CWU/18, 19, 20, 21, 22/84

ERB/RC

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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1. My decisions are that the claimants referred to in C.W.U. 20/84 and C.W.U. 22/84 are not disqualified for receiving unemployment benefit from and including 13 March 1984 by reason of the provisions of section 19(1) of the Social Security Act 1975, as amended, and that the claimants referred to in C.W.U. 18/84, C.W.U. 19/84 and C.W.U. 21/84 are not disqualified for receiving unemployment benefit from and including 14 March 1984 by reason of those provisions.

2. At all relevant times each of the claimants was employed by Cementation Mining Limited. Their employers were engaged by the National Coal Board to drive 2 new main headings in an area of one of the Board's collieries which was to be developed and the claimants, together with approximately 80 other workers, were employed on this work. The respective employments of the claimants were - on supplies, electrician, electrician, on supplies and tunneller. Each one is a member of the National Union of Mineworkers. As a result of the current trade dispute between the National Union of Mineworkers and the National Coal Board, work at the colliery, other than safety work, ceased on 13 March 1984 in so far as the operations of the Board were concerned. Each of the claimants also ceased work. The precise time at which they did so varied according to the shift on which a particular claimant was employed. By the end of the morning shift on 13 March 1984 they had all ceased work. Following claims by them to unemployment benefit, the insurance officer (now the adjudication officer) decided that each one was disqualified for receiving benefit from either 13 March 1984 or 14 March 1984 (according to the day on which he last worked) and for as long as the stoppage of work continued "because he lost employment owing to a stoppage of work which was due to a trade dispute at his place of employment (Social Security Act 1975 sec 19(1))." Each claimant appealed to the local tribunal (now the appeal tribunal). The tribunal, which each one attended and at which each one was represented by Mr. G.R.W. Evans, barrister-at-law, allowed each appeal. Their findings were "That the appellant and his colleagues had presented themselves for work but had been informed no work was available." They gave the following reasons for their decision - "The appellant had proved that he was not 1) participating in 2) directly interested in the Trade Dispute at ..... Colliery, ..." 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 heard by me on 1 October 1984. Mr. Evans again

appeared for each of the claimants and he and Mr. P.G. Phippard, who appeared for the adjudication officer, intimated that they agreed to the 5 appeals being heard together. With the exception of the claimant, reference C.W.U. 19/84, each claimant attended and gave evidence. Prior to the hearing, information had been received to the effect that this claimant would not be attending the hearing as he had now taken up residence in South Africa but that he would be filing an affidavit. He has not done so. Mr. Evans intimated that this claimant had neither instructed him to apply for an adjournment or to agree to his appeal being dealt with in his absence. In view of the fact that no request had been made for an adjournment and that Mr. Evans, his representative, was content that I should deal at the hearing with this claimant's appeal as well as the appeals of the other 4 claimants, I have considered that it was appropriate to do so.

3. Prior to and at the hearing before the appeal tribunal, it was common ground that a stoppage of work, due to a trade dispute, existed at the claimants'place of employment and that the claimants had lost their employment as a result of this dispute. The adjudication officer's case at this stage was that the claimants were participating in this dispute. He did not contend that they were directly interested in the dispute. On the other hand, Mr. Evans had contended, and the tribunal accepted, that the evidence established that they were neither participating in nor directly interested in the dispute. By the time of the hearing before me, the adjudication officer's case was amended in 2 respects. It was now contended that (a) the claimants were directly interested in the dispute and that (b) the place of employment of the claimants should be regarded as being a different place of employment to that of the striking miners employed at the colliery by the National Coal Board. The contention referred to in (a) was based upon evidence to the effect that the trade dispute between the National Coal Board and the National Union of Mineworkers concerned not only pit closures but also pay and conditions (the claimants'employers were informed that this was so by the National Coal Board) and that any increase in pay awarded to the members of the National Union of Mineworkers employed by the National Coal Board would be awarded "automatically" to the claimants by their employers. (The claimants' employers had stated that this was the position). Mr. Evans did not dispute that this was so but strongly asserted that the trade dispute related solely to pit closures and did not involve a dispute as to pay. He produced a letter to this effect from a leading figure in the National Union of Mineworkers. The contention referred to in (b) was based on 3 earlier decisions in this context, to which I will refer below. In his submission to the Commissioner, the adjudication officer maintained that the claimants should still be disqualified for receiving benefit on the ground that they had "accepted an instruction from the National Union of Mineworkers to stop work" (this was hotly contested by the claimants) with the result that "the dispute was imported to the Cementation site by the employees compliance with the advice of the NUM officials."

