a dderbyniwyd ar 26 Medi 2018, am adolygiad o benderfyniad y Tribiwnlys a roddwyd ar 29 Awst 2018, mae'r aelod sydd wedi'i ymgymhwyso yn y gyfraith (a gafodd ei hawdurdodi mewn ysgrifen gan y Llywydd i arfer swyddogaeth y Llywydd o dan reol 48(3) o Reolau Tribiwnlys y Gymraeg 2015 wedi penderfynu:

- i) nad yw'r Ceisydd wedi dangos bod unrhyw wall amlwg a phwysig yn y penderfyniad,
- ii) nad oes, felly, unrhyw sail ar gyfer adolygu'r penderfyniad.

Rhoddir y Rhesymau dros y penderfyniad isod.

Nicola Jones

Aelod o'r Tribiwnlys sydd wedi'i hymgymhwyso yn y gyfraith.
10 Rhagfyr 2018



**WELSH LANGUAGE TRIBUNAL
Case WLT/18/3**

ALED POWELL
(Applicant)

v

WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

After considering the Applicant's application, received on 26 September 2018, for a review of the decision of the Tribunal given on 29 August 2018, the legally qualified member of the Tribunal (authorised in writing by the President to exercise the President's function under rule 48(3) of the Welsh Language Tribunal Rules 2015) has decided:

- i) that the Applicant has not shown that there was an obvious and material error in the decision,
- ii) that there is therefore no ground for reviewing that decision.

The Reasons for the decision are given below.

Nicola Jones

Legally-qualified member of the Tribunal.
10 December 2018

RHESYMAU

1. Mae'r Ceisydd yn honni bod y Tribiwnlys wedi gwneud camgymeriad cyfreithiol trwy gamddeall effaith Mesur y Gymraeg gan mai'r unig opsiwn oedd ar gael iddo o dan y Mesur ar ôl iddo wneud cwyn i'r Comisiynydd, ac i'r gwyn honno gael ei gwrthod, oedd gwneud cais i'r Tribiwnlys.
2. Paragraffau 19 ac 20 o benderfyniad y Tribiwnlys dyddiedig 29 Awst 2018 yw'r rhai mwyaf perthnasol i'r cais hwn am adolygiad er fy mod wedi ystyried y ddogfen gyfan.
3. Mae'r sefyllfa gyfreithiol wedi'i gosod allan yn glir yn Rheol 48 o Reolau Tribiwnlys y Gymraeg 2015:

“(1) Caiff parti wneud cais i Ysgrifennydd y Tribiwnlys i benderfyniad gan y Tribiwnlys gael ei adolygu ar y seiliau—

 - (a) bod y penderfyniad wedi ei wneud yn anghywir oherwydd gwall pwysig ar ran gweinyddiaeth y Tribiwnlys,
 - (b) bod gan barti a oedd â hawl i gael ei glywed yn y gwrandawriad, ond a fethodd ag ymddangos neu gael ei gynrychioli, reswm da a digonol dros beidio ag ymddangos, neu
 - (c) bod gwall amlwg a phwysig yn y penderfyniad.”
4. Nid yw rheolau 48(1)(a) na (b) yn gymwys a rhaid i mi ystyried a oes gwall amlwg a phwysig yn y penderfyniad, fel sy'n cael ei osod allan yn Rheol 48(1)(c).
5. Canllaw cyfreithiol y Tribiwnlys oedd ymresymu'r Arglwydd Ustus Carnwath ym mhenderfyniad y Llys Apêl yn *E and R v Secretary of State*

REASONS

1. The Applicant asserts that the Tribunal has made an error in law in misunderstanding the application of the Welsh Language Measure in that once he has made the complaint to the Commissioner which was refused the only option open to him under the Measure was to make an application to the Tribunal.
2. Paragraphs 19 and 20 of the decision of the Tribunal dated 29 August 2018 are the most relevant to this application for review although I have considered the whole document.
3. The legal position is clearly set out in Rule 48 of the Welsh Language Tribunal Rules 2015:

“(1) A party may apply to the Secretary of the Tribunal for the decision of the Tribunal to be reviewed on the grounds that-

 - (a) the decision was wrongly made as a result of a material error on the part of the Tribunal Administration,
 - (b) a party, who was entitled to be heard at the hearing but failed to appear or be represented, had good and sufficient reason for failing to appear or
 - (c) there was an obvious and material error in the decision.”
4. Rules 48(1)(a) and (b) do not apply and it is left to me to consider whether there was an obvious and material error in the decision as set out in Rule 48(1)(c).
5. The Tribunal were guided in law by the approach of Lord Justice Carnwath in the decision of the Court of Appeal in *E and R v Secretary of*

for the Home Department [2004] EWCA Civ 49. Esbonnir yn yr achos hwn yr amodau y mae'n rhaid eu diwallu cyn y gall lys ddiddymu penderfyniad ar y sail fod y penderfyniad hwnnw wedi'i seilio ar ffeithiau anghywir. Yr amodau a restrir gan yr Arglwydd Ustus Carnwath yw:

