

ERB/RC

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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1. My decisions are that

(a) the decisions awarding unemployment benefit to the claimant from 12 April 1984 to 8 May 1984 (both dates included) may be reviewed;

(b) the claimant is disqualified for receiving unemployment benefit from and including 9 April 1984 and for so long as the stoppage of work due to the trade dispute at his place of employment continues; and that

(c) as a result, unemployment benefit was paid to him in respect of a period during which he was disqualified for receiving this benefit, namely from 12 April 1984 to 8 May 1984 (both dates included), that in consequence an overpayment of benefit amounting to £167.71 occurred and that repayment of this sum is not required.

2. The claimant, who is now aged 56 years, was employed as a repairer at a colliery when he was given notice by his employers on 14 January 1984 that his employment was being terminated on Saturday 7 April 1984 on the grounds of redundancy. Owing to a trade dispute, the National Union of Mineworkers instructed their members (the claimant is a member) to withdraw their labour from 12 March 1984. As a result, work at the colliery ceased on that date. The claimant claimed unemployment benefit on 9 April 1984. He had not worked between 9 March 1984 and 7 April 1984 and had been incapable of work during 1 week in this period. Benefit was paid to him from 12 April 1984 to 8 May 1984. The adjudication officer then gave the following decisions - "1. The claimant is disqualified for receiving unemployment benefit from and including 9.4.84 and for so long as the stoppage of work continues because he lost employment owing to a stoppage of work which was due to a trade dispute at his place of employment. (Social Security Act 1975 section 19(1)). 2. I have reviewed each of the decisions of the adjudication officer awarding unemployment benefit from 12.4.84 to 8.5.84 (both dates included) because I am satisfied that the decisions were given in ignorance of a material fact. (Social Security Act 1975 section 104). My revised decision is that unemployment benefit is not payable from 12.4.84 to 8.5.84 (both dates included) because the claimant lost employment owing to a stoppage of work which was due to a trade dispute at his place of employment. (Social Security Act 1975 section 19(1)). As a result, an overpayment of unemployment benefit has been made amounting to £167.71p. As I am satisfied that the claimant has throughout used due care and

diligence to avoid overpayment in obtaining and receipt of benefit to avoid overpayment. (Social Security Act 1975 section 119(1) and (2))." (He should have added "repayment is not required"). The claimant's appeal from these decisions to the appeal tribunal, which he attended and at which he was represented by his association, was disallowed. He then appealed to the Commissioner, having been given leave to do so by the chairman of the tribunal. The appeal was heard by me on 7 January 1985. The claimant attended and was represented by Mr. Eric Davies. Mr. P.G. Phippard appeared for the adjudication officer.

3. In his submission to the Commissioner, the adjudication officer maintained that the claimant was both participating in and directly interested in the trade dispute which brought about a stoppage of work at his place of employment and was, accordingly, disqualified for receiving benefit from 9 April 1984. In relation to his allegation of participation, he relied upon Umpire's Decision 1022/1938 and Decision R(U)3/69, while in relation to his allegation of direct interest, he relied upon Decision R(U)1/84. As to the claimant's contention that he would have been unemployed from and including 9 April 1984 in any event by reason of the notice he had received from his employers on 14 January 1984, the adjudication officer relied upon Umpire's Decision 1581/26 and Decisions R(U)11/52 and R(U)17/56. (Decision R(U)12/72 is also relevant). He also asserted that the decision awarding benefit to the claimant was capable of being reviewed as it was given in ignorance of a material fact, namely the fact that there was a period before 7 April 1984 when the claimant had lost employment by reason of a stoppage of work, which was due to a trade dispute at his place of employment.

4. At the hearing, Mr. Phippard submitted that the decisions awarding unemployment benefit to the claimant from 12 April 1984 to 8 May 1984 (both dates included) were given in ignorance of a material fact, namely the fact that the claimant had lost his employment on 12 March 1984 by reason of a stoppage of work, which was due to a trade dispute at his place of employment. He asserted that the decisions were given by the adjudication officer at the computer centre and that while the local office of the Department concerned would certainly know of this fact, this was not so as far as he was concerned. I am satisfied that the claimant last worked on 9 March 1984 and that on 12 March 1984 a stoppage of work, due to a trade dispute at his place of employment, took place and that this stoppage has continued to date. I am also satisfied that the claimant lost his employment by reason of this stoppage. I accept that the adjudication officer concerned was ignorant of the fact that this was so when he awarded benefit to the claimant and that, accordingly, his decision may be reviewed. I also accept that by reason of the provisions of section 19(1) the claimant has to be disqualified for receiving unemployment benefit from 12 April 1984 and for "(a) so long as the stoppage of work continues, or until (b) the claimant has become bona-fide employed elsewhere in the occupation he normally follows, or (c) he has become regularly engaged in some other occupation" unless it is established that he was not participating in or directly interested in the trade dispute which caused the stoppage of work. There is no suggestion that the circumstances referred to in (b) or (c) exist in this case. Mr. Eric Davies urged me to accept that, in any event, the claimant should not be disqualified from and including 9 April 1984 as he would not have been employed by the employers concerned from and including that date whether or not the stoppage had occurred, that is to say his loss of employment from that time should be attributed to the notice given by them

