

WB - Dismissal Through Misconduct - Then Lost
Another Job - Then Disqualification Case
AND REPEATED - FACT OF SMALL SETTLEMENT &
MJJG/5/LM Unfair Dismissal Commissioner's File: CU/64/94
After Verdict to Person

★ 57/95

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 15 October 1993 as that decision is not erroneous in law: Social Security Administration Act 1992 section 23.

2. This is an appeal by the claimant, a married woman born on 19 December 1968, against the unanimous decision of a social security appeal tribunal dated 15 October 1993, which dismissed the claimant's appeal from a decision of the adjudication officer as follows,

"[The claimant] is disqualified for receiving unemployment benefit from 20 January 1993 to 20 July 1993 (both dates included). This is because she lost her employment through misconduct ... Social Security Contributions and Benefits Act 1992, sections 25(1)(a) and 28(1)(a)."

3. The tribunal's record of decision (on form AT3) is completed in commendable detail. Their findings of fact are as follows,

"[The claimant] worked for a furnishing company from 26 86 - 19 1 93 when she was dismissed for misconduct. She had on 2 occasions stayed away from work for 2 days claiming to be ill and also claiming sickness pay. She admitted having lied to her employers about this at a disciplinary meeting on 15 1 93 and was dismissed for gross misconduct. An agreement was then made between [the claimant] and her former employers whereby they paid her £250 in settlement of any claim she might have against them [she had made an application to an industrial tribunal]. Her unemployment benefit was suspended from 20 1 93 - 20 7 93. During this period she obtained further employment and then again became unemployed."

4. The tribunal's reasons for decision were as follows,

"A person is disqualified for receiving unemployment benefit for a period not exceeding 26 weeks if she loses her employment through her misconduct. Section 28(1)(a) Social Security Contributions and Benefits Act 1992. Misconduct must be clearly proved by those alleging it. In this case it is admitted by the appellant. The misconduct involved dishonesty against the employer. The disqualification period of 26 weeks seems appropriate. No reasons are given for the subsequent agreement to pay her £250 and the tribunal did not see how this payment could affect the effect of the admitted misconduct on her claim to a state benefit. A further claim to unemployment benefit following new employment cannot succeed while an existing period of disqualification is in force. R(U) 13/64."

5. It appears that the full 26 weeks' disqualification was imposed as from 20 January 1993 by a decision of the adjudication officer on or about that date, the claimant having been dismissed without notice for misconduct on 19 January 1993. After the 26 weeks period of disqualification was imposed she again obtained employment but that employment ceased on 6 April 1993.

6. The claimant did not attend the tribunal's hearing, neither did she attend an oral hearing before the Commissioner on 16 May 1995. However written representations have been made on her behalf by her local Citizens Advice Bureau ("CAB") in a letter dated 12 October 1993 which was put before the tribunal and a confirmatory letter, dated 15 June 1995, to the Commissioner.

7. The CAB's letter of 12 October 1993 put forward the following grounds to the tribunal,

"[The claimant] was disallowed unemployment benefit from 20 January to 20 July 1993 because she lost her job through misconduct. She had taken two days off work for personal reasons but informed her employer that she had been sick. [The claimant] felt that dismissal in these circumstances was not warranted and made an application to an Industrial Tribunal for compensation on the basis that she had been unfairly dismissed. I acted on her behalf in this matter and negotiated a settlement through ACAS. I therefore submit on her behalf in this matter that she should not have been disqualified from receiving Unemployment Benefit. If the Tribunal does not accept this submission I would respectfully submit that the period of disqualification cannot be justified and a shorter period should be imposed. [The claimant] has also appealed against the disqualification continuing after a short period during which she was not claiming because she was working. I have explained to [the claimant] there is nothing in the Regulations which permits a second claim to succeed if there is already in force a period of disqualification and

that this aspect of her appeal must fail."

