C1 76/1977

RSL/KMG

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR INDUSTRIAL INJURY BENEFIT

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: James Anderson

Local Tribunal: Liverpool

Case No.: 174/5

Decision C.I. 6/78

1. My decision is that on 19 October 1976 the claimant suffered personal injury by accident arising out of and in the course of the activities of his elective office of shop steward and he is entitled to industrial injury benefit for the inclusive period 23 October to 6 December 1976.

2. The claimant is, or at the material time was, a shop steward of the General and Municipal Workers' Union ("GMWU") at the factory of Meccano Ltd were he was employed as a storeman. On 19 October 1976, with the approval of his employers and on full pay from them, he attended a shop stewards' training course at Liverpool Technical College, and on leaving the College at the end of the course period he slipped on the steps and broke a bone in his left foot. He subsequently claimed industrial injury benefit, but the local insurance officer held that the accident did not arise out of and in the course of his employment and therefore rejected his claim. By a majority decision the local tribunal have reversed the insurance officer's decision, and accordingly the insurance officer has appealed to a Commissioner.

3. At one time the representative of the GMWU concerned with the claimant's case requested an oral hearing of the appeal, but in the circumstances which have since arisen, I doubt whether he intends that that request should still be pursued. If he does so intend then I refuse the request.

4. The appeal appeared at first to depend solely on the question whether the majority of the local tribunal had correctly decided that the claimant's accident arose out of

and in the course of his employment by Meccano Ltd. This question raises interesting and important issues which, in my view, it would be unwise to determine without argument. However, I need not determine them because I am able to reach the same result as the local tribunal for different reasons.

5. In his reply to the insurance officer's submission to me, the representative of the GMWU dealing with the claimant's case took a new point. He pointed out that section 2(1)(a) of the Social Security Act 1975 includes in the statutory definition of "employed earner" not only "a person who is gainfully employed ... under a contract of service", but also a person so employed "in an office (including elective office) with emoluments chargeable to income tax under Schedule E". And he submitted that the claimant, in his capacity as an accredited shop steward of the GMWU, was an employed earner within the meaning of this definition and that attendance at the course, although voluntary on his part, was directly concerned with his office of shop steward and was reasonably incidental to that office. Accordingly, in exercise of the power conferred by section 103(4) of the Social Security Act 1975, I formulated a question for reference to the Secretary of State. The question has been duly referred to the latter, and his decision upon it reads as follows:-

> "That while attending a training course for shop stewards on 19 October 1976 at Liverpool Technical College, [the claimant], being a shop steward of the General and Municipal Workers' Union, was employed in employed earner's employment for the purposes of the industrial injuries provisions of the Social Security Act 1975."

The decision follows the wording of the question which I authorised and I now think that it would have been more accurate to refer to the claimant's "office" instead of to his "employed earner's employment"; but that is, perhaps, an insignificant point.

6. I have no doubt that, in attending the training course in question, the claimant was carrying out an activity or duty of or incidental to his office of shop steward. But there remains the question whether the accident occurred during the course of his activity in that office or after the activity was over for the afternoon and he was travelling away from it.

7. As already mentioned the accident occurred on the steps of the Technical College. I have been provided with a rough plan of the entrance to the College which shows that there is a pavement for the public footway in front of the steps and that the steps rise away from the public footway to the doors of the College. And I understand that the steps form part of the precincts of the College. Nevertheless, it has been submitted to me that the claimant's claim fails because the public have access to these steps.

8. It is a well known principle in industrial injuries insurance law that a person is not in the course of his employment when proceeding along a private way to or from the place of employment if the public have access to and in fact use that way: see the reported Commissioners' Decisions R(I) 20/57 and R(I) 1/68. However, I have no evidence that any member of the public uses the steps unless he wishes to enter or leave the Technical College, and I cannot imagine that any person would wish to do so save perhaps a child running up and down the steps in play. There is no evidence, therefore, that the steps are used by members of the public as such. They only use them as invitees of the College authorities, that is to say for entry to or exit from the College. In my judgment, therefore, when the claimant fell down on the College steps after the end of his course period on 19 October 1976, he was on private ground not used by the public as such, which he had to traverse in order to leave the College. Accordingly, he was still in the course of his activities in his office of shop steward.

9. My conclusion is, therefore, that the claimant's accident arose out of and in the course of the activities of his office of shop steward and that, following the decision of the Secretary of State, he is entitled to industrial injury benefit. The period for which he is entitled to the benefit is, according to the information in the case papers, the period mentioned in paragraph 1 above. The 3 days preceding the beginning of that period were, of course, "waiting days". Sickness benefit already paid to him in respect of such period must be treated as paid on account of the industrial injury benefit now awarded to him.

10. In the result, therefore, I uphold the local tribunal's decision although for reasons different from theirs and I give the decision set out in paragraph 1 above.

(Signed) R S Lazarus
Commissioner

Date: 24 October 1978

Commissioner's File: C.I. 76/1977
C.I.O. File: I.O. 5008/I/77
Regional File: Mer (Unregistered Papers)