MJG/SH/MD

Commissioner's File: C1/28/1985
C A O File: AO 5193/1/84
Region: Wales & South Western

SOCIAL SECURITY ACTS 1975 TO 1984
CLAIM FOR INDUSTRIAL ACCIDENT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Elaine Lea (Mrs)
Appeal Tribunal: Bristol
Case No: 137/1

1. My decision is that sickness benefit is payable to the claimant for the inclusive period from 10 April 1984 to 21 April 1984 because, although the claimant had not actually paid before the relevant time sufficient relevant contributions, the contribution conditions are taken to be satisfied since the claimant's incapacity was the result of an injury by accident arising out of and in the course of the claimant's employment: Social Security Act 1975, sections 50(1), 50A and 107(5). The claimant's appeal against the decision of the social security appeal tribunal dated 10 September 1984 is therefore allowed.

2. This is an appeal to the Commissioner by the claimant, a woman born on 10 January 1945 and thus aged 39 at the relevant time. The appeal is against the majority decision of the local tribunal of 10 September 1984 holding that the claimant's accident on 29 February 1984 did not arise out of and in the course of the claimant's employment within the meaning of section 50(1) of the Social Security Act 1975, with the result that the claimant could not be deemed to have satisfied the contribution conditions for sickness benefit (such deeming was necessary as she had not in fact the relevant number of contributions - see section 50A of the Social Security Act 1975).

3. The claimant was at the relevant time employed as a Home Care Assistant by a county council. That council had installed a telephone in her home and she received her instructions by telephone from the district organiser of Home Care Assistance. Although the claimant usually finished work by 5.30 pm, she could be called out after that time, though she was not in fact called out after that time on the day in question. On the day of the accident (29 February 1984) she had seen her only patient for the day and was walking on the pavement towards the bus stop when her ankle 'went over', possibly due to an irregularity in the pavement. She sustained an injury to her ankle and leg with considerable pain and ensuing incapacity for work.

4. A degree of flexibility existed in the claimant's working hours which could be from 20-30 hours per week and the time that she spent out of her home was all regarded as part of those 20-30 hours. In addition, her travelling expenses were reimbursed in the form of a free bus pass. She was wont to carry out services for patients such as the obtaining of small items of shopping and prescriptions, though she was not doing that on the day in question. She was simply on her way home after seeing her last patient. The question is whether those facts show that when the accident occurred it "arose out of and in the course of the

employment" within the meaning of section 50(1) of the Social Security Act 1975. The view taken by the local tribunal, which in my judgment was entirely correct according to the state of the cases as they then were, was that the claimant was not at the time of the accident travelling on duty but was travelling from duty. Consequently, the tribunal held that the accident did not arise in the course of the employment or out of it (see eg. the decision of a Tribunal of Commissioners in R(I)1/83). Nor would the fact that the claimant was paid travelling time or travelling expenses of itself show that the claimant was in the course of her employment (see R. v. National Insurance Commissioner, Ex p. Fieldhouse, reported as an appendix to Commissioner's Decision R(I)9/74).

5. However, the cases were reviewed by the Court of Appeal in the case of Nancollas and Ball v. Insurance Officer (1 March 1985 - the case is reported in [1985] 1 All ER 833). A transcript of the judgments of the Court of Appeal in that case has been made available to the parties. I have the benefit of detailed written submissions from the adjudication officer (dated 1 July 1985) and from the claimant's solicitor (dated 31 July 1985) on the impact of the Nancollas case on the facts of this case. I accept as correct the submission (paragraphs 3 and 4 of submission of 1 July 1985) of the adjudication officer now concerned as follows,

> "... I would submit that the Court of Appeal's judgment suggests strongly that where a person is called upon to travel between home and work at differing locations and makes the journeys each way during normal working hours, at the employer's expense and by a reasonable route in relation to where he has to perform his duty, the journeys can, in the absence of other factors to the contrary, reasonably be regarded not as journeys to and from work but as part of the work which he is employed to perform and thus he will throughout be in the course of his employment. In the present case, I submit it is not enough simply that the employer regarded the claimant as 'on duty' during her journey home; it is my submission that much depends upon the normal conditions of the claimant's employment and that it is open to the claimant or her representative to show what these are. If, for example, the normal conditions are such that the claimant is paid (as distinct from being assisted with travelling expenses) to include journeys from and to her home, ie. her hours of paid duty are regarded as commencing when she leaves home and terminating when she returns, then I would submit that the effect of the Court of Appeal's judgment is in her favour, bringing the whole of the journey to her home on 29.2.84, and therefore the accident, within the course of her employment. Otherwise I would adhere to the submission that she was a free agent at the time of her accident, no differently placed to anyone else who is in the process of going home at the end of the day's work and that the accident did not arise in the course of her employment."

6. In response to that submission, the claimant's solicitor has made the written submission of 31 July 1985 in which it is stated (and I am prepared to accept this as being correct bearing in mind the evidence of the earlier documents) that the claimant's hours travelling to and from home were regarded as part of her hours for payment purposes. There was an internal memorandum in the county council in question, which was submitted to the local tribunal and which stated,

> "... it has been agreed that in the case of Home Care Assistants they will be eligible to claim industrial injury from the time they commence duty, which in the case of those based at home means from the time they leave home to travel to a client and return home - on route directly from duty to home."

That memorandum is by no means conclusive of the question, as it is not of course competent to employer and employee by agreement to vary the statutory definition of what constitutes an accident arising out of and in the course of employment. The matter has to

be looked at in a broad perspective, as was urged by the Court of Appeal in the Nancollas case. Looking at all the factors in this case, e.g. the facts that the claimant was regarded as being still on duty while she was travelling home, was liable to receive telephone calls from her employers at home and indeed was liable to be called out after 5.30 pm, I have concluded that this is a case which, under the guidelines in the Court of Appeal's decision, ought to be one where the claimant should be held to have suffered an accident arising out of and in the course of employment.

7. I perhaps ought to add that, having studied the reported Commissioners decisions and the judgments in the Nancollas case, I do not regard the latter as giving henceforth "carte blanche" to all claims for 'travelling' accidents. There must, I would have thought, still be cases where what has occurred is simply an accident while a claimant is travelling to or from work (even where the claimant has no fixed workplace) and where the accident cannot therefore be said to arise out of and in the course of employment. Each case must be looked at in the light of its own facts, to which the guidance in the Nancollas case should be applied wherever applicable.

(Signed) M.J. Goodman
Commissioner

Date: 17 October 1985

C1/28/1985

General, Municipal, Boilermakers & Allied Trades Union

General Secretary: DAVID BASNETT

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20 NOV 1985

Our Ref: Research Department
GS/DB/PASS/RO'K/MC

19th November, 1985

TO: ALL REGIONAL SECRETARIES

For the attention of the Legal Officers

Dear Colleague,

Re: Industrial Accidents - Travelling to and from work

I refer to our circular of 21st August 1985 enclosing a recent decision of the Court of Appeal. I mentioned that the effects of this decision were unclear but that it seemed likely to make it easier to claim under the industrial injuries scheme for accidents occurring on journeys to or from work

I now enclose a Commissioner's decision made subsequently which largely confirms this point. As you will see it is likely to be particularly helpful to members such as home helps whose places and hours of work are not strictly defined, though others may also be able to make use of it.

Apart from the immediate implications for possible claims paragraph 6 suggests ways in which terms and conditions might be re-defined, with the agreement of employment, to make future claims easier.

Yours sincerely,

David Basnett

David Basnett
General Secretary

ENCL.