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Commissioner's File: CU/077/93

SOCIAL SECURITY ACTS 1975 TO 1990  
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Harold Beckles

Appeal Tribunal: Central London

Case No: 7:07/70356

My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside; I remit the case for determination to a new social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is an appeal by the claimant against the decision of the Central London Social Security Appeal Tribunal given on 17 February 1993 which decided he was disqualified for receiving unemployment benefit from 1 May 1992 to 30 July 1992. Leave to appeal to the Commissioner was given by the chairman of the tribunal.

3. I have before me grounds of appeal prepared on behalf of the claimant by Leslie Carr of the North Lambeth Law Centre and a submission by the adjudication officer now concerned which supports the appeal.

4. Regulation 28 of the Social Security Contributions and Benefit Act 1992 (formerly section 20 of the Social Security Act 1975) provides for disqualification of unemployment benefit. There are a number of heads of disqualification. The relevant ground in the instant case is that contained in regulation 28(1)(a) namely that the claimant has lost his employment through his misconduct.

5. The claimant was employed as an area service manager, he was dismissed by his employer because, in the opinion of the employer, he had stolen a fax machine the property of the employer. The claimant had at all times denied the theft of the machine. There were criminal proceedings; it would appear from the papers before me that these ended in the acquittal of the claimant. By a reference dated 23 October 1992 the adjudication officer referred the matter to the tribunal for a decision whether, and if so for what period, the claimant was disqualified from receiving unemployment benefit, and in particular for a decision whether he had lost his employment through misconduct. In his submission to the tribunal the adjudication officer

submitted that it was for consideration by the tribunal whether the evidence established that on 29 February 1992 the claimant stole a fax machine, the property of his employer, and that his conduct in so doing amounted to misconduct within the meaning of the Act and whether he had lost his employment as a result of that misconduct. Reference was made in the submission to the employer having stated that the claimant did not explain why <sup>V2</sup> had not handed the unit to an employee in accordance with the company's procedure.

6. At the hearing before the tribunal the claimant said that he had collected the machine and taken it to the Goods In area of the company. He did not get a receipt. He just left it in the area on the assumption that it would be processed. The company secretary in the course of his evidence stated that there were procedures to be followed by employees in these circumstances; that was a reference to what was said in the letter of dismissal:

"You state in your letter that you just left the machine in the Goods In area.

You do not explain why you did not hand it to one of the Goods In personnel, especially as you appear to believe that items go missing after being placed in this area."

That was one of the facts which led the employer to believe that the claimant had stolen the machine. The findings of the tribunal on questions of fact material to their decision were as follows:

"Claimant employed by company as an area controller. Prior to the incidents leading to his dismissal he had a heated argument with the managing director. After that he felt he was being victimised. He had to supervise the movement of the equipment round the country. A fax machine had to be returned from Wales. Claimant arranged for it to be sent to Waterloo whence he collected it and delivered it 2 days later to the company's goods-in area. They were busy there and he did not get a receipt. That fax machine then disappeared. He was later acquitted of stealing it. He was the last person known to have it. Claimant did not follow company procedure in dealing with that fax machine. His failure in that respect was inescapably blameworthy and wrong, however well intentioned it may have been. That failure was misconduct."

The members then disqualified the claimant for the period from 1 May 1992 to 30 July 1992. They gave the following reasons for their decision:

"Tribunal have had the opportunity of hearing very fully from the employer's representative and from the Claimant himself and have had much help from the Presenting Officer and from the Appellant's representative. It is clear that difficulties existed between Claimant and senior staff, but

it is also equally clear on Claimant's own saying that he failed to follow established procedure with regard to stock movement. Whilst it may be that the employer had not required enforcement of these as strictly as he should Claimant's conduct in the matter had been blameworthy and wrong. He was dismissed for misconduct and disqualification follows. However having regard to the possible confusion and difficulties, and the fact that employer did not at that time enforce his set procedure it is sufficient for disqualification to be limited as shown, that being a period which tribunal in exercise of their unfettered discretion are satisfied is proper to this matter."

The claimant's representative later sought leave to appeal to the Commissioner and leave was given by the chairman of the tribunal.

7. The point is taken by Mr. Carr that the tribunal failed to deal adequately with the issue of misconduct. He refers to his client having been accused of theft and dismissed for that reason and to the tribunal's finding that he had been blameworthy in failing to get a receipt for the fax machine left in the loading bay. He refers to the finding of the tribunal that the employer had not required enforcement of the procedure as strictly as they should. He argued therefore that the tribunal failed to address its mind to the question of the reasonableness of the employer's action in dismissing the claimant. He cites R(U)24/55 where the Commissioner was considering conduct within the meaning of section 13(2)(a) of the National Insurance Act 1946 (the precursor of the regulation under consideration). The Commissioner said "it may however be well to point out that the word 'misconduct' in section 13(2)(a) means simply such misconduct as would lead a reasonable employer to terminate a claimant's employment." The adjudication officer now concerned points out that the tribunal noted that the claimant's representative had cited R(S)2/80 and R(U)24/55, but that they had given no indication that they considered the relevance of those decisions in reaching their determination and accordingly their decision was in breach of regulation 25(2)(b) of the Social Security (Adjudication) Regulations.

8. It seems to me that the error of the tribunal is more fundamental than those argued in the points relied upon by the claimant's representative or the adjudication officer now concerned. Natural justice requires that a party knows the case he has to answer because otherwise does not have the opportunity of adequately presenting his own case. I remind myself of the passage in the speech of Lord Hodson in Ridge v. Baldwin, (HL) [1964] AC 40 at p.132, concerning natural justice:

"No one, I think, disputes that three features of natural justice stand out - (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges."

In the case before me the claimant had his appeal heard by an unbiased tribunal but it seems to me he did not have notice of the charges of misconduct which the tribunal found were proved against him, nor, of course, did he have the right to be heard in answer to these charges. The ~~misconduct~~-alleged against the claimant in the reference to the tribunal was theft of the fax machine. It is true that there were references to the failure to follow the proper procedures but these related to the proof of theft and were part of the totality of the evidence directed to that allegation. The tribunal did not indicate to the claimant that they were about to disqualify him on the ground of his failure to adhere to the company's procedure nor did they give the claimant an opportunity of dealing with a new ground of misconduct. I am satisfied that the decision of the tribunal is erroneous because of the breach of natural justice which I have explained in this paragraph. Because of this I will set aside the decision of the tribunal.

9. The new tribunal should deal with the ground of misconduct referred to it; if the members are mindful to find another ground of misconduct, then they should give the claimant a fair opportunity to deal with it. They should remember that it is for the adjudication officer to prove the misconduct which he alleges and it must be clearly proved. I invite their attention to R(U)24/55 where it was explained that misconduct means such misconduct as would lead a reasonable employer to terminate a claimant's employment. I remind them that it is not necessary for proof of misconduct that a claimant should be convicted of a criminal offence, but his acquittal after trial is evidence in his favour.

(Signed) J J Skinner  
Commissioner

Date: 21 March 1994