Neutral Citation Number: [2022] EWCA Civ 415

Case No: CA-2020-000248

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Edwin Johnson QC (sitting as a Deputy High Court Judge)
[2020] EWHC 2600 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/03/2022

Before:

LORD JUSTICE NEWEY
LORD JUSTICE ARNOLD
and
LORD JUSTICE BIRSS

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Between:

(1) TIMES TRAVEL (UK) LIMITED **(2) NOTTINGHAM TRAVEL LIMITED**	**Claimants/ Respondents**
- and -	
PAKISTAN INTERNATIONAL AIRLINES CORPORATION	**Defendant/ Appellant**

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PJ Kirby QC and Thomas Bell (instructed by **Farani Taylor Solicitors**) for the **Appellant**
Heather Murphy (instructed by **Charles Morgan Lawyers**) for the **Respondents**

Hearing date: 9 March 2022

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Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10:30am on 29 March 2022 by circulation to the parties or their representatives by email and by release to BAILII and the National Archives.

Lord Justice Newey:

1. In this appeal, the appellant, Pakistan International Airlines Corporation ("PIA"), challenges the sums which Edwin Johnson QC (now Edwin Johnson J), sitting as a Deputy High Court Judge, found to be due to the respondents, Times Travel (UK) Limited ("TT") and Nottingham Travel Limited ("NT"), in a judgment he gave on 7 February 2020.

Basic facts

2. TT and NT are travel agents which acted as agents for PIA. In 2014, TT and NT brought proceedings against PIA for, among other things, unpaid commission. On 14 June 2017, Warren J gave judgment in their favour ("the 2017 Judgment") and ordered the taking of an account to determine how much was due from PIA.

3. So far as NT was concerned, paragraph 3 of Warren J's order ("the 2017 Order") recorded that it was entitled to "remuneration in the form of NSR" and "commission in accordance with [PIA's] Agent Productivity Scheme" for periods specified in the order. After further hearings, Sir Nicholas Warren (who had by now retired) made an order dated 9 July 2018 which, among other things, expanded on the basis on which NT should receive "NSR". Paragraph 1 of that order provided:

> "Paragraph 3(i) of the Order of 14 June 2017 is to be interpreted and applied on the following basis:
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> a. NSR carries the meaning given to it in the judgment dated 14 June 2017;
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> b. NSR is to be applied on the basis of the lowest published fare at which the public can acquire the same ticket direct from PIA whether over-the-counter or online or otherwise; and
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> c. PIA must account to [NT] in respect of each ticket sale for the difference between the price at which it in fact provided the ticket to [NT] and the price which [NT] was entitled to acquire the ticket (which is calculated by reference to the lowest published price at which it offered the same ticket to the public on the exact date and time the ticket was issued by [NT])."

By paragraph 2 of his order, Sir Nicholas Warren further directed PIA to produce and serve an Excel spreadsheet which was to be verified by affidavit and in which "[e]ach ticket must be a separate line entry" and "[e]ach line entry must be supported by documentary evidence from BSP in native format".

4. Warren J had defined "Net Sale Remuneration" (or "NSR") in these terms in paragraph 8 of the 2017 Judgment:

> "A form of remuneration … in which the Claimants were offered tickets at 7% below the Net Price (thus at a price lower

> than that at which [PIA] offered them for sale directly to the public)".

In a decision and ruling dated 27 June 2018, Sir Nicholas Warren explained in paragraph 9 that "Net Price", as used in paragraph 8 of the 2017 Judgment, was the same as "Net Ticket Price", which was stated in paragraph 8 the 2017 Judgment to refer to "Price of ticket less tax, *ie* Base Ticket Price + YQ". "Base Ticket Price" and "YQ" were themselves defined to mean respectively "Price of a ticket less tax and YQ" and "Variable surcharge levied by airlines on the price of a ticket as a result of fluctuations on the cost of fuel".

5. "BSP", from which PIA was to provide "documentary evidence … in native format" under the terms of Sir Nicholas Warren's 9 July 2018 order, was the billing and settlement system operated by the International Air Transport Association ("IATA"). BSP records the date a ticket was issued, the ticket number and the fare, taxes and other charges to be paid by the agent in respect of the ticket.

