CSB 584/1981

JM/JCB

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision C.S.B. 8/82 R(SB) 19/82

1. This is a supplementary benefit officer's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 3 July 1981 which reversed two decisions of the benefit officer. I held an oral hearing of the appeal. The claimant did not attend and was not represented. The benefit officer was represented by Mr P Milledge of the Solicitor's Office of the Department of Health and Social Security. I am indebted to Mr Milledge for an address which was as helpful as it was entertaining.

2. The case turns upon the application of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No 985] to a claimant's hire purchase commitments. Regulation 11(1) provided as follows:

> "(1) This regulation shall apply where a claimant, or his partner, has entered into a hire purchase agreement ("the agreement") to purchase an item of furniture or household goods to which regulation 9(4) applies and, in the opinion of a benefit officer, the claimant is likely to remain entitled to a pension or allowance, or would remain so entitled if he made a claim for it, for the remainder of the period to which the agreement relates."

Regulation 11(2) begins thus:

> "(2) Where at the time at which the agreement was made the claimant was not entitled to a pension or allowance, and would not have been so entitled had he made a claim for it, a single payment shall be made -
>
> (a) if the outstanding debt is not more than the amount which would have been paid had regulation 9 applied, of an amount equal to the outstanding debt;"

3. With effect from 9 February 1981 the claimant, who had fallen ill, received a supplementary allowance. On that day she claimed single payments to meet the hire purchase debts in respect of a cooker, a gas fire and a carpet. (One agreement related to the cooker and gas fire and another agreement to the carpet.) The fact was, however, that prior to 9 February 1981 her local Gas Board had obtained judgment in the County Court in respect of breach of the agreement relating to the cooker and gas fire.

4. Regulation 6(2)(j) of the Single Payments Regulations provided thus:

> "(2) Notwithstanding any provision in these regulations, in particular regulation 30 (discretionary payments), no single payment shall be made in respect of any of the following:-
>
> .....
>
> (j) expenses arising from an appearance in court such as travelling expenses, legal fees, court fees, fines, costs, damages or subsistence;."

The rationale of this provision is obvious. A man who has been fined for causing malicious damage or who has been ordered to pay damages for assaulting his neighbour does not in social justice have any claim upon the state to foot the resultant bill. It occurs to me, however, that this appeal presents a situation which may not have been envisaged by the draftsman. It is a mere accident of chronology that, by the time when the claim for a single payment was made, the hire purchase agreement had been terminated by the Gas Board's election to treat the claimant's failure to maintain her instalments as having that effect. The County Court action would have been for damages. (Whether liquidated or unliquidated I cannot say, for I have seen neither the agreement nor the pleadings.) One does not have to be an expert in the history of the forms of action to appreciate that a judgment debt which represents damages is an entirely different animal from a debt under a contract. The tribunal (and I cannot blame it) took the pragmatic view that this distinction was one of shadow rather than of substance - and it awarded a single payment in respect of the cooker and the gas fire. Although I should very much have liked to reach the same conclusion, I have no alternative but to hold that the tribunal erred in law. Regulation 6(2)(j) is clear and overriding.

5. The implications and consequences of the finding to which I have been driven are little short of ludicrous. A claimant who is so impoverished that he falls behind with his instalments and is sued gets no relief. A claimant who has enough to maintain his instalments gets the balance paid off by the state. Nor does it end there. If the claimant cannot meet the judgment debt, the successful plaintiff may levy execution. Chattels, including the items the subject of the erstwhile agreement, will be carried off by the sheriff and sold. The claimant will then be entitled to single payments in order to replace such of these chattels as fall within the scope of the Single Payments

Regulations; and the last state of the taxpayer will be much worse than the first. I earnestly hope that the Secretary of State will reflect upon this situation.

6. The tribunal also awarded a single payment in respect of the debt outstanding on the carpet. On this aspect of the case an entirely different argument is advanced on behalf of the benefit officer. It is conceded that if regulation 9(4) applied to the carpet, then the other relevant provisions of regulation 11 are satisfied. Regulation 9(4) was, of course, a list of "essential furniture and household equipment". Item (h) read: "polyvinyl chloride (or equivalent) floor coverings". Is a carpet "equivalent" to PVC? The tribunal considered that it was. Mr Milledge strenuously submitted that it was not. The carpet the subject of the hire purchase agreement cost £2.99 a square yard. The amount payable in respect of "polyvinyl chloride (or equivalent) floor coverings" was "such amount as is necessary to purchase a new item of reasonable quality" (see regulation 9(5)(d)). It is conceded on behalf of the benefit officer that £2.99 a square yard would have been accepted as a reasonable price in respect of PVC.

