

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: James Evans

Social Security Appeal Tribunal: Wear

Case No: 32/14

[ORAL HEARING]

1. Our decision is that the majority decision of the social security appeal tribunal at Wear given on 24 July 1984 was, so far as it related to a claim for shoes, erroneous in point of law. We accordingly allow the appeal of the adjudication officer on that point and, being satisfied that it is expedient in the circumstances, give the decision that the tribunal should have given on this point, namely, that the claimant is not entitled to an emergency payment for shoes for his children. There were before the tribunal appeals in respect also of items of clothing which they dismissed but it is agreed on both sides that appeals from those decisions are not before us. We are grateful to Mr D James of the Solicitor's Office of the Department of Health and Social Security for the adjudication officer and to Mr R Drabble of Counsel instructed by the Child Poverty Action Group for the claimant, for their submissions.
2. The facts are common ground and are simple. The claimant is a coalminer and on 12 March 1984 he ceased to work at his place of employment because of a national trade dispute and has not worked since; the trade dispute has continued. He is married, with two children aged 9 and 11 years. On 25 May 1984 he made a claim for a single payment for items of clothing and for a pair of shoes for each of the children.
3. The claim raises the question as to whether, in the events which have happened, there is entitlement under regulation 8 of the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No 1529], or alternatively under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528]. We shall deal with the questions which arise under these provisions in turn.
4. Regulation 8 of the Urgent Cases Regulations falls to be considered in the present case through the operation of regulation 4(1) of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980 [SI 1980 No 1641]. Regulation 4(1) is in the following terms:-

"4.-(1) Where a member of the assessment unit is affected by a trade dispute Part II of the Supplementary Benefit (Urgent Cases) Regulations 1980 (emergency relief) shall apply notwithstanding the exclusion, in relation to such cases, in regulation 6(1)(b) of those regulations and Parts I and V (general and recovery) of those regulations shall also apply."

It is accepted that the reference in regulation 4(1) to the 1980 Urgent Cases Regulations is to be read as a reference to the 1981 Regulations (Interpretation Act 1978, sections 17 and 23). Part II of the Urgent Cases Regulations in fact consists of only one regulation, regulation 8, and that is in the following terms:-

"8.-(1) Where any member of the assessment unit is affected by a disaster (for example a fire or a flood), whether or not it affects other persons, and in the period mentioned in paragraph (3) -

(a) because of the disaster he is in need of any item to which column 1 of Schedule 1 to these regulations applies; and

(b) the Single Payments Regulations do not apply to that item in those circumstances,

the claimant shall be entitled in respect of that item to an amount of supplementary benefit determined in accordance with regulation 4.

(2) Where any member of the assessment unit is affected by such a disaster and because of the disaster is in need of living expenses, there shall be payable to the claimant for the period mentioned in paragraph (3) an amount of pension or allowance determined in accordance with regulation 5.

(3) This regulation shall apply for a period of 14 days immediately following the disaster, except where it appears to the Secretary of State that there are, will or likely to be circumstances making impracticable or unduly difficult the normal operation of the provisions governing or the practice relating to the claiming, awarding or payment of supplementary benefit he may direct that the period be extended; and a direction under this paragraph may be expressed -

(a) as having effect either generally or in relation to any case or class of case or to a specified area or specified areas; and

(b) either as having effect until a specified day or as continuing to have effect until revoked by the Secretary of State."

Regulation 2 provides that - "disaster" means the disaster in respect of which a claim is made for emergency relief."

5. The findings of the appeal tribunal were as follows:-

- "1. The claimant became involved in a trade dispute on 12/3/84.
2. He claimed a single payment for children's clothing on 25/5/84.
3. The children concerned are aged 9 and 11 years.
4. The children have outgrown their shoes and cannot wear them."

In the reasons for the decision the reasons of the majority are given as follows:-

"The majority accepted the claimant's evidence that the children had outgrown their shoes. This was an obvious danger to the health of growing children and they considered that as this was not a situation induced by them it was a disaster in terms of Reg. 8 of the Urgent Cases regs. as interpreted by the Commissioner in RSB 1/83. They did not consider that the outgrowing of clothes was as serious a matter and did not consider a payment justified in that respect. The majority considered that although Supp. Ben. would be payable for wife and children it would be inadequate to deal with this situation."

6. Mr Drabble submitted that it was open to the tribunal below to find that, where there was complete devastation in the ordinary financial arrangements of the household of the claimant caused by the strike, that was in the ordinary use of language a disaster for the members of the assessment unit other than the striker, and that the need for the shoes for the children was caused by the disaster at the time of the claim. The proposition as originally formulated continued with the words "in the sense that without it the need would not have been present at the time of the claim" but subsequently in the course of argument these words were withdrawn. As to "disaster" Mr Drabble submitted that what has to be considered is the combined effect of the event and its impact on the people affected by it.

7. It is in our view important to keep clear that there are four separate questions, all of which have to be answered affirmatively to lead to the application of regulation 8(1) of the Urgent Cases Regulations. These are firstly, was there a disaster, secondly was the member in question of the assessment unit affected by it, thirdly, was it because of that particular disaster which affected him or her that the need for an item within column 1 of Schedule 1 arose, and fourthly, did the Single Payments Regulations not apply to the item in question in those circumstances? As to the last question no issue arises that the Single Payments Regulations do not apply with the possible exception of regulation 30 with which we deal later.

8. With regard to "disaster" we respectfully adopt the approach of the learned Commissioner in R(SB) 1/83 paragraph 13, in giving the word its everyday meaning. We adopt also the citation in that paragraph from the definition in the Oxford English Dictionary, namely, "anything that befalls of ruinous or distressing nature; a sudden or great misfortune, mishap or misadventure; a calamity".

