

IN THE BRISTOL COUNTY COURT

2 Redcliff Street
Bristol
BS1 6GR

BEFORE:

DEPUTY DISTRICT JUDGE MELVILLE-SHREEVE

BETWEEN:

ParkingEye Limited

Claimant

- and -

Mrs Natasha Collins-Daniel

Defendant

Mr Gopal on behalf of the **Claimant**

Mrs Collins-Daniel, Litigant-in-person

Hearing date: 24th January 2014

Proceedings

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Friday 24th January 2014

Deputy District Judge Melville-Shreeve: Hello, do come in. Do come and take a seat. Take a seat.

Mrs Collins-Daniel: Thank you.

Deputy District Judge Melville-Shreeve: Have you been given a representation sheet? OK. Thank you very much. Thank you. Now I've had a letter from, dated the 3rd January from ParkingEye saying that they want me to just deal with their evidence in written form, having served it on both the Court and the Defendant.

Mr Gopal: Yes Sir.

Deputy District Judge Melville-Shreeve: So I'm happy with that. I'll obviously take it into account in writing. So I hope it's helpful to you, for me to deal with it this way, but the first question then is do ParkingEye have a contract with the Defendant? Because if they don't then there isn't really much of a case to bother about this afternoon. Now, this is no criticism of you Mr Gopal because I'm confident that you're an advocate instructed to help ParkingEye today.

Mr Gopal: Yes Sir.

Deputy District Judge Melville-Shreeve: And not their legal team, but I'm not helped by being told what various district judges may or may not have done in other hearings. Let me explain why that is because I'm quite keen that you should tell ParkingEye this. In our system of precedent we have courts of record and we have authority. District benches are not courts of record and so they are not either persuasive or binding authority upon me, and one of the reasons is because you never know quite what's been argued or the reasons behind a judge's decision. Secondly, if I was to be given persuasive authority it would be your duty to give me both sides, not just because you're against a litigant-in-person but because it's always the duty of a party who tries to argue the law to put both sides of the law. So it's somewhat unattractive to have a shotgun of cases, all district bench level, and all in which ParkingEye won, because if I hadn't bothered to look at the portal I wouldn't have known about all the cases where ParkingEye lost, and I shouldn't have to do the research, although the Defendant found them too. Next, if I'm given a case which is potentially authority and I was quite excited when I picked up this case, because from the cover and the word 'judgment' and seeing that it is His Honour Judge Hegarty QC, an eminent senior circuit judge of great expertise in the Mercantile Court, it's absolutely no use to give me page 99 to page 106, even though the bit in between those two pages does deal with some of the issues we're going to be looking at, it looks to me as though they were obiter. I think that there was a dispute between ParkingEye -v- Somerfield, probably because Somerfield disengaged ParkingEye and ParkingEye wanted a load of damages, I'm not absolutely sure, and I suspect that this relationship with the motorist, which is argued by His Honour in that case, therefore is obiter, although potentially very interesting and relevant. So you might also tell your principals in future that I like cases un-filleted. But let me tell you the difficulty with your contractual relationship, the first difficulty I can see, and if you can see an answer to it please tell me. The way that quite a lot of the district judges that I wasn't referred to seem to think, is that this can't be a claim in trespass because you're

not owners of the land, and so therefore it can only be a claim in contract. But what makes you think you have something to offer? You see it's circular to say that you're giving this lady a permission if, if you don't have any right in the land. If you're the agent of the landowner, if you're acting as the agent of the landowner then you, you slap bang do have a right in the land and you can exercise that agency right, there's not a difficulty. But you never quite say you are the agent. In fact you're very coy about it and reading the evidence there was a sort of suggestion that I might be allowed to peek at your agreement with the landowner, I don't know, if I ask nicely or something? I don't, I don't know how that's done, but, but you don't want to show me your agreement with the landowner. Now it's too late today to wave it around because of course you were told to provide everything before today, and it wouldn't be right on the other side to suddenly see it. But all I've got then is this witness statement from the managing agent dealing with the matter and it says this:

“The landholder is CPG South East. Savills is authorised by CPG South East the appoint ParkingEye as the car park operator.”

