



Neutral citation [2024] CAT 26

Case Nos: 1404/7/7/21

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

12 April 2024

Before:

SIR MARCUS SMITH
(President)
EAMONN DORAN
PROFESSOR ANTHONY NEUBERGER

Sitting as a Tribunal in England and Wales

BETWEEN

DAVID COURTNEY BOYLE

Class Representative

-and-

(1) GOVIA THAMESLINK RAILWAY LIMITED
(2) THE GO-AHEAD GROUP LIMITED
(3) KEOLIS (UK) LIMITED

Defendants

-and-

MS PRUZHANSKAYA

Defendant for the purposes of
the Application dated 5 March 2024

-and-

SECRETARY OF STATE FOR TRANSPORT

Intervener

Heard at Salisbury Square House on 12 April 2024

RULING

APPEARANCES

Ms Kirsty Malloch (instructed by Maitland Walker LLP) appeared on behalf of the Class Representative.

Ms Maria Pruzhanskaya appeared on her own behalf as the Defendant to the Application dated 5 March 2024.

Note: Excisions in this Judgment (marked “[~~§~~”]) relate to confidential information: Schedule 4, paragraph 1 to the Enterprise Act 2002.

1. There is before the Tribunal an application made by the Class Representative in these proceedings, Mr Boyle, in case number 1404/7/7/21. These are collective proceedings against various Defendants. The application arises in regard to a confidentiality ring that was established by the Tribunal in the usual terms. The relevant order in this case was made by the President on 16 December 2021 (the “Confidentiality Ring Order”).
2. In general, confidentiality rings operate at two levels, even where the confidentiality ring is a “single ring” confidentiality ring. An order – here the Confidentiality Ring Order – establishes the ring. Certain individuals are then admitted into the ring, and usually are identified in an annex to the order, which is “ambulatory”, in that it varies according as to who is admitted and who leaves the ring. That is what we term the “first level”.
3. The price of admission to the ring on the part of the individual is the giving of undertakings directly to the Tribunal. This is what we term the “second level”, a personal undertaking given by each individual admitted to the ring. Only upon the giving of those undertakings are such individuals permitted to access the information that is placed inside the confidentiality ring.
4. Turning to the Confidentiality Ring Order in the present case:
 - (1) Paragraph 7 provides that if any party wishes one of its relevant advisers to be removed from the confidentiality ring, they must inform the Tribunal in writing.
 - (2) Paragraph 9 provides that, with the exception of solicitors’ or counsels’ notes, and to the extent permitted by law or any professional conduct regulations, copies of all or any confidential information disclosed pursuant to the order must be destroyed insofar as is technologically possible or made inaccessible at the conclusion of these proceedings, or when a relevant adviser ceases to be involved in these proceedings.
5. Moving, then, from the first level – the Confidentiality Ring Order – to the second level, the undertakings offered by an individual, in this case, the

Respondent to this application, Ms Pruzhanskaya, gave an undertaking dated 24 March 2023 (the “Undertaking”). That is not denied. Although the entirety of the Undertaking is material, the following paragraphs state as follows:

- “1. I have read a copy of the Tribunal's order of 16 December 2021 (the “Tribunal’s Order”) and understand the implications of the Tribunal’s Order and the giving of this undertaking.
2. Save in respect of provision to the Tribunal, I will not disclose the Confidential Information, as defined in the Tribunal’s order, to any person who is not a relevant adviser (as defined in the Tribunal’s Order) without the express written consent of the person who originally disclosed the Confidential Information (“the Disclosing Person”) or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever without the express consent of the Disclosing Person.
- ...
- “7. With the exception of solicitors’ or counsels’ notes, and to the extent permitted by law or any professional conduct regulations, any and all copies of the documents containing the Confidential Information will be securely disposed of insofar as is technologically possible or rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person at the conclusion of these proceedings.”

6. The Undertaking has been signed by Ms Pruzhanskaya. She says that there are a number of errors in the Undertaking: notably that she was not employed by Maitland Walker (but was effectively supplied to Maitland Walker by way of another company); and that she is not regulated by the SRA, the Solicitors Regulation Authority, because she was a paralegal and not a solicitor. The Tribunal is quite prepared to accept these as errors for present purposes: but they are immaterial to the undertakings that were given by Ms Pruzhanskaya in this case, and which were accepted by the Tribunal in order to ensure the due protection of the information within the confidentiality ring. The Tribunal concludes that the Undertaking has been given by Ms Pruzhanskaya in the terms described above.
7. This application arises from the refusal by Ms Pruzhanskaya to hand back the laptop which she was lent for the purposes of working for Maitland Walker

during the course of her retention as a legal adviser, within the meaning of the Confidentiality Ring Order, by Maitland Walker.

