

CWU 28/80

ERB/RC

SOCIAL SECURITY ACTS 1975 TO 1980
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

CWU 28/80

1. My decision is that the claimant is disqualified for receiving unemployment benefit from 18 September 1979 to 27 October 1979 (both dates included).

2. The claimant, who is now aged approximately 63 years, had been employed as a school teacher for almost 39 years when his employment terminated on 31 August 1979. The local education authority, who were his employers at the time, stated on 14 September 1979 that the termination was attributable to "voluntary retirement". At the same time, they stated that he was entitled to 3 months' notice, that he was given notice on 25 May 1979 and that, if he had not retired voluntarily, his employment would otherwise have lasted for at least another 6 weeks. He claimed unemployment benefit on 3 September 1979. Benefit was paid to him. However, payment was suspended from and including 18 September 1979 and, on 24 September 1979, the insurance officer decided that he was disqualified for receiving benefit from 18 September 1979 to 27 October 1979 (both dates included) "because he voluntarily left his employment without just cause". The claimant's appeal from this decision to the local tribunal, which he attended and at which he was represented by his association (the Assistant Masters and Mistresses Association), was disallowed by a majority. His association then appealed on his behalf to the Commissioner. His solicitors requested a hearing. The hearing took place on 11 December 1980. The claimant was represented by Mr. Rupert Jackson of counsel, who called the claimant, Mr. J. Thomas, an employee of the employers concerned, and Mr. P.A. Smith, an officer of the claimant's association, to give evidence. Mr. F.J. Lewis appeared for the insurance officer.

3. Section 20(1)(a) of the Social Security Act 1975 provides that -

"20.-(1) A person shall be disqualified for receiving unemployment benefit for such period not exceeding 6 weeks as may be determined if -

- (a) he has lost his employment as an employed earner through his misconduct, or has voluntarily left such employment without just cause;"

4. In the grounds of appeal submitted by the claimant's solicitors it is submitted that (a) the claimant did not voluntarily leave his

employment, it was terminated by his employers, that (b) alternatively, if he left voluntarily he did so with just cause (they set out in detail their reasons for maintaining that this was so) and that (c) if he left voluntarily without just cause the prescribed period of disqualification should be less than 6 weeks. In his submission to the Commissioner, the insurance officer has maintained that (i) as the claimant had chosen to participate in an early retirement scheme and that as his employment would otherwise have continued until he attained normal retirement age in 1983, he had to be regarded as having left his employment voluntarily, and that (ii) he did not have just cause for doing so, particularly in view of the fact that he left the employment he had when he had no justified expectation of securing alternative employment, and thus made demands on the National Insurance Fund which could have been avoided if he had not decided to leave. The arguments advanced at the hearing were to substantially the same effect but were put forward in more detail.

5. On 7 March 1979 the employers concerned issued a circular headed "Early Retirement of Teachers". It was stated therein that "The question of early retirement for teachers has been discussed in the Teachers' Consultative Committee and the County Council has agreed to consider applications for early retirement from teachers who will be aged 50 or over at the date of retirement and who have 5 or more years service. The purpose of this circular is to invite applications by 31st March, 1979, from teachers interested in retiring at the end of this academic year. Making such an application will involve no commitment and a teacher will be free to withdraw the application when he or she knows the terms upon which early retirement is available. The Council have reserved a discretion whether to allow a teacher to retire early. This discretion can be exercised only "where this is deemed to be in the interests of the efficient discharge of the employer's functions". Members have made it clear that they will exercise their discretion in favour of allowing a teacher to retire only if some financial benefit to the Council will result. No decision has yet been made by the Council on the question of "added years" for pension purposes. Each interested teacher will be informed of the decision on this in due course". The claimant responded in a letter to them dated 20 March 1979 in which he stated, "I wish to make an application for early retirement under the conditions laid down in the above Circular". He went on to request that his years of service (38 years and 138 days on 31 March 1979) be made up to 40 years by 31 August 1979. Following a letter from the employers, setting out the terms which were those requested by the claimant, a reply was sent by him on 25 May 1979 in which he stated that "I hereby accept your offer under the terms stated in your letter to retire from teaching on August 31st 1979 and to terminate my employment at B.. C.. School G.. on that date". In their reply, dated 4 June 1979, the employers stated "I confirm that your appointment will be terminated in the interests of the efficient discharge of the functions of the Authority and that you will retire on 31st August, 1979".