And I accept all that, this is unchallenged evidence:

“The operator has written authority to undertake”

And it just says:

“parking management control and enforcement. The operator had authority to issue a parking charge under the written agreement.”

Authority, one assumes from Savills, on behalf of the landowner:

“The operator is authorised by the landowner to issue parking charge notices.”

But, so are you the agents or not? I don't, I don't really know. What do you think? Do you think you're agents of these landowners? ParkingEye.

Mr Gopal: Well there's a, there's a contractual relationship between the landowners and ParkingEye.

Deputy District Judge Melville-Shreeve: Yeah, there is, that's, that's clear, even though I don't have the contract --

Mr Gopal: So --

Deputy District Judge Melville-Shreeve: *That the Claimant has --*

Mr Gopal: If I can just explain with regard to the contract, and it's, it's no reflection on Mrs Collins-Daniels but I have done a number of ParkingEye small claims in various Courts in England and Wales. The Court may not be aware of it but at present there's a big, the only way I can describe it is an internet vendetta against ParkingEye, and there's been issues with certain members of the public obtaining copies of the parking

agreements that ParkingEye have with landowners, so ParkingEye, on such matters, are cautious about providing these written agreements, it's been made aware that these, these confidential documents have leaked onto the internet on certain public forums, which ParkingEye, obviously, given the fact that it's a confidential relationship between ParkingEye and the landowner, are reluctant to do so. So that, that may be the reason why the parking contract between ParkingEye and the landowners isn't available. But in terms of ParkingEye's ability to (a) issue parking charges and (b) enforce them, they do have the written authority of the landowner and I can only go on the statement that's before the Court of Mr Ward, I believe it is, to --

Deputy District Judge Melville-Shreeve: Yeah.

Mr Gopal: Confirm that, that ParkingEye had the written authority at the date of this offence, which is dated the 1st November, sorry, 11th January last year, to issue this parking charge, Sir, and, and take it as paragraph 11 states:

“Pursue the outstanding parking charges in accordance with the BPA Approved Operator Scheme code of practice and this includes by any means up to and including taking legal action to enforce the parking charge.”

And the witness statement is signed by a statement of truth to confirm that that would be the cases of the claim, for the Claimant I would submit that that in itself gives ParkingEye the authority to issue these charges and in essence enter into a contract with any user, not just Miss, Mrs Collins-Daniel, that enters that car park and any other car park that they manage Sir.

Deputy District Judge Melville-Shreeve: If there is a contract with the Defendant, so let's, let's leap over that hurdle and say there is one, that the written terms of the contract, because she's never spoken to you, she may have made eyes at you over the telecamera, but she's never spoken to, the written terms of that contract, according to your own evidence, appear to be here. OK?

Mr Gopal: Sir.

Deputy District Judge Melville-Shreeve: So I'm now going to construe this document as a written contract. So you grab your copy and I'll grab mine and we'll do it together. The first point is this, I have to construe it contra proferentem, which means, for the Defendant's sake, because we're not supposed to do Latin any more, against the person who wrote it, which is them. So if there's any ambiguity it's their problem, not yours. Now, first of all it has to be observed that in English we generally use punctuation, and for good reasons, and I've only found two marks, one is a comma after the use of 'customers only' towards the bottom, and the other is a colon, after the words 'parking charge of' in the middle, unless you count paragraph markings, and the lack of punctuation may be important. So let's go and do this contract together:

“ParkingEye Car Park Management”

No full stop but we'll assume one is implied:

“4 hour max stay customer only car park for use only whilst shopping on site failure to comply with this”

Singular ‘this’:

“will result in a parking charge of: £85”

Now, what’s ‘this’ mean?

Mr Gopal: Well it’s, my interpretation would be the four hour maximum stay Sir.

Deputy District Judge Melville-Shreeve: Well that’s one possibility. What about:

“customer only car park for use only whilst shopping on site failure to comply with this”

Can’t I construe that to mean that a person who stays for less than four hours but does not shop on site, alternatively shops off site, would have to pay a parking charge?

