

Commissioner's File: CU/102/1936

Region: North Eastern

SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR UNEMPLOYMENT BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Appeal Tribunal: Wakefield

Case No: 19/03

[ORAL HEARING]

1. My decision is as follows:

- (a) The claimant is not disqualified for receiving unemployment benefit from and including 21 March 1984 because, although she lost employment from that date owing to a stoppage of work which was due to a trade dispute at her place of employment, she has proved that she neither participated in nor was directly interested in the trade dispute which caused the stoppage of work: Social Security Act 1975, section 19 as amended;
- (b) The claimant is not disqualified for receiving unemployment benefit for the inclusive period from 21 March 1984 to 11 September 1984 because, although her claim for that period made on 17 September 1984 was outside the prescribed time limit, she has shown continuous good cause for the delay in making the claim: Social Security Act 1975, section 32(1) and the Social Security (Claims and Payments) Regulations 1979, regulation 14 and Schedule 1.

The claimant's appeal against the decision of the social security appeal tribunal dated 28 January 1986 is therefore allowed.

2. This is an appeal to the Commissioner by the claimant. It is a claimant's appeal and not an appeal by an Association - see form of appeal dated 27 May 1986 signed by the claimant personally. On my direction the appeal was the subject of an oral hearing before me on 27 January 1989, at which the claimant was present and gave evidence to me but was unrepresented. By her request, the hearing proceeded in the absence of her representative, who had also agreed to that course. The adjudication officer was represented by Mr Otto of the Office of the Chief Adjudication Officer. I am indebted to the claimant and to Mr Otto for their assistance to me at the hearing.

3. The appeal is from a unanimous decision of the social security appeal tribunal dated 28 January 1986, which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 18 September 1984. That decision had held the claimant to be disqualified for receiving unemployment benefit from and including 21 March 1984 because she had lost employment as a cleaner at South Kirkby Colliery in Yorkshire as a result of a



miners strike which started in March 1984. I do not need to make a finding of fact as to whether her job as a cleaner was in the same or a different "place of employment" within the meaning of section 19(2)(a) of the Social Security Act 1975 (a point which is canvassed in the submissions of the adjudication officer now concerned) because I have in any event held that she is able to escape disqualification under the 'trade dispute' provisions of section 19(1) of the 1975 Act, because she has proved that she neither participated in nor was directly interested in the trade dispute which caused the stoppage of work (for reasons see below).

4. The facts in this case are comparatively simple and are accurately summarised in paragraph 4 of the written submission dated November 1986 of the adjudication officer now concerned as follows,

"The claimant is employed by the National Coal Board (NCB) as a cleaner at South Kirkby Colliery. ~~she is not a member of the National Union of Mineworkers (NUM).~~ In October 1983 the NUM introduced a national overtime ban in support of a substantial pay rise - following rejection of an offer by the NCB of 5.2% and an undertaking from the NCB not to close collieries and reduce manpower levels. Following the NCB's announcement on 1.3.84 to close two Yorkshire Collieries (Cortonwood and Bulcliff Wood) industrial action increased and on 6.3.84 the NUM called an all out strike from midnight 9/10.3.84. For the first few weeks of the strike the claimant continued to work and attend for work and cross the picket line, but on 20.3.84 she was told by the manager Mr Lloyd not to attend any more until the strike was over. On 12.9.84 she made a claim for unemployment benefit and made a retrospective claim for the period 21.3.84 to 11.9.84 on 17.9.84."

5. The relevant statutory provision in force at the relevant period was section 19 of the Social Security Act 1975, before amendment by the Social Security Act 1986 but subject to the amendment made by the Employment Protection Act 1975 which removed the necessity to prove non-financing and the necessity to show non-membership of a "grade or class of workers". As thus amended, the relevant parts of section 19(1) read as follows,

"19. (1) A person who has lost employment as an employed earner by reason of a stoppage of work which was due to a trade dispute at his place of employment shall be disqualified for receiving unemployment benefit so long as the stoppage continues, [...]; but this subsection does not apply in the case of a person who proves -

(a) that he is not participating in or directly interested in the trade dispute which caused the stoppage of work;"

6. There is no doubt that the miners strike was a "trade dispute" (see definition in section 19(2)(b)) nor that the claimant lost her employment by reason of the stoppage of work due to the miners strike. Equally there is no doubt that she can prove that she was not participating in the trade dispute and the adjudication officer now concerned rightly so concedes (see paragraph 3 of submission of November 1986).

