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Commissioner's File: CI/5249/1995

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

1. My decision is that the decision of the social security appeal tribunal given on 24 February 1995 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the suspension of the claimant, which took place on 12 July 1994, was not an industrial accident, and accordingly a declaration of an industrial accident under section 44(2) of the Social Security Administration Act 1992 cannot be made.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 24 February 1995. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant, who was present, but was represented by Mr L Humby from the Free Representation Unit, whilst the adjudication officer appeared by Mr S Priddis of the Solicitor's Office of the Department of Social Security.

3. On 7 March 1994 form BI100A was received from the claimant claiming disablement benefit in respect of an alleged accident at work on 12 July 1994 when, in the course of his employment as a night barman with Saville and Holdsworth Ltd, he was told to leave the premises where he worked pending a security investigation. The claimant stated that in consequence he suffered depression, anxiety, an absence of energy and loss of confidence. He contended, in effect, that he suffered from what could be called in common parlance "a nervous breakdown". The claimant was suspended on full pay, whilst the alleged misconduct was investigated. In due course, the claimant was in fact dismissed. The claimant

contended that the shock of his suspension had given rise to his condition, and that accordingly he was entitled to a declaration of an accident pursuant to section 44(2) of the Social Security Administration Act 1992. However, on 19 May 1994 the adjudication officer, after having investigated all the circumstances, refused to make the declaration. He considered that it had not been established that there had been either (i) an event which in itself was identifiable as an accident or (ii) a particular occasion on which personal injury was suffered by the claimant which would constitute an accident. In due course, the claimant appealed to the tribunal, who in the event, upheld the adjudication officer.

4. The claimant gave as his written grounds of appeal to the Commissioner the following:-

> "My unfair suspension from work constituted an 'accident' within the meaning of section 44 Social Security Administration Act 1992. It was an unexpected event which occurred in the course of my employment..."

It is not in dispute in this case that the claimant's suspension from work arose out of and in the course of his employment within section 94 (1) of the Social Security Contributions and Benefits Act 1992. Accordingly, if it was an accident, it was an industrial accident. The real issue in this case was whether the incident amounted to an "accident".

5. The locus classicus for a definition of what constitutes an accident can be found in R(I) 52/51. There the learned Commissioner said at paragraph 4 as follows:-

> "The word 'accident' as used in the Act is used in its ordinary popular sense, and signifies some undesigned or untoward event: and moreover, it signifies an event which, although it may be one of several similar events, is capable of being reasonably clearly identified as the cause of the trouble.

Later, at paragraph 6 the Commissioner extended the definition by saying:-

> "...that an 'accident' is not confined to external incidents such as mishaps with machinery, or to special strains or exertion, but that it may include the case of a sudden physiological [pathological] injury such as an internal lesion occurring without any unusual exertion or incident. There must, however, have been a particular moment at which the injury (be it an initial injury or an aggravation of an existing condition) occurred."

6. The basic definition, as contained in paragraph 4, is taken from an observation of Lord Macnaghten in Fenton v. Thorley and Co., Ltd., [1903] A.C. at page 448 where he says:-

> "I come, therefore, to the conclusion that the expression

'accident' is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed."

As regards the extension of the definition contained in paragraph 6, this would appear to be derived from what was said by Lord Lindley in Fenton v. Thorley and Co. Ltd. He said (at page 453) as follows:-

"The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is often used to denote both the cause and the effect, no attempt being made to discriminate between them."

Later he said (at page 456) with reference to the case before him:-

"In this case the cause of the injury is known, and it is proved that the cause was an accident. It is not, therefore, necessary to consider whether the Act applies to cases in which the cause of the injury is not known or in which the only unforeseen occurrence is the personal injury itself."

7. In the case before me the "accident", if there was one, was the suspension. The shock and eventual "nervous breakdown", to which it gave rise, constituted the injury. It was not one of those cases where there was an injury without any identifiable cause, and the injury itself had to be regarded as the accident. But was the suspension an accident?

