



16 October 2020

PRESS SUMMARY

R (on the application of Highbury Poultry Farm Produce Ltd) (Appellant) v Crown Prosecution Service (Respondent)

[2020] UKSC 39

On appeal from [2018] EWHC 3122 (Admin)

JUSTICES: Lord Reed (President), Lord Lloyd-Jones, Lord Kitchin, Lord Hamblen, Lord Burrows

BACKGROUND TO THE APPEAL

Highbury Poultry Farm Produce Ltd (“**HPFPL**”) operates a poultry slaughterhouse. The average throughput is 75,000 chickens per day, equating to 19,500,000 or so chickens per annum. The birds have their legs shackled to a moving line and are then submitted to a number of sequential processes, including stunning, bleeding and scalding.

On 31 August, 12 September and 5 October 2016 a chicken went into the scalding tank (where its feathers would be removed) while still alive because its neck had not been properly cut by a certified operative. HPFPL was charged with two offences in respect of each of the three incidents:

- (i) failure to comply with article 3 of Regulation (EC) No 1099/2009 (the “**EU Regulation**”), which required that animals should be spared avoidable suffering during their killing, contrary to regulation 30(1)(g) of the Welfare of Animals at the Time of Killing (England) Regulations 2015 (the “**WATOK Regulations 2015**”); and
- (ii) failure to comply with article 15(1) of the EU Regulation by failing to sever the carotid arteries and verify that the animal presented no signs of life before scalding, contrary to regulation 30(1)(g) of the WATOK Regulations 2015.

The trial judge dismissed HPFPL’s argument that regulation 30(1)(g) of the WATOK Regulations required proof of mens rea (ie proof that the defendant had knowledge of the factual circumstances constituting the alleged offence) or culpability on the part of the defendant. HPFPL challenged this ruling by way of judicial review. The Divisional Court found that there was a presumption that the WATOK Regulations 2015 required proof of mens rea, but that this presumption was displaced, not least due to social concern regarding animal welfare. HPFPL appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Burrows gives the sole judgment. The Court holds that both offences are offences of strict liability. Negligence by the business operator does not have to be proved.

REASONS FOR THE JUDGMENT

Regulation 30(1)(g) of the WATOK Regulations provides that it is an offence to contravene the EU Regulation. Article 3(1) of the EU Regulation provides that “Animals shall be spared any avoidable pain,

distress or suffering during their killing and related operations.” Article 15(1), Annex III, point 3.2 of the EU Regulation provides that “in case of simple stunning... the two carotid arteries or the vessels from which they arise shall be systematically severed... Further dressing or scalding shall only be performed once the absence of signs of life of the animal has been verified” [9].

HPFPL submitted that it was sufficient for negligence to be required under either the EU Regulation or the WATOK Regulation. As to the latter, in interpreting a domestic legal provision, there is a presumption that a crime requires mens rea or culpability [11]. However, the Court holds that the WATOK Regulations are no more than the mechanism through which the EU Regulation is given effect in domestic law. It is solely the interpretation of the EU Regulation that matters. In general, an EU regulation leaves Member States with the discretion to decide whether to create criminal offences in their domestic legislation. The WATOK Regulations 2015 create such offences [14]. However, while member states have a discretion as regards penalties, they have no discretion to lower the standards required by the EU regulation in question. If the EU regulation imposes strict liability, the domestic regulation must do the same [15]. Thus, if HPFPL fails to establish that negligence is required under the EU Regulation, then it cannot succeed on the basis that, in any event, regulation 30(1)(g) of the WATOK Regulations 2015 requires negligence and does not impose strict liability [16].

The EU Regulation has to be interpreted in accordance with EU law principles [19]. Insofar as they are different, domestic rules of statutory interpretation are displaced by those principles [23]. The teleological approach to legislative interpretation required by EU law means that there is a heavy stress on seeking to ensure that the interpretation of the words fulfils the purposes of the legislative provision and, more generally, the purposes of the EU [27]. The imposition of strict liability in the context of criminal law is not contrary to EU law [28].

The wording of article 15(1), requiring the severing of the carotid arteries, suggests the imposition of strict liability. There is no hint that business operators shall be liable only if the operational rules are intentionally or negligently infringed [33]. This interpretation is supported by the purpose of the provision. Strict liability imposes a clear and easily enforceable standard, uniform across the EU, and avoids the difficulty in pinpointing the individual upon whom the requisite state of mind must be attributed [34]. Article 15(1) therefore imposes strict liability [37].

The wording of article 3(1), requiring animals to be spared any avoidable suffering during their killing, also suggests strict liability [39]. Recital (2) to the EU Regulation, despite mentioning suffering being induced “by negligence or intention”, does not affect the wording of article 3(1). It merely clarifies that a breach of article 3(1) will usually entail fault. Negligence or intention are examples of the ways in which a breach of the EU Regulation induces suffering, but they do not form an exhaustive list [48]. The recitals to an EU regulation cannot be interpreted in such a way as to contradict the clear wording of that regulation [49]. Further, the earlier incarnation of the EU Regulation, Directive 93/119/EEC, did not include the words “negligence or intention” in the relevant recital. It is highly unlikely that the EU would have made its animal welfare requirements less strict under the EU Regulation than under the Directive it replaced [52]. Article 3(1) therefore also imposes strict liability [53].

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.

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