7. The next question therefore is whether the claimant can show that she was not "directly interested in the trade dispute which caused the stoppage of work" (section 19(1)(a) of the 1975 Act). In his original submission of November 1986, the adjudication officer now concerned pointed out that in Decision CU/39/1985 a Tribunal of Commissioners (subsequently affirmed on this point by the Court of Appeal) had held that, in relation to a particular colliery, the dispute which caused the stoppage of work by the miners was both as to wages and as to pit closures. The adjudication officer submitted that the claimant in this case had a direct interest in the pit closure aspect of the dispute (see paragraph 14 of submission of November 1986). I should pause at this point to say that I accept what is said in paragraph 14 of that submission, namely that, because the claimant as a cleaner would have had her wages fixed by agreements reached in the National Joint Council for Local



Authority Services (Manual Workers) - a body which does not involve either the NCB or the NUM in its negotiations, the claimant would have no direct interest in the pay issue.

3. However, since the adjudication officer's submission of November 1986 there have been a number of developments. A subsequent Tribunal of Commissioners in a decision on file CU/066/1986 considered the question of "direct interest" in the context of a female canteen worker at an NCB colliery. ~~It was held that she was engaged in a separate branch of work with the result that the trade dispute was not at her "place" of employment.~~ (see section 2(2)(a)). ~~In paragraph 3 of their decision they briefly considered whether a canteen worker could be directly interested in the issue of pit closures but pointed out that the particular colliery at which the canteen worker worked was not one likely to be closed and although there had been a reduction of manpower at the colliery the staffing levels in the canteen remained the same after the strike as they had been before the strike.~~ In the present case the evidence is that South Kirkby Colliery was not under any threat of closure at the time of the miners' strike though it was closed in March 1988, when the claimant was made redundant. The position at the relevant time i.e. the period of the year-long miners' strike is, however, summed up in paragraph 2 of a written submission on the claimant's behalf which accompanied her appeal (dated 27 May 1986), reading as follows.

"On 12 March 1984 [the claimant] was affected by the industrial dispute which began in the Mining Industry. At this time [the claimant] was employed at South Kirkby Colliery in a similar capacity to her current employment. This is a large unit with high productivity and there were no plans involving total or partial closure of any section of the Colliery. This is one of the super pits upon which the future of the Barnsley Coalfield is intended to depend."

Although events have shown that prediction to be false, I accept that it was true at the time. Consequently, ~~I accept as correct a further written submission dated 27 October 1988~~ by the adjudication officer now concerned in which he withdraws his earlier submission ~~(reiterated by Mr. Otto at the hearing) that the claimant was directly interested in the dispute and submits that she was not directly interested.~~

9. It follows therefore that the claimant has discharged the onus imposed by section 19(1) upon her of proving that she neither participated in nor was directly interested in the trade disputes which caused the stoppage of work and her loss of employment. She is not therefore prevented by the "trade dispute" disqualification from entitlement to unemployment benefit from 21 March 1984 to the date the stoppage of work was deemed to have ended (2 April 1985 - see paragraph 18 of submission dated November 1986 of adjudication officer now concerned).

10. The remaining question is whether or ~~not the claimant is time-barred~~ for the period from 21 March 1984 to 11 September 1984 because she did not in fact make a delayed claim for unemployment benefit for that period until 17 September 1984. As the normal time for making a claim for unemployment benefit is the same day as that for which benefit is claimed, she must show continuous good cause for the delay if she is not to be disqualified by the time-bar for receipt of unemployment benefit for that period (see Social Security Act 1975, section 82(1) - in force at that time - and regulation 14 of and Schedule 1 to the Social Security (Claims and Payments) Regulations 1979). This matter was not considered by the social security appeal tribunal but I am of course entitled to consider it under the provisions of section 102(1) of the Social Security Act 1975 which provides that,

"Where a question under this Act first arises in the course of an appeal to the Commissioner, the ... Commissioner may, if [he thinks] fit, proceed to determine the question notwithstanding that it has not been considered by an adjudication officer."

I consider it right in this case that I should decide the issue as to "good cause" for delay since it clearly arises on the facts but the original tribunal would not have needed



consider it as they had imposed a trade dispute disqualification.

