CU 275/1981

DGR/BP

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

CU 275/1981

1. My decision is that unemployment benefit is not payable for 8 December 1980, because there were not at least 13 weeks since the last day for which the claimant was entitled to that benefit in each of which he had worked for 16 hours or more as an employed earner.

2. The basic facts of this case are not in dispute. The claimant exhausted his title to unemployment benefit on 16 July 1980, and on 8 December 1980 he reclaimed unemployment benefit, contending in effect that by virtue of the employment he had undertaken since 16 July 1980 he had requalified. However, enquiries made of his employer, namely the Highbury College of Technology where he was engaged as a part-time lecturer, revealed that on no week during the relevant time had he been employed for 16 hours; his normal hours of employment amounted to no more than five and a quarter. Moreover, the claimant does not dispute this, but his contention has been throughout that there must be added to the actual hours of lecturing a considerable number of further hours during which he undertook preparatory work. If these hours were taken into account, then according to the claimant he satisfied the relevant statutory provisions.

3. However, the insurance officer was not persuaded, and he disallowed the claim. After an unsuccessful appeal to the local tribunal, the claimant now appeals to the Commissioner, leave having been previously given by the Chairman of the tribunal.

4. Section 18 of the Social Security Act 1975, as amended, provides as follows:

> "(1) A person who, in respect of any period of interruption of employment, has been entitled to unemployment benefit for 312 days shall not thereafter be entitled to that benefit for any day of unemployment (whether in the same or a subsequent period of interruption of employment) unless before that day he has re-qualified for benefit.

(2) A person who has exhausted his right to unemployment benefit re-qualifies for it when -

(a) he has again been in employment as an employed earner and has been so employed in 13 weeks since the last day for which he was entitled to that benefit: and

(b) in each of those weeks he has worked in such employment for 16 hours or more."

5. It is not in dispute that the claimant was during the relevant weeks in employed earner's employment, and the issue is purely and simply whether he can establish that he worked the requisite 16 hours in 13 or more weeks since 16 July 1980. This matter was considered in the Unreported Decision on Commissioner's File C.U. 423/1979 and the view was clearly stated that preparatory work could not be taken into account. The learned Commissioner in that case observed at paragraph 6, inter alia, as follows -

> "The claimant's hours of duty, under the copy contract in evidence, have already been quoted and were 15; and the evidence before me is that there never were as much as 21 before 3 April 1978 or 16 thereafter. Those are the duty hours which the claimant was obliged to work. In my judgment, the reference to the hours worked in employment as an employed earner in section 18(2)(b) of the Social Security Act 1975 is a reference to hours worked under a claimant's contract of employment as an employed earner. A person who was required, under his contract, to work overtime and did so, should no doubt have the hours so worked included in the computation. But the claimant was not in that position. The additional hours worked by her were not performed at the request of her employer. She was not obliged to do such work under her contract nor was she paid any additional salary for them. I am not able to imply any term in her contract requiring the claimant to carry out such work. In my judgment, any hours spent by the claimant outside her teaching hours in preparation, marking, etc are not hours worked in employment as an employed earner, in terms of section 18(2)(b) of the Social Security Act 1975. Any such hours were worked outside her employment on a voluntary basis".

6. In the present case the claimant was not required to work anything like 16 hours in any one week. Moreover, he was not required under his contract to do any more hours than those expressly provided for in his contract, albeit in practice he would in fact spend some time in preparation. However, those hours simply do not count. It is perhaps not insignificant that clause 9 of the standard contract for part-time teachers with the Hampshire Education Committee expressly states -

> "No part-time teacher may normally undertake more than 15 hours of instruction a week".

It would seem that it was not in contemplation that the claimant could ever satisfy the requirement of working for 16 hours in any particular week.

7. I am reinforced in reaching the above conclusion by the principle laid down by the Court of Appeal in Lake v Essex County Council /1979/ ICR at p. 577. Admittedly, they were concerned with paragraph 9, (1)(f) of the First Schedule to the Trade Union and Labour Relations Act 1974 and not with section 18 of the Social Security Act 1975. Nevertheless, the Court elected to treat the hours spent outside school hours reasonably necessary for the proper performance of the appellant's teaching duties in school hours as irrelevant for the purpose of computing whether or not she worked for 21 hours in any one week. I find this approach has great persuasive effect.

8. Accordingly, in my judgment the claimant had not requalified by 8 December 1980, and as a result was not entitled to unemployment benefit for that day,

9. I dismiss this appeal.

Signed) D G Rice
Commissioner

Date: 21 April 1982

Commissioner's File: C.U. 275/1981
C I O File: I.O. 3160/U/81
Region: South Eastern