



31 July 2013

PRESS SUMMARY

Torfaen County Borough Council (Appellant) v Douglas Willis Limited (Respondent) [2013] UKSC 59

On appeal from [2012] EWHC 296

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Carnwath, Lord Toulson

BACKGROUND TO THE APPEAL

The appellant local authority (‘the Council’) has responsibility for the enforcement of food safety laws in its area. In June 2011 inspectors visited the premises of the respondent company, which carries on the business of buying, processing and selling meat products. The inspectors found a number of packages of frozen meat labelled with “use by” dates which had passed. The respondent was tried on 23 charges of selling food ‘after the date shown in the “use by” date relating to it’ contrary to Regulation 44(1)(d) of the Food Labelling Regulations 1996 (‘the Regulations’) made under the Food Safety Act 1990.

The charges were dismissed by Gwent Justices on 1 September 2011. They accepted a submission by the respondent that it had no case to answer because the prosecution had not proved that at the date of the alleged offence the food required a “use by” label under the Regulations, ie that it was highly perishable and likely after a short period to constitute an immediate danger to human health. There was no evidence as to when the meat had been labelled or frozen. The Council appealed by way of case stated. The Divisional Court allowed the appeal, holding that the prosecution did have to show that the food had at some stage been in a state which required it to be labelled with a “use by” date, which had passed, but not that it was in that state at the time of the offence.

The Council brought a further appeal to the Supreme Court, submitting that the prosecution had only to show that the respondent was selling food which was the subject of a “use by” label displaying a date which had passed.

JUDGMENT

The Supreme Court unanimously allows the appeal. It holds that under Regulation 44(1)(d) it is sufficient for the prosecution to prove that a defendant had food in its possession for the purpose of sale which was the subject of a label showing a “use by” date which had passed. The case will be remitted to a different panel of justices for a rehearing in accordance with this ruling. The judgment is given by Lord Toulson.

REASONS FOR THE JUDGMENT

- The Divisional Court was right to reject the respondent’s argument that the prosecution had to prove that the food was in a highly perishable state at the time of the alleged offences under

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Regulation 44 (1)(d). On the wording of that paragraph, all the prosecution had to prove was that (i) the food was in the respondent's possession for sale (and therefore 'sold' within the extended meaning of that term), (ii) that the food had a "use by" mark or label 'relating to' it, and (iii) that the date shown had passed [21]. To read into paragraph (d) an additional requirement that the food was in a highly perishable state at the time of the alleged offence would seriously weaken the regulatory scheme and the protection provided to consumers. It would enable a retailer of perishable food, which had passed its "use by" date to freeze it and then sell it without the consumer knowing how long it had been unfrozen [22].

- The words 'relating to' in the phrase 'sells any food after the date shown in a "use by" date relating to it' were synonymous with 'referring to'. It denoted a factual connection rather than a legal requirement and simply meant that the food sold was the subject of a label with a "use by" date [24].
- Comparison with other paragraphs of Regulation 44 (1) showed that, unlike the offence in paragraph (a), there was a reason for the omission of the words 'marked or labelled in accordance with Part II of these Regulations'. Once food had been marked with a "use by" date the Regulations protected the consumer by prohibiting the removal or alteration of the marking except with the written authority of the original marker and by prohibiting the sale of the food after the "use by" date shown [25-27].
- The Divisional Court's construction of the Regulations would give rise to significantly greater practical problems and expense for enforcement under paragraph (d) compared with (a). Questions relating to when the marking of the food had been done and the state of the food at the time would be matters unknown to the inspectors and realistically might deter prosecutions [28].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
www.supremecourt.gov.uk/decided-cases/index.html