

WB - Occupational Pension Revenue
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SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 11 March 1993 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that as at 1 September 1992 the claimant was in receipt of an occupational pension amounting to £62 per week, and that, as that sum exceeded the prescribed sum of £35 by £27, the weekly rate of unemployment benefit was £43.10 less £27, leaving a sum of £16.10.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 11 March 1993. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant was present, but unrepresented, whilst the adjudication officer appeared by Mr R Dowdal of CAS.

3. The claimant was employed by British Telecom until he accepted voluntary redundancy. The Company had a scheme providing for the terms and conditions upon which the employment of those accepting voluntary redundancy should be terminated, and under this scheme different rules applied to different age groups. As regards those aged between 50 and 59, which included the claimant, there was a compensation award of six months' pay and an enhanced pension benefit payable at once. It was the claimant's contention that this scheme was nothing more than a redundancy scheme, arguing in effect that in so far as a pension became immediately payable, it was in no sense an occupational

pension within section 30 of the Social Security Contributions and Benefits Act 1992. Moreover, if it was, then the claimant could rely on regulation 25(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 [S.I. 1983 No.1598]. The adjudication officer rejected this submission, deciding that the claimant's entitlement to unemployment benefit as at 1 September 1992 should be abated by taking into account the amount of the claimant's occupational pension of £62 per week. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer.

4. The first question for determination by the tribunal was whether the pension payments receivable by the claimant were by way of an "occupational or personal pension" within section 30 of the Social Security Contributions and Benefits Act 1992. Section 30(1) provides as follows:-

" 30. - (1) If payments by way of occupational or personal pension which in the aggregate exceed the maximum sum are made for any week to a person who has attained the age of 55, the rate of any unemployment benefit to which apart from this section he is entitled for that week shall be reduced by 10p for each 10p of the excess; and in this subsection 'the maximum sum' means such sum not less than £35 as is prescribed."

The prescribed sum is currently £35.

What constitutes an occupational or personal pension is defined in section 122 as meaning:-

"In relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him -

(a) out of money provided wholly or partly by the employer or under arrangements made by the employer; or

(b)"

Occupational pensions are further defined in regulation 25(2) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations, and payments made under a redundancy scheme unconnected with an occupational pension scheme, as so defined, are specifically excluded by regulation 25(1). Regulations 25 reads as follows:

" 25. - (1) For the purposes of section 30 of the Social Security Contributions and Benefits Act 1992 there shall be

disregarded such pension payments for any week to any person who has attained the age of 55 as are sums paid to him -

- (a) solely by way of compensation for an employment of his coming to an end by reason of redundancy; and
 - (b) otherwise than under the rules of an occupational pension scheme or personal pension scheme of which he is or was a member.
- (2) In this regulation 'occupational pension scheme' means any scheme or arrangement which is comprised in one or more instruments or agreements and which has effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service to earners with qualifying service in an employment of any such description or category, where those benefits include benefits payable by reason of retirement which is at the normal age for retirement under the rules of such scheme or arrangement."

5. The tribunal expressed themselves as "satisfied on the balance of probabilities that the payments received by [the claimant] constitute payments by way of 'occupational or personal pension'". Clearly, they had in mind section 30 and regulation 25. However, they did not explain why they were satisfied that the payments receivable by the claimant fell within the definition. The point is important, because the claimant had vigorously contended that the payments arose out of a redundancy scheme wholly unconnected with any occupational pension arrangement. Accordingly, on that ground I must set aside the tribunal's decision for breach of regulation 25(2)(b) of the Adjudication Regulations. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

6. The claimant produced details of BT's pension scheme. Under it, a member would be entitled to receive a pension, payable for life, on his retirement on or after the normal retiring age of 60 years, provided he had qualifying service of at least five years, and in addition he would receive a single tax-free lump sum. There was a formula for calculating the amount of the pension and the amount of the lump sum. The important feature

of the scheme, for the present purpose, was that the pension was not payable before the normal retiring age of 60. However, that scheme was modified in the case of redundancy. If a member had at least five years qualifying service and was 50 or over, he would, if he were made redundant, be entitled to an immediate pension and a single tax-free lump sum. The reckonable service, on which both the pension and the lump sum were to be calculated, would be enhanced to what it would have been had the member remained in BT's employment until normal retiring age, subject to a maximum enhancement of 6½ years, and provided that reckonable service might not be increased to more than double its length. The claimant contended that this provision under the Company's pension scheme was something which lay outside the original scheme, and was part of the redundancy package. In order to induce people to volunteer for redundancy, they were offered the carrot of an immediate pension covering the period until their normal retirement age. The Company's normal pension scheme then came into operation. However, the lump sum would seem, in the light of the document before me, to be calculated and paid once and for all on early retirement, and not split so as to take into account the period before age 60 and the period on attaining that age, and this in itself would seem to indicate that this arrangement was not a separate redundancy scheme. But be that as it may, I am satisfied that the arrangement which was activated by redundancy was a mere variation of the pension scheme. Where a person was made redundant aged 50 or over, he could claim an immediate pension and lump sum calculated in accordance with the formula there prescribed. The arrangement had no separate or independent existence; it was grafted onto the existing pension scheme. 1

7. As regards section 30, I am satisfied that the pension payable to the claimant as at 1 September 1992 was an occupational pension within the definition contained in section 122. The pension involved periodical payments arising in connection with the end of the claimant's employment and these were made to him out of money provided wholly or partly by his employer, BT.

8. I next have to consider regulation 25(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983. Manifestly, the pension scheme set up by BT was an occupational pension scheme within the definition contained in regulation 25(2), and in particular the benefits of the scheme included "benefits payable by reason of retirement which is at the normal age for retirement under the rules of such scheme or arrangement". A scheme falls within the definition where it includes benefits payable by reason of retirement at the normal age of retirement, and it is immaterial that the particular benefits receivable by the claimant are not benefits payable at the normal age of retirement. (See R(U) 5/82 paragraph 11). Clearly then, the payments made to the claimant as from 1 September 1992 were made under the rules of an occupational pension scheme, and the result of this was that the claimant could not bring himself within regulation 25(1)(b). The

pension payments could not therefore be disregarded, and any weekly sum over and above £35 was deductible from his unemployment benefit.

9. For completeness I should mention that the claimant contended before me that, as the Company had included in its accounts, under the head dealing with the cost of redundancies, the expense of early retirement pensions, this in itself coloured their character, and required them to be considered part of a redundancy package, and not part of the company's pension scheme. There is nothing in this point. All that the Company's action shows is that it adopted the course it did in the accounts for the sake of commercial convenience. The cost of the early pensions arose out of redundancy; this did not mean that it was part of a redundancy scheme and nothing more. Moreover, for what it is worth, the Company themselves, when questioned on the nature of the early retirement provisions, categorically stated that the pension receivable by the claimant was an occupational pension.

10. Accordingly, my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 24 February 1994