8. The details by which the laptop was provided and some of the details by which it was refused to be returned are set out in the evidence in support of the application. That evidence is the fifth witness statement of Mr Julian Maitland Walker, the partner at Maitland Walker having the conduct of these proceedings on the part of the Class Representative. His witness statement sets out very clearly why it is that this application is being made and why Maitland Walker are so keen to have the laptop returned.
9. At this point it is important that it is stressed that the laptop is not really the key matter for the Tribunal's purposes. What is critical is the assurance that all of the parties and the Tribunal must have that confidential information is no longer in the hands of a former legal advisor like Ms Pruzhanskaya. In this case, the Tribunal has no confidence that, unless all equipment provided by Maitland Walker to Ms Pruzhanskaya is returned to Maitland Walker, there will not be a danger of confidential information being at large in the world. The only way in which this Tribunal can protect the confidential information is by ensuring that the equipment on which it is or may be held is handed over.
10. Over and above this, the Tribunal considers that there do need to be further protections built into the order that we are minded to make, whereby the necessary assurance to all of the parties to the proceedings can be given that confidential information is protected.
11. So that is why we are focusing on the return of the laptop and other equipment provided by Maitland Walker to Ms Pruzhanskaya. It is not because there is any interest in this Tribunal in having the laptop returned; it is the means of securing the protection of confidential information.
12. The Tribunal has listened very carefully to what reasons Ms Pruzhanskaya might have for refusing to return the laptop (and any other equipment). We use the term "refusing" advisedly, because it is quite clear from the evidence that Maitland Walker have bent over backwards in an attempt to secure the laptop.

The response that one gets from Ms Pruzhanskaya is this: that she is apparently ready and willing to return the laptop, it is just that a series of unfortunate events or incompetencies on the part of Maitland Walker render that impossible. By way of example, the written submissions made by Ms Pruzhanskaya say this:

- “3. By the application, MW [that is Maitland Walker] requested the Competition Appeal Tribunal (“CAT”) to issue a possession order for laptop M-21, which MW provided to MP. MW provided a laptop to MP for work on the case, but forgot to collect it on 10 November 2023 when MP finished its engagement with MW, in full knowledge that the laptop contained confidential information and MP would not take any assignments with MW through Flex Legal/Mishcon de Reya LLP.
4. To date, 5 months since MP finished her assignment with MW, MW failed to organise secure collection of the laptop with confidential information, while blaming MP for MW's own negligence and the negligence of their agents. Instead of organising timely and safely collection of the equipment with confidential information, it chose to apply to the Competition Appeal Tribunal (CAT), in order for the CAT to issue a possession order for MP for the delivery of the laptop for which the CAT, as MP understands, do not have jurisdiction.”

13. This does not come close to explaining why, months later, the laptop remains in Ms Pruzhanskaya’s possession, despite her apparent willingness to return it. In short, no proper reason has been advanced for the failure to return the laptop, and Ms Pruzhanskaya’s account is entirely at variance with the evidence that has been presented before this Tribunal. The fact is that Maitland Walker have done a great deal over the last few months in fruitless attempts to have this equipment returned. We stress again that at issue is not the laptop itself, but the fact that the laptop may contain confidential information.

14. A further illustration of Ms Pruzhanskaya’s refusal to comply with her undertakings is this: shortly before this hearing, at the President’s request, the Registry of the Tribunal wrote to Ms Pruzhanskaya suggesting that she bring the laptop with her today. It was no more than a suggestion: it certainly was not an order, it was not even a request. It was a suggestion that this application might be short circuited if that course was taken. Ms Pruzhanskaya declined that invitation. She has presented herself today without the laptop, and the reason she gave was because she did not know from whom the letter making the suggestion came. That is indicative of a refusal to engage on the part of Ms Pruzhanskaya in the processes both of Maitland Walker and this Tribunal in

regard to information which she knows is confidential, which she knows is protected, and in relation to which she has signed an undertaking personally.

