ERB/JVL

Commissioner's File: CWU 17/85
CWU 18/85
CWU 19/85
C.A.O. File: A.O. 4352/UB/85
A.O. 4353/UB/85
A.O. 4354/UB/85
Region: Wales and South Western

2nd Decision

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Names: Brynley Richards, George Redfern Grose, Liam McMonagle.

Social Security Appeal Tribunal: Cardiff

Case Nos: 9/10,9/11,9/12

[Hearing]

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1. My decisions are that the claimants are not disqualified for receiving unemployment benefit from 12 November 1984 to 4 March 1985 (both dates included) by reason of the provisions of section 19(1) of the Social Security Act 1975.

2. The background of this case and the circumstances in which each of the present claimants came to be in receipt of unemployment benefit from either 13 or 14 March 1984 to 10 November 1984 are outlined in my decisions dated 5 October 1984 on Commissioner's Files CWU 18/84, CWU 19/84, CWU 20/84, CWU 21/84, and CWU 22/84. Following a development which is described below the adjudication officer gave the following decision in relation to each of the claimants on 14 December 1984 "The claimant is disqualified for receiving unemployment benefit from and including 12.11.84 and for so long as the stoppage of work continues because he lost employment owing to a stoppage of work which was due to a trade dispute at his place of employment". Each of the claimants appealed to the appeal tribunal and on 22 January 1985 the tribunal allowed each appeal. Each of the claimants attended the hearing and each one was represented by Mr J Davies, who is a Welfare Rights Officer. The adjudication officer then appealed from these decisions to the Commissioner having been given leave to do so by the chairman of the tribunal. The appeals were dealt with by me at a hearing on 13 August 1985. Each of the claimants attended. They were again represented by Mr J Davies. Mr J P Canlin of the solicitor's office of the Department of Health and Social Security appeared for the adjudication officer. It was agreed at the outset by all concerned that the 3 appeals be heard together.

3. The initial action in relation to the development referred to above was the dispatch by Mr J McMurdo, the agent of Cementation Mining Limited (hereinafter referred to as the Company) at the N.. C.. Colliery of a letter dated 9 November 1984 to each one of the Company's employees who prior to the iminers strike had been engaged in driving 2 new main headings

in an area of this colliery. They consisted mainly of supply men, electricians and tunnellers and numbered approximately 80. This work was being carried out by the Company on behalf of the National Coal Board. The letter read as follows "I have today received instructions from the N.C.B. Management at N... C... Colliery, informing me officially that the N... C... Colliery is open for work to all Cementation employees. I must therefore advise you that with effect from Monday 12th November 1984 the N.C.B. will provide employment for every man who reports for work. The normal transport organised by the N.C.B. to transport men to work will be in operation, at the normal pre-strike times, on each of the three shifts. Check in local press for details of Bus times and routes. Yours faithfully for: Cementation Mining Limited." In a letter dated 10 December 1984 the Company's personnel manager stated that the letter had been issued "on the instructions of the NCB." According to him 4 of the Company's employees attended at the colliery on 12 November 1985 "and discussed their situation with their Lodge Official:" and that a fifth employee telephoned Mr McMurdo. (The claimants were not among the five referred to). He stated "On enquiry to our Agent through Mr L (one of the 4) they were informed by our Agent that each man would have to decide for himself whether or not he should cross the picket line." The personnel manager went on to state that "If our employees had returned to work on 12 November, they would not have been employed on their normal duties but would have been found alternative work by the NCB." Further information relating to this aspect of the case was provided in a written statement made by Mr L S who was one of the 4 who had attended, which was to the effect that "On meeting my employer Mr J McMurdo I asked him about the letter and he told me the NCB had instructed him to send it. I asked him if my normal work was available he replied NO. I asked him what work Cementation were going to give me he replied None, and told me that the NCB were going to give me work. I asked him what work and he replied he did not know but that it would not be underground but on the surface I asked him to be specific and he said well you might be tidying up the pit yard or perhaps painting or you might just be told to sit in the First Aid room or the canteen. I asked him if our foremen were going to supervise any Cementation man who did this he replied No they have been instructed not to cross picket lines and that I would be supervised by NCB staff". In a letter dated 28 January 1985 the Company's personnel manager stated "In the conversation Mr L had on behalf of himself and his colleagues with our Agent, Mr McMurdo, on 12 November 1984, there was no discussion on the subject of actual work that might be undertaken. The discussion was entirely on what the men should do as regards the picket line." He went on to state that "Our offer of work was that contained to all employees in Mr McMurdo's letter of 9 November 1984." and that "No employee has taken up this offer." He added that "As contractors to the NCB we are required to carry out work as instructed by the NCB. We would in turn require our employees to carry out such work provided that this is reasonably within their capabilities. This requirement has been met by other of our employees on other NCB sites similarly affected." I accept Mr L S's account of what was said by Mr McMurdo.

