

DGR/SH/3/MD

Commissioner's File: CI/122/1985

C A O File: AO 6045/1/85

Region: North Western

**SOCIAL SECURITY ACTS 1975 TO 1984
CLAIM FOR INDUSTRIAL INJURIES DISABLEMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Edward Thomas Dunkerley

Appeal Tribunal: Liverpool

Case No: 34/14

[ORAL HEARING]

1. My decision is that the accident which occurred on 6 September 1983 arose out of and was in the course of the claimant's employment, and was therefore an industrial accident.
2. This is an appeal by the adjudication officer against the decision of the social security appeal tribunal of 18 January 1985. The claimant's association asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who did not attend, was represented by Mr R O'Kelly of the General, Municipal, Boilermakers and Allied Trades Union, and the adjudication officer was represented by Mr P Milledge of the Solicitor's Office of the Department of Health and Social Security.
3. The facts of this case are very simple and not in dispute. The claimant was entrusted with the task of delivering a quotation and it was arranged between him and his employer that he should do so in his own car in usual working hours, and that he should be paid the travelling expenses involved. In the course of the return journey he stopped to purchase some cigarettes for his own use, and whilst out of the car, at some time between 4.55 pm and 5.10 pm on 6 September 1983, he was struck by a bus, receiving multiple injuries. The question at issue is whether or not the accident arose out of and was in the course of his employment.
4. The local adjudication officer took the view that the accident did not occur in the course of the claimant's employment and that therefore it was not an industrial accident. As the law was then thought to be, conveniently enshrined in R(I)4/79, I have no doubt that he was right. Moreover, the tribunal in the light of the afore-mentioned authority were not entitled to overturn that decision. Accordingly, it is not surprising to find that the adjudication officer appealed to the Commissioner. However, subsequently to the hearing of the tribunal the Court of Appeal in Nancollas and Ball v. Insurance Officer [1985] 1 All E.R. 833 delivered a far-ranging judgment which had the effect of removing in one stroke all the accumulated learning on the question of what constitutes an industrial accident both under the old workmen's compensation legislation and under the national insurance and social security

legislation. The principle which is now to apply is embodied in the words of Sir John Donaldson, the Master of the Rolls at p.840.

"However, there are no rules, other than that which is contained in the statute: if, looking at the whole factual picture, the claimant suffered the accident whilst in the course of his employment, he is eligible for benefit...."

5. Applying the above principle to the facts of the present case, I have no doubt that the claimant suffered the accident whilst in the course of his employment. He was returning from delivering a quotation, and all he did was to break his journey for a few minutes to purchase cigarettes. Such a stop for such a purpose is something which is inherently incidental to any journey and is a deviation of a kind which does not radically change the essential nature of the activity on which the person concerned was engaged. The claimant was, in my judgment, still pursuing what his employer required him to do. He was still returning from delivering his quotation. On no conceivable basis could it be said that he was on a jaunt of his own. He was proceeding homewards with but a break of a few minutes to obtain cigarettes. I am satisfied on the facts that the claimant was still in the course of his employment, and it is not in dispute that the accident arose out of his employment.

6. Accordingly, the accident which occurred on 6 September 1983 was an industrial accident. I understand that the disablement questions arising on the claim have already been referred for a decision by the medical authorities in accordance with section 108 of the Social Security Act 1975.

7. I therefore dismiss this appeal.

(Signed) D.G. Rice
Commissioner

Date: 28th January 1986