6. As regards the commission due to TT and NT under the "Agent Productivity Scheme" (or "APS"), the 2017 Order provided for this to be calculated by reference to "base ticket sales" and "base sales".

7. The litigation pursued a somewhat different course as regards TT. Warren J held in the 2017 Judgment that TT was entitled to set aside for duress an agreement which it had entered into with PIA on 24 September 2012. That being so, the account which Warren J directed should be taken in relation to TT in the 2017 Order, and in respect of which he on 9 July 2018 required PIA to produce and serve a spreadsheet, did not fully correspond to that ordered with regard to NT. However, in a decision later affirmed by the Supreme Court (see [2021] UKSC 40, [2021] 3 WLR 727), on 14 May 2019 the Court of Appeal allowed an appeal by PIA, concluding that Warren J had been wrong to hold that TT was entitled to avoid its 2012 agreement with PIA: see [2019] EWCA Civ 828, [2020] Ch 98. In the circumstances, on 20 May 2019 Mr Johnson ("the Judge") varied the 2017 Order to bring the directions relating to TT into line with those which applied to NT.

8. By this stage, PIA should have produced and served spreadsheets complying with Sir Nicholas Warren's order of 9 July 2018. On 19 December 2018, Barling J made an order under which PIA was to be debarred from defending the account unless it complied with its obligations in this respect by 16 January 2019. On that latter date, PIA supplied spreadsheets which were described as showing details of the tickets PIA had sold to TT and NT. The spreadsheets did not, however, comply with Sir Nicholas Warren's order, notably because they failed to give the lowest published fares at which PIA had offered tickets to the public at the relevant times. When, therefore, the matter came back before the Judge on 13 August 2019, PIA accepted that the deficiencies in the spreadsheets it had prepared meant that it was debarred pursuant to Barling J's order from defending the account.

9. The account was the subject of a trial before the Judge in December 2019. As before us, TT and NT were represented by Miss Heather Murphy. Mr Thomas Bell appeared for PIA, but PIA being debarred from defending the account he played only a limited role. He was permitted to make representations as to the date to which the account should run, but not on other issues.

10. The evidence before the Judge included spreadsheets in which TT and NT quantified their claims. The way in which the spreadsheets had been prepared was explained in similar terms in affidavits made by Mr Ismail Ahmad, a director of TT, and Mr Asim Nazir, a manager for NT. It suffices to quote from Mr Ahmad's affidavit. He said:

> "11. [TT] had produced an Excel Spreadsheet which was extracted from [TT] back office invoicing system called AR Technologies New Flight Information V3 ('ARTNFI'). This software is connected to SABRE and when a ticket is issued by us on any airline through our SABRE (GDS), the software picks up all the relevant information including ticket number, date of issue, routing, cost price to be paid to airline, taxes breakdown of the ticket etc. A search query was created to pull ticket data from all [PIA] tickets issued by [TT] from 16 October 2010 to 31 October 2012 with the parameters of:
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> a. Date ticket was issued;
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> b. Ticket number;
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> c. Cost price paid to [PIA] via BSP.
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> 12. The result of the search was exported from the software to Microsoft Excel format and the Spreadsheet produced. This Spreadsheet details total sales for [PIA] in these periods by [TT] and accordingly the incentive is calculated according to the tier basis in the June 2014 order.
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> 13. The ticket numbers and the cost price were also cross checked with the BSP reports which are third party reports generated by IATA. The BSP reports from … this period are the same ones [PIA] have provided as they are not disputed in terms of raw data (ticket number and cost price).
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> 14. [PIA] has produced an Excel spreadsheet showing details of the tickets sold by [TT] from 16 October 2010, in accordance with the order of 9 July 2018. The original database from which the spreadsheet has been compiled is held [on] the mainframe computer at [PIA's] head office in Pakistan.
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> 15. The BSP reports for the spreadsheet have already been provided by [TT] in previous account disclosure so not to duplicate the data have not been provided again with the spreadsheet filed and served on 9th September."

11. Mr Ahmad had explained earlier in his affidavit that "[a]gents use a computer Global Distribution System ('GDS') such as SABRE to view what tickets are available and to make a booking".

