



Press Summary

1 November 2023

R (on the application of Palmer) (Appellant) v Northern Derbyshire Magistrates Court and another (Respondents)

[2023] UKSC 38

On appeal from: [2021] EWHC 3013 (Admin)

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Burrows, Lady Rose and Lord Richards

Background to the Appeal

The issue in this appeal is whether an administrator of a company appointed under the Insolvency Act 1986 (the “**IA 1986**”) is an “officer” of the company within the meaning of the phrase “any director, manager, secretary or similar officers of the body corporate”, as used in section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“**TULRCA**”).

Sections 193(1) and (2) of TULRCA provide that, where an employer proposes to dismiss at least 20 employees as redundant within 90 days, it is required to give notice to the Secretary of State at least 30 days before those dismissals take effect. An employer who fails to give notice as required commits an offence under section 194(1) and, where the offence is proved to have been committed by a body corporate with the consent or connivance of, or to be attributable to neglect on the part of, “any director, manager, secretary or other similar officer of the body corporate”, that person commits an offence under section 194(3).

The appellant, Mr Palmer, was appointed as one of three joint administrators of West Coast Capital (USC) Ltd (“**USC**”) on 13 January 2015. On 14 January 2015, certain employees of USC were handed a letter, signed by Mr Palmer, stating that they were at risk of redundancy and giving notice of USC’s intention to consult with them at a staff meeting that day. Later the same day, they were handed a further letter, also signed by Mr Palmer, dismissing them with effect from that day. No notice of the redundancies was given to the Secretary of State until the relevant form, signed by Mr Palmer, was emailed on 4 February 2015.

In July 2015, criminal proceedings were commenced against Mr Palmer, alleging that he had committed the offence set out in section 194 of TULRCA. Mr Palmer argued that he had not committed an offence because an administrator appointed under Part II of the IA 1986 is not an “officer” within section 194(3) of TULRCA. The Northern Derbyshire Magistrates Court held that Mr Palmer was such an “officer”. The Divisional Court dismissed his claim for judicial review. Mr Palmer now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Richards gives the only judgment, with which the other Justices agree.

Reasons for the Judgment

In the absence of any definition of “officer” for the purposes of section 193(3) of TULRCA, nor any clear statement of authority which can be taken as a definition of what is generally understood to be an officer, the first recourse must be to the IA 1986, as the statute which created and governs the process of administration and the position of an administrator, to determine whether it was intended that an administrator of a company should be an officer of that company [20]. None of the many references to “officer” within the IA 1986 suggests that an administrator is an officer of a company; importantly, some of the references clearly show that an administrator is not considered to be an officer of a company [21]-[26].

The relevant provisions of the IA 1986 provide a clear picture that it was not the intention or effect of the legislation, in creating the process of administration, to classify an administrator as an officer of the company in administration [27]. After considering the caselaw relied upon by the Divisional Court [29]-[39], the Court concluded that an administrator is not an officer of a company [40].

There was also no scope for an extended reading of “other similar officer” within section 194(3) to include an administrator. There is no hint in the language of the section that an expansive interpretation should be given to it. On the contrary, the restriction to an officer who can be said to be “similar” to a director, manager or secretary is inconsistent with an expansive interpretation [43].

The Court then considered the policy arguments advanced by the parties. Mr Palmer submitted that the inclusion of administrators within section 194(3) would confront administrators with a dilemma of either acting swiftly in the interests of achieving the statutory purposes of administration or complying with the notice requirements under sections 193 and 194 [45]. The Court held that administrators could not be excluded on this basis, given that companies in administration were not excluded from sections 193 and 194 [46].

The respondents advanced a different policy argument, submitting that if section 194(3) did not include administrators, a vacuum in responsibility would be left, with no mechanism to deter non-compliance and rendering the criminal sanction meaningless [47]. With this in mind, the Divisional Court adopted a functional test for determining the persons who came within the category of “other similar officers” [48]. This approach was not justified either by the language of the provision or by its context [50]. First, if the legislative intention had been to adopt a functional test, there was no difficulty in expressly doing so [51]. Second, section 194(4) expressly widens the scope of section 193(3) to include, in addition to officers of the body corporate, members of a body corporate where “the affairs of the body corporate are managed by its members”. That did not support a functional test; if Parliament intended such a test, these general words would have been used in section 194(3), and section 194(4) would have been unnecessary [53]. Third, long before the enactment of section 194 and its predecessors, it had been established that a receiver and manager was not an officer of the company. If Parliament had intended a functional test, section 194 would have been drafted in a way which gave effect to it [54].

The Court held that whether a person is an “officer” of a body corporate in the context of provisions such as section 194 is to be determined by asking whether that person holds an office within the constitutional structure of the body corporate. That is the normal meaning of an officer of a company or other institution, and the normal meaning is emphasised by the prior

reference to directors, managers and secretaries in section 194(3), all of whom are officers in the conventional sense, together with the words “other similar” before “officers” [55].

An administrator of a company appointed under the IA 1986 is not therefore an “officer” of the company within the meaning of section 194(4) TULRCA. The appeal is allowed and the decision of the District Judge is quashed [56].

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: [Decided cases - The Supreme Court](#)