

Occupational Diseases - Work in Ship's Engine Rooms C.P.A.G.

DGR/SH/18

★ 14/96

Commissioner's File: CI/7176/1995

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992
CLAIM FOR REDUCED EARNINGS ALLOWANCE
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 20 June 1995 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the majority decision of the social security appeal tribunal of 20 June 1995. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant was present, but unrepresented, whilst the adjudication officer appeared by Miss E Finnigan of the Solicitor's Office of the Department of Social Security.

3. On 12 December 1994 the adjudication officer decided that Prescribed Disease A10 (known as occupational deafness) was not prescribed in relation to the claimant, because he had not been employed at any time on or after 5 July 1948 in employed earner's employment in any prescribed occupation. The claimant's contention was that he had, during the relevant period, been engaged in an occupation falling within paragraph (s) as set out against Prescribed Disease A10 in Schedule 1 (as amended) to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 [S.I.1985 No.967]. That paragraph reads as follows:-

" (s) Work in Ship's Engine Rooms."

4. The adjudication officer rejected the claimant's contention, and when an appeal was made to the tribunal, the latter upheld the adjudication officer. However, the tribunal, doubtless in an attempt to assist the claimant, suggested that he might be

able to invoke paragraph (m) of the Schedule, and argue that he had been engaged in employment involving:-

" (m) The use of burners or torches for cutting or dressing steel based products, or work wholly or mainly in the immediate vicinity of those tools whilst they are being so used."

Having raised the point, the tribunal nevertheless decided that the claimant could place no reliance on this particular contention, because they "were not satisfied that there was sufficient evidence to show that he had more than negligible use of these" burners or torches. Miss Finnigan pointed out that the evidence indicated that his use of these tools was far from negligible, and submitted that the tribunal were not entitled to reach the conclusion they did, at least without further explanation. I see the force of that contention and accept it. I have on that ground to set aside the tribunal's decision for breach of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 [S.I. 1986 No 2218].

5. However, I understand, from what the claimant told me in his address to me, that he did not seriously consider that his deafness arose out of the use of burners or torches - he was wholly convinced that it arose out of his work in Lloyds Bank engine room in which he had been employed prior to his retirement - and anyway it may well be - I did not investigate the matter - that his use of burners or torches occurred more than five years before the date of his claim, in which event paragraph (m) would be of no assistance to him. Accordingly, it may be - it is entirely a matter for the claimant - that the claimant may not wish to rely on paragraph (m), in which event he will be at liberty to withdraw his appeal on this point.

6. I now turn to the real issue in this case, namely the meaning of "ships' engine rooms". The tribunal took the view that what was meant was "engine rooms on ships". The words "engine rooms" naturally flow together as adjective and noun respectively, and the tribunal took the view that the word "ships'" was used to define the particular type of engine rooms in contemplation. The claimant, however, sought before the tribunal in effect to link the word "ships'" closely to the word "engine", contending that the phrase meant rooms "where there were ships' engines". And he repeated this submission to me.

7. One difficulty facing the claimant in his interpretation is that the word "engine" is used in the singular, not the plural. In its singular form, it is, in my judgment, clearly being used as an adjective to describe the type of rooms in question. What is envisaged is engine rooms, as distinct from any other sort of rooms, and these are further limited by the qualifying word "ships'".

8. A further difficulty that confronts the claimant is that in the room where he worked the engines as such were not specifically ships' engines. He worked in an engine room

belonging to Lloyd's Bank where there were six diesel engines, four of which ran 24 hours a day. It so happened that engines of this model were also used to power ships. In the claimant's case, they were used to generate electricity and to heat the building generally. But the characteristic of those engines was that they were diesel engines, not that they were ships' engines. They could perfectly well be used for ships and, I understand were extensively so used. However, they were not exclusively manufactured for ships' use. They were essentially just diesel engines with more than one use.

9. But any doubt there might be over this matter is, in my judgment, clearly dispelled by looking at the underlying purpose for prescribing the occupation set out in paragraph (s). For in the report by the Industrial Injuries Advisory Council on Occupational Deafness presented to the Secretary of State on 8 November 1988 the following observations are there set out.

" SHIPS' ENGINE ROOMS

59. The aim of our study was to establish values of Leq (8hr) for engine room staff in as wide a range of ships as possible. There was consultation with the Department of Transport's Marine Directorate, the Hygienic Section of a multi-national oil company; marine superintendents of shipping companies gave advice as did the General Council of British Shipping who were also generously helpful in mounting field work. Initial guidance regarding sources of information was given by the National Union of Marine Aviation and Shipping Transport Officers. Studies were done on six vessels ranging from a tug of a Thames towing company to a 27,200 ton cruise liner, a range considered to be representative of the shipping industry as a whole.

60. After the field work and consultations already described, and taking

account of the seafarer's special work routines and the actual time spent at sea compared to in port or on shore, it became clear that the risk for the majority of engineer staff would not warrant prescription at this stage. But, there were other factors to consider. For example, in ships with high speed engines and manned engine rooms, e.g. some small tankers, the risk justifies prescription. There are cases of engineer staff who have suffered the minimum degree of hearing loss required for benefit entitlement. Lastly, we learn that for engine room staff impaired hearing can lead to the loss of livelihood through medical discharge. We consider that this unusual factor weighs the balance in favour of prescription."

Manifestly, the context in which consideration was being given to prescribing ships' engine rooms as a relevant occupation was the shipping industry. There was no question of engine rooms generally being in contemplation. Moreover the position is reinforced by the fact that, later in the report under a separate sub-heading, consideration was given to the possibility of prescribing power stations, and it is significant that the engine room in which the claimant worked operated to provide power. On the possibility of prescribing power stations the Advisory Council said as follows:-

" POWER STATIONS

67. On the basis of information on levels of noise exposure and pain from the CEGB and observations made by the special adviser on a visit to a coal-fired power station we do not consider that any occupation involved in

the running of power stations should be added to the list of prescribed occupations at the present time."

10. The plain fact is that the engine room in which the claimant worked had nothing to do with ships. Nor did it affect the issue that the diesel engines employed therein could equally have been used on ships or that the person in charge of the operations there was, as the claimant informed me, a retired sea captain. The prescribed occupation of paragraph (s) is clearly limited to engine rooms on ships, and does not extend to engine rooms on land, regardless of the nature of the engines located there.

11. The claimant protested vigorously to me that it was unfair and unreasonable that if, as he maintained, he was made deaf by the noise of the diesel engines in the room where he worked, he should, nevertheless, be denied benefit, whereas if he had been working on a ship and rendered deaf by those same machines, he would have succeeded. I see the force of the claimant's contention, but a claim for deafness cannot succeed irrespective of the occupation giving rise to the deafness. The occupation has to be specifically prescribed in the regulations, and deafness arising out of any occupation not so prescribed will not suffice. Unfortunately for the claimant, his employment lay outside the occupation prescribed under paragraph (s). It follows that the tribunal did not err in point of law on this particular point, and if that were the only issue I would have no hesitation in dismissing this appeal. However, as explained above, the tribunal failed to deal fully with whether or not the claimant could bring himself within paragraph (m), and I must on that account set aside their decision.

12. Accordingly, I direct that the appeal be reheard by a differently constituted tribunal, who will give full consideration to whether or not the claimant can establish that he was engaged throughout the relevant period in employment falling within paragraph (m). Of course, if the claimant does not wish to pursue this particular issue, he can withdraw his appeal.

13. I allow this appeal.

(Signed) D.G. Rice
Commissioner
(Date) 20 MAR 1996