Mr Gopal: Well yes Sir, but on the flip side it can also be construed that the four hours maximum stay forms part of the, is forming part of the failure to comply with this will result --

Deputy District Judge Melville-Shreeve: There’s --

Mr Gopal: In a parking charge.

Deputy District Judge Melville-Shreeve: Two possibilities. Read on:

“Parking limited to 4 hours (no return within 1 hour)”

Is that a ‘this’? If I return within one hour is that one of these ‘thises’?

Mr Gopal: Well it would be Sir, because it’s clearly marked that you cannot return within one hour, so if you park there for four hours and you --

Deputy District Judge Melville-Shreeve: Well where does it say that that will cause me to have to pay £85? There’s no paragraph number --

Mr Gopal: There may not be Sir, but I wouldn’t submit that that’s an issue in this case.

Deputy District Judge Melville-Shreeve:

“Park only within marked bays”

If I park not in a marked bay is that an £85 charge or not?

Mr Gopal: Well the point is Sir, that’s not relevant to this case.

Deputy District Judge Melville-Shreeve: It's a document I'm trying to construe, it's your contract:

“Parent and toddlers only in marked bays”

Now that's crass in two respects. First of all is that saying that there'll be an £85 charge if a person who doesn't have a toddler parks in a parent and toddler bay? That's one way you can read it. But the other way you can read it is that if parents with toddlers don't park in the marked parent and toddler bay, that they will be in breach of this contract. And, and the same applies to to:

“Blue badge holders only in marked bays”

What it means is that people who don't have blue badges shouldn't park in the disabled bays, but what it says is:

“Blue badge holders only in marked bays”

Mr Gopal: Sir I disagree. My interpretation of that sign, and any sign that I see in a car park is that is simply information for members of the public to be aware that the parents and toddlers can park in marked bays, blue badge, blue badge holders should park in marked bays. I, I wouldn't submit that that forms part of the contract that if --

Deputy District Judge Melville-Shreeve: Well this --

Mr Gopal: And I would --

Deputy District Judge Melville-Shreeve: This is the written contract and I'll tell you why I say that. I've got powerful glasses, right? Sail off into the very small print and you're going to find the following, second line down it says:

“Parking is at the absolute discretion of the landowner and the terms and conditions that apply are set out within this notice the parking contract”

So this document does not contain information. This is the parking contract, according to you. It has no paragraph numbers, it has no clear reference to anything, and it has an ambiguous phrase:

“failure to comply with this”

And interestingly I had a look at your notice to see if I could work out what, so to speak, you were alleging against this Defendant and in fact you're alleging overstaying.

Mr Gopal: Yes Sir.

Deputy District Judge Melville-Shreeve: So although she says she went to the shops, and she may or may not have done, I don't mind really because the allegation upon which your parking charge is based is, is overstaying. But, I have to tell you I'm not

convinced on the basis of your written contract that there's a term that says that that will lead to the £85, although you say that it's all clear, it's --

Mr Gopal: I would disagree with that --

Deputy District Judge Melville-Shreeve: Crystal clear.

Mr Gopal: Interpretation Sir, and it's, as stated, it's never been an issue that's been raised in the past because as far as most Courts are concerned, again I appreciate Sir that those are only district judges and not necessarily binding on yourself, the sign, to any reasonable person is pretty, is, I would submit, clear it's a four hour maximum customer only car park stay, and if you fail to comply with that then there will be a charge of £85.

Deputy District Judge Melville-Shreeve: Now let's move on to the penalty charge point. Some of the Courts have found that, that varying amounts of money are penalties rather than a contractually agreed sum. It seems to me you have, in this case you have a particularly hard problem because the deal that you're offering people is free parking. There is no, there is no suggestion of any charge for any parking. So if your, your car park was perfectly managed it would be simply full of people who never paid a penny, either to ParkingEye or to the land owner, or to anybody else, it would be a car park without payment, a car park without profit, a car park without money. So, there's no question, for example, of this lady, when she gets into her fifth hour, of blocking off a place that a paying customer was dying to get into, because there are no paying customers, so even if she stayed there for 40 years the consequences to ParkingEye would be of no financial significance, because she's never going to have to pay. So how do you say this £85 could possibly be justified as a payment? I, I've read your principals' evidence about this, but they don't seem to address the problem of the fact that the car park ordinarily wouldn't attract any payment.

