

VGHH/RO

Commissioner's File: CU/058/1986

C A O File: AO 4205/UB/86

Region: Midlands

SOCIAL SECURITY ACTS 1975 TO 1985

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

me: Andrew David Brown

Appeal Tribunal: Hereford

Case No: 01/12

1. This is a claimant's appeal, brought with the leave of a Commissioner, against a decision of a social security appeal tribunal dated 14 January, 1986 which confirmed a decision of an adjudication officer dated 29 August, 1985 that the claimant was disqualified for receiving unemployment benefit from 1 June 1985 to 12 July 1985 because he voluntarily left his employment without just cause (Social Security Act 1975 section 20(1)(a)).

2. The claimant was employed as a labourer on a Manpower Services Commission Community Programme called the Churchyard Project. This employment terminated on 30 April 1985, after approximately 6 months service. On 29 August 1985 an adjudication officer gave the decision referred to in paragraph 1 above. The claimant appealed against this decision to a social security appeal tribunal who on 14 January 1986 decided "Appeal dismissed".

3. The tribunal's recorded findings on question of fact material to that decision were:

"We have listened carefully to the appellant and Mr Cleverly and read the detailed submissions. However, although there are many complaints by the appellant we are satisfied that none of them justified his leaving when he did and therefore he has not shown just cause."

The tribunal's recorded reasons for decision were:

"No just cause for leaving voluntarily."

4. Regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984, as amended, required the chairman of the tribunal to

"include in the record of every decision a statement of the reasons for such decision and of their findings on questions of fact material thereto..."

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5. The first issue before the tribunal was whether the claimant left voluntarily and the onus of showing this rests on the adjudication officer. Mr Cleverly on behalf of the claimant had, according to the chairman's note of evidence, submitted that the circumstances in which he left "amount to constructive dismissal", clearly a submission that the claimant did not leave voluntarily. The second issue before the tribunal was whether, if the claimant did leave voluntarily, he had just cause for so doing. The claimant's complaint, or one of them, was that he was compelled to travel in a van with many people smoking and he submitted a letter from his doctor that this was certainly detrimental to his health. The third issue before the tribunal was what, if the claimant did leave voluntarily, and failed to show that he had just cause for doing so, the period of disqualification should be. There is a discretion to disqualify the claimant for "such period not exceeding six weeks as may be determined..": see section 20(1) of the Social Security Act 1975. That discretion as to the period of disqualification which must be exercised judicially.

6. The tribunal did not find a single fact on which to base a determination on any of these three issues. No one reading their decision can determine why they considered that the claimant left voluntarily (an issue clearly in dispute), why they considered that he had not shown just cause or whether they understood that they had a discretion as to the period of disqualification and, if they did, what their reasons were for deciding that the maximum period of 6 weeks was appropriate in the circumstances of the case.

7. As pointed out by the adjudication officer now concerned, who has submitted that the tribunal were in breach of regulation 19(2)(b), a submission which is clearly correct, since not one single fact has been found, I have a discretion either to remit the case to an appeal tribunal for rehearing or to determine the case myself: see decision R(U) 3/63, which is that of a Tribunal of Commissioners. Paragraph 14 of that decision sets out the general rule in practice which "is that, where the claimant has a statutory right to a hearing by the local tribunal [now social security appeal tribunal] and has not received it in accordance with the regulations, a fresh hearing by the local tribunal will normally be ordered, especially if the claimant asks for it." Two exceptions are recognised, first where the appeal cannot possibly succeed and, at the opposite end of the scale, where all the facts are before the Commissioner (paragraphs 15 and 16). Neither exception applies here. The claimant's representative has not replied to my note, in granting his request for an oral hearing, that this request was granted on the basis that he was asking me to decide the appeal myself and that if he was asking for the case to be remitted, an oral hearing was unnecessary.

8. In these circumstances, in the exercise of my discretion, I consider that the general rule should apply and that the case should go back to a fresh tribunal. The claimant has not had a hearing in accordance with the regulations, to which he was entitled, because no single fact has been found and there are no findings on the relevant issues referred to in paragraph 5 above. I could only decide the case if I had an oral hearing. That is clearly a relevant and important factor: see decision R(S) 2/83 at paragraph 7 and the general rule already quoted.

) Reasons for Decision (contd)

e/she must not leave his/her employment without due regard to the interests of the rest of the community. This usually consists of reasonable steps being taken in the meantime, before leaving that employment, to obtain other employment. This the claimant did not do, his whole evidence, from the beginning right to the end, in all the copious documentation of it, is entirely concerned, whether justifiably or unjustifiably, with 'self'. The 'self' is so much that it appears obsessive on occasions. And the Tribunal found it very significant indeed that in all of that mass of written evidence given beforehand, there was no reference whatsoever to steps taken to look for other work before leaving that employment. That evidence was given at a late stage of the Tribunal hearing and only after the Chairman had specifically raised the issue with the claimant. The Tribunal could not therefore accept that kind of after-thought evidence, particularly having regard to the quite remarkable letter of the 29th May 1986 to the Group Adjudication Officer which rejects information as to that key issue of efforts to find alternative employment. At worst, the Tribunal could regard it as utter stupidity and crassness, but the Tribunal cannot be that uncharitable, it must regard it as a way of avoiding the question asked, for the reason that no efforts had in fact been made to find alternative employment. The Tribunal also find it significant, in that important context, that the claimant had greater knowledge of Welfare Benefit Law than the usual lay person and yet, he had avoided, until the last minute only under question, to refer to efforts to find alternative employment.