on 14 January 1984 that his employment would end on Saturday 7 April 1984. This approach is one with which I have considerable sympathy. However, it has been repeatedly rejected in the decisions given by those concerned in the application of the relevant provisions over the years, (see, for example the decisions referred to in paragraph 3. Decision R(U)12/72 is a decision of a Tribunal of Commissioners) and I have come to the conclusion that I should follow those decisions.

5. Mr. Phippard submitted that the answers given by the employers to questions addressed to them on 29 October 1984 indicated that the claimant was directly interested in the trade dispute. I set out the questions and answers - "If as a result of a settlement of the dispute involving members of the NUM and associated trade unions, a pay increase is awarded with retrospective effect, is there any way in which a redundant mineworker would automatically benefit from that award? - It is normal practice to apply any award retrospectively to persons who have left the Board's service (a) under Board Pension Schemes; (b) redundancy; (c) deceased workers" and "would he be entitled to (a) arrears of pay from the date to which the award was back dated until the date of termination of his notice period. (b) a fresh calculation of redundancy pay or pension payments under the NCB Redundancy Scheme. or (c) any other benefits - (a) Yes (b) Yes (c) Yes - e.g. payments under the Redundant Mineworkers' Payment Scheme Order 1984." Mr. Davies pointed out that even if this was the position (which he doubted), it would have no practical effect in so far as the claimant was concerned. He asserted, and Mr. Phippard accepted, that the "Redundancy Lump Sums" payable to the claimant would not be increased in any event as he had already been paid the maximum. I am satisfied that this is so. Mr. Davies also maintained that there was no more than a remote possibility that the weekly mineworkers' pension superannuation payable to the claimant might be adjusted by a fraction in 5 years time owing to an alteration in the level of supplementation and that, in the circumstances, he should not be regarded as having a direct interest in the dispute by reason of the existence of this remote possibility. I accept this argument. It appears to me, that it would be unrealistic to do otherwise. However, the employers have indicated that if as a result of a settlement of the dispute a pay increase was awarded with retrospective effect and the date from which the increase was to be payable was a date prior to 10 March 1984, then the claimant would definitely be paid the increase from that date up to and including the date on which he last worked, namely 9 March 1984. I accept the employers' assurance in this respect. Accordingly, I hold that the claimant has a direct interest in the dispute.

6. In his evidence before me, the claimant stated that a vote taken at the colliery at which he was employed on 10 March 1984 was against going on strike and that, as a result, he attended at the colliery on 12 March 1984 together with those who were expected to work that day. There were pickets on duty. He stated "We were not prepared to cross the picket lines and did not do so. No one crossed the lines". He agreed that there was no question of them being physically prevented from going in to work or, that they refrained from crossing the picket lines as a result of intimidation. The claimant stated that what happened on 12 March 1984 was repeated on 13, 14 and 15 March 1984 by which time it was clear that picketing was to continue and that he and his colleagues were not prepared to cross the picket lines. As a result, he and his colleagues ceased to attend at the colliery and the employers withdrew the transport to and from

the colliery which was normally provided by them. My interpretation of the situation is that the presence of the pickets was meant to indicate to those who had initially intended to go in to work that they should not do so and that the claimant and his colleagues demonstrated their acquiescence by deciding not to cross the picket lines. Such acquiescence amounted, in my judgment, to participation in the trade dispute (see the decisions noted in paragraph 3 and, in particular, Umpire's Decision 1022/1938).

7. It follows, from the conclusions set out in paragraphs 5 and 6, that the claimant is unable to escape the disqualification imposed by section 19(1), and that he is therefore disqualified for receiving unemployment benefit from the date on which he claimed benefit, namely 9 April 1984 and for so long as the stoppage continues.

8. For the reasons I have given, my decisions are those set out in paragraph 1.

9. The claimant's appeal is disallowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 11 January 1985

Commissioner's File: C.W.U.30/84

A.O. File: A.O.3404/UB/84

Region: Wales and South West