Mr Gopal: Sir, clearly given the fact that ParkingEye are the management company, they incur costs in managing that car park. The system of the automatic number plate recognition systems, all of that incurs charges, Sir, and if the contract that a customer is entering into with ParkingEye is breached, the enforcement of that contract itself incurs charges and therefore the £85 that's being claimed is a reasonable sum, and, and has been decided by various judges to be, not only district judges but also judges of a higher standard, Sir.

Deputy District Judge Melville-Shreeve: Like who?

Mr Gopal: Well His Honour Judge Hegarty in the, in the copy of the case that I presented --

Deputy District Judge Melville-Shreeve: He didn't do an £85 charge. Let's have a look at what he, he *thought about it*. He, he thought £135 was plainly a penalty.

Mr Gopal: Sir.

Deputy District Judge Melville-Shreeve: And, let's see what he thought. He was dealing with £75 reduced to £37.50 if paid within 14 days. This one's £85 reduced to £50, if paid within 14 days. And so that's at paragraph 408. And then were the charges

penalties. He looks at the helpful judgment of Mr Justice Colman in *Lordsvale Finance -v- Bank of Zambia* saying:

“Whether a provision is to be treated as a penalty is a matter of construction to be resolved by asking whether at the time the contract was entered into the predominant contractual function of the provision was to deter a party from breaking the contract or to compensate the innocent party from breach. That the contractual function is deterrent rather than compensatory can be deduced by comparing the amount that would be payable on breach with the loss that might be sustained if breach occurred.”

And the point that I’m just making to you is that here there’s no possibly comparison because there is no loss. There’s never going to be a loss sustained because the parking’s free. So you’re in the rather awkward situation that any penalty charge would be purely a penalty. Even just a pound --

Mr Gopal: I disagree Sir.

Deputy District Judge Melville-Shreeve: Well --

Mr Gopal: All, all the documentation that’s before the Court clearly shows that these matters aren’t penalty charges. What can be construed as a penalty charge, which His Honour Judge Hegarty stated as a sliding scale, where if a certain amount isn’t paid then the amount would, increases to above the amount on the sign, His Honour Judge Hegarty said, I’m struggling to find the paragraph, if I was to be given a moment.

(pause)

Mr Gopal: The paragraph 428 of the, the document that I’ve handed you:

“I conclude that any motorist using the car park would be contractually bound to pay the charge of £75 if he exceeded the specified time limit and a demand for payment was made upon him. Whilst he might argue that the charge in question amounted to a penalty and was therefore irrecoverable, I think he would probably fail in that contention. But it seems to me, on the limited material presently before me, that he would probably succeed in any argument that the increase to £135 in the event of a failure to pay within the specified period did amount to a penalty.”

So the initial charge of £85, as held by His Honour Judge Hegarty, would not amount to a penalty Sir, and there’s been --

Deputy District Judge Melville-Shreeve: It’s not held by, this is obiter and --

Mr Gopal: I appreciate that but it’s, it’s *an* --

Deputy District Judge Melville-Shreeve: He’s saying probably, it’s not £85 it’s £75, he’s saying probably £135 is too much and probably £75 is one you might swing, but

here we're dealing with £85, not £75, anyway, not binding but all interesting stuff. You say it's not a penalty and the Defendant says it is. All right. There are a very large number of cases reported at district judge level, many of which you seem to be familiar with. Are you able to take me to any Court of Appeal or appellate decision on the, on the facts of this case where ParkingEye have taken one of these cases up to the next level and got themselves a binding judgment?

Mr Gopal: No Sir.

Deputy District Judge Melville-Shreeve: Is, is there such?

Mr Gopal: There isn't, but at the flip side there isn't a case which supports --

Deputy District Judge Melville-Shreeve: There's never going to be a case the other way because of course people who are made to pay a penalty of £75 by a court are very unlikely to take on a large company, the largest parking management company in the country, for the sake of their £75 penalty charge.