12. TT and NT also put in schedules summarising their claims. By way of example, TT's schedule for its NSR claim calculated what it was due at 7% of "Total Ticket Sales (PIA to [TT])" for specified periods. Thus, the total sales for November and December 2012 were given as £2,281,963.74 and so £159,737.46 (i.e. 7% of £2,281,963.74) was said to be due as NSR. In all, £2,669,302.51 was claimed by TT in respect of NSR.

13. The Judge gave judgment on 7 February 2020. With regard to APS, the Judge recorded that TT's and NT's quantification of their claims had been accepted by Mr Bell and further said that he was himself satisfied that the claims for APS had been correctly calculated. Accordingly, the Judge determined that TT and NT were respectively due £188,181.60 and £153,373.49 by way of APS.

14. Turning to NSR, the Judge noted that TT and NT should have had the benefit of a 7% discount from the lowest published price at which PIA offered the same ticket to the public on the same date and at the same time, but he explained in paragraph 66 of his judgment that "[t]his integral component was … missing from the evidence which was before [him] at the Account Trial". After discussing the available materials, the Judge said in paragraph 102:

> "I regard myself as entitled to find and do find, on the evidence before me, that [PIA] did fail to give [TT and NT] the benefit of the 7% discount to which [TT and NT] were entitled by way of NSR, on tickets sold to [TT and NT] in the period between 1st November 2012 and 14th June 2017".

In paragraph 110, the Judge concluded:

> "(1) I find that [PIA] failed to give [TT and NT] the benefit of the required 7% discount by way of NSR on ticket sales to [TT and NT]. I find that this was a total failure rather than a partial failure.
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> (2) I accept [TT and NT's] calculations of the sums due to them by way of NSR, subject to the qualification that the claim of [NT] is limited to the period ending on 14th June 2017."

Approaching matters on that basis, the Judge held TT and NT to be owed £2,669,302.51 and £1,665,312.39 respectively for NSR.

15. The order giving effect to the Judge's judgment was made on 21 February 2020 and sealed on 24 February. Its terms had been agreed between counsel and approved by the Judge.

16. In May 2020, however, PIA both filed the appellant's notice giving rise to the present appeal and applied for the February order to be corrected under the "slip rule". The

basis in each case was that the sums payable by PIA had been calculated by reference to gross fares, including taxes, when taxes should have been excluded.

17. The slip rule application came before the Judge on 14 September 2020. In a judgment given on 2 October 2020, he concluded that an error had been made in the taking of the account but that it was not one that could be corrected under the slip rule. He explained in paragraph 86 of his judgment:

> "If I was minded to accede to this application, it seems to me that I could not simply order that the figures in paragraphs 2-5 of the February 2020 Order be replaced by the revised figures calculated by [PIA]. The problem that I have is that there has never been an investigation of the different elements of the ticket prices in the relevant columns of the BSP reports. The Account was not taken on this basis. An account taken on this basis would be a different account. I do not regard myself as being in a position where I can legitimately make findings as to what the results would have been if that different account had been taken. I can see that, if that different account had been taken, I might have been willing to take a robust view of arguments from [TT and NT] that the BSP reports did not show the correct figures to be used in the taking of that account. I am not however taking that account. I am being asked to exercise a jurisdiction under the slip rule."

The Judge went on in paragraph 88:

> "In my view, the reality of the position is that if I was minded to accede to this application, it would require me to direct a retaking of the Account, on a different basis to that on which the Account was taken. It seems to me that the taking of a step of this kind is well outside the legitimate jurisdiction of the court under the slip rule."

18. In the course of his judgment, the Judge said this in paragraph 79 in relation to the question "what would have happened if the error … had been identified at a stage when it would, at least in theory, have been capable of correction":

> "The answer to that question seems to me open ended. One can test the position by considering what would have happened if the error had been identified and raised prior to the trial of the Account. I do not think that it matters, for this purpose, that [PIA] had been debarred from defending the Account. [PIA] was represented at the trial of the Account, and I permitted [PIA] to assist me with one of the issues I had to decide in the Account. It seems to me unrealistic to think that I would have closed my mind to the error, if it had been pointed out to me by [PIA] at or prior to the trial of the Account. Rather, it seems to me that I would have had to make a decision as to what to do about the error and, depending upon that decision, as to the consequences of the error for the taking of the Account."