6. In his opening address at the hearing, Mr. Jackson outlined in considerable detail the background relating to the publication of the circular, to which reference is made in paragraph 5. He also produced the relevant documents. It would appear to me that the most informative is the letter from the Department of Education and Science to the claimant's association dated 2 December 1980. The position of those teachers who have reached the age of 50 years, but have not attained the

age of 60 years, is governed by the provisions of the Teachers Superannuation (Amendment) Regulations 1978 [S.I. 1978 No. 422] which relate to the premature retirement of teachers in this age group "if by written notice given to the Secretary of State his employer certifies that his service has been terminated - (a) by reason of his redundancy, or (b) in the interests of the efficient discharge of his employer's functions". Teachers aged 60 years to 65 years are not covered by these regulations but similar arrangements for their premature retirement for the same reason may be made. The application of the arrangements in individual cases is (as the documents referred to in paragraph 5 indicate) "a matter between the authority and the individual teacher". The Department require the employers concerned, who choose to make these arrangements, to issue a certificate stating the reason for premature cessation of employment. On 18 June 1979 the claimant's employers certified that "The employment in reckonable service of [the claimant] has been terminated in the interests of the efficient exercise of the employing authority's functions".

7. In reply to the employers' reference to "voluntary retirement", the claimant stated "I applied for early retirement". In his evidence before me he stated that when he accepted the employers' offer of early retirement "I was not thinking of doing any other work for some time at least after my retirement". He added that, prior to his retirement, he had no specific job in view and had not taken any action with a view to obtaining employment and (as far as he knew) he had no prospects of employment. He was not feeling very well at the time. Mr. Thomas gave evidence to the effect that it had been calculated that his employers saved £2500 by entering into the arrangement, outlined above, with the claimant. This was due to the fact that a supply teacher on scale I took over the claimant's duties and was placed in scale II, whereas the claimant at the time of his retirement was in scale III. He explained that no early retirement was approved unless it was to the employers' financial advantage, even though it was otherwise in the interests of the efficient discharge by his employers of their functions. Mr. Smith's evidence was to the effect that there was general agreement in educational spheres that there was "a pressing need" to introduce arrangements of this nature. (I was informed that of the 104 education authorities in the country, 71 were making arrangements of the nature made by the claimant's employers). He stated that he would have described the claimant's retirement as a "premature retirement" rather than a "voluntary retirement". He also stated that, in response to the circular, 37 teachers employed by his employers in the age group 60 years to 65 years indicated that they were prepared to retire prematurely, and did so in accordance with the employers' arrangements. This was a minority of the number in this age group who could have indicated that they were prepared to do so.

8. Mr. Jackson submitted that the claimant should not be regarded as having left his employment. The initial moves were taken by the employers. The final step was also taken by them, namely the issuing of the certificate referred to above. His employment was terminated by his employers. It would appear to me to be abundantly clear that the claimant left his employment and that he did so voluntarily. He chose, or elected or opted, to retire. He was not required to do so. If he had not done so his employment would otherwise have lasted for at least another 6 weeks.

9. I have taken note of everything Mr. Jackson had to say in support of his contention that, in any event, the claimant had just cause for voluntarily leaving his employment. He maintained that disqualification under the provisions of section 20(1)(a) was intended to be a penalty (or punishment or sanction - see paragraph 17 of Decision R(U)4/70) and that it was wholly inappropriate to impose a penalty when a person left his employment in the circumstances in which the claimant did so. Provision for early retirement had been made by Parliament. Arrangements for early retirement, such as these made by the employers concerned, were positively approved by the Department of Education and Science, by education authorities generally and by the teachers' unions. They were entered into in the public interest. They were required to be "in the interests of the efficient exercise of the employing authority's functions" and, in addition, a teacher would only be allowed to retire if some financial benefit to the employers would result. He submitted that the requirement that a cause should be "just" was not as stringent as a requirement that it should be "good". What was required was that the act of voluntarily leaving was just as between all the parties thereby affected. He referred me to virtually all the reported decisions relating to the meaning of "just cause" in this context, and invited my attention, in particular, to Decision R(U)20/64, in which it is stated that "The notion of 'just cause' involves a compromise between the rights of the individual and the interests of the rest of the community. So long as he does not break his contract with his employer, the individual is free to leave his employment when he likes. But if he wishes to claim unemployment benefit he must not leave his employment without due regard to the interests of the rest of the community" (paragraph 8). He submitted that the public interest as a whole and not merely the interests of the unemployment insurance fund and the contributors thereto had to be taken into consideration (see paragraph 15 of Decision R(U)4/70). He pointed out that it was not to the claimant's financial advantage to voluntarily leave when he did but, by doing so, he was assisting his employers to discharge their educational responsibilities efficiently and also helping to relieve the plight of the young teacher who was unemployed and improve the prospects of the young teacher who was employed.

