

Calculation of earnings—reasonable expenses

Claimant, in receipt of a retirement pension, was employed for a day as a gatekeeper at a race-course. During the day he spent 8s. 8d. on food which he contended was 6s. more than his usual expenditure. He also incurred an expense of 3s. for care of his invalid wife during his absence.

Held that 5s. of the 8s. 8d. expended on food and the 3s. were reasonable expenses incurred in connection with his employment Decisions C.G. 114/49 (reported) and R(G) 7/53 followed.

1. My decision is that the claimant's retirement pension fell to be reduced by 4s. 0d. a week, that is to say to the sum of 30s. 0d., in respect of the week commencing on the 29th October, 1953.

2. The claimant was in receipt of a retirement pension at the rate of 34s. 0d. a week, subject to deductions on account of earnings.

3. On Saturday the 24th October, 1953 the claimant was employed as a gatekeeper at a race-course in respect of which employment he was paid the sum of £3 10s. 0d. His employer has stated that his wages were £2 10s. 0d. and that he was allowed £1 for expenses. From that sum he was entitled to deduct (a) a rail fare of 10s. 4d., (b) a bus fare of 10d., (c) 4d. in respect of insurance contributions and (d) 6s. 0d. in respect of income tax deducted at source, making in the aggregate 17s. 6d. So far, the deductions which he claimed have been admitted. He also claimed to be allowed to deduct 6s. 0d. in respect of subsistence. That claim has not been admitted and that is the question upon which he appealed in the present appeal.

4. By the National Insurance (General Benefit) Regulations, 1948 [S.I. 1948 No. 1278] Regulation 4(1)(a), as amended by the National Insurance (General Benefit) Amendment Regulations, 1949 [S.I. 1949 No. 1984], the earnings to be taken into account for the purpose of calculating the extent to which his retirement pension falls to be reduced are limited to the net remuneration or profit derived by the claimant from his occupation and he is

entitled to deduct from his gross receipts any sums the deduction of which from salary or wages is authorized by statute and the "reasonable expenses incurred by" him "in connection with the employment".

5. The claimant's contention was that as he was away from home for eleven hours on the day in question it was reasonable for him to buy a full midday meal and to have at a later stage two cups of tea and a ham sandwich. He was not allowed to leave the race-course and the only midday meal obtainable cost 6s. 6d. He had to give the waiter sixpence as a tip and the two cups of tea and the ham sandwich cost him 1s. 8d. He contended, therefore, that on the day in question he had expended 6s. 0d. more on food than he would otherwise normally have done and that that was a reasonable expense incurred in connection with his employment.

6. The insurance officer now concerned with this case pointed out that persons, whether in employment or not, had to expend money on food and that in Decision C.P. 2/48 (reported) a claimant, who had sought to deduct a sum of money in respect of food from her wages for the purpose of ascertaining her earnings, had not been allowed to do so. That case, however, is, I think, distinguishable from the present case. In that case the claimant was working only two hours a day and there was no evidence that she incurred any exceptional expense in respect of providing herself with food.

7. It was further pointed out by the insurance officer now concerned with this case that, although in Decision R(G) 7/53 the principle had been accepted that a claimant was entitled to deduct the increased cost of providing a midday meal for her child when she was at work as compared with the cost of providing the child's meal when she was not at work, the principle of allowing a deduction in respect of meals for a claimant himself or herself had not so far been conceded. It seems to me, however, that there is no distinction in principle. If a claimant by reason of his occupation has reasonably to incur additional expense in providing a midday meal, that is, I think, a reasonable expense incurred by the claimant in connection with his employment. It has to be remembered that what is being ascertained is the net remuneration or profit derived by the claimant from his occupation. Whether or not a particular expense is a reasonable expense must be determined in the light of the circumstances of each case.

8. As was pointed out in Decision C.G. 114/49 (reported) "in connection with" in this context means "in consequence of". If the claimant incurs the expense because he is employed, and would not incur it if he were not, it seems to me that the expense is incurred in connection with his employment. (Compare further Decision R(G) 12/52.)

9. The claimant in this case clearly would not have contemplated buying food during the day at a cost of 8s. 8d. (As he was having the midday meal at the price of 6s. 6d., the 6d. tip was an inevitable part of the aggregate cost of the meal, having regard to normal practice.) It seems to me that 5s. 0d. of that sum of 8s. 8d. can properly be said to be that part of the cost which was incurred in connection with the employment; it was something over and above the normal cost of food during the day, even though it included a main meal, in the standard of living to which he may reasonably be assumed to be accustomed.

10. In the course of this appeal he referred to another matter, though it apparently had not occurred to him to make a claim that he was entitled to deduct any sum in respect of it. As the facts came to light I thought, and the insurance officer now concerned with this case agreed, that I ought to deal

with it. His wife is totally incapacitated and he has in the normal way to employ a daily help every day from 9 a.m. to 12.30 p.m., but upon the day now in question, because he was away from home for such long hours, it was essential that someone should come and look after his wife. The cost of employing a daily help for the necessary additional hours would have been prohibitive from his point of view and his brother's wife came over to look after the claimant's wife in his absence after the daily help had left. He had to pay her railway fare which was 3s. 0d. That appears to me to be a reasonable expense incurred by him in connection with the employment in the exceptional circumstances of his case.

11. In the result the gross sum of £3 10s. 0d. is reduced to £2 12s. 6d. by reason of the deductions which were uncontroversial in this case and by a further 8s. 0d. to £2 4s. 6d. by reason of this decision. As the claimant's retirement pension falls to be reduced only by his earnings in so far as they exceed 40s. 0d. a week by complete shillings, his retirement pension falls to be reduced by 4s. 0d. to 30s. 0d. for the week in question.

12. I allow the claimant's appeal.
