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Commissioner's File: CSB/143/1985

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Region: London North

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: Nicholas Bland

Social Security Appeal Tribunal: Euston

[ORAL HEARING]

1. Our decision is that the claimant is entitled to receive the sum of £27.55 by way of supplementary benefit for the week commencing 17 January 1985 and we confirm the decision of the appeal tribunal to that effect. No error of law arises.

2. This is an appeal by the claimant from the unanimous decision of the social security appeal tribunal, Euston, on 5 February 1985, by leave of the chairman. For the reasons which we shall give the decision of the tribunal dismissing the appeal from the decision of the adjudication officer, dated 23 January 1985, is upheld. We are indebted to Mr Drabble of Counsel, instructed by the Child Poverty Action Group, for the claimant and to Mr D James of the Solicitor's Office of the Department of Health and Social Security for the adjudication officer for their arguments.

3. The claimant is a coalminer employed by the National Coal Board. He is married with one child. On 26 April 1984 he ceased work through an industrial dispute and he has not worked at his job since, as the dispute continues. He is in receipt of supplementary benefit. The only dispute so far as the tribunal was concerned related to two items in the statement of assessment, namely, item 1, "Amounts for living expenses", "For the appellant and partner £22.45" and item 8, "Adjustments for trade dispute £16".

4. The principal question in this case arises directly as to whether section 6(1)(b) of the Social Security (No 2) Act 1980 applies to the effect that in the calculation of supplementary benefit for the claimant there is to be deducted (now) £16 per week by reason of the Social Security (No 2) Act 1980 Specified Sum Order 1984 [SI 1984 No 1800], in effect the strike pay which the claimant's union is treated as paying the claimant. It is not relevant to this question whether or not this amount is actually being paid. There is no dispute that on the relevant language the question turns on whether the claimant falls within section 8 of the Supplementary Benefits Act 1976 (as substituted in 1980). On this question section 9 of that Act (as also substituted in 1980) has also been referred to. It will also be necessary to consider certain provisions of Schedule 1 to the Supplementary Benefits Act 1976 (as substituted in 1980) in relation to "normal requirements" only (as the parties agree), and

of the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No 1399] which we understand are not materially different from the provisions in force when the 1980 substitutions were effected. We set out the material provisions in the next paragraph.

5. Section 6(1) of the Social Security (No 2) Act 1980 -

"6.-(1) Where in consequence of a stoppage of work which is due to a trade dispute the requirements of a person for any period are, by virtue of section 8 of the Supplementary Benefits Act 1976 (which relates to cases affected by trade disputes), to be disregarded to any extent for the purposes of supplementary benefit, then, except so far as regulations provide otherwise -

- (a) there shall not be disregarded for the purposes of that Act -
 - (i) any relevant payment of his for that period or any part of it, and
 - (ii) without prejudice to the generality of the preceding sub-paragraph, any amount which becomes or would on an application duly made become available to him in that period by way of repayment of income tax deducted from his emoluments in pursuance of section 204 of the Income and Corporation Taxes Act 1970 (pay as you earn);
- (b) any payment by way of a supplementary pension or allowance for that period or any part of it which apart from this paragraph would be made to him, or to any other person whose resources are to be aggregated with his in pursuance of the said Act of 1976, shall not be made if the weekly rate of the payment is [£16] or less and, if it is more than [£16], shall be at a weekly rate equal to the difference; and
- (c) no payments in pursuance of section 4 of the said Act of 1976 (which relates to urgent cases) shall be made, in respect of requirements relating to that period, to him or to any other person whose resources are to be aggregated with his in pursuance of that Act."

Section 8(1) of the Supplementary Benefits Act 1976 -

"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 the 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."

Section 9(1) and (2) of the Supplementary Benefits Act 1976 (as amended immaterially in subsection (2)) -

"9.-(1) Where a person -

- (a) has, by reason of a stoppage of work which was due to a trade dispute at his place of employment, been without employment for any period during the stoppage; and
- (b) is a person whose requirements for that period (except so far as those requirements included the requirements of any other person) fall to be disregarded for the purposes of supplementary benefit by virtue of section 8 of this Act (persons affected by trade disputes); and
- (c) becomes engaged in remunerative full-time work again in consequence of the ending of the stoppage;

section 6(1) of this Act shall not apply in his case until the expiration of the period of fifteen days from the beginning of the engagement mentioned in paragraph (c) above; but subsection (2) below shall have effect in such a case.

(2) Any sum paid to a person or an award of supplementary benefit by virtue of subsection (1) above shall be recoverable from him or another person in accordance with regulations."

Schedule 1 to the Supplementary Benefits Act 1976 -

"2.-(1) For the purposes of this Schedule requirements shall be of three categories, namely, normal requirements, additional requirements and housing requirements; and the items to which each category relates and, subject to sub-paragraph (3) of this paragraph, the weekly amounts for those categories shall be such as may be prescribed.