10. I consider that it is essential to bear in mind, when considering the merits of this appeal, that it relates to an unemployment insurance scheme and entitlement to benefit under that scheme. The aim of the relevant statutory provision, namely section 20(1)(a), is to protect the unemployment insurance fund relating to this scheme. It provides, inter alia, that in the absence of just cause for doing so, a person who voluntarily leaves his employment shall not become a charge on the fund for a particular period. This background has to be borne in mind when determining the meaning to be attached to just cause in this provision. This would appear to me to have been the approach which prompted the following observations by the Commissioner in Decision R(U)26/51 - "Although each case has to be considered in the light of its own circumstances, the general principles applicable are set out in Decision 11760/30 which is a decision given under the Unemployment Insurance Acts now repealed but which applies equally to this case. In that decision, it was observed that - as in the present case - the question is not whether it was reasonable and proper for the claimant to retire on pension but whether, when he elects to do so and thereby "abandons employment", it is reasonable that he should be allowed to derive benefit from the Unemployment Fund. The Umpire held that it was

net, and expressed the opinion that the claimant having left his employment to obtain a pension - which he would not have lost had he continued - was in no better position on the question of "just cause" than one who left his employment "because somebody had left him a legacy which brought him in a similar or larger income". The decision given in 1930, to which he refers, related to the provisions of section 8(2) of the Unemployment Insurance Act 1920, which also disqualified for benefit a person who voluntarily left his employment without just cause. I have no doubt that the present claimant considered he was acting reasonably from the point of view of his own well being in accepting early retirement on the terms he was offered. In addition, there may well have been an element of altruism in his decision, such as a belief that his early retirement would assist in the solution of current educational problems and also provide opportunities for a younger member of the profession. I have also no doubt that his employers considered that they were acting reasonably from their point of view, in offering him early retirement. The evidence is to the effect that they were satisfied that, in doing so, they were acting in the interests of the efficient discharge of their functions as an education authority and that, in addition, financial benefit to them would accrue. I do not consider that any of these features assist the claimant. It may be argued that while this might be so in the case of a claimant who was employed in private industry, other considerations arise when one is concerned with a public service and when the action taken which resulted in the early retirement is one which can be said to have been taken with the approval of Parliament, the Government Department concerned and many other public and professional bodies. I am not impressed by this approach. It may be said that in coming to the arrangement which I have described, the claimant and his employers were acting in the public interest. As I have already indicated, I accept that they believed they were. The fact that the claimant believed that this was so, did not in itself provide him with just cause for leaving when he had no other employment in view and had made no attempt to get any. I consider that I would be well out of my depth as a Commissioner if I were to conclude that, quite apart from the beliefs of the claimant and his employers, the arrangement entered into was, in fact, in the public interest. Is it in the public interest that it is left to the individual local authorities to decide whether they should enter into arrangements of this nature? Is it in the public interest that financial, rather than educational, considerations should finally determine whether an arrangement should be entered into? Were the substantial number of local education authorities, who to date have not entered into arrangements of the nature of that entered into by the claimant's employers, failing to act in the public interest and is this so as far as the teachers (a majority in the relevant age group) who did not respond to the invitation of the claimant's employers were concerned? I do not accept that one can be expected to attempt to answer questions of this nature in determining whether the claimant had just cause for his action. Basically, this is a simple straight forward case of a claimant who having been given the opportunity of an early retirement and provided with an incentive for accepting it, did so, with the result that his employment terminated on 31 August 1979. If he had not done so, his employment would have continued until he attained normal retirement age in 1983. He chose to retire. He was entitled to do so. Different considerations arise in determining whether having done so he is or is not to be disqualified for receiving benefit. At the time he applied for early retirement, namely 20 March 1979, he had no intention of

seeking alternative employment following the termination of his appointment and took no steps to obtain alternative employment. This was the position up to at least the date of termination, namely 31 August 1979. It may be said that, bearing in mind the employment situation generally, this was a realistic approach, in which event it may be said that he chose to give up the employment he had when he knew he had no reasonable prospects of obtaining alternative employment. There is no suggestion that he decided to retire because of, for example pressing personal or domestic circumstances, or because of working conditions which the employers had failed to remedy after they had been drawn to their attention, or the failure of his employers to fulfil their contractual obligations. The claimant has said that he was not feeling well at the relevant time. However, the evidence falls far short of establishing anything remotely resembling a lack of confidence on his part in his mental or physical ability to perform his duties as a teacher. Having had regard to all the evidence and the submissions which have been made, I am satisfied that the claimant did not have just cause for voluntarily leaving his employment. It follows that he has to be disqualified for receiving unemployment benefit. Bearing in mind all the circumstances, including, in particular, those relating to alternative employment, I consider that the period of disqualification imposed by the insurance officer and local tribunal was appropriate and it is that imposed by me. It may be said that it is unfair that a claimant should be penalised for co-operating with his employers in their efforts to exercise their functions efficiently and save money. (As the present claimant has continued (apart from when he was in receipt of sickness benefit) to receive unemployment benefit, it may be said that, in the event, he will not be penalised as he will receive benefit for the maximum number of days - 312). There appears to be no reason why the employers should not take into account the position of persons such as the claimant in relation to the receipt of unemployment benefit when deciding what inducements to offer for early retirement. Needless to say, this is a matter which is entirely outside my jurisdiction.

11. The appeal of the claimant's association is disallowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 15 January 1981

Commissioner's File: C.W.U.28/80

C.I.O. File: I.O.3201/U/80

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