

Rolls Building  
7 Rolls Buildings  
Fetter Lane  
Holburn  
London  
EH4 1NL

Friday, 3<sup>rd</sup> July 2020

before

THE HONOURABLE MR JUSTICE FANCOURT

G [REDACTED]

- v -

LANCASHIRE COMBINED FIRE AUTHORITY

THE CLAIMANT appeared IN PERSON  
NO APPEARANCE by or on behalf of the DEFENDANT

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WHOLE HEARING  
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1 **Case called at 10.30am.**

2 MR G■■■■■: As I said, I haven't got that in front of me, but as you say –

3 MR JUSTICE FANCOURT: Well, yes.

4 THE CLERK OF THE COURT: Sir, sorry to interrupt, my computer just unexpectedly  
5 decided to restart itself at about 10:57, so I've started recording again, but I don't  
6 know if, just for the sake of the recording, you want to just highlight what was  
7 discussed in the last minute or so, for the recording. It is entirely up to you, sir.

8 MR JUSTICE FANCOURT: For the sake of the recording, I have just had a short  
9 discussion with Mr G■■■■■ to make sure I understand exactly how he says that  
10 paragraph 5.2 of Schedule 2 to the order works, and the position we have reached,  
11 is that if someone retires early through ill health, the pensionable pay is that at the  
12 date of the retirement through ill health, but it has to take account of any promotion  
13 that the fireman could have been expected to have achieved by the normal  
14 retirement date for a person of his rank, and in Mr G■■■■■'s case that is the age of  
15 60. That is right Mr G■■■■■, I think, is it not?

16 MR G■■■■■: Yes, yes, My Lord.

17 MR JUSTICE FANCOURT: Well, Mr G■■■■■, I understand the argument. I think you  
18 place reliance on some guidance that -

19 MR G■■■■■: The Home Office commentary, sir.

20 MR JUSTICE FANCOURT: The Home Office commentary, yes. Let me see if I can  
21 locate that in the bundle that I have got. If not, we will refer to it in the  
22 Ombudsman's decision, because I think he quotes from it.

23 **Pause.**

24 Mr JUSTICE FANCOURT: No, I cannot find the Guidance itself, so let us go to the  
25 decision of the Ombudsman, that he sets out.

26 **Pause.**

27 MR JUSTICE FANCOURT: Actually, he only sets out the particular sentence that you  
28 referred to, which is not very helpful. Let me see if I can locate the guidance  
29 somewhere else in this bundle. Yes, it is actually an appendix to the Ombudsman's  
30 decision. The commentary says how much is the pension, the sums are set out in  
31 Examples 1 and 4 - 7, the basis of the calculations is explained here: 'A firefighter's  
32 basic ill-health pension is never less than one sixtieth of average pensionable pay,  
33 and never more than 40 sixtieths of average pensionable pay or what could have  
34 been earned by compulsory retirement age.' And it is those words, is it not: 'What  
35 could have been earned by compulsory retirement age,' that you rely on.

1 MR G [REDACTED]: The B3 pension, My Lord, was an agreed introduction by the union and the  
2 employers at the time that the statutory instrument was introduced in 1992. And it  
3 was designed, it may not have been written very clearly, but it was designed to  
4 replace the fact that people who were having to be retired injured out of the service,  
5 to get compensation were going to court, and that was expensive, not only for them  
6 but for the taxpayer and, you know, the government, and the unions decided that  
7 what was drafted was that B3, Pension B3 would hold compensation so that people  
8 did not have to go to court to gain their advantage. And they didn't - I and others  
9 feel that it wasn't worded awfully well, and I think that Mr [Copplestone Bruce?]  
10 feels the same way and has in his advice, has tried to explain that.

11 MR JUSTICE FANCOURT: Yes.

12 MR G [REDACTED]: But B3, there is no, there is very little understanding of the fact that that B3  
13 pension stands for compensation for anyone who has years to work, who has  
14 chances of promotion, would be compensated for, and in fact lose out that  
15 possibility. Yes.

16 MR JUSTICE FANCOURT: All right. Well, at the end of the day, the legal question is a  
17 very limited one, as encapsulated by Mrs Justice Falk, and I think correctly  
18 encapsulated, and I think you agree that she correctly expressed the issue. It turns  
19 purely on the interpretation of Schedule 2 to the order.

20 MR G [REDACTED]: It is the interpretation that –

21 JUDGE FAL KCOURT: It is purely a legal point

22 MR G [REDACTED]: It's a legal point, and I think this is why, well, I'm sure that Mr Copplestone  
23 Bruce felt strongly about this, and his last advice that you've read is, from my point  
24 of view, from our point of view, as good as it gets.

25 MR JUSTICE FANCOURT: Well, I quite understand what you say that, but Mr  
26 Copplestone Bruce is taking a rather broader approach to the merits of the pension  
27 scheme, and what I am concerned with is a much narrower question of the  
28 interpretation of the statutory instrument.

29 MR G [REDACTED]: Yes, that's correct. Yes.

30 MR JUSTICE FANCOURT: Well, Mr G [REDACTED], I have read Mr Copplestone Bruce's  
31 advice, I have read the relevant parts of the scheme, is there anything else that you  
32 want to say in support of your argument?