As regards the exercise by the Tribunal of its discretion to reduce the period of disqualification, the Tribunal was unable to find any factor in the evidence before it to enable it to exercise that discretion. Mr. C. Y. With respect to the learned Commissioner, 'constructive dismissal' is not equivalent to not leaving employment voluntarily. It is a concept solely within the Employment Law relating to unfair dismissal. As regards Social Welfare Law you either leave the employment voluntarily, whatever the compulsions, or you get sacked. The nearest the concept of constructive dismissal can come to is where the Tribunal might find that the causes making an employee leaving his employment could be factors justifying a reduction of a period of disqualification. None of the causes given by the claimant merited, in the view of the Tribunal, any reduction whatsoever.

The conditions of work, as described by the claimant, involved a long period of attention, not of sufficient severity to make him take his complaints to a higher and more influential authority than the one he approached. Criticism about the Hereford City Council was not an adequate reason. There has been no sudden overwhelming reason at the last minute. The last straw is only, after all, a straw.

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PELLANT

Findings of Tribunal on questions of fact material to decision (ie the relevant facts accepted from the evidence available)

The claimant was employed as a labourer on a Churchyard Project by the Hereford City Council from 5/11/84 to 30/4/85 when he left that employment voluntarily. The circumstances of the employment, the incidents which occurred during it and which led to the claimant leaving that employment are accepted and found to be facts. Insofar as that they have been set out in massive detail in the documentation, it will be unnecessary for the Tribunal to repeat them again at length. The Tribunal reject the evidence given to it by the claimant as to the steps he took to find other employment in the meantime before leaving the Churchyard Project on 30/4/85. That employment could have continued for at least another six weeks.

Full text of *unanimous/*majority decision on the *Appeal/*Reference (including amounts and effective date(s) as appropriate)

Appeal allowed.

Mr. Andrew David Brown is disqualified from receiving Unemployment Benefit from 1/6/85 to 2/7/85 (inclusive). Section 20(1)(a) of the Social Security Act 1975.

Reasons for dissent if Tribunal not unanimous

Reasons for decision (ie an explanation of why, when applying the facts to the statutory provisions and case-law, a particular conclusion has been reached. And why, if it is not clear from box 2, that evidence has been accepted or rejected).

The Tribunal accepted the long, detailed and repetitive written evidence of the claimant as to the conditions of his employment and his reasons for leaving that employment, because the evidence to the contrary was insufficient in comparison. Even though the Tribunal felt that the claimant had perhaps been over-sensitive, to the point of being hysterical at times; it was up to him, on his own purely subjective basis, to decide that he had good personal reasons for leaving that employment. The concept of 'just cause' does not stop there. It involves an extension, a substantial further constituent. Decision R(U) 20/64 emphasises that the purpose of Unemployment Benefit is to provide against the misfortune of unemployment happening against a person's will. It is not sufficient for a person to prove that he/she acted reasonably, in the sense of acting reasonably in his/her own interests, but the interests of the National Insurance Fund and other contributors have to be taken into account as well. So long as he/she does not break his/her contract with his/her employer, an individual is free to leave his/her employment when he likes, but if he/she wishes to claim Unemployment Benefit (contd).

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Chairman's Signature.....

[Handwritten Signature]

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Form AT 22 noted

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APPLICATION FOR LEAVE TO APPEAL FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL

Name: MR ANDREW DAVID BROWN

SSAT: SWANSEA

Register No: 85/4

In the matter of an application by the claimant for leave to appeal from the decision of the social security appeal tribunal dated the 18th day of March 1987.

The claimant's late application for leave to appeal to a Commissioner is accepted for consideration, since I consider that there are special reasons for doing so. Any procedural defects connected with the application are waived. Leave to appeal is granted. The claimant's letter (and enclosed grounds) dated 7 July 1987 shall stand as his notice of appeal given on the date when notice of this direction is given to him.

OTHER DIRECTIONS BY THE COMMISSIONER

The claimant appears from the notes of the proceedings before the tribunal on 18 March 1987 to have written a letter dated 29 May 1986 to "the Group Adjudication Officer in Worcester". The adjudication officer should obtain a copy of that letter for this Office's file, and, if different, of "the attached sheet" referred to by the claimant on the letter from the Unemployment Benefit Office to the claimant dated 28 May 1986.

This Office shall copy the letter (and sheet if different) to the claimant.

I note that the claimant in his letter dated 7 July 1987 requests an oral hearing of any appeal. I direct an oral hearing of the appeal. If the claimant so requests the oral hearing shall take place in Cardiff, but otherwise in London.

I note that the record of the proceedings of the social security appeal on 18 March 1987 bears that date but that the papers show that the record was not in fact completed until May 1987. In these circumstances the claimant's right of appeal is on a point of law only, but if I were to hold that the decision of the tribunal was erroneous in law then I would consider it expedient to make findings of fact sufficient finally to determine these proceedings. The parties should accordingly be prepared at the hearing to produce such witnesses and to tender such evidence as they may wish to reply on in this eventuality.

The adjudication officer shall deal with whether the claimant was in employed earner's employment within section 20(1) of the Social Security Act 1975, and if not with what other provisions it is contended applied to him in the circumstances.

I have considered the claimant's letter of 24 December 1987 and his further letter dated 5 January 1988 in answer to the letter from this Office dated 31 December 1987, concerning the terms of the introduction to the question asked of the claimant by the Unemployment Benefit Office in its letter to him dated 28 May 1986. The adjudication officer should obtain for me an explanation of how and why the introduction was framed as it was, (to be copied by this Office to the claimant).

Judge Bromley, Q.C.
CHIEF COMMISSIONER