11. The adjudication officer now concerned, in the submission of November 1986 (which in this regard is still maintained), deals with this matter at paragraphs 21-23. Paragraph 21 summarises the law as to "good cause" for delay. I will not set out the law in detail here as it is of course well settled and well known. On the facts of this case, the adjudication officer then submits as follows (paragraphs 22-23),

"The claimant completed form UB101 on 12.9.84 wherein she stated she wished to claim from that date. On 17.9.84 she also completed form UB591 claiming unemployment benefit retrospectively from 21.3.84 to 11.9.84. When requested to give her reasons for not claiming before she stated when she originally made a claim to the benefit in June 1984 the claim form was torn up by a member of staff at the Unemployment Benefit Office as the DHSS had sent her there in error. The situation has been explained by a member of the staff of the Unemployment Benefit Office (UBO) at page 7 of the case papers. The claimant's husband was apparently already in receipt of supplementary benefit for his wife and children. On 8.6.84 adjudication officers in the Department of Employment examined claims to unemployment benefit from ancillary workers employed within the mining industry, and decided to suspend all the claims. At the same time her husband's supplementary benefit was reduced. Due to an administrative oversight the claimant was referred by the DHSS to the Unemployment Benefit Office to make a claim for unemployment benefit. On her arrival their mistake was discovered and she was referred back to DHSS. At that time no claim to unemployment benefit was taken from the claimant. She eventually made a claim to the benefit on 12.9.84. The claimant has not advanced any other reasons for not claiming timeously, or explained why she did not make a claim immediately she was told by the Colliery Manager not to attend work until the dispute was over. (It must be stressed however that her husband was unable to claim unemployment benefit himself due to the trade dispute, having to rely on supplementary benefit instead). It is also unclear what prompted the claimant to make her claim in September 1984. Whilst it is open to the claimant to make further observations and provide any information she considers relevant to her delayed claim I submit that having regard to the available evidence the claimant cannot be regarded as having done all that could be reasonably expected of her and that she has not shown continuous good cause for the delay in making her claim for the period 21.3.84 to 11.9.84 (both dates included) until 17.9.84."

12. Having heard the claimant's explanations of this matter given to me at the hearing and considered the submissions of Mr Otto on the point, ~~I have come to the conclusion that the claimant has demonstrated continuous good cause for the delay from 21 March 1984 right up to the date when she made her claim on 17 September 1984, with the result that her claim for the period from 21 March 1984 to 17 September 1984 is not time-barred.~~ I have to bear in mind that the claimant was at the relevant time a woman with dual responsibilities to her own family and as a cleaner at the colliery. She is not someone working in a highly intellectual job (though intellectuals might find life very uncomfortable without cleaners!). She has no formal educational qualifications. Moreover conditions at that time in 1984 in the mining industry in which the claimant was completely immersed (her husband being a miner) were in a state of very considerable flux and anxiety. From March 1984 to June 1984, her husband was claiming an increase of supplementary benefit for her and she may well have thought she had no separate claim in her own right. It is hardly surprising, particularly in view of what had happened in the June of 1984 when she tried to make a claim that the claimant gave the matter up until she eventually made her claim on 17 September 1984. In the circumstances I think the delay is understandable and a reasonable person of the claimant's age and experience would have failed to act until September 1984 just as the claimant did (see paragraph 13 of the decision of a Tribunal of Commissioners in R(S) 2/63). Consequently I find good cause to be shown and the claim is not time-barred.



13. Lastly I should observe that although, in paragraph 25 of the submission of ~~November 1986~~ by the ~~application officer now concerned~~, it is said, "I understand that apart from the questions at issue in this appeal there is no other bar to payment" that may well not now be the position. My decision therefore has simply to be a declaration that neither the trade dispute qualification nor the time-bar disqualification will prevent a successful claim to unemployment benefit from 21 March 1984 onwards but whether in other respects (eg. contributions record or exhaustion of the 312 day's entitlement) the claimant is or is not entitled to unemployment benefit is a matter which will have to be dealt with at local level. In view of the length of time that has already elapsed in this case however I would ask the local authorities in the local Office to deal with these aspects of the matter as quickly as possible and to ascertain whether, in the light of my decision, unemployment benefit for any period from 21 March 1984 is payable to the claimant. If any difficulty arises on this aspect of the case reference can be made to me for a Supplemental Decision.

(Signed) M.J. Goodman

Commissioner

Date: 23 February 1989