

CSB 9711/83

Memorandum

JGM/FB

The statement of facts as LT 205 does
not of itself establish them. So ATs should
a) record facts which have been conceded
b) make findings on facts in dispute; findings to be
based on evidence apart from LT 205

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No 23/138

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 9 August 1983 was erroneous in point of law and it is set aside. The matter must again be referred to a differently constituted social security appeal tribunal save on the one point as to which I give the decision that the tribunal should have given, in exercise of the power conferred by regulation 27(a)(i) of the Social Security (Adjudication) Regulations 1984.

2. One major point on which the tribunal adjudicated concerned the period (if any) for which the claimant fell to be treated as being employed after the termination of his engagement with a company at 2 October 1981. This turned on the proper interpretation of regulation 9(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, about which there has been a considerable conflict of opinion finally resolved perhaps by the decision of the Court of Appeal in Chief Supplementary Benefit Officer v Cunningham (a copy of which is in the case papers). The appeal tribunal in giving their decision followed the directions contained in an earlier decision of mine on the claimant's case, which the above Court of Appeal decision has shown to have been erroneous. On this issue I am now able to give the decision that the tribunal should have given, viz. that the claimant is not to be treated pursuant to regulation 9(1) of the Conditions of Entitlement Regulations 1981 as employed beyond 30 October 1981. An allowance may be awarded to him on this footing without awaiting the result of the reference back to the new tribunal on the other questions by virtue of which the claimant may arguably have been entitled from some earlier date. But if there is any question of the rate of the allowance that must go to the new tribunal.

3. Regulation 9(1) provides for a person to be treated as being engaged in remunerative full-time work (subject to regulation 9(2)) not only while he is actually so engaged but also for a period after he has ceased to be so engaged, a period which is ordinarily calculated (under regulation 9(1)(c)) from the date on which certain terminal payments which are treated as constituting remuneration are payable. The

difficulties of construction of the regulation arose in cases where there were a number of different terminal payments each made in respect of periods of varying lengths. The principal question was whether the periods could be added together to form a series of consecutive periods or whether they were to be treated as concurrent so that, effectively, the claimant's deemed employment continued only until the end of the period which last expired. It was this question that was resolved in the Cunningham case, though the position has since been altered by a further regulation that is however of no significance on the present appeal.

4. On this issue there is the evidence of a letter from the claimant's employers giving details of the full and final payment due to the claimant with a receipt signed by the claimant showing a number of payments, somewhat illegibly dated in September 1981. This includes certain payments in respect of 14 days' holiday earned but not yet taken, and of salary for 1 and 2 October 1981 and 2 days in lieu. There is also a statement made by the claimant in a submission addressed to the tribunal that he received one month's salary for September 1981 which was payable on 30 September 1981, 2 days before the termination of his employment. It is clear that, taken by itself, this salary payment could be invoked to deem the claimant to have been employed for one month from its date, i.e. to 30 October 1981. In fact the tribunal added to this a period of 14 days for the pay in respect of the holiday not taken and the 2 days' salary in respect of 1 and 2 October. In so doing they were following faithfully the terms of my previous decision. That has now been shown to be wrong; and it was not permissible to aggregate these periods with the period referable to the month's salary to 30 September. Possibly the holiday money and the two days' pay for 1 and 2 October could have been aggregated so as to create a single period of 16 days. But such period would be subsumed in the later ending period attributable to the final salary to 30 September and they can be ignored. It follows that the claimant cannot be treated, under regulation 9(1) as employed beyond 30 October 1981 and that his title to a supplementary allowance should be worked out accordingly.

5. The claimant wants to do better than this. He has made a number of points including a general point about the nature of the evidence. I reiterate what I said in my previous decision about the matters stated as "facts" in the form LT 205. These are no more than statements by the adjudication officer of what he thinks or hopes that he can establish; their mere statement in the form LT 205 does nothing to establish them. They may be established by their being conceded or by other evidence. It is desirable that the tribunal should record such of the relevant facts as they find to have been conceded. Relevant facts that are not conceded must be the subject of specific findings and these must be based on evidence outside the form LT 205.

6. The claimant made the point that a decision on a form A 14N was issued awarding him an allowance from 5 October 1981. If this is correct and the decision has not been revoked, the claimant's remedy might be to sue for the money, so far as not received, in the Courts. But such a decision, if still standing, would preclude the making of

a contrary decision in relation to any period covered by it. The appeal tribunal ought therefore to have dealt with this contention and they did not. The new tribunal must do so. I do not know what the position of this decision is. It was capable of review by the benefit officer (now the adjudication officer) either on the ground of error of law or error of fact; indeed it may have been reviewed, and replaced by the decision of the benefit officer now appealed from. I cannot speculate further.

7. The remaining matter is the claimant's claim to an allowance for any period to which regulation 9(1) precludes a normal supplementary allowance, under the Supplementary Benefit (Urgent Cases) Regulations 1981. On this issue the tribunal held that the claimant's resources exceeded his requirements computed under regulation 5 (meaning I think regulation 5 of the Urgent Cases Regulations). No explanation of this conclusion and insufficient findings of facts relevant to it are included. It is quite impossible to deduce from the decision their reasons why the claim failed in this respect and the decision is set aside on that account for want of compliance with regulation 7 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 then in force.

8. The new tribunal must thus deal with the point about the decision said to have been given on form A 14N; and with the claim under the Urgent Cases Regulations. Further, if my decision on the point under regulation 9(1) is not sufficient to enable the rate (if any) of the allowance from 30 October 1981 to be worked out, they must deal with the amount of that as well.

9. The appeal succeeds.

(Signed) J G Monroe
Commissioner

Date: 6 December 1984

Commissioner's File: C.S.B. 971/1983
C SBO File: 1129/83
Region: North Eastern