(2) A person's requirements shall consist of normal requirements together with requirements, if any, of such of the other categories as are applicable in his case.

(3) In the case of a person specified in the first column of the following table his normal requirements shall be taken to be the weekly amount specified in relation to him in the second column of that table; and in that table -

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"relevant person" means a person whose requirements include those of another person by virtue of sub-paragraph (1) of paragraph 3 of this Schedule.

TABLE

Person	Weekly amount
<p>1. A relevant person who - (a) is such a person as is mentioned in section 1(1)(a) of this Act; or (b) is not such a person as is so mentioned but satisfies prescribed conditions.</p>	<p>The aggregate of the sums for the time being specified in section 6(1)(a) of the Social Security Pensions Act 1975 and column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975 (which specify the amounts of the basic component of a Category A retirement pension and the increase of the pension for an adult dependant).</p>
<p>2. A relevant person not falling within paragraph 1 of this table.</p>	<p>The aggregate of the sums for the time being specified in paragraph 1 of Part I of the said Schedule 4 and column (3) of paragraph 1(a) of the said Part IV (which specify the amounts of unemployment or sickness benefit and the increase of it for an adult dependant of a beneficiary under pensionable age).</p>
<p>3. A householder who - (a) has attained pensionable age; or (b) has not attained pensionable age but satisfies prescribed conditions.</p>	<p>The sum for the time being specified in the said section 6(1)(a).</p>
<p>4. A householder not falling within paragraph 3 of this table.</p>	<p>The sum for the time being specified in paragraph 1 of the said Part 1.</p>
<p>(4) Regulations may provide that the preceding sub-paragraph shall have effect with prescribed modifications. </p>	
<p>3.-(1) Where two persons are a married or unmarried couple, their requirements and resources shall be aggregated and treated -</p>	
<p>(a) until the prescribed date, as those of the man; and</p>	
<p>(b) on and after that date, as those of such one of them as satisfies prescribed conditions or, where both of them satisfy or neither of them satisfies those conditions, as those of such one of them as they may jointly nominate in accordance with regulations or, in default of such a nomination, as the Secretary of State may determine.</p>	
<p>(2) Where a person is responsible for, and is a member of the same household as, another person and they are not a married or unmarried couple, then -</p>	

(a) if the other person is a child or is excluded from entitlement to supplementary benefit by section 6(2) of this Act; or

(b) if the circumstances are such as are prescribed,

their requirements and resources shall be aggregated and treated as those of the first-mentioned person."

The Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No 1399] are made under (*inter alia*) paragraph 2(4) of Schedule 1 to the Supplementary Benefits Act 1976, and regulation 10 of those regulations is in the following terms -

"10.-(1) In the case of a person to whom any paragraph in column (1) of Schedule 3 applies, the provision, which in the corresponding paragraph in column (2) of that Schedule relates to him, or, if he had been a relevant person, would have related to him, shall have effect with respect to the weekly amounts for normal requirements specified in those provisions further modified as shown in the corresponding paragraph in column (3) of that Schedule."

The relevant parts of Schedule 3 to the Requirements Regulations are -

Cases (1)	Provisions Modified (2)	Modified Amount (3)
12. Where either (but not both) of a relevant person and his partner is a person affected by a trade dispute.	12. Paragraphs 1 and 2 of the table.	12. The ordinary rate for non-householders.

The table referred to is that set out above.

Regulation 2(1) of the Requirements Regulations contain the following material definitions -

"'person affected by a trade dispute' means a person whose requirements fall to be disregarded to any extent by virtue of section 8 of the Act."

"'relevant person' means that one of a married or unmarried couple whose requirements and resources include those of the other by virtue of paragraph 3(1) of Schedule 1 to the Act."

The Act referred to is the Supplementary Benefits Act 1976 and the provisions referred to have been set out above.

6. Mr Drabble's principal submission is that section 8(1) of the Supplementary Benefits Act 1976 on its true construction has no application where, in brief, paragraph 3(1) of Schedule 1 applies, and that, as to that exception, the legislature has enacted paragraph 12 of Schedule 3 to the Requirements Regulations to, so to speak, fill the gap deliberately left. He submitted that section 8 can have no application to a married (or unmarried) couple, where the wife's requirements are treated as the husband's; they are effectively all his requirements and those requirements do include requirements

to be treated as his within section 8(1). Therefore, he submitted, the disregard for which section 8 provides does not apply, on the true construction of section 8. Put another way, section 8 can have no operation, Mr Drabble submitted, if the requirement severance operation which it contemplated could not be performed, as it could not, he submitted, in the case of a married or unmarried couple who were treated as one person so far as requirements were concerned; it was not a question of a claimant and a dependant. On the other hand, Mr James has argued that there is no limitation on the generality of section 8(1), and that the function of paragraph 12 is to modify the effective operation of section 8 in the context where paragraph 12 applies, so that it matters not whether it is the claimant or his partner who is the one affected by a trade dispute.