8. As to the last paragraph of that letter from the CAB, I should explain that the claimant's principal ground of appeal to the Commissioner is that it is unfair that the disqualification should continue when she had obtained fresh employment and reclaimed unemployment benefit only on that employment ceasing. I consequently issued a Direction on 2 March 1995 asking for submissions on whether R(U) 13/64, which is said to propound this rule, was still to be regarded as good law. At that hearing the claimant did not attend and indicated that she did not wish to attend. The adjudication officer was represented by Mr L. Scoon, Counsel, of the Office of the Solicitor to the Departments of Health and Social Security. The case was fully discussed at the hearing and I put to Mr Scoon various points about R(U) 13/64 and asked for a further written submission from him, which I have now received, dated 30 May 1995, as follows,

"The maximum period of disqualification from entitlement to unemployment benefit when R(U) 13/64 was decided was 6 weeks. Successive increases of the period which is currently 26 weeks, cannot alter the fundamental principle enunciated in R(U) 13/64, namely that the obtaining of other employment during a period of disqualification for misconduct does not operate so as to reduce the disqualification. The terms of the legislation under which R(U) 13/64 was decided: section 13(2)(a) of the National Insurance Act 1946 were considered and compared at the hearing [before me on 16 May 1995] with the current legislation: section 28(1)(a) of the Social Security Contributions and Benefits Act 1992, when it was considered that they were broadly in the same terms. This it is submitted enhances the contention that R(U) 13/64 is still good law. Successive increases in the maximum period of disqualification made by legislative changes subsequent to the decision R(U) 13/64 were made in the light of the principle enunciated in R(U) 13/64. The absence of any change in the wording of the legislation to suggest a derogation from the principle in R(U) 13/64 indicates that the legislature indicated the same principle to apply."

9. I have carefully considered R(U) 13/64 and the submission of Mr Scoon. The CAB on behalf of the claimant has not disputed this particular part of the matter though the claimant does dispute it and considers that the operation of R(U) 13/64 is unfair. My ruling on this matter is as follows. First a close examination of R(U) 13/64 reveals that there there was in fact no actual imposition by an insurance officer of a period of disqualification following loss of the first employment. The question of whether a period of disqualification should be imposed as a result of loss of the first employment arose only on a claim for unemployment benefit on loss of a subsequent employment. In so far as R(U) 13/64 may decide that on a claim for unemployment benefit it is permissible to look back to hitherto unadjudicated-on terminations of employment, I would have thought that that is doubtful. It should be borne in mind

that there can be no disqualification unless it has actually been imposed by an adjudication officer's decision.

10. However, in the present case, there was an actual imposition of a period of disqualification (following the loss of the first employment) by an adjudication officer's decision. There is no provision in the legislation that a period of disqualification should be abrogated by the obtaining of new employment. Consequently, in my view, the disqualification must run its natural course. That is so, in my judgment, even though the period of disqualification is now 26 weeks, whereas at the time of R(U) 13/64 it was only 6 weeks. I therefore affirm the rule for which R(U) 13/64 is said to be authority, though its application is somewhat dubious on its facts as I have indicated. My decision is confined to cases where there is period of disqualification running because it has actually been imposed by an adjudication officer or other adjudicating authority. Section 28(1)(a) of the Social Security Contributions and Benefits Act 1992 enables a disqualification to be imposed where a claimant "has lost his employment as an employed earner through his misconduct". That provision does not confine the "employment" that is lost to the employment whose termination has caused the current claim for unemployment benefit. If therefore there is already a period of disqualification running from the loss of an earlier employment, it will continue to run even though the claim to unemployment benefit is because of loss of a subsequent employment.

11. I now deal with the other grounds of appeal that were put forward on the claimant's behalf to the tribunal. I refer to the letter from the CAB dated 12 October 1993 set out in paragraph 7 above. First, I hold that this is clearly a case where a period to disqualification was mandatory because of the circumstances in which the claimant lost her job through undoubted misconduct. Moreover the fact that she received £250.00 compensation from her employer as a result of an industrial tribunal application by her (which apparently did not proceed to a hearing before that tribunal) does not alter this conclusion because there is no indication that the payment contained an admission by the employers that there was no misconduct. It is extremely unlikely that there would be such an admission. Quite why the payment was made is not clear but it is of course commonplace for small sums to be paid in settlement of an industrial tribunal claim by an employer without reference to any liability for unfair dismissal. I have no doubt that this payment came in such a category. The tribunal did not err therefore in the way that they treated the £250.00 payment.

12. As to the period of disqualification, I accept a written submission by the adjudication officer dated 19 January 1995 (in response to a nominated officer's direction) in which it is submitted that the tribunal having made detailed findings of fact dealt sufficiently with R(U) 4/87 (Tribunal of Commissioners) when they considered the period of disqualification and stated that they thought that in all the circumstances the 26 weeks period of disqualification was "appropriate". I agree with that

submission and I therefore see no reason to disturb the tribunal's finding on that point.

(Signed) M J Goodman
Commissioner

Date: 11 July 1985