

JBM/SH/17

Commissioner's File: CU/058/1991

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Darlington

Case No: [REDACTED]

1. My decision is that the decision of the Darlington social security appeal tribunal dated 4 January 1991 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.
2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal.
3. The facts of the case are dealt with in the Summary of Facts contained in the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 12 November 1991 the claimant through his representatives has had the opportunity to comment and I have their observations to me dated 3 December 1991. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provision is section 5(3) of the Social Security Act 1986.
5. In my judgment the decision of the appeal tribunal is erroneous in point of law. On the face of their record at page T78 of the case papers in their reasons for decision the appeal tribunal state as follows:-

"A written statement was made by Mr Allan which was untrue and this amounted to a misrepresentation whatever the explanation for the incorrect information proffered was (R(B) 18/85)."

The above sentence of the appeal tribunal's reasons for decision

would appear, with necessary modifications, to be taken directly from "non-means tested benefits legislation commentary by D Bonner, I Hooker, R White 1991 Edition at page 221. The following sentence which deals with the decision in R(SB) 18/85 as it applies to oral observations (that is the following sentence in the text of Bonner reproduced immediately below) is ignored. There is no unequivocal finding of fact that the claimant did not discuss his pensions with the official at the interview.

Immediately below I reproduce the relevant passage from Mr Bonner's commentary:-

"Misrepresents

Misrepresentation is founded on positive and deliberate action: R(SB) 9/85. As noted above the reason why the statement represented to the Department is incorrect is irrelevant. If a statement has been made, whether written or oral (R(SB) 18/85) which is untrue, it is a misrepresentation whatever the explanation for the incorrect information proffered. A misrepresentation in a written document may be qualified by an oral statement; it is often asserted by appellants that the form does not accurately reflect everything that was said. Whilst generally claimant's bear responsibility for the contents of forms, if it is accepted that an oral qualification has not been properly noted, this may preclude the written misrepresentation from being such: R(SB) 18/85. In such cases, it goes without saying that careful findings of fact on the oral observations are crucial. .."

It is clear from the face of the appeal tribunal record that the appeal tribunal took considerable care and attention to detail - however, their reasons for decision on the face of their record and as set out above fail fully to follow the guidance given in Decision R(SB) 18/85 as detailed (in my view correctly) in Mr Bonner's commentary set out above.

6. In accordance with my jurisdiction my decision is as set out as follows. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. All issues of fact are at large before the new tribunal.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 11 January 1993