MJG/EFM

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR RECORDING OF A DECLARATION OF AN INDUSTRIAL ACCIDENT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

C I 407/1982

1. My decision is that the claimant suffered on 18 January 1982 an industrial accident, i.e. an accident that arose out of and in the course of his employed earner's employment, and I declare accordingly: Social Security Act 1975, sections 50-55 and 107. The claimant's appeal against the decision of the local tribunal is therefore allowed.

2. The claimant is a man now aged 58. On 18 January 1982 he was at work in the coin-room annexe of a large Post Office. The title of his occupation was that of "postman" but his job did not consist of delivery of mail. He was employed to load and unload coins on to and from vehicles and to feed coins into machines that package coins into easily handled quantities. That work involved identifying and unblocking stoppages, usually of paper, in cogs and the claimant carried a screwdriver in order to assist him with this task. While at his work he was approached by a lady cleaner, almost 60 years of age, who asked him to help in re-fixing the head of her mop to its handle. At that time there was no male cleaner available and the claimant used his screwdriver to try to secure the mop-head to the handle. The screwdriver slipped and pierced the skin between the claimant's left index finger and thumb, apparently damaging the tendon. The claimant did not trouble to ask his direct supervisor for authority to do this particular act, but it has been submitted on his behalf that, had he asked his supervisor for authority, there is little doubt that he would have received it. I accept that submission. Emphasis has been placed by the claimant on an element of flexibility in working in the Post Office and, at the local tribunal, evidence was given that the claimant was "a general duty man". I note that in a memorandum dated 7 April 1982, the Post Office's personnel branch state, "It is confirmed that /the claimant/ sustained his hand injury in the place he was scheduled to perform his normal duty but he was not authorised to be doing the work which resulted in his sustaining injury to his hand". However, I doubt whether that means more than that the claimant was not specifically employed to fix mop-heads. It does not mean that he was forbidden to do so.

3. On 1 February 1982 the claimant applied for a declaration that he had suffered an industrial accident but that was refused by the local insurance officer (upheld by a majority decision of the tribunal) on the ground that the accident 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. The local tribunal held that "the claimant when mending the mop was not doing something he was employed to or something reasonably incidental thereto. Nor did he have the express authority of his employer and in the opinion of the majority of the tribunal he did not have implied authority". The dissenting member of the tribunal stated that "as the repairing of the mop was an insignificant and non-technical act it was either reasonably incidental to his employment or an act for which he had the implied authority of his employer".

4. In my judgment, the approach of the dissenting member shows the right common-sense approach to the problem. In a decision on Commissioner's File C.I. 234/1981 (unreported) the learned Commissioner urged that the realities of the situation should be kept in view in industrial accident cases, saying (at paragraph 7),

> "However, in the real world people do not always act with careful deliberation and circumspection. Nor are they fortunate enough to have advisers ready at hand to indicate what is the most prudent course to adopt."

In my view, the same approach should be adopted in this case. Within limits, to be "a good Samaritan" at work should not place a person under a penalty if he or she is unlucky enough to suffer an accident while so acting, though of course no encouragement should be given to dangerously officious acts or to the arrogation of duties when there is no need for it. I emphasize that my decision in the present case depends on my finding that the claimant had implied authority from his employer to attempt to repair the mop-head.

5. I am fortified in my conclusion by reported Commissioner's Decision C.I. 280/49 (K.L. ), in which the female claimant worked in a pottery-making premises. A firm of building contractors were carrying out repairs there and one of their workmen asked the claimant to hold up a window frame for him so that he could reach his hammer. The subsequent hammering of a piece of wood on to the frame while the claimant was holding it displaced some bricks which fell on to the claimant's head and shoulder and injured her. The learned Commissioner held that the accident arose out of and in the course of the claimant's employment, describing the help with the window-frame as given in the course of an "emergency", not within the narrower meaning of that word in section 54 of the 1975 Act (as it now is) but in the sense of "something which is reasonable and sensible in the circumstances' for the purpose of enabling /the/ employer's work to proceed" (paragraph 4 of C.I. 280/49 (K.L.) adopting the words of Greene M.R. in Dermody v. Higgs and Hill Ltd. 30 B.W.C.C. 351, C.A., at 355/6). That definition, in my judgment, equally applies to the present claimant's help with the mop-head. No-one else was available to repair the head and the claimant acted reasonably and sensibly to enable the Post Office's work to proceed, i.e. to have its premises cleaned.

6. For the sake of completeness, I should add that the local insurance officer and the insurance officer now concerned cite, in opposing the claimant's appeal, reported Commissioner's Decision R(I) 1/66 (docker killed while driving fork lift truck - not employed so to do - held not an industrial accident). That decision was confirmed by the Divisional Court (see Appendix to R(I) 1/66) but I ought to point out that it was distinguished in reported Commissioner's Decision R(I) 1/70 and moreover the Divisional Court's decision was doubted by the Court of Appeal in Kay v. I.T.W. LTD /1968/ 1 Q.B. 40 at pages 150-1 and 157. Clearly therefore Decision R(I) 1/66 and the Divisional Court's decision should be cited with caution and only in the light of other reported cases and decisions.

(Signed) M J Goodman
Commissioner

Date: 14 March 1983

Commissioner's File: C.I. 407/1982
C I O File: I.O. 5188/I/82
Region: Midlands