15. We conclude that Ms Pruzhanskaya is in breach of her Undertaking and that that breach is deliberate, repeated and serious.
16. Ms Pruzhanskaya raised a series of procedural questions in the course of this application.
17. She claims not to have been served with the application. We do not accept that, and that is now irrelevant because Ms Pruzhanskaya is present before the Tribunal and is listening to this ruling as it is being rendered. We have ensured in the course of this hearing that she has seen and read the material documents, so she cannot say after the event that she does not know what is going on. In any event, Ms Pruzhanskaya's written submissions show an excellent grasp of the background.
18. Ms Pruzhanskaya says that she has not seen all of the material that is necessary for the purposes of this application. We do not accept that either. She has seen what is necessary to mount a defence to the application, and the reason she has not mounted a defence that is feasible is not because of the absence of documents but because such a defence does not exist. Nothing has been said by way of explanation of her conduct: and it would have been easy to give at least a short statement of why the Undertaking was not being complied with. No such statement has been forthcoming.
19. A number of distractions have been raised by Ms Pruzhanskaya over the course of these months. She has suggested negligence on the part of Maitland Walker in the handling of confidential information. We say nothing about that, save that it is wholly irrelevant. We are only concerned here with the return or destruction of the confidential information held by Ms Pruzhanskaya.
20. Ms Pruzhanskaya has attempted to use the laptop as leverage in negotiations with Maitland Walker. We say nothing more about that, save that that underlines the wilfulness in Ms Pruzhanskaya's refusal to return the laptop. There have

been various attempts to derail these processes by suggesting that information which frankly is *nihil ad rem* to this application, should be disclosed.

21. We are satisfied that the application must be granted in order to protect the integrity of the Tribunal's processes, and that is the order we are minded to make. We turn to the precise specification of that order, because it is important that Ms Pruzhanskaya understands exactly what it is that we are ordering:

(1) This is an application for an injunction under rules 67 and 68 of the Tribunal Rules 2015. We have jurisdiction to grant an injunction, but it seems to us that it would be appropriate, so that Ms Pruzhanskaya understands where she stands, that she be made a party for this purpose and for purposes of the application. Accordingly, the first item in the order is that Ms Pruzhanskaya is made, for purposes of the application, a party to the proceedings.

(2) Secondly, an injunction should be granted obliging Ms Pruzhanskaya to do the following matters within the next seven working days from the date of the perfection of the order.

(i) She must deliver, and deliver up to this Tribunal, all equipment from Maitland Walker, including a laptop which is a Dell Vostro laptop, [redacted], but we stress that the order extends not only to that laptop but also to any other equipment received by Ms Pruzhanskaya from Maitland Walker during the course of her work with Maitland Walker.

(ii) Ms Pruzhanskaya is enjoined from using confidential information that she has derived as a result of her work for Maitland Walker in any way.

(iii) She must provide a statement in the form of a sworn affidavit indicating that she has complied with the paragraph 7 of the undertaking that she provided dated 24 March 2023, namely that she has destroyed or rendered inaccessible any and all

confidential information so that it is not readily available to any person at all.

22. Those are the elements of the injunction that we are ordering. We will leave it to Maitland Walker to draw up an order for us to approve. To be clear, we are making this order now but it will be effective seven days from when it is signed by the President, so there is a little bit more time than seven clear days. Although the order is being made now, it will become effective when it is formalised.
23. The Tribunal also directs that the order contain a penal notice because we are not satisfied that a mere order without a penal notice is sufficient to ensure compliance with the injunctions that have been made.
24. The Tribunal also directs that the order, when it is made, be served by Maitland Walker and by this Tribunal by email on Ms Pruzhanskaya, and that will constitute sufficient service in lieu of personal service.
25. Finally, we turn to the question of costs. It is quite clear that Maitland Walker have been put to considerable cost in pursuing this application, and this application has been successful. We order that the costs of this application on the standard, but not the indemnity, basis be paid by Ms Pruzhanskaya to the Class Representative, and to be subject to a detailed assessment. We also order that there be an interim order as to costs, payable within 28 days, in the amount of £10,000.
26. This Ruling is unanimous.

Sir Marcus Smith
President

Eamonn Doran

Professor Anthony Neuberger

Charles Dhanowa O.B.E., K.C. (*Hon*)
Registrar

Date: 12 April 2024