

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision No. C.S.U.2/81

... was reviewed ... and ...

1. My decision is that the claimant is disqualified for receiving unemployment benefit from 16 October 1979 to 30 March 1980 (both dates included) in terms of section 19(1) of the Social Security Act 1975.

2. The claimant who is a turner lost employment on 16 October 1979 by reason of a stoppage of work due to a trade dispute at his place of employment. He claimed unemployment benefit from 8 February 1980, the date when his union on behalf of the striking workers including the claimant formally abandoned the claim which led to the stoppage and acknowledged that there was no possibility of the employers reinstating the strikers. The local insurance officer disqualified the claimant for receiving unemployment benefit from 17 October 1979 "for so long as the stoppage of work continues". That decision was upheld on appeal by the majority of the local tribunal and the claimant's association appealed to the Commissioner. In connection with that appeal an oral hearing was held before me at which the claimant was represented by Mr. Mure, Advocate, instructed by Messrs. L. & L. Lawrence, Solicitors, Glasgow and the insurance officer was represented by Mr. Mackenzie. I am indebted to these gentlemen for their assistance. Some limited evidence regarding the dispute was given on the claimant's behalf by Mr. MacKay of the A.U.E.W. Detailed evidence was given on behalf of the insurance officer by Mr. Aitchison, Works Director and Secretary of the employers concerned. Mr. Aitchison gave his evidence in a clear and careful manner and I accepted that evidence as honest and reliable.

3. The material facts are as follows:-

The employers are a small engineering company manufacturing and repairing thermostatic steam valves and other heating items and non-ferrous castings. Prior to the strike after-mentioned their total work force numbered approximately 58 of whom approximately 43 including 5 apprentices were production workers. Their castings orders were ordinarily fulfilled in a matter of a few weeks and their order book normally had approximately 4 to 6 weeks work at any time. The annual wage agreement for the work force, reached in May 1979, provided for a wage rise of a little more than 10 per cent, with provision for a review in the autumn in light of

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productivity and the company's position. In September 1979 the employees made a claim for a further 12 per cent wage increase which was rejected by the employers who maintained that no further rise was justified. As a result 35 production workers including the claimant came out on strike on 16 October 1979. An immediate stoppage of production work resulted. The employers issued an ultimatum on 8 November 1979 threatening dismissal if the men did not return by 12 November 1979. This did not result in a return and letters of dismissal followed on 12 November 1979. Meantime 5 apprentices withdrew their labour on 9 November 1979 and their dismissals followed on 28 November 1979. The employers did not immediately regard the dismissals as necessarily final. They lost most of their business through the stoppage however, and by 6 December 1979 had decided that they could not re-employ the strikers or recruit other personnel. By 8 February 1980

the grade dispute was no longer a live issue. The strikers had already abandoned their wage claim but although by that date they sought only reinstatement of all striking employees they accepted that there was no possibility of their being reinstated. Meantime, after the dismissals, the company were left with only the directors, a manager, foreman and design office staff, numbering 15 in all. The premises (and the plant) were put up for sale. The staff however wished to try to continue working for a period and the directors agreed. A limited amount of production work was resumed but the production of castings and most of the finishing work was sub-contracted. The company's volume of business was less than one-third of the pre-strike level in January and February 1980 but gradually rose until by the end of April sales were running at roughly the pre-strike level, although profitability was affected until the second half of 1980. Some production plant was sold. The premises were not sold but have subsequently been partially sub-let. In the autumn of 1980 5 persons were recruited by the company, all on the production side. This was done to release for their normal duties other staff (and especially design staff) diverted after the loss of the production workers. Despite the restoration of the pre-strike level of business the employers continued to sub-contract casting and finishing work and still do so. The claimant commenced alternative employment with another company as a vertical borer on 31 March 1980.

4. Section 19(1) of the Social Security Act 1975 as amended provides as follows:-

"19.-(1) A person who has lost employment as an employed earner by reason of a stoppage of work which was due to a trade dispute at his place of employment shall be disqualified for receiving unemployment benefit so long as the stoppage continues, except in a case where, during the stoppage, he has become bona fide employed elsewhere in the occupation which he usually follows or has become regularly engaged in some

/other

other occupation; but this subsection does not apply in the case of a person who proves -

(a) that he is not participating in ... or directly interested in the trade dispute which caused the stoppage of work; ...

(b) ...

