

[REDACTED] Ltd - v - City of Bradford Metropolitan District Council CAZ

Appeal Details

Case number: DY00305-2303
Vehicle: [REDACTED]
Representative: Mr [REDACTED] E [REDACTED]
Number of PCNs: 1

Appeal Raised: 10/03/2023
Hearing: All parties attended the hearing
Decision: 18/04/2023
Adjudicator: James Richardson

Decision - PCN DY10646412

[REDACTED] Ltd, you have lost this appeal.

The penalty charge and daily licence fee should be paid within 28 days.

Penalty Charge Amount: £120.00

Issued: 19/01/2023

Entered: 05/01/2023 17:19

Manchester Road 5

1 - Taxi/PHV/LGV/Minibus

Please see the next page for the Adjudicator's Reasons

Adjudicator's Reasons

1. Appeal numbers DY00305-2303 and DY00316-2303 have been heard together with a single decision being issued.
2. Mr E [REDACTED], as the representative, took part in the scheduled hearing. Mr R [REDACTED] represented the Council.
3. The Appellant's vehicle was recorded on 5th January 2023 at 17:19 when it was driven on Manchester Road. It was recorded again on 10th January 2023 at 09:13 when it was driven on Becks Road. Both locations are within the Council's Clean Air Zone (CAZ) for which a daily road user charge is payable.
4. Mr E [REDACTED] explains the Appellant is a courier firm which uses self-employed drivers. He says the vehicle was used over the period without consent. He explains the driver, who signs a contractor's agreement, is liable for damage to the vehicle and for penalties. A copy of the agreement has been submitted in evidence.
5. Mr R [REDACTED] says that the agreement (condition 10.2) states that damage and penalties will be deducted from the driver's wages and not that they are directly liable for the same. He refers to the representation in which it is stated that the Company could not confirm if the driver actually drove the vehicle in Bradford and at the time could only make an assumption.
6. I find that because the required daily charge was not paid on each occasion, a contravention on each date occurred.
7. Regulation 6 of The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013, states that liability for payment of the penalty rests with the registered keeper of the vehicle. That means the driver is not, simply by default, responsible for the penalty.
8. That liability may be transferred where the Appellant is a hire company and the vehicle was on hire. Because of the amendment provided by The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) (Amendment) Regulations 2014, the Protection of Freedoms Act 2012 definition of hire agreement applies; Regulation 13 (6), Schedule 4; "hire agreement" means an agreement which— (i) provides for a vehicle to be let to a person... for a period of any duration". This means the Appellant is required to provide sufficient proof that the particular vehicle was actually on hire at the time to a particular party.
9. Two contractor agreements have been uploaded as evidence for the appeals. One is dated 4th January 2023 and refers to a work commencement date of 14th December 2022 and the other is dated 5th January 2023 and uses the same commencement date. Only one is signed. No explanation is given for the different agreements.

10. Condition 3 10.2 states “Driver will be liable for any vehicle penalty charges, speed ticket, parking fines will all be deductible from the contractor’s wage or liable.”. The provision to enable deduction from the wages infers the Company will retain administrative responsibility for settlement with personal liability for payment being removed from the driver. The manner in which the arrangement has been framed is a contractual one as opposed to one that clearly renders the driver directly liable and responsible for payment of penalties.

11. Neither agreement identifies the specific vehicle which has been provided and no evidence has been submitted to confirm the individual named was responsible for (in a formal hirer capacity) and driving the particular vehicle concerned on each occasion. To that end I note the acknowledgement in the representations as to being unable to confirm the driver involved as opposed to an assumption.

12. Because of the evidence available to me I find that the Appellant has failed to demonstrate vehicle [REDACTED] was actually on hire at the time to the named contractor. Further, in addition to those facts, that the contractor and not the Appellant was directly responsible for paying any penalty.

13. These appeals have been lost.

James Richardson
Adjudicator
18/04/2023