19. Now, however, PIA seeks to have the error which the Judge considered to have been made on the taking of the account remedied by way of its appeal to this Court.

20. PIA filed evidence from Mr Taimoor Malik of PIA in support of both its slip rule application and the present appeal. However, Mr PJ Kirby QC, who appeared for PIA with Mr Bell, rightly did not attempt to persuade us that we could have regard to it. The matters to which Mr Malik referred could plainly have been discovered with reasonable diligence before the trial and PIA was anyway debarred from defending the account.

PIA's case

21. Under the 2017 Order, as later explained and amended, TT and NT were entitled to buy tickets from PIA at 7% below the "Net Ticket Price", defined to refer to "Price of ticket less tax, *ie* Base Ticket Price + YQ". In other words, TT and NT were to pay 7% less than the price *including* fuel surcharge (or "YQ") but *excluding* tax. As regards APS, what was due from PIA fell to be assessed by reference to "base ticket sales" or "base sales" and so again on the basis of sales excluding tax.

22. Mr Kirby argued that, when the account was taken, the figures used in the calculation of NSR and APS were inclusive of tax, with the result that the amounts due to TT and NT were over-stated. He relied in this respect on BSP reports supplied by PIA in January 2019 which were in evidence at the trial. The headings to these reports include "Gross Fare Cash", "Tax/Fee Cash" and "Payable Balance". The amounts shown under these headings in respect of, say, a document issued on 8 January 2013 are, respectively, £340.00, £207.55 and £547.55. Here, therefore, "Payable Balance" is the aggregate of "Gross Fare Cash" and "Tax/Fee Cash", and the same is true elsewhere in the reports. Mr Kirby submitted that the amounts due to TT and NT were determined by reference to the "Payable Balance" figures (or equivalents from TT's and NT's own invoicing systems), but those included tax and so were inappropriate. TT and NT ought properly, Mr Kirby said, to have used the "Gross Fare Cash" column (or equivalent) when framing their claims.

23. Mr Kirby stressed that the Judge could not be blamed for the error which he said had been made. He recognised, moreover, the need for finality in litigation: no one had drawn the Judge's attention to the point and PIA had accepted TT's and NT's quantification of their APS claims. Mr Kirby contended, however, that in the particular circumstances PIA should be permitted to raise the problem on appeal. As things stand, he said, TT and NT enjoy a substantial windfall generated by their own mistake in claiming commission by reference to figures which, incorrectly, included tax. There would, Mr Kirby submitted, be no prejudice to TT and NT if matters were corrected.

Legal principles

24. As Lewison LJ observed in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29, at paragraph 114, "The trial is not a dress rehearsal. It is the first and last night of the show". Even so, this Court sometimes allows new points to be taken on appeal, and, as Snowden J (with whom Longmore and Peter Jackson LJJ agreed) noted in *Notting Hill Finance Ltd v Sheikh* [2019] EWCA Civ 1337, [2019] 4 WLR

146, at paragraph 26, "there is no general rule that a case needs to be 'exceptional' before a new point will be allowed to be taken on appeal".

25. In *Singh v Dass* [2019] EWCA Civ 360, Haddon-Cave LJ (with whom McCombe and Moylan LJJ agreed) summarised the principles which apply where a party seeks to raise a new point on appeal in these terms:

> "16. First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.
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> 17. Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial (*Mullarkey v Broad* [2009] EWCA Civ 2 at [30] and [49]).
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> 18. Third, even where the point might be considered a 'pure point of law', the appellate court will only allow it to be raised if three criteria are satisfied: (a) the other party has had adequate time to deal with the point; (b) the other party has not acted to his detriment on the faith of the earlier omission to raise it; and (c) the other party can be adequately protected in costs. (*R (on the application of Humphreys) v Parking and Traffic Appeals Service* [2017] EWCA Civ 24; [2017] R.T.R. 22 at [29])."