4. Following some confusion at the outset, a clear picture emerged as to what happended at the relevant time in so far as the claimants and their employers were concerned. This picture was provided by the evidence of Mr. J. McMurdo, the employers' site agent, and that of the 4 claimants who were present at the hearing. Mr. D. Howe, the employers' personnel manager at their head office, also gave evidence as to the issues involved in the trade dispute and as to the position in relation to the award of pay increases. The outcome was that there was no dispute between Mr. Phippard

and Mr. Evans as to the facts, save in relation to whether the trade dispute was concerned with a dispute as to pay as well as pit closures. Both of them urged me to accept the contention set out in (b) of paragraph 3 and to accept that there was no trade dispute at the claimants' place of employment. Mr. Phippard indicated that, in the circumstances, he considered that he could no longer maintain that the claimants were disqualified for receiving benefit by reason of the provisions of section 19(1), as amended, (which are set out in the adjudication officer's submission to the Commissioner).

5. Having had regards to the facts and to the guidance provided by the Umpire in his decision in Case Number 1308/26 and the Commissioners in Decision R(U)23/64 (see paragraph 10) and the unreported decision on Commissioner's file C.U.306/71, I accept that the place of employment of the present claimants was not that of the members of the National Union of Mineworkers employed by the National Coal Board, who were on strike at the relevant time. It is of interest to note that the facts in the case in which the Umpire gave his decision and those in the case in which the Commissioners' unreported decision was given bear a striking resemblance to the facts of the case with which I am now concerned.

6. Mr. Phippard and Mr. Evans submitted, and I accept, that the evidence was to the effect that the claimants' employers and the claimants were equally anxious that the work on which they were engaged should continue without interruption. This involved, as far as the claimants were concerned, the crossing of picket lines and the ignoring of the advice given at the pit head by their union officials. The evidence of each of the claimants, who gave evidence before me, was to the effect that they had worked on the appropriate shift up to and including that of the morning of 13 March 1984, for example the night shift on 12 March and the day shift on both 12 and 13 March 1984, and that they had had to cross picket lines and ignore the advice tendered at the pit head by their union officials in the process of getting to work. They were adamant that they were fully prepared to continue to go to work under these conditions and only ceased presenting themselves for work because they were informed by their employers that it was no longer possible for the work to be continued for at least 2 reasons, namely the fact that the officials of the National Union of Mineworkers at the colliery had intimated that all safety cover would be withdrawn if any one their members was allowed down the pit by the management, and also the fact that the materials normally provided by the National Coal Board to enable the operation of the claimants' employers to continue were no longer available as the Board's employees were on strike.

7. In the light of the circumstances outlined in paragraphs 5 and 6, I have come to the conclusion that the claimants lost their employment by reason of a trade dispute, namely the dispute between the National Coal Board and the National Union of Mineworkers, that this was not a trade dispute at the claimants' place of employment and that there was no trade dispute at their place of employment, with the result that they were not disqualified for receiving benefit by reason of the provisions of section 19(1), as amended. If I had come to the conclusion that the trade dispute which existed should be regarded as a trade dispute at the claimants' place of employment, then I would have held that the claimants were not participating in it but were directly interested in it because the dispute related to pay as well as pit closures and if the outcome involved a rise in pay the claimants would have been awarded the same rise in pay.

However, in view of the conclusion to which I have come, these points are irrelevant and I do not find it necessary to deal with them in any detail. For the reasons I have given, my decisions are those set out in paragraph 1.

8. The adjudication officer's appeals are disallowed.

(Signed) E. Roderic Bowen
Commissioner
Date: 5 October 1984

Commissioner's Files: C.W.U.18/84, C.W.U.19/84, C.W.U.20/84, C.W.U.21/84 and C.W.U.22/84

C.A.O. Files: A.O.3391/UB/84, A.O.3390/UB/84, A.O.3392/UB/84, A.O.3393/UB/84 and A.O.3394/UB/84

Region: Wales and South West