33 MR G [REDACTED]: Well, except to say, and it hasn't been said previously, that from my point  
34 of view and I'm the one you are dealing with now, and has been sort of on this  
35 quest for so many years now, it's not from personal greed that I'm doing this.

1 There's a group of people, of us. The 1992 scheme meant that looking back, those I  
2 worked with, those I commanded, those I came out of a building on my hands and  
3 knees with, wreaked; a lot of them have died leaving widows and beneficiaries.  
4 And when they die the widow loses half the pension. They then lose the injury  
5 pension and then of course when that person dies, the state pension goes with them.

6 So, the widows and beneficiaries, despite their husbands' paying 11% of their  
7 annual income into the pension scheme have got no advantage over anyone who has  
8 served the basic time to age 55 and got the same pension. They haven't had any  
9 advantage.

10 MR JUSTICE FANCOURT: Yes.

11 MR G [REDACTED]: And I think, and I'm sure, that is why B3 was brought in, to compensate  
12 people who have been injured and have gone out of the service through no fault of  
13 their own, who have been put in harm's way, which of course is what you accept  
14 when you're in the job, and then when they die, their widows and beneficiaries  
15 don't get any advantage. We believe that the 1992 scheme, people who were on  
16 that scheme then, are being underpaid their pension, for those who were injured,  
17 anyway, and it amounts to a legal interpretation of the statutory instrument as to  
18 whether or not they are being underpaid or were being underpaid.

19 MR JUSTICE FANCOURT: Yes, indeed. All right. If there is nothing else that you wish  
20 to add, Mr G [REDACTED], I will give a judgment.

21 MR G [REDACTED]: Well, there is such a lot written, My Lord -

22 MR JUSTICE FANCOURT: Yes.

23 MR G [REDACTED]: The bundle is, I meant this has been going on since I introduced, since I  
24 started it off in December 2015 by presenting the brigade with an IDR P1 which was  
25 in fact the first piece of paper they would receive from us, saying that we found  
26 something that really ought to be investigated, and the brigade have failed to do so,  
27 and we've got to this stage now. It's a long way down the road, but here we are.

28 MR JUSTICE FANCOURT: All right. I propose to give a short judgment, giving my  
29 reasons for the decision on your application.

30 **Judgment given.**

31 MR JUSTICE FANCOURT: Mr G [REDACTED], I am sorry that that goes against you but as I  
32 explained, it is a pure question of law, interpretation of the language of the scheme  
33 and in my judgment the point is simply unarguable. There is no material within the  
34 wording of the scheme to support the argument, nor in my view would it make any  
35 practical sense. So that is the reason why I have dismissed your application. I am

1           sorry that I have had to do that but that is the position as a matter of law.

2 MR G [REDACTED]: Thank you for your judgment My Lord. I will pass this on to those of us  
3           who are in this same position, that is to say hopeful[?]. Well, I suppose we have to  
4           swallow that but thank you again.

5 MR JUSTICE FANCOURT: Mr G [REDACTED], you are entitled to request or maybe the Trades  
6           Union may want to request a transcript of the judgment to be prepared. My clerk  
7           when I put the phone down will be able to give you some assistance with how you  
8           go about that if that is something that you want to do.

9 MR G [REDACTED]: Thank you for that. I would like to study it, as others would I am sure but  
10          would we have that in writing do you think or would it have to be...?

11 MR JUSTICE FANCOURT: No, you will get a full written judgment.

12 MR G [REDACTED]: Yes, thank you.

13 MR JUSTICE FANCOURT: The transcribers will prepare it and I will make any small  
14          adjustments as a necessary to correct any obvious errors or bad expression that I  
15          used in my judgment that I have just given but otherwise it will be approved and  
16          then sent out.

17 MR G [REDACTED]: Right.

18 MR JUSTICE FANCOURT: There is... It does not come free unless your financial  
19          circumstances are such that assistance, financial assistance will be given by the  
20          courts, which is why I mention that if it is of general importance as you indicated, I  
21          think earlier that it might be to a number of people.

22 MR G [REDACTED]: Well, I am the stalking horse if you like, that is to say that my particular  
23          case was one that could be brought up. I am in a position unlike some of the  
24          people; I am still here for a start, the others have died. I had the rank and I had the  
25          certain possibility of being promoted in the last five years.

26 MR JUSTICE FANCOURT: Yes.

27 MR G [REDACTED]: That's why it was my particular case that we decided to run.

28 MR JUSTICE FANCOURT: Right, I understand that. As I say, if you or others or a Trade  
29          Union decide they want a transcript then they are perfectly entitled to request one  
30          but there is a fee to pay to the transcribers to prepare the written transcript of the  
31          judgment.

32 MR G [REDACTED]: Yes, okay. I'll pass that on.

33 MR JUSTICE FANCOURT: Thank you very much. Thank you Mr G [REDACTED] for your very  
34          courteous submission and I wish you good health and a long life.

35 MR G [REDACTED]: Thank you My Lord.

1 MR JUSTICE FANCOURT: Goodbye.

2 MR G [REDACTED]: Bye.

3 **Court rises.**

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