



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TyG/2019/09

ALED POWELL

(Ceisydd)

v.

COMISIYNYDD Y GYMRAEG

(Atebydd)

PENDERFYNIAD

Mae'r Ymgeisydd wedi gwneud cais am adolygiad o benderfyniad y Tribiwnlys, dyddiedig 17 Medi 2020, ynghylch y mater hwn o dan reol 48 o Reolau Tribiwnlys y Gymraeg 2015.

Mae'r ymgeisydd wedi rhoi rhesymau pam ei fod yn teimlo bod y cais yn deilwng mewn e-bost dyddiedig 14 Hydref 2020.

Mae'r Tribiwnlys yn gwrthod y cais am adolygiad gan nad oes dim gwall amlwg a sylweddol yn y penderfyniad.

Rhesymau:

Mae'r Ymgeisydd yn cyflwyno 3 phrif fater sydd, yn ei farn ef, yn golygu bod gwall sylweddol, sef: -



WELSH LANGUAGE TRIBUNAL

Case No: WLT/2019/09

ALED POWELL

(Applicant)

v.

WELSH LANGUAGE COMMISSIONER

(Respondent)

DECISION

The Applicant has applied for a review of the Tribunal's decision dated 17 September 2020 in this matter under rule 48 of the Welsh Language Tribunal Rules 2015.

The applicant has provided reasons why he feels the application is merited in an email dated 14 October 2020.

The Tribunal refuses the application for a review as there is no obvious and material error in the decision.

Reasons

The Applicant puts forward 3 main issues why he feels there is a material error: -

1. Roedd y Tribiwnlys wedi derbyn bod y Comisiynydd wedi ystyried rhai ffactorau amherthnasol wrth wneud ei benderfyniad. Felly, dylid diddymu penderfyniad y Comisiynydd.
2. Roedd yr Ymgeisydd wedi cyflwyno dilysrwydd Ymchwiliad CSG 237 fel tystiolaeth ac yn ei ddatganiad roedd y Tribiwnlys wedi dweud nad oedd unrhyw gyfrifoldeb arno i ddadansoddi cyfreithlondeb yr ymchwiliad hwnnw. Roedd hyn yn fethiant difrifol ar ran y Tribiwnlys felly dylid diddymu penderfyniad y Tribiwnlys.
3. Roedd cyfeiriad y Tribiwnlys at ail-gynnal yr ymchwiliad blaenorol yn gamarweiniol gan nad oedd y naill barti na'r llall wedi awgrymu y dylid ail-gynnal yr ymchwiliad, dim ond y dylid cynnal ymchwiliad i'r methiant oedd yn destun cwyn CSG 627.

Roedd y Tribiwnlys wedi seilio'i benderfyniad ar ystyried holl resymau'r Comisiynydd gyda'i gilydd. Gwnaeth y sylw nad oedd rhai o'r rhesymau ar eu pennau eu hunain yn rhesymau cryf ac nad oeddynt, ar eu pennau eu hunain, yn berthnasol nac yn ddigonol wrth ystyried nodau'r Mesur. Serch hynny, roedd wedi datgan yn glir bod y Comisiynydd, wrth ddadansoddi'r rhesymau i gyd gyda'i gilydd, wedi ystyried materion perthnasol ac nad oedd prif nod y Mesur yn cael ei anwybyddu drwy ddadansoddi'r holl resymau y rhoddwyd ystyriaeth iddynt gyda'i gilydd wrth wneud y penderfyniad.

1. The Tribunal accepted that the Commissioner considered some irrelevant factors in arriving at its decision and should therefore annul the Commissioners decision.
2. The validity of the Investigation CSG 237 had been introduced as evidence by the Applicant and the Tribunals statement that it did not have any responsibility to analyse the legality of that investigation was a serious failing which should annul the Tribunals decision.
3. The Tribunals reference to repeating the previous investigation was misleading as neither party suggested that the investigation should be repeated only that an investigation should be conducted into the failing which is the subject of the complaint CSG 627.

The Tribunals decision was based on considering all the Commissioners reasons as a whole. It commented that individually some reasons were not strong reasons and individually not relevant or sufficient when considering the aims of the Measure. However, it clearly stated that analysing the reasons as a whole, the Commissioner had considered relevant considerations and the principle aim of the Measure was not being ignored by analysing all of the reasons taken into consideration as a whole in arriving at the decision.

Roedd yr Ymgeisydd wedi cyfeirio at ymchwiliad CSG 237 fel un annilys ac wedi tynnu sylw at sylwadau a wnaed ym Mhenderfyniad y Tribiwnlys, TyG/WLT 18/2. Mae'r Ymgeisydd yn datgan bod ystyriaethau'r Tribiwnlys yn cynnwys rhagdybiaeth bod ymchwiliad CSG 237 yn ddilys pan oedd wedi herio hyn, a bod y Tribiwnlys wedi gwneud camsyniad wrth beidio â dadansoddi dilysrwydd ymchwiliad CSG 237.