26. In *Notting Hill Finance Ltd v Sheikh*, Snowden J said this about the approach to be adopted:

> "26. … Whilst an appellate court will always be cautious before allowing a new point to be taken, the decision whether it is just to permit the new point will depend upon an analysis of all the relevant factors. These will include, in particular, the nature of the proceedings which have taken place in the lower court, the nature of the new point, and any prejudice that would be caused to the opposing party if the new point is allowed to be taken.
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> 27. At one end of the spectrum are cases such as the *Jones* case in which there has been a full trial involving live evidence and cross-examination in the lower court, and there is an attempt to raise a new point on appeal which, had it been taken at the trial, might have changed the course of the evidence given at trial, and/or which would require further factual inquiry. In such a case, the potential prejudice to the opposing party is likely to be significant, and the policy arguments in favour of finality in litigation carry great weight. As Peter Gibson LJ said in the *Jones* case (at para 38), it is hard to see how it could be just to permit the new point to be taken on appeal in such

> circumstances; but as May LJ also observed (at para 52), there might none the less be exceptional cases in which the appeal court could properly exercise its discretion to do so.
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> 28. At the other end of the spectrum are cases where the point sought to be taken on appeal is a pure point of law which can be run on the basis of the facts as found by the judge in the lower court: see eg *Preedy v Dunne* [2016] EWCA Civ 805 at [43]–[46]. In such a case, it is far more likely that the appeal court will permit the point to be taken, provided that the other party has time to meet the new argument and has not suffered any irremediable prejudice in the meantime."

27. The "*Jones* case" to which Snowden J referred was *Jones v MBNA International Bank Ltd* [2000] EWCA Civ 514. In that case, Peter Gibson LJ said at paragraph 38:

> "It is not in dispute that to withdraw a concession or take a point not argued in the lower court requires the leave of this court. In general the court expects each party to advance his whole case at the trial. In the interests of fairness to the other party this court should be slow to allow new points, which were available to be taken at the trial but were not taken, to be advanced for the first time in this court. That consideration is the weightier if further evidence might have been adduced at the trial, had the point been taken then, or if the decision on the point requires an evaluation of all the evidence and could be affected by the impression which the trial judge receives from seeing and hearing the witnesses. Indeed it is hard to see how, if those circumstances obtained, this court, having regard to the overriding objective of dealing with cases justly, could allow that new point to be taken."

The present case

28. It can be seen from the authorities that a party will not generally be allowed to raise for the first time on appeal a point which "would necessitate new evidence or … , had it been run below, … would have resulted in the trial being conducted differently with regards to the evidence at the trial" (to quote Haddon-Cave LJ) or which, "had it been taken at the trial, might have changed the course of the evidence given at trial, and/or which would require further factual inquiry" (to quote Snowden J). The point which PIA now wishes to advance is of that character. It is not possible to determine from the existing evidence the extent, if any, to which the sums due to TT and NT in respect of NSR and APS were over-stated on the taking of the account as a result of being assessed by reference to tax-inclusive figures. If, moreover, PIA had queried in due time the basis on which its liabilities to TT and NT were being calculated, that would probably have affected the taking of the account and the evidence adduced by TT and NT. As things stand, there would have to be a remittal if this Court allowed PIA to run its new point. Mr Kirby accepted that this Court would not itself be in a position to arrive at revised figures.

29. As I have said, PIA relies on BSP reports which were available at the trial. It is apparent from, for example, the passage from Mr Ahmad's evidence set out in paragraph 10 above that TT and NT cross-checked their own calculations against those reports. However, Mr Ahmad does not explain quite how the exercise was undertaken or, in particular, by reference to which column in the BSP reports. Further, the amounts which TT and NT understood to be suggested by the BSP reports did not precisely tally with their own calculations. For instance, NT reckoned that it was entitled to £1,665,312.39 as NSR whereas it saw the BSP reports as indicating a liability of £1,677,958.74, £12,646.35 more. While, therefore, it seems likely that TT and NT used tax-inclusive figures when quantifying the NSR and APS due to them, evidence would be needed to prove the point.

