INDUSTRIAL INJURY BENEFIT

Procedure before local appeal tribunal

A local appeal tribunal is not bound by the strict rules as to admissibility of evidence normally applied in a Court of Law, but where questions of fact are in issue on which the claimant or other qualified witnesses are available to give evidence, they should be called to give evidence, a statement by the claimant's representative not being evidence. Where a claimant is called to give evidence he should do so, where reasonably possible, in a place apart where he can be free from interruption or distraction. The claimant's Association's complaint that the procedure adopted by the Tribunal in this case was unfair and unduly formal was without substance.

13. In their notice of appeal the Association state—" We appeal against the decision of the Local Appeal Tribunal dated 27th September, 1960, on the grounds that we do not consider the Local Tribunal gave a fair hearing to the case. Our Liverpool Official has had to protest to the Chairman of this Local Tribunal on several occasions and in the present case you will note brief reference is made to this in the 'Notes of Evidence'. The Chairman omits to say any protest was made and further omits to say that the Tribunal were invited to put questions to the claimant. It is also interesting to note that no reference is made concerning the letter of the witness H. dated 6th September 1960. After losing the case under these circumstances, it leaves us with suspicions as to the effect of these clashes between our officer and the Chairman. We are registering a complaint with the Regional Controller and, if necessary, a complaint with the Minister."

14. Before opening the appeal the claimant's solicitor referred to this matter and informed me that the Association had submitted a formal complaint to the office of the Lord Chancellor and he supplied me with a copy of the letter. The letter is too long to set out here but the following sentence is important, viz., " My Officer also informs me that the Minister's Insurance Officers are not too happy about the methods used by this Chairman. It is not a question of exceeding rights, but just a question of method ". The claimant's solicitor said that the complaint was of " a harsh insistence on procedure " and asked that I should hear the officer concerned. This I consented to do with the proviso that I must not be expected to express any opinion adverse to the local appeal tribunal, who were not represented before me.

15. The officer said that he attended many tribunals in Lancashire and North Wales and that his complaint was that this particular chairman alone always keeps strictly to defined lines. On the occasion in question he made an opening statement which is recorded by the chairman, at the conclusion of which the chairman asked him " Are you bringing forward your claimant as a witness? ". He said " I objected to this as too formal. I asked if he could explain exactly what he required ". The chairman said that neither he nor the tribunal could question the claimant unless the officer produced him as a witness. The officer then said " I told him that I objected to the terms he used and that the Tribunal was not bound by the rules of evidence, that the Tribunal could question the claimant if they wished but I was not going to produce him as a witness ". The officer told me that he had had the same trouble on previous occasions and said " I reminded him that I had protested previously ". To this the chairman replied—" In that case we can't question the claimant and you can protest as much as you like ". The officer then registered a formal protest.

16. The record of the proceedings, on this point, reads—" [The officer] was invited to call claimant to give evidence in corroboration of his opening statement but did not do so ". The insurance officer's representative read a statement made by the clerk to the tribunal which did not materially differ from the account given in the previous paragraph hereof.

17. The solicitor agreed that this was the only ground of complaint and argued that the whole purpose in repealing the Workmen's Compensation Acts and substituting the National Insurance (Industrial Injuries) Act was to abolish everything suggestive of a Court and its procedure in order that claimants might feel completely " at home " and not in any way overawed by their surroundings, and that the chairman was therefore wrong and harsh in insisting upon " procedure " to the extent indicated.

18. In my view there is no substance in this complaint. It is provided by the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1299], regulation 26(1)(b) that " subject to the provisions of the Act and these regulations, the procedure on the determination of any question by the Minister or the insurance tribunal shall be such as the Minister or the insurance tribunal, as the case may be, shall determine ". The chairman of the tribunal was therefore acting strictly within his rights and the officer had no right to complain of the procedure adopted by him. Moreover the procedure adopted by the tribunal was, in my view, the procedure which should be followed in a case like the present where the claimant is present and represented, and there is a definite issue on vital questions of fact. The claimant's representative is not competent to give evidence as to the facts; this should be done by the claimant or other qualified witnesses. I stress this matter because it is important to remember that many appeals have to be decided by the Commissioner on documentary evidence alone and from time to time difficulty is created because the local tribunal records the opening statement of the claimant's representative but no evidence given by the claimant. Except where there is no dispute there is no need for the tribunal to record any statement of fact made by the claimant's representative but a record should be made of the evidence, if any, given by the claimant. I am also of the opinion that if a claimant is called upon to give evidence he should do so, where reasonably possible, in a place apart where he can be free from interruption or distraction.

NOTE.—Paragraphs 1-12 and 19-20 of the decision are not reproduced as they relate only to the particular case which was being decided.