



Neutral citation [2021] CAT 25

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1357/5/7/20 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 July 2021

Before:

THE HON. MR JUSTICE JACOBS
(Chairman)
PROFESSOR JOHN CUBBIN
EAMONN DORAN

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) **STELLANTIS N.V.**
- (2) **FCA ITALY S.P.A.**
- ~~(3) **FCA MELFI S.R.L.**~~
- (4) **FCA SRBIJA D.O.O.**
- (5) **FCA POLAND S.A.**
- (6) **MASERATI S.P.A.**
- (7) **SEVEL S.P.A.**

Claimants

- v -

- (9) **NTN CORPORATION**
- (10) **NTN WALZLAGER (EUROPA) GmbH**
- (11) **NTN-SNR ROULEMENTS SA**

Defendants

RULING (PERMISSION TO APPEAL AND COSTS)

A. PERMISSION TO APPEAL

1. The Defendants (“NTN”) filed four grounds of appeal on 9 July 2021 (“the PTA Application”) seeking permission to appeal the Tribunal’s judgment of 18 June 2021, [2021] CAT 14 (“the Strike Out Judgment”). The Tribunal subsequently received a written response from the Claimants (“FCA”) and a written reply from NTN in respect of the PTA Application.
2. The Tribunal has considered NTN’s PTA Application on the papers and we unanimously refuse NTN permission to appeal.

(1) Reasons for refusing permission to appeal

3. We do not consider that the appeal has a real prospect of success.
4. NTN does not challenge the Tribunal’s identification of the relevant legal principles, nor its analysis of the conclusions reached by the CAT in *Royal Mail Group Limited v DAF Trucks Limited & Others* [2021] CAT 10 (“*Royal Mail*”). The judgment in *Royal Mail* contained a detailed discussion of the approach to be taken to amendments to plead mitigation by costs reduction, and was based on earlier authority. The legal principles are therefore not in a state of development (cf Ground 3).
5. The question for the Tribunal was therefore the application of those principles to the particular pleading by NTN in this case, and whether there was a plausible case of causation which carries a degree of conviction.
6. In reaching its conclusion that there was not, the Tribunal considered all the matters relied upon by the parties. The Tribunal did not (cf Ground 1) impose a requirement for NTN to identify unusual methods or methods other than ordinary budgetary control; but this is clearly a relevant consideration. *Royal Mail* shows that the Tribunal was entitled to consider, as a relevant factor, FCA’s lack of knowledge of the overcharge (cf Ground 2).

7. Having considered all the circumstances, the Tribunal concluded in the Strike Out Judgment at [30] that there were no facts relied upon in the Voluntary Particulars which might plausibly give rise to the inference of the direct causative link required. The conclusion was consistent with the approach in *Royal Mail*. There is no real prospect of the Court of Appeal wishing to overturn the Tribunal's evaluative decision.
8. The Tribunal's conclusion did not depend upon the question of whether or not NTN's case relied upon an unpleaded premise (cf Ground 3). But in any event there is no real prospect of persuading the Court of Appeal that the Tribunal's conclusion in that regard was wrong.

B. COSTS OF THE APPLICATION FOR SUMMARY JUDGMENT

9. NTN accepts that it must pay FCA's costs of its successful application for summary judgment. There is no dispute that a summary assessment is appropriate. The only issue is the amount of the costs to be awarded.
10. FCA seeks £123,612.95, comprising approximately £69,000 of solicitor costs and £54,690 of counsel fees for Mr Harris QC. NTN submits that these figures are excessive, and that a reasonable sum on summary assessment would be £50,000. This is rather lower than NTN's own costs of £ 93,418.86, although those costs include some £10,000 for the costs of preparing the Voluntary Particulars at a time prior to the strike-out application being made.
11. Under rule 104 (4) of the CAT Rules, the Tribunal may take into account various matters in exercising its discretion, including whether costs were proportionately and reasonably incurred, and whether costs are proportionate and reasonable in amount.
12. The Tribunal considers that both parties' costs are very high, bearing in mind that the issues raised by the summary judgment application were relatively short points addressed in a hearing which lasted less than half a day, and where both parties had the benefit of the *Royal Mail* decision. In addition, the relevant ground had also, to some extent, been covered in the previous disclosure

hearing, with the facts later pleaded in the Voluntary Particulars reflecting the case advanced at the earlier hearing.

13. We consider that there is force in NTN's submission that the level of counsel fees and solicitor time is excessive in all the circumstances, and that it would not be reasonable as between the parties to require NTN to pay anything approaching those sums. We take a broad brush approach, taking into account the level of fees incurred by NTN itself, which in our view are also high. We award FCA £65,000, representing just over 50% of the figure claimed.

The Hon. Mr Justice Jacobs
Chairman

Professor John Cubbin

Eamonn Doran

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 26 July 2021