

CSU 76/1980

DR/IM

Decision No. C.S.U.4/81

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No. C.S.U.4/81

1. My decision is that the claimant was not entitled to unemployment benefit in respect of the periods from 8 October 1979 to 18 October 1979, 6 November 1979 to 15 November 1979, 3 December 1979 to 11 December 1979, 31 December 1979 to 10 January 1980 and from 28 January 1980 to 7 February 1980 (all dates included) because of the provisions of section 17(1)(b) of the Social Security Act 1975.

2. The claimant was employed as a roustabout by Wagley Offshore Limited for various periods from August 1977 onwards. The said Wagley Offshore Limited is a company which is involved in the supply of labour to North Sea oil rig operators, and the claimant was evidently employed on the oil rig "PIPER A". As is explained in the written submission of the insurance officer now concerned with the case the claimant's employment by the said company from at least January 1979 onwards involved, apart from minor variations, 15 days off-shore followed by 15 days on-shore. The claimant was paid in respect of his employment off-shore, but he received no payment from the said company in respect of his periods on-shore. The question at issue in this appeal is whether the claimant was entitled to unemployment benefit during the periods set forth in paragraph 1 above when he was on-shore and not receiving any payment from his said employers.

3. The question at issue depends largely on whether the claimant was precluded from receiving unemployment benefit during the said periods under consideration because of the provisions of section 17(1)(b) of the Social Security Act 1975 which provides as follows:-

17.-(1) For the purposes of any provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit -

- (a) ...
- (b) ...

(b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that person would not work in that employment or in any other employed earner's employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;

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.....".

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4. I agree with the insurance officer now concerned with the case that a local tribunal should be regarded as having decided that unemployment benefit was payable to the claimant for the periods in question. Thereafter the said insurance officer brought the present appeal to a Commissioner.

5. It has been laid down by a Tribunal of Commissioners in Decision R(U)7/68 that "termination of employment" within the meaning of section 17(1)(b) of the 1975 Act falls to be interpreted according to its natural and ordinary meaning with the result that as soon as the contract of service between the particular employer and the claimant is terminated the employment under it is terminated also and not merely suspended. In the present case the claimant maintains that each period of employment off-shore terminated whenever he came on-shore and that during his periods on-shore he was therefore entitled to unemployment benefit. It is not in dispute that the claimant was not paid wages or a retainer in respect of the periods when he was ashore, and he was therefore free to take other employment during these periods. It is also not disputed that the claimant in fact held himself available for other employment during the periods in question.

6. The claimant did not appear before the local tribunal, but the assistant manager of his said employers gave evidence before that tribunal, and his evidence gave support to the claimant's said contentions. The said assistant manager gave evidence to the effect that the claimant was employed on each occasion when he went off-shore to do a specific job on the rig in question; that once that job was completed and he returned ashore the employers had no further control over him; and that the contract with the claimant was terminated once the off-shore job was completed and was only liable to be renewed if the claimant was available on the next occasion when the said employers contacted him. The local tribunal, having regard to the evidence of the assistant manager of the employers in question, reached the conclusion that at the end of each period of employment off-shore the claimant's employment fell to be regarded as having been terminated and that he was therefore entitled to unemployment benefit during his periods ashore.

7. I agree with the insurance officer now concerned with the case claiming that the claimant was not entitled to unemployment benefit during the periods under consideration having regard to the various points made by the insurance officer in paragraph 12 of his written submission. It is unnecessary for me in this decision to deal with all the matters raised by the insurance officer in that paragraph, but I would mention the following issues which have influenced me to reach my decision in this case:

- (a) The claimant signed a contract in connection with his employment in January 1979. No fresh contract was signed on each occasion on which the claimant commenced employment off-shore.
- (b) The said contract of employment gave particulars of the terms on which the company was employing the claimant. The said contract stated amongst other things that the claimant at no time would work off-shore for a period of more than 10 weeks; that his wages would be paid by cheque payable to him at his place of employment fortnightly; that any employee dismissed after 26 weeks of continuous employment could request a written statement of the reasons for dismissal; and that any change of terms mentioned in the contract would be brought to the attention of the employee within 1 month of any such change.
- (c) As already stated, the claimant from January 1979 onwards worked, apart from minor exceptions, 15 days off-shore followed by 13 days ashore. That pattern of work seems to me to be inconsistent with a regular termination of employment followed by a fresh contract of employment. The said periods of employment based on the contract which was signed in January 1979 are in my opinion more consistent with a continuing or running contract.
- (d) The claimant's tax form P45 was throughout retained by the employers.

8. At the oral hearing before me the insurance officer's representative founded on Decision C.S.U.4/79 which concerned a claim for unemployment benefit by a person employed by the same employers involved in the present case in circumstances very similar to the present appeal. The terms of the contract in that case, however, provided that the obtaining of secondary employment without the consent of the managing director was an offence for which the employee in question was liable to instant dismissal. The insurance officer's representative also founded on the Decision R(U)10/80 which involved a radio operator who was employed for regular spells on an oil rig followed by rest spells ashore. In that last mentioned decision, however, the

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Commissioner, when deciding that the radio operator in question was not entitled to unemployment benefit during his periods ashore, founded amongst other things on the fact that the employer had the right to recall the claimant should the rig in question be repositioned. I accept therefore that these decisions contained features warranting the decisions precluding payment of benefit during rest periods under section 17(1)(b) which are not present in the contract relating to the claimant in the present case. One must of course have regard to the terms of any contract under consideration, but in a case of this sort it is also of importance to have regard to the realities of the situation. From at least January 1979 onwards the claimant was regularly employed by the said employers for periods of 15 days off-shore and 13 days ashore. As already explained he had a consistent pattern of employment which in my view rendered his employment more consistent with a continuing or running contract. In all the circumstances I agree with the insurance officer now concerned with the case that the claimant was not entitled to unemployment benefit having regard to the provisions of section 17(1)(b) of the 1975 Act. Furthermore, I am of the opinion that the claimant is not assisted in this connection by regulation 16 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975.

9. I am not suggesting that all employees of the employers in question are not entitled to unemployment benefit during their periods ashore. At the oral hearing before me the claimant explained that about one-third of the employees employed by the said employers off-shore were employed for irregular periods i.e. for periods during which they carried out some specific task, and when that task was completed it was unknown when precisely they would be employed in the future. Each case of this sort must clearly depend on its own particular facts and circumstances, and it may well be that such employees are entitled to unemployment benefit when ashore.

10. Any payments of unemployment benefit made to the claimant following upon the local tribunal's said decision do not require to be repaid.

11. The insurance officer's appeal is allowed.

(Signed) Douglas Reith
Commissioner

Date: 12 May 1981

Commissioner's File: C.S.U.76/80
C.I.O. File: I.O.3473/U/80
Scottish H.Q. File: Unregistered Papers