9. Regulation 8(1)(a) directs attention to the items in column 1 of Schedule 1 to the regulations. In seven paragraphs Schedule 1 identifies clothing and footwear, emergency travelling expenses, emergency help for purchasing bedclothes and essential furniture and household equipment, emergency help for repairs of essential furniture and household equipment, emergency minor repairs to property, emergency removal expenses and emergency fuel. While it is not necessary to set out all of these paragraphs, it is to be noted that there are, within the paragraphs, references to the occurrence of a disaster (paragraph 3), to damage caused by a disaster (paragraph 5) and to the results of a disaster (paragraph 7(d)). These references are in our view wholly compatible with both the purposes of regulation 8(3) and its primary identification of a period of 14 days "immediately following the disaster".

10. It is to be noted also that regulation 8(1) gives as examples of disasters a fire or a flood - what we might call conventional disasters; moreover, these "disasters" are not qualified by the "affecting" part of the opening words; these are events which occur.

11. A "disaster" is therefore in our view something which at the least contains two elements, that it can be said to have occurred and that it by its nature necessarily results in significant harmful or distressing consequences. It may be relevant in particular cases to consider other matters, for example, how significant in scale is the event and the harmful or distressing consequences. It would however in our view be wrong for us to seek to identify essential attributes or qualities further than we have, since in each case it is the language used by the legislature which has to be applied to the facts of that case. The essential elements we have identified would for example encompass both a tidal wave drowning many people and destroying property on a large scale and a gas explosion in a private house destroying only that house and killing or injuring one or two people.

12. The necessary consequences of an event may enable a decision to be reached whether that event is properly described as a disaster, but this does not in our view generally justify arguing backwards from the effect on a particular person affected to identify a disaster. The fact that an event causes serious harm to a particular person does not of itself necessarily turn that event into what is generally understood by a "disaster".

13. We are unable to agree with Mr Drabble that the state of affairs which he describes by the skilful forensic term "complete devastation" of the household's ordinary financial arrangements caused by the strike is a disaster within the language used by the legislature, bearing in mind that the first question is the identification of a "disaster". The state of affairs was a consequence and not an occurrence and was not a necessary ingredient of the strike; the strike itself could not be described as a "disaster" in terms of regulation 8(1). The children outgrew their shoes, but normal growth of human beings cannot be properly described as a "disaster". We do not therefore think that there was a "disaster" which "affected" the children.

14. We particularly do not accept that the children's need for shoes was "because of" what Mr Drabble described as a disaster. The children would have needed new shoes whether or not their father was involved in a trade dispute and whether or not he was receiving any wages. They would have needed them even if he had been at work and was being paid full wages. In our view the serious effect of the trade dispute on the finances of the household did not cause the need for larger shoes for the children. The "need of any item" must directly flow from the disaster.

15. In our view accordingly the majority of the tribunal reached a conclusion which was based upon an erroneous view of the law as to what constituted a disaster and as to the causation of the children's need for shoes. The decision by a majority as to the single payment for the shoes cannot therefore stand.

16. At the end of his Decision R(SB) 1/83, the Commissioner referred to a self-induced calamity (he instanced a drunk smashing up his caravan). He drew a distinction between the drunk and the members of his family who were in any way involved in bringing about the damage but were necessarily involved in the consequences thereof, the former being outside and the latter inside regulation 8(1). Mr James submitted to us that the language used as to the

members of the family was too wide. We think this may depend on the circumstances and in our view the right initial approach is to ask the four questions which we have posed. Mr James submitted that regulation 8(1) could not apply where one member of the assessment unit caused or contributed to the disaster or the causation of the need of other members of the assessment unit. It is not necessary for us to analyse this argument or the effect of self-induction for the purposes of this decision and we do not do so.

17. As to the second limb of the case relating to regulation 30 of the Single Payments Regulations (which enables single payments to be made in certain circumstances where the requisite conditions are not satisfied) this cannot apply if regulation 6(1)(b) of those regulations applies, and that provision is in the following terms:-

"6.-(1) Notwithstanding any provision in these regulations, in particular regulation 30 -

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(b) no single payment shall be made where any member of the assessment unit is a person whose requirements fall to be disregarded to any extent by virtue of section 8 of the Act (persons affected by trade disputes). . ."

The reference is to section 8 of the Supplementary Benefits Act 1976 as substituted in 1980. That runs as follows:-

"8.-(1) Subject to subsection (2) below, where a person -

(a) is, by reason of a stoppage of work which is due to a trade dispute at his place of employment, without employment for any period during that stoppage; and

(b) has not during that stoppage become bona fide employed elsewhere in the occupation which he usually follows, or become regularly engaged in some other occupation,

his requirements for that period shall be disregarded for the purposes of supplementary benefit except so far as those requirements include requirements of another person which are to be treated as his by virtue of any other provision of this Act and are not to be disregarded by virtue of this subsection as it applies to the other person."

Subsection (2) is immaterial.

18. It is not in dispute that sub-paragraph (a) and sub-paragraph (b) apply. For the reasons we have given in decision on Commissioner's File CSB/143/1985, a copy of which is annexed, we are satisfied that the claimant is a person who falls within section 8 of the Supplementary Benefits Act 1976. It follows therefore that regulation 30 cannot be applied in the circumstances of this case.

(Signed) Leonard Bromley
Chief Commissioner

(Signed) J S Watson
Commissioner

(Signed) R F M Heggs
Commissioner

Date: 8 March 1985