7. Mr Milledge readily conceded, without any prompting from me, that the primary meaning of "equivalent" is "equal in value". He further submitted, however, that in contemporary everyday English "equivalent" is capable of bearing wider meanings; and, of course, he is quite right. What, then, are the relevant criteria other than value? It was established that little or no useful guidance can be derived from an examination of the chemical composition of the materials to be compared with PVC. Linoleum, Mr Millege agreed, would certainly fall to be regarded as equivalent to PVC. Linoleum (canvass and linseed oil) is vegetable. PVC is mineral. Modern carpets can be animal (wool), vegetable (cotton) or mineral (nylon).

8. Mr Milledge then deployed for my consideration three differences between PVC and carpets which, he submitted, made it unreasonable to regard the one as being equivalent to the other:

(a) PVC has a smooth surface. Carpet has a pile.

(b) PVC is cleaned and maintained in one way; carpet in another.

(c) Carpet is more readily damaged by the activities of children. It does not wear so well. This is especially true of the cheaper carpeting.

I must confess that the materiality of (a) and (b), in the context of regulation 9(4)(h), escapes me. There is, however, some force in (c).

9. Perhaps Mr Milledge's strongest point lay in his rhetorical questions: If carpeting is embraced by regulation 9(4)(h), what is excluded? Why did not the draftsman simply write "floor coverings"? I can, however, suggest at least two answers:

(i) The draftsman may well have wished to exclude the type of floor covering which is in the nature of a fixture; eg wooden blocks or quarry tiles.

(ii) PVC furnishes some guide as to the price range envisaged. (This, of course, fortifies the "of equal value" construction).

10. I find it difficult to draw any confident conclusion from what I have set out in paragraphs 6 to 8 above. I have decided, however, that it is unnecessary for me to attempt to do so. I quote from the speech of Lord Reid in Cozens v. Brutus [1973] A.C. 854, at p. 861:

> "The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word 'insulting' being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

11. In my view the foregoing passage is of direct application to the word "equivalent" as it appears in regulation 9(4)(h). It is not there used in any unusual sense. The Court of Appeal said many years ago that an industrial tribunal is, in effect, an industrial jury. A supplementary benefit appeal tribunal is, by the same token, a supplementary benefit jury. It is at least as well qualified as (and probably better qualified than) a Commissioner to decide what floor coverings are "equivalent" to PVC in the context of regulation 9(4)(h) - and I think that it is to the tribunal that Parliament has entrusted that duty.

12. I find it impossible to say that in this case the conclusion of the tribunal was "unreasonable" in the sense in which Lord Reid used that word in the final sentence of the passage quoted by me in paragraph 10 above. Indeed, after much reflection, the only ground of which I can think for excluding cheap carpeting from the scope of the regulation is

that carpeting is "above the station" of those who are in receipt of supplementary benefit. I cannot imagine that such an outmoded notion would find favour to-day.

13. It follows that I find no error of law in the tribunal's decision in respect of the carpet.

14. The amendment to rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 /S.I. 1980 No. 1605/ effected by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 /S.I. 1982 No. 40/ is now in effect. I do not, accordingly, have to go through the distasteful charade of referring this case to another tribunal with mandatory directions as to how that tribunal should determine the claimant's original appeal. I am satisfied that it is "expedient in the circumstances" that I myself should give the decision which the tribunal should have given.

15. My decision is as follows:

(1) The decision of the supplementary benefit appeal tribunal dated 3 July 1981 is erroneous in point of law and is set aside.

(2) The claimant is not entitled to a single payment in respect of the gas fire and gas cooker which were the subject of a County Court judgment against her.

(3) The claimant is entitled to a single payment in respect of the carpet which was at the material time the subject of a hire purchase agreement.

NOTE: The Single Payments Regulations under which the foregoing has been decided have now been replaced by the Supplementary Benefit (Single Payments) Regulations 1981 /S.I. 1981 No. 1528/. Regulations9 and 10 have been the subject of extensive rearrangement and renumbering. The words "of reasonable quality" have been omitted from the end of what was regulation 9(5)(d) (now regulation 10(3)(d)). Otherwise, however, the relevant provisions of the Regulations are unaltered in their effect.

(Signed) J Mitchell
Commissioner

Commissioner's File: C.S.B. 584/1981
C-SBO File: S.B.O. 761/81

Date: 2 March 1982