8. Mr Humby asserted that it was, arguing that, from the standpoint of the claimant, the suspension was wholly unexpected and untoward within the accepted definition. Moreover, it mattered not that the suspension was a deliberate, and not an accidental, act. He cited in this connection the House of Lords decision Board of Management of Trim Joint District School v. Kelly [1914] A.C. 667 where an assistant master at an industrial school, whilst engaged in the performance of his duties, was assaulted by two of the pupils in pursuance of a preconcerted plan of attack and killed. The accident giving rise to the fatality was deliberate, not accidental. However, the House of Lords held that, for the purposes of the Workmen's Compensation Act, which was the forerunner of the present social security legislation, the assault and death were to be treated as caused by accident. Viscount Haldane L.C. said at page 679:-

"My Lords, if the object of this statute be as wide as I gather from the study of its language, its construction

must, as it appears to me, be that accident includes any injury which is not expected or designed by the workman himself."

Later he said at page 680:-

"In the present case the facts leave little doubt on my mind that from one point of view at all events Kelly met with what may properly be described as a accident, and it was not the less an accident in an ordinary popular sense in which the word is often used merely for the reason that it was caused by deliberate violence."

Mr Humby also referred to me the succinct comment of Earl Loreburn at page 681, where he said:-

"When Lord Macnaghten, in Fenton v. Thorley ...., spoke of the occurrence being 'undesigned', I think he meant undesigned by the injured person."

Accordingly, Mr Humby contended that it was immaterial that the employers in this case deliberately suspended the claimant. It was still an accident, because the matter had to be viewed from the standpoint of the claimant. As far as he was concerned, it was an unexpected event, and therefore an accident.

9. Mr Priddis argued that to describe the suspension of the claimant as an accident was a travesty of the use of the English language. The employers' action might have been unexpected by the claimant, although whether it was or was not was unknown, but that did not make it an accident. The word "accident" carried with it the concept of an unwelcome and unexpected mishap arising in the course of events. The suspension of the claimant by his employers was something wholly alien to the above concept. The employers' actions were nothing more than the exercise of a right available to them under employment law. They were, in suspending the claimant in order that the allegation of misconduct could properly be investigated, doing no more than what was required of any employers in the circumstances of the case. To describe that action as an accident flew in the face of any common sense interpretation of the word "accident."

10. I accept that approach. Manifestly, the House of Lords took the view that the word "accident" was not a technical term, and had to be interpreted in its natural everyday sense. If the suggestion were put to the man in the street that an employee's suspension, pending an investigation of his conduct, was an accident, he would regard it as absurd. Employees are regularly suspended or dismissed, but these actions are never regarded as accidents. In some cases such action may well be unexpected, but that does not make it an accident. Mr Priddis illustrated the point by an analogy. If a policeman called at someone's home and arrested him, that might well be wholly unexpected, and he might well sustain a

severe shock, but no one could realistically or sensibly suggest that he had sustained an accident. Any other view would fly in the face of the ordinary use of the English language.

11. The fact that in certain circumstances a deliberate act is nevertheless treated as an accident, as happened in Board of Management of Trim Joint District School v. Kelly, really arises out of the two meanings that can be given to the word "accident". It can (in its adjectival form) be used to contrast with "deliberate", or it can indicate an unexpected mishap arising in the usual course of events. It is in the latter sense that the word is used in section 94 (1) of the Social Security Contributions and Benefits Act 1992, and when used in that sense, it is immaterial whether the act giving rise to it was deliberate.

12. It follows from what has been said above that the suspension of the claimant could not be considered an accident, and accordingly the tribunal were right to refuse to declare that an industrial accident had occurred. For completeness, I should mention that I had cited to me Commissioner's decision CI/554/1992, but that dealt with quite exceptional circumstances, and as the learned Commissioner said in that case:-

> "My decision consequently constitutes no precedent for any other case where it may be asserted that stress at work has caused a claimant mental or physical injury."

It certainly has no bearing on the matter before me.

13. Although the tribunal reached the right conclusion, I am not satisfied that they explained the position with sufficient clarity, and accordingly I must set aside their decision as being erroneous in point of law. However, it is not necessary for me to remit the matter to a new tribunal. I can conveniently substitute my own decision, and dispose of the appeal finally.

14. Accordingly, my decision is as set out in paragraph 1.

(Signed)

D G RICE
Commissioner

(Date) 8 AUG 1996