**R(S) 8/79**

**19.1.79**

**INVALIDITY BENEFIT**

**Imprisonment - committal to prison by a magistrates order made under section 64 of the Magistrates' Courts Act 1952 by reason of civil contempt of court**

The claimant had been committed to prison by an order of a Magistrates Court under section 64 of the Magistrates' Courts Act 1952 by reason of his disobedience of an earlier order of magistrates that he pay maintenance for his wife. Invalidity benefit was paid for the period during which he was so imprisoned. The insurance officer reviewed

and revised the award on the grounds that the claimant should have been disqualified under section 82(5) (b) of the Social Security Act 1975.

*Held* that :-

1. the claimant's imprisonment had nothing to do with a criminal offence, but was for a civil form of contempt of Court (paras 6 and 7);
2. the claimant should not be disqualified for receiving invalidity benefit for the period of his imprisonment under section 82(5)(b) of the Social Security Act 1975, as the Court was not exercising criminal jurisdiction (para 8);
3. the decision awarding invalidity benefit was properly reviewed but should not have been revised (para 9)

1. My decision is that the decision awarding invalidity benefit to the claimant for the period 30 March to 6 May 1976 is not to be revised on review.

2. The claimant was at the time in receipt of invalidity benefit, but by an order of the Magistrates' Court at Penzance dated 14 January 1976 he was ordered to be committed to prison (pursuant to section 64 of the Magistrates' Courts Act 1952) for a period of 42 days on account of arrears of maintenance payable to his wife. The order

was suspended subject to payment of £13 per week. It seems that the claimant failed to make the required payments and he was in fact committed to prison for the period from 29 March to 7 May 1976 pursuant to the order. He continued however to encash

the orders for the payment of invalidity benefit which were in his possession. When the insurance officer became aware of the fact of the claimant's committal to prison he decided to review the decision awarding benefit and to revise it in relation to the period spent in prison holding that the claimant was for that period disqualified for

receiving benefit under section 82(5)(b) of the Social Security Act 1975, under which a person is disqualified for receiving benefit (subject to immaterial exceptions) for any period during which he is undergoing imprisonment or detention in legal custody. As a

result of this revision there had been an overpayment of benefit, repayment of which was required. The claimant appealed unsuccessfully to the local tribunal and he now appeals to the Commissioner

3. Section 82(5) (b) of the Social Security Act 1975 re-enacted section 49(1) (b) of the National Insurance Act 1965 which itself re-enacted (with the modification next mentioned) section 29 (1) (b) of the National Insurance Act 1946. This last-mentioned section referred to "penal servitude, imprisonment or detention in legal custody" but (penal servitude having in the meanwhile been abolished by the Criminal Justice Act 1948) the two later Acts referred only to "imprisonment or detention in legal custody".

While the 1946 Act was in force there were a number of decisions of Commissioners on the provision. In Decision R(S) 20/53 the Commissioner said at paragraph 9 (*obiter* however as he dismissed the claim)

"However the context in which the expression "detention in legal custody" is used in Section 29(1)(b) does indicate that it is not to bear its full meaning since this would have included the preceding terms "penal servitude" and "imprisonment" which would thus have been superfluous. It therefore follows

(as was held in Decision CS/16/48 (reported)) that the expression must be taken to refer only to detention which has some connection with criminal proceedings."

I am not sure that I follow precisely the logic of this, but I understand the effect of it to be that detention in legal custody has to be construed as *ejusdem generis* with penal servitude and imprisonment. An application to set aside this decision among others was made to the High Court, where the proceedings are reported under the title *Regina v National Insurance Commissioner, Ex parte Timmis* [1955] 1 QB 139. On this application Lord Goddard CJ suggested (at page 149) an alternative test, viz. whether *habeas corpus* would lie. The application was dismissed, but it was specifically left open whether the section would apply to a summary reception order which had nothing to do with a criminal offence. The question whether the *habeas corpus* test was the right test was thus left open.

4. The point then came before a Tribunal of Commissioners in the case which was the subject of Decision R(S) 3/55, in which the Tribunal accepted the reasoning in Decision R(S) 20/53 and laid down that detention under an order which is not made in

criminal proceedings or grounded on any criminal act was not detention in legal custody within the meaning of section 29(1) (b). They seemingly rejected the *habeas corpus* test, preferring a test whether the detention had anything to do with a criminal offence.