7. Mr Drabble further submitted that there was no need to have recourse in the circumstances of the present case to section 8(1) at all; the sum payable was that identified by paragraph 12 of Schedule 3 to the Requirements Regulations, where that paragraph applied. Therefore, he submitted, it could not be said that it was "by virtue of section 8 of the Supplementary Benefits Act" that the disregard arose and accordingly section 6(1) of the Social Security (No 2) Act 1980 did not apply. This is not in our view right because for the purposes of paragraph 12 the person concerned must be "a person affected by a trade dispute" and that is a defined expression meaning a person whose requirements fall to be disregarded to any extent by virtue of section 8. If a person is not within the definition, paragraph 12 could not apply to him or her at all. Clearly paragraph 12 has as its pre-condition that section 8 does apply in the particular case. Mr Drabble's submission purported to demonstrate that paragraph 2 of the Table in paragraph 2 of Schedule 1 to the Supplementary Benefits Act 1976 together with the provisions of the Requirements Regulations can operate independently of section 8 in the case of a person affected by a trade dispute. The flaw of that argument is that the provisions of Schedule 3 paragraph 12 to those regulations operate because of section 8 and not in spite of it. Further in any event it would be surprising that subordinate legislation filled a gap in the material primary legislation of section 8 without the existence of any gap being clearly indicated in section 8 itself.

8. Mr Drabble further submitted that paragraph 12 constituted a 'misfire' by the legislature, as he put it, as far as husband and wife were concerned, since they were not within section 8 and therefore not within the definition in paragraph 12.

9. Mr Drabble also submitted that the expression in section 8(1) "except so far as" was precisely apt to deal with an indivisible sum. We do not agree. In our view the words denote a quantum limitation on what would otherwise be a total disregard under the subsection. In short, all other requirements but those of the person who is without employment through a trade dispute at his place of employment remain to be taken into account and are not to be disregarded.

10. In our view both sub-paragraphs (1) and (2) of paragraph 3 in Schedule 1 to the Supplementary Benefits Act 1976 have the same effect, that is, where and as to those to whom they apply, they require their requirements and resources "to be aggregated and treated" as those of the person identified or for whose identification an identification mechanism is spelt out. We can see no legislative purpose in construing section 8(1) to apply to persons identified under paragraph 3(2) but not to persons identified under paragraph 3(1).

As Mr Drabble agreed, on his construction, section 8(1) would cause a disregard where it applied to a single man and a single man with a child but not to a married or unmarried couple where one was off work through a stoppage; although even in this case Mr Drabble in his reply indicated that there might be highly unusual circumstances in which it would apply to such a couple; it would however apply to such a couple by virtue of the closing words of the subsection if both were off work through a stoppage. We can see no sensible policy which the legislature might have to achieve such a result, in particular to distinguish couples where one was off work through a trade dispute from couples where both were. Further, the words "include requirements of another person" in section 8(1) have, we think, to be construed consistently with the like words in the definition of "relevant person" in Schedule 1 to the Supplementary Benefits Act 1976 and are both apt to refer to the effect of paragraph 3 in that Schedule, the reference in the definition of "relevant person" being to paragraph 3(1) alone.

11. We accept Mr James' argument as to section 9 of the Supplementary Benefits Act 1976 that Parliament could not have intended the obligation to repay supplementary benefit for the first 15 days back at work which that section imposes to vary according to whether the person or persons concerned was or were a single person, a married or unmarried couple of whom one had stopped work or such a couple both of whom had stopped work. In our view sections 8 and 9 have to be construed consistently.

12. In our view paragraph 12 of Schedule 3 to the Requirements Regulations modifies the operation of section 8 and both have to be read together. The words in paragraph 12 amending the table in Schedule 1 to the 1976 Act do not, in our view, require a different construction. We see no relevance so far as construction is concerned through the later addition of £1.50 to paragraph 2 in the table without any identification of to whom it was attributable.

13. It follows we consider that section 8(1) did apply to the claimant, and accordingly that so does section 6(1) of the Social Security (No 2) Act 1980.

14. This case is of wide significance affecting many claimants. It is worthy of note that after the claimant had failed to get the issues we have determined decided by the High Court on judicial review the whole process from the making of the claim through to its determination by the adjudication officer, the determination of the appeal by the tribunal and the issue of this decision by a Tribunal of Commissioners after an oral hearing has occupied no more than four weeks.

(Signed) Leonard Bromley
Chief Commissioner

(Signed) J S Watson
Commissioner

(Signed) R F M Higgs
Commissioner

Date: 19 February 1985