SUPPLEMENTARY BENEFIT

Remunerative full time work exclusion

On the 14 November 1980 the Supplementary Benefits Commission[1] decided that the claimant was no longer entitled to a supplementary allowance because he was working as a window cleaner On appeal, the Tribunal accepted that the claimant had been seen working, and confirmed the Commission's decision on the grounds that Section 6(1) of the Supplementary Benefits Act 1976 applied. The claimant appealed to a Social Security Commissioner.

Held that —

1. The decision of a Supplementary Benefit Appeal Tribunal is in the fullest sense a judicial one and it is imperative that adequate findings of fact and reasons for the decision should be given (paragraph 7);

2 The Tribunal's decision was inadequate because it did not indicate whether the Tribunal found the work to be full time and remunerative, as required by Section 6(1) of the Supplementary Benefits Act 1976 (paragraph 9). It is not enough merely to say that a statutory provision applies without saying *why* it applies (paragraph 10).

3 Before admitting hearsay evidence, a Tribunal must carefully weigh up its probative value, bearing in mind that the original maker of the statement is not present to be questioned on what he actually saw (paragraph 9)

The appeal was allowed.

1. The Supplementary Benefits Commission was abolished from 24 November 1980 by section 6(2) of the Social Security Act 1980.

1. I set aside the decision of the Supplementary Benefit Appeal Tribunal dated 12 January 1981 and remit the appeal to a differently constituted Supplementary Benefit Appeal Tribunal for rehearing in accordance with this decision. The claimant's appeal against the said decision of the Supplementary Benefit Appeal Tribunal is therefore allowed: Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980, [S.I. 1980 No 1605], Rules 8–11.

2. The claimant appealed to a Supplementary Benefit Appeal Tribunal against the decision of the Supplementary Benefits Commission, issued on 14 November 1980, that the claimant was not entitled to supplementary allowance. Written observations by an officer of the Commission give a detailed history of the matter. It is clear that the decision of the Commission that the claimant was not entitled to supplementary allowance was because, to quote those observations, "payment ceased as it was found that the appellant was working as a window cleaner....Supplementary benefit is not being paid as the appellant is considered to be in full-time employment and has been seen working by an officer of the Department" (observations by Commission's officer).

3. In his written statement to the tribunal, the claimant stated "I have been accused of having been cleaning windows, I have not been cleaning windows, I am at home all day and have witnesses to prove it". Nevertheless the claimant did not attend the hearing before the local tribunal, nor did he call any witnesses before that tribunal. Two officers of the Commission were, however, present at the hearing.

4. In their decision (on Form LT235) dated 12 January 1981, the tribunal made the following finding of fact, "The tribunal accepted the evidence of the Commission's officers that the appellant had been seen to be working as a window cleaner". The tribunal decided unanimously to dismiss the claimant's appeal and gave as their reasons for decision (Form LT235) "Section 6(1) of the Supplementary Benefits Act 1976 applies". It should be noted that section 6(1) of the Supplementary Benefits Act 1976 as amended states,—

> "6(1) A person who is engaged in remunerative full-time work shall not be entitled to supplementary benefit....." (my underlining).

5. On 13 February 1981, I gave leave to the claimant to appeal to the Commissioner from the decision of the tribunal. Appeal lies to a Commissioner only on a question of law (Supplementary Benefits Act 1976, section 15A(2) and the Supplementary Benefit and Family Incomes Supplement (Appeals) Rules 1980, Rule 8(1)). In a direction accompanying the leave to appeal I stated,

> "The record of the proceedings before the tribunal (Form LT235) does not appear to deal with the question of whether the alleged work as a window cleaner was 'full-time' (Supplementary Benefits Act 1976, s.6(1))".

6. In response to that request, a benefit officer has made a submission to the Commissioner dated 21 July 1981, and as I accept that submission in full and it sets the matter out admirably, I quote paragraphs 2 to 5 of that submission verbatim. They read as follows:—

> "2. The record of the Tribunal's decision is silent as to the nature of the evidence before it and does not indicate the extent to which the appellant had been observed to be working as a window cleaner. It is not possible to identify the criteria by which the Tribunal concluded that the work was full-time, nor, indeed, whether they considered this question at all. There is no record of any evidence being before the tribunal that the work was 'remunerative'. At best the decision merely indicates that the tribunal accepted the (undisclosed) evidence of the Commission and treated this as automatically satisfying section 6 of the 1976 Act.
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> 3. In my submission where the stated reasons for a decision are so inadequate that it is impossible to tell whether the tribunal directed their minds to the essential questions or whether there was any evidence before them upon which they could properly reach their conclusion, such inadequacy may, of itself, be a sufficient ground for concluding that the decision was erroneous in point of law, (See CRAKE v. SUPPLEMENTARY BENEFITS COMMISSION [unreported] (22 July 1980) per Woolf J....)[1]
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> 4. In R(A) 1/72, when dealing with the obligation of a tribunal to give reasons, the Commissioner (R. J. Temple QC) said at paragraph 8: 'The obligation to give reasons for the decision....imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met does no more than this.

