



**TC01304**

**Appeal number: TC/2009/12099 & 12100**

*STRIKE OUT – lack of jurisdiction*

**FIRST-TIER TRIBUNAL**

**TAX**

**B DINES**

**Appellant**

**-and-**

**V R DINES**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: Mrs B Mosedale (Judge)**

**The matter was determined on the papers under Rule 29(3)(striking out without a hearing) following an opportunity for the appellants to make representations.**

## DECISION & DIRECTION

1. Below I issue a direction striking out Mr & Mrs Dines' claim for costs which was the only outstanding matter in Mr & Mrs Dines appeals against various assessments raised against them by HMRC for 1996/97 to 2005/6. This Decision notice gives my reasons for doing so.
2. The strike out direction was made on the papers and without a hearing under Rule 29(3) after a number of opportunities were given to the Appellants to make representations.
3. The two appellants, husband and wife, lodged appeals against assessments raised by HMRC some years ago. I cannot be more precise than this because (as explained below) the Tribunal service has destroyed its file. It is also their case that they requested a hearing in front of the General Commissioners by letter of 2 June 2008 but no hearing took place before the General Commissioners' jurisdiction ceased on 1 April 2009. Their appeals were transferred to this Tribunal.
4. Their appeals went to a hearing on 7 October 2009 but the hearing was adjourned part-heard. Subsequent to the hearing, the assessments on Mr & Mrs Dines were reconsidered by HMRC and reduced to nil.
5. The Tribunal wrote to the Appellants on 24 February 2010 acknowledging that they had requested the Tribunal keep its file open as Mr & Mrs Dines were considering making an application for costs against HMRC. This letter explained that the Tribunal considered that it would have no jurisdiction over such a claim, giving the same reasons in summary as I give below.
6. A further letter was sent to the Dines, it appears on 21 June 2010, which informed them that the Tribunal considered it had no power to award costs and therefore no jurisdiction in Mr & Mrs Dines' claim for costs. It informed them that the Duty Judge was therefore minded to strike out their claim for costs and asked them for representations. It seems Mr & Mrs Dines did not reply.
7. Although the file ought then to have been referred back to a Judge, by mistake the Tribunal Service destroyed the file.
8. Mr & Mrs Dines wrote again to the Tribunal on 4 April 2011 to update the Tribunal on their claim, informing the Tribunal that in the intervening period they have been pursuing a claim for costs through the Adjudicators Office and had also contacted the European Court for Human Rights.
9. On 16 May 2011 the Dines contacted the Tribunal Service again enclosing a letter from the European Court of Human Rights dated 4 May 2011 which asked them to confirm whether they have sought leave to commence judicial review proceedings. This brought to the Tribunal's attention that the file had been closed without formally resolving the costs claim.

10. Although belatedly, the file was then referred to a Judge. The Dines were again been asked for their representations on why they considered this Tribunal has jurisdiction to award costs. Their reply contained no grounds on which they considered this Tribunal has jurisdiction other than to say that they consider that adjudication of costs and compensation was included in the scope of their appeal. They also confirm that their appeal was destined to be heard by the General Commissioners.

11. However, the General Commissioners had no power to award costs or compensation in any appeal heard by them. This is because the Commissioners were a creature of statute and had no inherent jurisdiction to award costs. And statute did not give them such a power – there is no power to award costs under the General Commissioners (Jurisdiction and Procedure) Regulations 1994/1812. If the General Commissioners’ jurisdiction to hear Mr & Mrs Dines appeal had not been abolished, then, even though the Dines’ succeeded in their appeal, the General Commissioners could not have awarded them costs

12. Instead, of course, the Dines succeeded in their appeal after the First Tier Tribunal had taken over the jurisdiction to hear cases that would previously have been heard by the General Commissioners. The question is therefore whether this Tribunal has jurisdiction to award costs. In some cases, as set out in Rule 10, it does have such jurisdiction.

13. However, the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Schedule 3 Paragraph 7 restricts this Tribunal’s functions to award costs in respect of “current proceedings.” Mr & Mrs Dines’ appeals are “current proceedings” because Paragraph 1(2) provides:

“For the purposes of this Schedule there are “current proceedings” if, before the commencement date –

(a) any party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal, and

(b) the existing tribunal has not concluded proceedings arising by virtue of that notice.”

14. It is agreed by the Dines that they had served notice on the General Commissioners (an existing Tribunal) before 1 April 2009 as they say they wrote on 2 June 2008 requesting a hearing by the General Commissioners and imply that in their view the only reason the hearing did not come on before the General Commissioners’ were abolished was delay by HMRC. It is quite clear, also, that the General Commissioners did not conclude proceedings. There is therefore no doubt that the Dines’ appeals are “current proceedings”.

15. This Tribunal’s powers to award costs are therefore restricted by Paragraph 7(7) which provides:

“An order for costs may only be made if, and to the extent that, an order could have been made before the commencement date (on the

assumption, in the case of costs actually incurred after that date, that they had been incurred before that date.)”

16. In other words, this Tribunal can only award costs in current proceedings, such as this case, if an order could have been made before the commencement date of 1 April  
5 2009. The General Commissioners could not have awarded costs to the Dines. This was a case before the General Commissioners. This Tribunal therefore cannot award costs. We have no jurisdiction.

17. I therefore direct that the Appellants’ claim for costs in their appeal is hereby  
10 STRUCK OUT under rule 8(2) on the grounds that this Tribunal does not have any jurisdiction for the reasons given above.

18. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later  
15 than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE**  
**RELEASE DATE: 6 July 2011**

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