4. It would appear to me that the circumstances surrounding the issue of the letter of 9 November 1984 have a distinct air of unreality about them. During the course of the hearing I commented adversely on the fact that the adjudication officer had made no attempt to arrange for the attendance of Mr McMurdo at the hearing. This is equally true as far as the Company's personnel manager and the appropriate officer

of the National Coal Board are concerned. However judging from the documentary evidence before me I very much doubt whether they would have been able to inject an air of realism. I am invited to accept that the Company were instructed by the National Coal Board to carry out "work" at the colliery and that having received their instructions the Company issued the letter of 9 November 1985. The evidence is to the effect that they were not provided with any information as to the nature of the work they were to carry out, save that they knew the work was not that normally carried out by them. In the absence of any information Mr McMurdo ventured to suggest that it might consist of tidying up the pit yard or perhaps painting or just sitting in the First Aid Room or the canteen. Similarly the Company's employees were expected to present themselves for work without being told what they would be required to do. Save that they were informed that they would not be employed on their normal duties and that they knew that, whatever the work, it would be carried out at a place where there was a stoppage of work due to a trade dispute and would involve crossing hostile picket lines, they were left in ignorance (save for Mr McMurdo's suggestions) as to what was to be required of them. I have not been provided with any information as to the pay they were to receive and there is no suggestion that they were given any information as to this aspect of the matter. It may be said that it would be reasonable to assume that they would be paid what they would have earned if they had been carrying out their normal duties. If this was the case it would appear that they would have been paid sums which were greatly in excess of what would be paid normally to an odd job man or surface labourer. Thus for example one claimant (CWU 19/85) informed me that his gross weekly earnings when carrying out his normal duties as a tunneller were £247.

5. The appeal tribunal came to the conclusion that the employment offered to the claimants was not bona fide or genuine employment. I have come to substantially the same conclusion. I referred in paragraph 4 to an air of unreality. On reflection I consider that the circumstances justify the use of stronger language. What occurred at the instigation of the National Coal Board was, to use an Americanism, a phoney exercise directed towards the creation of a situation in which the claimants would appear to have turned down a genuine offer of employment whereas in fact the Board had no intention at the time of instructing the Company to carry out work on their behalf and the offer of employment put forward by the Company at the instigation of the Board was not a genuine offer of employment. Mr Canlin submitted that the claimants should have at least put the matter to the test and have reported for work. I do not agree. The circumstances surrounding the offer of work were such as to entitle them to treat the offer as one which was not a genuine offer and to ignore it. It would appear to me that even if it could be regarded as a genuine offer it was one which the claimants were entitled to reject. They were asked to report for work without being given any information as to the nature of the work they were to be expected to carry out save that it would not involve carrying out their normal duties. What they were told by Mr McMurdo tended to indicate that they would either be just sitting around or be required to do work which did not bear any resemblance to their normal work as skilled operators. In addition it does not appear that they were given any assurrance in relation to the pay to which they would be entitled and it was quite impossible for either the Board or the Company to forecast for how long the work would be available as this depended upon when the miners strike came to an end. Mr Davies drew my attention to the provisions of section 20(4) of the Social Security Act 1975 to the

effect that employment shall not be deemed to be employment suitable in the case of any person if it is employment in a situation vacant in consequence of a stoppage of work due to a trade dispute. Mr Canlin pointed out that this provision only applied in relation to the application of the provisions of section 20(4) ("For the purposes of this section"). Nevertheless I accept that in determining whether the claimants were entitled to reject the offer of employment the fact that if it was genuine, it was an offer of employment of the nature referred to in section 20(4) is one of the factors I am justified in taking into consideration.

6. In view of the conclusions to which I have come I am satisfied that the position of the claimants in relation to their entitlement to unemployment benefit was the same on 12 November 1984 as it was prior to the receipt by them of the letter of 9 November 1984 and that they are not disqualified for receiving this benefit from 12 November 1984 to 4 March 1985 (the day before there was a full return to work at the colliery) (both dates included) by reason of the provisions of section 19(1) of the Social Security Act 1975. I should like to express my gratitude to both Mr Davies and Mr Canlin for their invaluable assistance.

7. The adjudication officer's appeals are disallowed.

(Signed) E. Roderic Bowen.
Commissioner.

Date: 22 August 1985.