Mr Gopal: But again Sir, then on the flip side ParkingEye may take the point of view, given the costs, that it would incur in --

Deputy District Judge Melville-Shreeve: But you --

Mr Gopal: Taking the matter to --

Deputy District Judge Melville-Shreeve: You, were you to get an authority in your favour, would benefit to the tune of, presumably hundreds of thousands, if not millions -
-

Mr Gopal: They may well do so Sir, but I can't comment on the commercial reasons why ParkingEye --

Deputy District Judge Melville-Shreeve: All right.

Mr Gopal: As of yet haven't taken that *stage* --

Deputy District Judge Melville-Shreeve: That's a fair --

Mr Gopal: I mean they may well have Sir --

Deputy District Judge Melville-Shreeve: That's a fair comment.

Mr Gopal: They may well have and it hasn't been --

Deputy District Judge Melville-Shreeve: That's a fair comment. They may choose

Mr Gopal: Decided on.

Deputy District Judge Melville-Shreeve: They may choose today, let's, you know --

Mr Gopal: Sir.

Deputy District Judge Melville-Shreeve: Who knows. All right. Unless there's anything else you want to add I'm going to give a judgment in this case. I'm not asking you to say anything because you're not going to be able to help your case at all.

Mrs Collins-Daniel: That's fine. Thank you.

(judgment given)

Deputy District Judge Melville-Shreeve: Those are my rulings, thank you very much. Is there anything else I can do for either of you?

Mr Gopal: Sir --

Deputy District Judge Melville-Shreeve: You're entitled to apply for costs, which you can do if you wish to, if you've had any I'll consider them. Do you want leave to appeal?

Mr Gopal: Yes Sir, on the basis that some of the comments made in the judgment don't reflect the case law that has been before the Courts previously Sir, so my, my instruction, with my, my instructions, I would seek leave to appeal on that basis Sir.

Deputy District Judge Melville-Shreeve: OK. I've been asked for leave to appeal and the only test is whether or not I think there is a reasonable prospect of the appeal succeeding. I have reflected very long and hard about this, because I had the opportunity to read this case much earlier on today, ParkingEye having very helpfully *rendered* their arguments in, into writing and I have looked at the authorities and I realised that were I to come to a view against ParkingEye there was a possibility I might be asked for leave and I, I wondered whether this was a case in which I could say there was any reasonable prospect of success, but I regret that I am going to refuse leave for this reason, that although I may be wrong about the contractual matter, I don't think I am, but, otherwise I wouldn't have ruled as I have, but although it may turn out ultimately, if this is ever tested, that I'm wrong about that, I consider that the other three main points that I make are unanswerable, namely the contract itself is unintelligible from this notice and that no one construing it contra proferentem would ever impose a penalty upon a motorist. Secondly, that the charge is plainly a penalty charge and under the ordinary rules of contract law would be unenforceable, but that, thirdly, the European regulation, which is now part of our consumer law, would render this unenforceable, so I'm afraid for those reasons I think this appeal would fail, and so I'm going to refuse leave. Of course it doesn't prevent you from --

Mr Gopal: Yes, Sir.

Deputy District Judge Melville-Shreeve: Pursuing it. Very limited costs in the small claims track, because I don't suppose you paid any fees, or anything like that --

Mrs Collins-Daniel: No I haven't, I --

Deputy District Judge Melville-Shreeve: At your end of the business. But what you, you're entitled to is, well it's only this, you can have any lost earnings up to a rather meagre maximum, for being here today, and you can have your travel expenses. The lost earnings are a maximum of £90 a day. I wouldn't give you more than half a day unless you had to take the whole day off. Are you working at the moment?

Mrs Collins-Daniel: I'm on maternity leave but my husband has had to take time off to look after my child, so.

Deputy District Judge Melville-Shreeve: Your child?

Mrs Collins-Daniel: Yes.

Deputy District Judge Melville-Shreeve: So --

Mrs Collins-Daniel: He's taken half a day.