5. More recently the point came before a Tribunal of Commissioners in Northern Ireland in connection with internment there under special powers and the tribunal in a decision (to be reported as R 1/76(P)) followed and applied R(S) 3/55 expressly

basing their reasoning on the *ejusdem generis* rule and indicating that the interpretation of the corresponding Northern Irish section was not affected by the omission from the more recent Acts of the phrase "penal servitude". This decision was affirmed by the High Court in Northern Ireland under the title *Regina (O'Neill) v*

*National Insurance Commissioners* [1974] NI 76. I consider that I am bound by these decisions to hold that a person is not disqualified under section 82(5)(b) of the Social Security Act 1975 by reason of undergoing detention in legal custody which has

nothing to do with a criminal offence. I have still to determine whether (contrary to the submission of the insurance officer now concerned) the disqualification extends to the undergoing of imprisonment that has nothing to do with a criminal offence and also whether the committal of the claimant in this case, if it amounted to imprisonment, had anything to do with a criminal offence. I take this second question first

6. The claimant was committed to prison by a magistrates' order made under section 64 of the Magistrates' Courts Act 1952 by reason of the breach of an earlier order of magistrates that he pay maintenance for his wife. Under section 67 of the 1952 Act he

was entitled to be released on payment of the amount due and costs. In my judgment he was, while so in prison, undergoing imprisonment.

7. In substance he was in prison by reason of his disobedience of a Court order, a form of contempt of Court. There is a clearly recognised distinction between civil and criminal contempt of court (see Halsbury's Laws of England (4th Ed.) Vol. 9 page 3),

and disobedience of a court order is there included (at page 33) among the civil contempts, though it is recognised (at page 52) that there may be some distinction in the case of disobedience of orders of a magistrates' court. After some difference of judicial opinion, it was settled by the House of Lords (reversing a majority decision of

the Court of Appeal) in *Scott v Scott* [1913] AC 417 that proceedings for contempt consisting in the breach of an order of the High Court were not a criminal cause or matter. I refer in particular to the speech of Lord Atkinson at pages 454 to 467 and to the dissenting judgement of Fletcher Moulton LJ (as he then was) in the Court of Appeal ([1912] P 241 at page 268) which was expressly approved by Lord Atkinson ([1913] AC at page 462). I think it is clear from Lord Atkinson's speech at the page last mentioned that the same applies to justices' orders made in civil suits. I find

therefore that the claimant's imprisonment had nothing to do with a criminal offence.

8. The insurance officer now concerned criticises the reasoning of the Tribunal of Commissioners and of the High Court in Northern Ireland (following that of the Tribunal of Commissioners in R(S) 3/55) on the ground that it is based on the fallacious premise that imprisonment could only be imposed by judgment of a criminal

court in accordance with criminal law. He suggests in effect that the proper test to apply is the *habeas corpus* test. If this were the first case in which the point had to be decided I should, I think, have accepted the *habeas corpus* test, which seems to me to accord better with the natural meaning of the words used. But I do not think that it is open to me to do so. The insurance officer would not ask me to depart from the previous decisions if this had been a case of detention in legal custody not amounting to imprisonment. As however this is a case of imprisonment he suggests that it is

open to me to distinguish the cases above mentioned. In other words he invites me to apply the *habeas corpus* test to imprisonment while leaving the criminal offence test applicable to detention in legal custody. I do not think that I should do this. If I did, I should open up a distinction between various kinds of detention, which might depend on the description of the detention fortuitously used in Acts of Parliament drafted without the present question being in mind at all. In any case I think that the distinction suggested is inadmissible. The decisions that I am following are all based on the proposition that imprisonment in the section means only imprisonment imposed by a court exercising criminal jurisdiction, and I think that I am bound to accept that conclusion inasmuch as it was reached by a Tribunal of Commissioners

9. Accordingly although I consider that it was proper to review the decision awarding invalidity benefit to the claimant in the light of his subsequent imprisonment the decision does not fall to be revised and there has been no overpayment. The claimant's appeal is allowed accordingly.

(Signed) J G Monroe

Commissioner