5. It was accepted on behalf of the claimant, correctly in my opinion, that in the circumstances outlined above the claimant lost employment on 16 October 1979 by reason of a stoppage of work due to a trade dispute at his place of employment and that he was participating in and directly interested in the trade dispute which caused the stoppage. It was therefore accepted that the claimant was liable to disqualification under the section for receiving unemployment benefit for so long as the stoppage of work due to the trade dispute continued. The critical question in the appeal was when that stoppage should be regarded as having come to an end.

6. Mr. Mure contended on behalf of the claimant that the trade dispute ended, at the latest, on 8 February 1980. He accepted that a stoppage of work due to a trade dispute can continue after settlement of the trade dispute but argued that in this case (1) the stoppage of work after 8 February 1980 was due to the employers' decision, unrelated to the trade dispute, to operate at a lower level by sub-contracting production work and (2) that in any event the stoppage ceased in April 1980 when business was restored to its former level. Mr. Mure referred to the short period elapsing between the expiry of the employers' ultimatum to the strikers and the decision not to re-employ them. He sought to deduce from the history of the wage negotiations that the employers were in financial difficulties in 1979 and he referred to a statement by Mr. Aitchison at the local tribunal that irrespective of the stoppage of work there might have been a gradual run-down of the business. He submitted that these factors enabled the inference to be drawn that the employers had decided before 8 February 1980, for reasons unconnected with the trade dispute, to restructure the operations of the company and to sub-contract production work. Mr. Mure's first proposition was however firmly denied in evidence by Mr. Aitchison who made it clear that the employers' decision to sub-contract production work was forced by the consequences of the strike and that the reference to a possible gradual run-down of business noted at the local tribunal was no more than an acknowledgment that the effects of the current general recession would probably have affected the company to some extent in any event.

7. On behalf of the insurance officer Mr. Mackenzie accepted that the trade dispute "died a death" at 8 February 1980 but submitted under reference to R(U) 11/63 paragraph 17 that a stoppage of work may persist after settlement of a trade dispute. He also submitted under reference to C.W.U.18/49 and R(U) 1/56 that the onus of proof that a continuation of a stoppage of work was due to a cause other than the trade dispute lies with the person asserting that proposition. He referred to paragraph 10 of Decision R(U) 17/52 in which a Tribunal of Commissioners quoted from Umpire's Decision 4850/26 where the Umpire after defining the meaning of a stoppage of work due to a trade dispute said: "... a stoppage of work in this sense comes to an end when for any reason the employers no longer have employment to offer on any terms and will

not again employ men at the colliery in question on any terms". Mr. Mackenzie submitted that in the present case the employers' inability to re-employ the strikers and their decision to sub-contract any new production work were directly due to the effects of the stoppage upon their business and did not end the stoppage of work as a stoppage due to the trade dispute. The stoppage should not be regarded as having ended until the employers regained something approximating to their pre-strike level of business, which he suggested was achieved after the end of April 1980.

8. The apparent breadth of the proposition contained in the passage quoted from Umpire's Decision 4850/26 and in particular the inclusion of the words "for any reason" compels me to consider as a preliminary question in this case whether the employers' decisions not to re-employ the strikers and to sub-contract the production work did not per se bring to an end the stoppage of work due to the trade dispute, irrespective of the reason for their decision. It is plain that a stoppage of work must be of a temporary character at its inception if it is to be a stoppage due to a trade dispute within the meaning of section 19(1) - see Decision R(U) 17/52 paragraph 9, where the Tribunal of Commissioners said: - "To be due to a trade dispute within the meaning of [the section] a stoppage of work must be in the nature of a strike or lock-out, that is to say it must be a move in a contest between an employer and his employees, the object of which is that employment shall be resumed on certain conditions. If a stoppage was not designed for this purpose but was the result of a decision to cease to be employed or to give employment (as the case may be) it would not in our opinion be due to a trade dispute within the meaning of the sub-section, notwithstanding that this decision was taken because of the existence of a trade dispute". There is no doubt also that a stoppage of work of a temporary character which continues for a time after settlement of the trade dispute can nevertheless continue to be due to that trade dispute if directly consequential upon it - R(U) 11/63, paragraph 17, and see paragraph 7 of numbered Decision G.S.U.5/75 and the authorities there referred to.