It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reason for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over-elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision, should be able to discern on the face of it the reasons why the evidence failed to satisfy the authority'. In my submission, when considered in the light of the above statement, the reasons of the...tribunal fail to satisfy Rule 7(2)(B) of the Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980 (S.I. 1980/1605).

5. It is, therefore, submitted that the decision of the...Appeal Tribunal is erroneous in point of law and that [the claimant's] appeal should be allowed".

7. I accept that submission in its entirety and adopt its wording as my reasons for deciding that in this case the claimant's appeal should be allowed. I would only add that the learned Commissioner in reported decision R(A) 1/72 was dealing with a decision of a delegated medical practitioner on behalf of the Attendance Allowance Board and that is why the Commissioner referred to the decision as being "an administrative quasi-judicial decision". The decision of a Supplementary Benefit Appeal Tribunal is, however, in the fullest sense a judicial decision, just as is the decision of a Commissioner or of a Court. It is even more imperative, therefore, that adequate findings of fact and reasons for a decision should be given.

8. That point is emphasised by the wording of Rule 7(2) of the 1980 Appeals Rules (cited above) which provides—

"7(2) The [Supplementary Benefit Appeal] tribunal shall—

(a) record every determination in writing; and

(b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and

(c) if a determination is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting".

9. The tribunal in this case did not comply with Rule 7(2)(b). Their finding of fact, "The tribunal accepted the evidence of the Commission's Officers that the appellant had been seen to be working as a window cleaner" is inadequate in that it does not indicate whether or not the tribunal found that work to have been full-time and remunerative—as required by Section 6(1) of the Supplementary Benefits Act 1976. Nor does it indicate whether the Commission's Officers, who were apparently witnesses at the hearing, had themselves seen the claimant working as a window cleaner or whether they were merely retailing statements which other officers of the Commission had given to them. If the latter was the case then there should be an indication of whether or not the tribunal was prepared to accept "hearsay" evidence. A tribunal is not, of course, bound by the strict rules of evidence, but nevertheless it must, before admitting second-hand (hearsay) evidence, carefully weigh up its probative value, bearing in mind that the original maker of the statement is not present at the hearing to be questioned on what he actually saw.

10. The reasons given by the tribunal for its decision are also inadequate. It is not enough merely to say that a statutory provision, i.e. in this case

Section 6(1) of the 1976 Act, applies without saying *why* it applies. Had the tribunal addressed their minds to that matter, they would not have fallen into the error of giving no indication that they had considered the requirement of Section 6(1) that the work in which a person is to be engaged, if he is to lose entitlement to Supplementary Benefit, must be "remunerative full-time work".

11. The above breaches by the tribunal of Rule 7(2)(b) constitute an error of law. As a result I allow the claimant's appeal and set aside the tribunal's decision of 12 January 1981. In accordance with Rule 10(8)(a) of the 1980 Appeals Rules, I refer the case to a differently constituted tribunal for rehearing.

12. That new tribunal should take account of all the matters set out by me in this decision and in particular the need to ascertain, and make a finding of fact on, whether under Section 6(1) of the Supplementary Benefits Act 1976 as amended, the claimant was "engaged in remunerative full-time work". They should also take note of the fact that Section 6(1) (as amended) continues ".....and regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of this sub-section as so engaged". They should ensure, after they have heard such evidence as there is on the rehearing, whether or not there is any provision in regulations which affects the issue before them and should so state in their reasons for decision.

13. Unless there is some genuine and compelling reason why the claimant is not able to attend the rehearing of this case, the claimant ought, in his own interest, to attend and, in my view, it is important that he should do so. Moreover, if he has (as he stated) witnesses to prove that he had not been cleaning windows, he ought to try to secure the attendance of those witnesses at the rehearing, so that they can give evidence on the point.

(Signed) M. J. Goodman
Commissioner

1. Now reported in /1982/1 All England Reports 498.