



24 July 2019

PRESS SUMMARY

**R (on the application of Association of Independent Meat Suppliers and another) (Appellants)
v Food Standards Agency (Respondent)**

[2019] UKSC 36

On appeal from [2017] EWCA Civ 431

JUSTICES: Lady Hale (President), Lord Hodge, Lady Black, Lord Lloyd-Jones, Lord Sales

BACKGROUND TO THE APPEAL

Cleveland Meat Company Ltd (‘CMC’) bought a bull at auction. It was passed fit for slaughter by the Official Veterinarian (OV) stationed at its slaughterhouse. After a post-mortem inspection of the carcass, and discussion with a Meat Hygiene Inspector, the OV declared the meat unfit for human consumption. It did not therefore acquire a health mark.

CMC took the advice of another veterinarian surgeon and challenged the OV’s opinion. It contended that in the event of a dispute, and of its refusal to surrender the carcass voluntarily, the OV would have to seize it under s 9 of the Food Safety Act 1990 (‘the 1990 Act’) and take it before a Justice of the Peace to determine whether or not it should be condemned. The respondent (‘the FSA’) did not accept that it needed to use this procedure. It maintained that the carcass should be disposed of as an animal by-product and served a notice for such disposal.

CMC, together with Association of Independent Meat Suppliers, issued a claim for judicial review to challenge the FSA’s assertion that it did not have to use the s 9 procedure. They claimed in the alternative that it was incumbent on the UK to provide some means for challenging the decisions of an OV in such cases. The claim failed in the High Court and Court of Appeal.

Before the Supreme Court there were three main issues. The first was a matter of domestic law: whether the s 9 procedure was available or mandatory in these circumstances. The second issue was whether the use of the s 9 procedure was compatible with the food safety regime laid down by European Union law, specifically Regulations (EC) 178/2002, 852/2004, 853/2004, 854/2004, 882/2004, and 1069/2009. The third issue was whether Regulation 882/2004 mandates an appeal procedure and, if so, whether such an appeal should allow a challenge to the full factual merits of the OV’s decision or whether the limited scope of challenge in a judicial review claim is sufficient to comply with the regulation’s requirements.

JUDGMENT

The Supreme Court decides to refer two questions to the Court of Justice of the European Union. The terms of the reference are set out by Lady Hale and Lord Sales in their joint judgment, with whom Lord Hodge, Lady Black and Lord Lloyd-Jones agree.

REASONS FOR THE JUDGMENT

For the purposes of this reference, the Court of Justice of the European Union is asked to assume that the claimant appellants' interpretation of section 9 of the 1990 Act is correct, and that a Justice of the Peace has power to give a ruling which may result in an award of compensation if he considers that a health mark ought to have been applied to a carcass.

In order to determine this appeal, this Court refers the following questions to the Court of Justice of the European Union [22]:

(1) Do Regulations (EC) Nos 854 and 882 preclude a procedure whereby pursuant to section 9 of the 1990 Act a Justice of the Peace decides on the merits of the case and on the basis of the evidence of experts called by each side whether a carcass fails to comply with food safety requirements?

(2) Does Regulation (EC) No 882 mandate a right of appeal in relation to a decision of an OV under article 5.2 of Regulation (EC) No 854 that the meat of a carcass was unfit for human consumption and, if it does, what approach should be applied in reviewing the merits of the decision taken by the OV on an appeal in such a case?

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. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>