9. It is however arguable that if the temporary character of the stoppage of work as a move in the trade dispute is altered by subsequent decisions of the employer of the kind taken in this case which have the effect of prolonging the stoppage of work indefinitely or perhaps making the stoppage permanent, such decisions, even if themselves due to the effects of the trade dispute, nevertheless automatically remove the stoppage of work from the scope of section 19(1). There would, I consider, be some logic in this result in light of the passage quoted above from Decision R(U) 17/52. The weight of authority however points the other way. In Decision R(U) 1/65 the Commissioner referred to R(U) 17/52 and said in paragraph 12: "If in the course of a stoppage an employer decides never to re-open his business, because of economic or other reasons, or if a trade dispute has been settled but work is not restarted by reason of causes independent of the trade dispute, no doubt in these and such like cases a fresh cause of stoppage would be held to have replaced the trade dispute". In Decision R(U) 11/63 paragraph 17 the Commissioner, after emphasizing the need to keep the trade dispute distinct from the stoppage of work and pointing out that a stoppage of work and disqualification may persist after the settlement of a trade dispute if consequential upon it continued: "or the dispute may never be settled, but the resulting stoppage may come to an end through a general resumption of

work by the old employees or others engaged to replace them, or by the merger and obliteration of the stoppage in a general closure owing to bad trade". I note also that in the recent numbered Decision C.U.12/80 the Chief Commissioner considered the issue of causation in relation to a closure decision taken by employers whilst a trade dispute was still in existence for the purpose of determining whether the closure decision was consequential upon the trade dispute or was due to independent financial causes. I think it must be inferred from these authorities that the fact that during a stoppage of work due to a trade dispute the employers make a decision or decisions which indefinitely prolong or even make permanent the stoppage of work does not automatically bring to an end the operation of the section. I am therefore of the opinion that in considering whether there was a continuing stoppage of work for the purposes of section 19(1) in the present case the significance of the employers' decisions not to re-employ the strikers and to sub-contract production work must be judged in light of the reasons for those decisions.

10. My conclusions upon the matters in dispute in this appeal are as follows:- (1) There was a stoppage of work in the present case affecting the bulk of the production and finishing work of the employers' company. That stoppage was due to a trade dispute at the claimant's place of employment and he lost employment thereby, all within the meaning of section 19(1). (2) While the question of settlement of the trade dispute is not necessarily critical in the circumstances of this case, I think it may be said that the employers and the striking employees ceased to be engaged in the trade dispute on 8 February 1980. (3) The continuing stoppage of work would be due to that trade dispute, whether it was settled or not, if directly consequential upon it. (4) I am satisfied on the evidence before me that the employers' inability to re-engage the strikers and their decision to sub-contract production work were due to the effects of the strike. (5) The prolongation of the stoppage of work so brought about must be regarded as being due to the trade dispute and is not shown to have been due to a supervening cause as contended by Mr. Mure. (6) In light of the foregoing conclusions, the restoration of the employers' business to approximately the pre-strike level by the end of April 1980, which was achieved without resumption of the production work affected by the stoppage, does not represent the end of the stoppage of work within the meaning of section 19(1) of the Social Security Act 1975. (7) Nevertheless as at that date the continuing stoppage of work can in my opinion no longer be attributed to the adverse consequences of the trade dispute as by then, substantially, these consequences had been repaired. The continuing stoppage thereafter must in my opinion be deemed to be due to a policy decision of the company not to revert to their pre-strike production activities.

11. I therefore hold that the stoppage of work in the present case continued to be due to the trade dispute up to but not after 30 April 1980. The claimant therefore must be held disqualified for receiving unemployment benefit after 8 February 1980. In his case, however, the disqualification terminates on 30 March 1980 when he commenced alternative employment. That event enables him to take advantage of the exception contained in section 19(1) which is available to persons who, during the stoppage, become bona fide employed elsewhere in their usual occupation or become regularly engaged in some other occupation.

12. The appeal is said to be a test case for 43 foundry and production workers including 5 apprentices. The apprentices who lost employment from a different date due to the same trade dispute have been referred to in

paragraph 3 above. Evidence was also given at the hearing before me to the effect that 3 of the 43 employees had been off work sick at the time of the strike. It is therefore apparent that the decision in the present appeal may not necessarily be applicable to them. As was explained at the hearing this decision must be given with reference to the facts established in relation to the present claimant, and in so far as the findings are regarded as inapplicable to or insufficient for the purposes of other claimants consideration will no doubt have to be given by their association to the possibility of further procedure in their cases.

**13. The appeal of the claimant's association on behalf of the claimant is disallowed save as regards the terminal date of the period of his disqualification.**

(Signed)

**J. G. Mitchell**  
**Commissioner**

**Date: 18 February 1981**

**Commissioner's File: C.S.U.71/80**

**C.I.O. File: I.O.3291/U/80**

**Scottish H.Q. File: Unregistered Papers**