

22 November 2013

Reference 6062523049
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J. A. Smith (Appellant)

-v-

ParkingEye Ltd (Operator)

The Operator issued parking charge notice number 550893/479117 arising out of the presence at Morrisons Grantham, on 6 June 2013, of a vehicle with registration mark X596ERY.

The Appellant appealed against liability for the parking charge.

The Assessor has considered the evidence of both parties and has determined that the appeal be **allowed**.

The Assessor's reasons are as set out.

The Operator should now cancel the parking charge notice forthwith.

Reasons for the Assessor's Determination

It is the Operator's case that a parking charge notice was correctly issued, giving the reason as: *'By remaining at the car park for longer than the stay authorised or without authorisation, in accordance with the terms and conditions set out in the signage, the Parking Charge is now payable'*. The Operator submits that a parking charge is now due in accordance with the clearly displayed terms of parking.

The Appellant does not dispute that the terms of parking were clearly displayed, or that he stayed for longer than the advertised maximum stay.

It is the Appellant's case that:

- a) He was working as a contractor on site and so was permitted to overstay the advertised maximum stay time.
- b) He had received another parking charge notice for the same reason at the same car park which had been cancelled by the Operator. Accordingly, this parking charge notice ought to be cancelled.
- c) The parking charge is not a genuine pre-estimate of the Operator's loss.

The Appellant has submitted that the parking charge does not reflect the Operator's loss, and so is not enforceable. The Operator has not addressed this submission.

It appears to be the Appellant's case that the parking charge represents a sum for specified damages, in other words compensation agreed in advance. Accordingly, the charge must represent a genuine pre-estimate of the loss caused by the alleged breach.

The Operator does not appear to dispute that the sum represents damages, and has not attempted to justify the charge as a genuine pre-estimate of loss.

Consequently, I have no evidence before me to refute the Appellant's submission that the parking charge is unenforceable. Accordingly, I must allow the appeal.

I need not decide any other issues.

Chris Adamson, Assessor