Deputy District Judge Melville-Shreeve: He's taken half a day, and what does he normally earn in a day?

Mrs Collins-Daniel: Oh, I, it's about £xx an hour, so a day --

Deputy District Judge Melville-Shreeve: So it would get you over £90 a day.

Mrs Collins-Daniel: Yes.

Mr Gopal: Sir --

Deputy District Judge Melville-Shreeve: So that would be £45.

Mr Gopal: He's not a party to these proceedings, he's not --

Deputy District Judge Melville-Shreeve: No.

Mr Gopal: Here, so I, it's --

Deputy District Judge Melville-Shreeve: It's true isn't it?

Mr Gopal: It's, the provisions are solely for witnesses.

Deputy District Judge Melville-Shreeve: Lost earnings is only for witnesses and people who attend as parties.

Mrs Collins-Daniel: Yeah.

Deputy District Judge Melville-Shreeve: Let's just have a look. I, I don't think I'm going to be able to get the, his --

Mrs Collins-Daniel: No, that's --

Deputy District Judge Melville-Shreeve: £45 or whatever, although, I'm going to have to think about it for a moment. Just, just let read and see what it says.

(pause)

Deputy District Judge Melville-Shreeve: The court may not order a party to pay a sum to another party in respect of the other party's costs, fees and expenses except (a) the fixed costs, blah, de, blah, (b) in proceedings, no. (c) any court fees. (d). Ah.

“expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing”

So it's babysitting expenses, isn't it? That's an argument.

Mrs Collins-Daniel: Yeah, childcare costs.

Deputy District Judge Melville-Shreeve: Yeah, childcare costs. A sum not exceeding the amount specified for any loss of earnings or loss of leave, or to staying away from home. Yeah, so it comes either (d) or (e). All right. I'm going to allow you £20.

Mrs Collins-Daniel: Thank you.

Deputy District Judge Melville-Shreeve: Because I think that's two hours of somebody --

Mr Gopal: I don't see on what basis you can do that Sir, because --

Deputy District Judge Melville-Shreeve: Have, have you got the CPR in front of you? 27.14. It says:

“(d) expenses which a party . . . has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing”

And I read on:

“(e) a sum not exceeding the amount specified in Practice Direction 27 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying”

This is 'or':

“to staying away from home for the purposes of attending a hearing”

So what she's done is she's incurred a loss for staying away from home.

Mr Gopal: I think, well no she hasn't Sir because she hasn't incurred any loss.

Deputy District Judge Melville-Shreeve: Well she's had to pay for childcare --

Mr Gopal: She hasn't because there's no childcare, the husband's looking after the child.

Deputy District Judge Melville-Shreeve: Well the husband's had to take half a day off, or a day --

Mr Gopal: But that's not childcare Sir.

Deputy District Judge Melville-Shreeve: What's not childcare, the husband taking --

Mr Gopal: The husband having to take time off. Childcare is actually paying someone to look after a child, which is not the case here. The most that Mrs Collins would be able to recover is travel expenses and any parking expenses.

Deputy District Judge Melville-Shreeve: Well that's an interesting thought, which I'll reflect on for a minute. And then what about your travel expenses and parking expenses?

Mrs Collins-Daniel: I paid £3.50 today to park, and I've driven here and I believe I live about seven miles away. So 14 miles round trip.

Deputy District Judge Melville-Shreeve: Right. 14 miles. We normally pay 0.45p a mile, which is £6.30, and £3.50. So the travel expense element comes to £9.80. So the question, let me have another little read and see if I can understand this correctly. Costs on the small claims track may not order a party to pay a sum in respect of that other party's costs, fees and expenses except. (c). Right, so it's over the page, (d) expenses which a party has reasonably incurred in travelling to and from a hearing or in staying away from home.

Mr Gopal: The staying away from home would obviously mean the expenses of a hotel if this had, say for example, the matter were listed in Cardiff and Mrs --

Deputy District Judge Melville-Shreeve: Yeah, had to stay in a hotel, I can see that. And a sum not exceeding the amount specified in Practice, for any loss of earnings or loss of leave by a party or witness due to attending a hearing. Are you on paid maternity leave?