Nid oedd penderfyniad y Tribiwnlys yn TyG/WLT 18/2 wedi dod i gasgliad ynghylch dilysrwydd ymchwiliad CSG 237. Roedd wedi nodi bod yr amgylchiadau yn datgelu rhesymau cryf o bwys cyffredinol pam y dylid rhoi gwrandawriad i'r cais ond nid oedd wedi archwilio'r mater nac wedi dod i'r casgliad bod yr ymchwiliad yn annilys. Nid yw hyn gyfystyr â thystiolaeth ei fod yn annilys. Nid oedd yr Ymgeisydd wedi darparu dim tystiolaeth yn TyG/WLT 19/9 i ategu'r ddatl ei fod yn annilys y tu hwnt i honiadau'r Ymgeisydd ei fod yn annilys. Roedd ymchwiliad CSG 237 wedi'i gwblhau ac mae'n sefyll fel ymchwiliad dilys.

Y penderfyniad y bu'n rhaid i'r Tribiwnlys ei ystyried oedd a oedd y penderfyniad yn y mater hwn (TyG/WLT 19/9) i wrthod ymchwilio yn ddefnydd priodol o bwerau'r Comisiynydd. Canlyniad ymchwiliad CSG 237 oedd camau gorfodi ac roedd yr awdurdod

The Applicant referred to the investigation CSG 237 as invalid and drew attention to comments made in the Tribunals Decision TyG/WLT 18/2. The Applicant states that the Tribunals considerations included a presumption that investigation CSG 237 was valid when he challenged that, and the Tribunal had erred in not analysing the validity of investigation CSG 237.

The Tribunals decision in TyG/WLT 18/2 did not reach a conclusion in relation to the validity of investigation CSG 237. It noted that the circumstances reveal strong reasons of general importance why the application should be heard but did not examine the issue and did not conclude that the investigation was invalid. This falls short of evidence that it was invalid. No evidence was provided by the Applicant in TyG/WLT 19/9 to support the argument that it was invalid beyond the bare assertions by the Applicant that it was invalid. The investigation CSG 237 was completed and stands as a valid investigation.

The decision the Tribunal had to consider was whether the decision in this matter (TyG/WLT 19/9) was an appropriate use of the Commissioners powers in refusing to investigate the matter. Investigation CSG 237 concluded with enforcement action and the

lleol wedi cyflwyno newidiadau i'w arferion yn sgil yr ymchwiliad hwnnw. Yn yr achos presennol, bu'n rhaid dadansoddi'r penderfyniad i beidio â chynnal ymchwiliad o fewn y cyd-destun bod camau gorfodi wedi'u cymryd a bod y Cyngor wedi newid ei arferion. P'un ai oedd yr ymchwiliad yn ddilys ai peidio, ni fyddai'n newid y ffaith bod y camau gorfodi hyn wedi'u cymryd a bod arferion wedi cael eu newid. Nid oedd cyfrifoldeb ar y tribiwnlys i ystyried dilysrwydd ymchwiliad CSG 237.

Wrth gyfeirio at ailgynnal yr ymchwiliad, nid oedd y Tribiwnlys yn ystyried yr angen i gynnal holl ymchwiliad CSG 237 eto. Roedd yn cyfeirio at y ffaith y byddai unrhyw ymchwiliad yng nghyswllt y mater hwn yn ailadrodd dadansoddiad o faterion yn ymwneud â gweithdrefnau'r cyngor o ran sicrhau bod arwyddion ffordd yn cydymffurfio â'r Mesur. Dywedodd y Comisiynydd, o ystyried yr holl amgylchiadau, nid oedd yn debygol y byddai unrhyw gamau gorfodi yn cael eu rhoi ar waith gan fod tystiolaeth ar gael o'r ymchwiliad blaenorol bod y cyngor wedi rhoi sylw i'r materion hyn ac nad oedd wedi cael dim adroddiadau o batrwm o fethiannau a fyddai'n teilyngu cynnal ymchwiliad.

local authority had introduced changes to its practices as a result of that investigation. The present case had to analyse the decision taken not to investigate against the background that such enforcement action had been taken and action taken to change the practices of the Council. Whether or not the investigation was a valid one or not would not change the fact that the enforcements action and change in practices had taken place. The tribunal was not under a responsibility to consider the validity of the investigation CSG 237.

The Tribunal in referring to repeating the investigation was not considering the need for the whole investigation of CSG 237 to be repeated. It was referring to the fact that any investigation in this matter would be repeating an analysis of issues regarding the council's procedures for ensuring road signs complied with the Measure. The Commissioner stated that in all the circumstances any enforcement action was unlikely as they had evidence from the previous investigation of how the council had addressed these issues and there was no pattern of failings reported to them to merit an investigation.

Mae'r Tribiwnlys yn gwrthod y cais am adolygiad gan nad oes dim gwall amlwg a sylweddol yn y penderfyniad.

Iwan Jenkins

Llywydd Tribiwnlys y Gymraeg

16.11.20

The Tribunal refuses the application for a review as there is no obvious and material error in the decision.

Iwan Jenkins

President of the Welsh Language Tribunal

16.11.20