30. That, however, is by no means the end of PIA's difficulties. Supposing that it could be inferred that TT's and NT's calculations were founded on tax-inclusive figures corresponding to those in the "Payable Balance" column of the BSP reports and, hence, that the calculations were flawed, it still would not be possible to know with any certainty how to correct them. As was stressed by Miss Murphy, there is no evidence as to the ingredients of the figures in the "Gross Fare Cash" and "Tax/Fee Cash" columns. Tax is presumably included in the "Tax/Fee Cash" amounts and so also in those in the "Payable Balance" column, and TT and NT were not entitled to have tax taken into account when assessing either NSR or APS. However, the evidence does not disclose what, if any, fees contributed to the "Tax/Fee Cash" sums or whether fuel surcharges ("YQ") were put into this column. PIA's case, as Mr Kirby explained, is that, by the relevant period, YQ will have become part of the fare itself and so will not have contributed to the "Tax/Fee Cash" figures, but that has not been established. Were it the case that YQ fed into "Tax/Fee Cash", it would definitely be wrong to assess the NSR due to TT and NT by reference to the "Gross Fare Cash" column since NSR fell to assessed by reference to "Net Ticket Price", which was defined to be inclusive of YQ. Since Mr Kirby accepted that there is an issue as to whether YQ was to be deducted when calculating APS, where YQ features in the BSP reports also matters in relation to APS. A similar question could, potentially, arise in relation to fees: it is impossible to discount the possibility that the "Tax/Fee Cash" figures encompass "fees" which ought to be taken into account when determining NSR and/or APS. As Miss Murphy said about the BSP report columns during argument, we do not know what is under the bonnet.

31. Mr Kirby emphasised the degree to which the sums which the Judge found to be due from PIA on the taking of the account were attributable to figures supplied by TT and NT. The Judge's conclusions reflected the spreadsheets in which TT and NT had quantified their claims. TT and NT thus, Mr Kirby argued, stand to enjoy a windfall generated by their own mistake.

32. On the other hand, PIA seems itself to have used tax-inclusive figures when giving "Ticket Cost Price to agent" in the spreadsheets it supplied on 16 January 2019. Further, PIA did not point out (doubtless because it did not spot) the alleged problem with TT's and NT's claims until after the order in respect of the account had been perfected. The Judge said in his slip rule judgment that it was unrealistic to think that he would have closed his mind to the error had it been drawn to his attention by PIA at or before the trial (see paragraph 18 above). If, however, the debarring order

against it had prevented PIA from highlighting the complaint it now makes, that would have been a consequence of its own default.

33. In any event, the simple fact is that, when the account was taken, the Judge was not alerted to any issue as to whether the figures put before him included tax and, even if he had been, the available evidence was not such as would have enabled him to work out quite what adjustments might be required. Nor could we. There would thus, as Mr Kirby fairly accepted, have to be a new hearing if we allowed PIA's appeal.

34. In all the circumstances, I do not think we should grant PIA permission to raise the point which it now wishes to pursue. The trial was "the first and last night of the show" and any issue as to whether TT and NT were erroneously basing their claims on tax-inclusive figures should have been taken by that stage. Allowing PIA to do so now would necessitate a further factual inquiry, new evidence and another hearing. That is not appropriate.

35. I would accordingly decline to allow PIA to raise its new point and dismiss the appeal.

Lord Justice Arnold:

36. I agree. PIA's skeleton argument in support of the appeal relied upon Mr Malik's statement both to show that the alleged error had been made and to quantify the alleged overpayment which resulted from it. Despite this, no application was made for permission to adduce Mr Malik's statement as fresh evidence. On the contrary, counsel for PIA disavowed reliance upon Mr Malik's statement, realistically accepting that permission to adduce it was very unlikely to be granted both because the evidence could have been adduced at trial with reasonable diligence and because PIA had been debarred from defending. Counsel for PIA sought instead to show that the evidence before the judge showed that the alleged error had been made, although he accepted that a further hearing would be required to quantify the extent of the overpayment. The documents he relied upon as demonstrating the alleged error are far from self-explanatory, however. For example, they contain the expression "document number". Counsel asserted, without evidence, that this was the same as "ticket number". When it was pointed out, however, that the "document numbers" were 10 or 11 digits whereas the "ticket numbers" referred to in other documents were 13 digits, he naturally had no explanation for this. In reality, PIA could not establish the existence of the alleged error, let alone quantify the alleged overpayment which resulted from it, without fresh evidence. On PIA's own admission it could not rely upon the necessary fresh evidence.

Lord Justice Birss:

37. I agree with both judgments.