Mrs Collins-Daniel: Yes.

Deputy District Judge Melville-Shreeve: There you go.

Mr Gopal: She has that paid maternity Sir.

Deputy District Judge Melville-Shreeve: Yeah, and she's just wasted half a day of maternity leave.

Mr Gopal: Well no, that's construing the law incorrectly Sir, because she is --

Deputy District Judge Melville-Shreeve: Why's that?

Mr Gopal: Still receiving the maternity pay.

Deputy District Judge Melville-Shreeve: Yeah.

Mr Gopal: It's not a case that she is not getting that maternity pay, it's not a loss. You're actually compensating her for more, because she hasn't, her maternity pay hasn't stopped because she's had to come here today. If, if Mrs Collins, if Mrs Collins was --

Deputy District Judge Melville-Shreeve: Yeah, but it's loss of leave. That's always the, the case with loss of leave. That's how --

Mr Gopal: Well no Sir because --

Deputy District Judge Melville-Shreeve: Loss of leave always --

Mr Gopal: No, no because most witnesses who attend Court actually have to take time off work, so loss of leave in terms of having to compensate them for holiday pay which they can't, in future take. But in this case that isn't the case because maternity pay is still being paid. In essence you will be giving the Defendant extra, because she's not actually losing anything --

Deputy District Judge Melville-Shreeve: No, because --

Mr Gopal: By being here today.

Deputy District Judge Melville-Shreeve: Maternity pay is to spend time with your kid. She is not spending time with her kid today and her maternity pay will run out at some point or other, I don't know what it is, three months or six months or something, and then you are home with your child with no money at all.

Mr Gopal: Well then how --

Deputy District Judge Melville-Shreeve: So she's just wasted half a day of time that she would have spent looking after her child.

Mr Gopal: So how is the Court going to determine what the maternity pay is?

Deputy District Judge Melville-Shreeve: £45.

Mr Gopal: On the basis of?

Deputy District Judge Melville-Shreeve: Half of a £90 day. What did you use to do when you worked?

Mrs Collins-Daniel: I m a xxx.

Deputy District Judge Melville-Shreeve: What did you get paid as a xxx?

Mrs Collins-Daniel: I get paid, yearly £x.

Deputy District Judge Melville-Shreeve: Well more than £80, £90 a day.

Mr Gopal: Sir I'm, Sir...

Deputy District Judge Melville-Shreeve: All right. £9.80 plus £45. So I'm going to say claim dismissed and Claimant to pay Defendant's costs of £54.80. That's £45 plus £9.80.

Mr Gopal: Sir, just for the note I have to point out I think that's an unfair order, given the fact that maternity pay has not actually been lost, and I would, just for the record, I think that needs to be noted Sir, the Court is compensating the Defendant for more than what she is actually entitled to. It's a different scenario when someone has to take leave --

Deputy District Judge Melville-Shreeve: Well I'm afraid --

Mr Gopal: Off work Sir.

Deputy District Judge Melville-Shreeve: That's your view, and your view from the bar I've heard, but my ruling remains the same.

Mr Gopal: Sir.

Deputy District Judge Melville-Shreeve: Thank you very much.

Mr Gopal: Thank you.

Deputy District Judge Melville-Shreeve: I wish you well with your child.

Mrs Collins-Daniel: Thank you very much.

Deputy District Judge Melville-Shreeve: Did I see one was due in March, is that what you said in your application, or whatever?

Mrs Collins-Daniel: No, she was born on xxx.

Deputy District Judge Melville-Shreeve: Born on xxx?

Mrs Collins-Daniel: Yeah. So she's --

Deputy District Judge Melville-Shreeve: So sorry, I --

Mrs Collins-Daniel: No, not at all, so she's --

Deputy District Judge Melville-Shreeve: Many congratulations.

Mrs Collins-Daniel: Very little. Thank you.

Deputy District Judge Melville-Shreeve: That's tremendous.

Mrs Collins-Daniel: Thank you very much for your time.

Deputy District Judge Melville-Shreeve: Thank you.