- (i) Bod camargraff wedi'i greu oherwydd camgymeriad mewn perthynas â ffaith berthnasol;
- (ii) Bod y ffaith o dan sylw yn un "sefydledig", hy y byddai'r sefyllfa gywir wedi'i dangos trwy dystiolaeth wrthrychol annadleuol petasai sylw wedi'i dynnu at y pwynt ar y pryd;
- (iii) Na allai'r person oedd yn ceisio herio'r penderfyniad gael ei gyfrif yn gyfrifol am y camgymeriad;
- (iv) Bod yr holl gyfranogwyr yn y penderfyniad yn rhannu diddordeb mewn cydweithredu er mwyn dod i'r ateb cywir;
- (v) Bod y camargraff wedi chwarae rhan sylweddol yn yr ymresymu.

6. Canfyddiad y Tribiwnlys oedd nad oedd (iii) wedi'i ddiwalli. Y Ceisydd ei hun oedd yn gyfrifol am y camddealltwriaeth ac ni chymrodd unrhyw gamau i ddatrys neu gywiro'r camddealltwriaeth unwaith y daeth y camddealltwriaeth yn amlwg. Rhaid oedd i'w ddal yn gyfrifol am y camgymeriad felly.

7. Mae'r Ceisydd yn hawlio nad oedd dyletswydd arno i dynnu sylw'r Comisiynydd at y ffaith ei bod hi'n seilio'i phenderfyniad ar y camddealltwriaeth fod y sgrinlun yn dangos gwir natur ei gwyn. Fodd bynnag, y gwir gwestiwn yw mai'r Ceisydd oedd wedi darparu'r

State for the Home Department [2004] EWCA Civ 49. This case set out the conditions which must be satisfied in cases where a public authority makes a decision based on erroneous facts if a court is to quash that decision. The conditions set out at paragraph 63 by Lord Justice Carnwath are:

- (i) That an erroneous impression has been created by a mistake as to a relevant fact;
- (ii) That the fact in question is an "established" one, ie that if attention had been drawn to the point at the time, the correct position could have been shown by objective and uncontentious evidence;
- (iii) That the person seeking to challenge the decision could not fairly be held responsible for the error;
- (iv) That all the participants in the decision had a shared interest in cooperating to achieve the correct result;
- (v) That the mistaken impression played a material part in the reasoning.

6. The Tribunal found that (iii) above was not satisfied. It was the Applicant himself who was responsible for the misunderstanding and took no steps to resolve or correct the misunderstanding once that misunderstanding became apparent. He must therefore be held responsible for the error.

7. The Applicant asserts that it was not his duty to draw the attention of the Commissioner to the fact that she was basing her decision on the misunderstanding that the screenshot demonstrated the true nature of the complaint. However, the real issue is that it was the

sgrinlun (fel rhan o'i dystiolaeth yn achos TyG/WLT/17/2), gan ei ddisgrifio'n benodol fel "sgrinlun sy'n dangos natur yr hyn oedd yn destun i achos CSG176". Trwy wneud hynny, anfonodd y Ceisydd y Comisiynydd i lawr y llwybr a gymerwyd ganddi yn ei hystyriaeth.

8. Mae'r Ceisydd hefyd yn hawlio mai pwrpas darparu'r sgrinlun oedd rhoi i'r Tribiwnlys (ac felly'r Comisiynydd) enghraifft yn unig o'i bryderon. Os oedd y Ceisydd yn teimlo bod yn rhaid iddo ddarparu tystiolaeth er mwyn sicrhau bod y Comisiynydd yn deall natur ei gwyn, roedd disgwyliad y byddai'n darparu tystiolaeth a oedd yn uniongyrchol berthnasol i sail ei gwyn. Roedd yn rhesymol i ddisgwyl y byddai'r Comisiynydd yn seilio'i phenderfyniad ar y sgrinlun a ddarparwyd gan y Ceisydd, gan mai dyna'r unig dystiolaeth a oedd wedi'i darparu i gefnogi ei gwyn ac ni chyfeiriodd at unrhyw dystiolaeth arall a fyddai wedi dangos natur y gwyn honno'n well.

9. Mae'r Ceisydd yn awgrymu yn ei gais presennol y byddai'r Tribiwnlys wedi bod yn ymwybodol o fodolaeth posibl tystiolaeth arall yn sgil gwrandawriad ei Gais blaenorol (TyG/WLT/17/2). Mae hyn yn amherthnasol. Y cwestiwn yn yr achos presennol yw pa wybodaeth oedd ar gael i'r Comisiynydd wrth iddi wneud ei phenderfyniad. Darparwyd yr wybodaeth honno iddi gan y Ceisydd yn unig.

10. Mae ymresymu'r Tribiwnlys, yn fy marn i, yn hollol resymol ac mae'r gyfraith wedi'i chymhwyso'n gywir

Applicant who provided the screenshot (as part of his evidence in case TyG/WLT/17/2) specifically describing it as "a screenshot showing the nature of that which was the subject of complaint CSG176 (trans.)". In doing so, the Applicant clearly sent the Commissioner down the path taken by her in her consideration.

8. The Applicant also asserts that the purpose of providing the screenshot was to provide the Tribunal (and hence the Commissioner) with just an example of his concerns. If the Applicant felt it necessary to provide evidence to ensure that the Commissioner understood the nature of his complaint then there must be an expectation that he would provide evidence which was directly relevant to the basis of the complaint. It was reasonable to expect that the Commissioner would base her decision on the screenshot provided by the Applicant, as that was the only evidence provided to support his complaint and he made no reference to any other evidence that would better demonstrate the nature of that complaint.

9. The Applicant suggests in his current application that the Tribunal would have been aware of the possible existence of other evidence as a result of the hearing of his previous Application (TyG/WLT/17/2). This is irrelevant. The issue in the current case is what information was available to the Commissioner at the time she made her decision. That information was provided to her solely by the Applicant.

10. I find the approach of the Tribunal entirely reasonable and the application of the law correct and

ac yn briodol. Deallwyd y dadleuon yn yr achos yn glir gan y Tribiwnlys. Dywed y Ceisydd nad oedd ganddo unrhyw ddewis ond i wneud cais i'r Tribiwnlys unwaith y sylweddolodd fod y Comisiynydd wedi camddeall ei Gŵyn CSG176. Nid yw hynny'n wir. Nid oedd unrhyw beth yn rhwystro'r Ceisydd rhag mynd yn ôl at y Comisiynydd, gan esbonio'r camgymeriad a gofyn iddi ail-ystyried ei phenderfyniad yng ngoleuni'r gwir sefyllfa. Dewisodd y Ceisydd beidio â chymryd y cam hwnnw.

11. Roedd y camgymeriad ffeithiol mewn perthynas â CSG176 yn un a oedd wedi'i achosi ganddo ef ac ni cheisiodd, mewn unrhyw ffordd, ei gywiro'n uniongyrchol gyda'r Comisiynydd.

12. Roedd yn rhesymol i'r Tribiwnlys ddod i'w benderfyniad ar sail cymhwyso'r gyfraith a'r gyfraith achos yn gywir, fel yr esbonir yn glir ym mhenderfyniad y Tribiwnlys, yn arbennig ym mharagraffau 19 a 20. Ni fedraf ganfod unrhyw wall amlwg a phwysig yn y penderfyniad ac rwy'n gwrthod y cais am adolygiad.

HERIO'R PENDERFYNIAD HWN

Nid oes unrhyw hawl apelio yn erbyn y penderfyniad hwn ond gallwch, os ydych yn credu bod gennych seiliau dros wneud hynny, wneud cais i'r Uchel Lys am adolygiad barnwrol ohono. Fe'ch cynghorir, os ydych yn ystyried gwneud hynny, cymryd cyngor cyfreithiol ar y mater a hynny ar frys, gan fod terfynau amser tynn yn perthyn i gais felly.

appropriate. The issues in the case were clearly understood by the Tribunal. The Applicant states that once he realised that the Commissioner had misunderstood his Complaint CSG176 he had no alternative but to apply to the Tribunal. This is not the case. There was nothing to prevent the Applicant from reverting to the Commissioner explaining the misunderstanding and requesting that she revisit her decision in the light of the true position. The Applicant chose not to take this step.

11. The error of fact in relation to CSG176 was of the Applicant's own making and he did not seek in any way to rectify this directly with the Commissioner.

12. It was reasonable for the Tribunal to come to its decision on a correct application of the law and case law, the reasons for which are clearly set out in the decision of the Tribunal most notably at Paragraphs 19 and 20. I can find no obvious and material error in the decision of the Tribunal and I reject the application for review.

CHALLENGING THIS DECISION

There is no right of appeal against this decision by you can, if you believe that you have grounds for doing so, apply to the High Court for a judicial review. You are advised, if you are considering doing so, to take legal advice on the matter and to do so promptly since strict time limits apply to such an application.