'special reason'. This meant

> that there must be some factor or factors in the circumstances of the particular case which takes it outside the common run of cases . . . [W]hile keeping the general rule laid down by s.29(2) in mind, the decision maker must nevertheless be prepared to respond to the circumstances of a particular case if for any special reason the application of the general rule would be unjust, unreasonable or otherwise inappropriate having regard to the scope and object of the Act.

(Reasons for Decision, para. 35.)

A proper case for the exercise of the discretion was where the parties were living apart, although still under the one roof. There was difficulty in distinguishing between a 'subsisting marriage and one which can be seen to have utterly broken down', but family law cases would 'provide some useful guidance'; and the AAT referred to *Pavey* (1976) 10 ALR 259 and *Falk* (1977) 15 ALR 189: Reasons for Decision, paras. 36–7.

The AAT decided that, from 1970 onwards, Reid and his wife were two separate individuals leading separate lives; that their marriage had irretrievably broken down. The nursing and housekeeping services provided by Mrs Reid since December 1980 should not 'be seen as involving the resumption of a marriage relationship which was long dead but rather as the provision of services by Mrs Reid out of a sense of compassion for a man who she regards in all but a legal sense as her former husband': Reasons for Decision, para. 42. The AAT concluded:

> 43. We are satisfied therefore that the applicant and his wife have, at all material times, been living separate and apart although under the one roof and that, for the purposes of the Act, they should be regarded as if they were no longer married. We are further satisfied that the applicant has not, at any stage since the date of their separation, had access to or been supported in any respect by his wife out of her own separate income. In our view, the facts as we have found them provide a special reason which takes this case out of the ordinary run of cases involving a husband and wife. We therefore determine that Mrs Reid's income should be disregarded in calculating the rate of Mr Reid's pension and direct that Mr Reid's pension should be recalculated and paid accordingly with effect from 27 March 1980.

Unemployment benefit: 'voluntary' unemployment

MEASEY and DIRECTOR-GENERAL OF SOCIAL SERVICES (No. Q81/39)

Decided: 14 September 1981 by J.B.K. Williams.

Kenneth Measey (aged 46 years) had been employed as a motor mechanic in Sydney. In February 1981 he left this job and moved, with his wife and two young children, to Queensland. At the same time he sold his home in the NSW country town of Parkes (which the family had left about a year earlier).

On arrival in Queensland, Measey claimed unemployment benefit. The DSS decided that payment of benefit should be postponed, under s.120(1)(a) of the *Social Services Act*, for six weeks. He appealed, unsuccessfully, to an SSAT and then applied to the AAT for review of the postponement decision.

Section 120 gives the Director-General a discretion to postpone payment of unemployment benefit. The relevant parts of that section are as follows:

> 120. (1) The Director-General may postpone for such period as he thinks fit the date from which an unemployment benefit shall be payable to a person, or may cancel the payment of an unemployment benefit to a person, as the case requires —
> (a) if that person's unemployment is due, either directly or indirectly, to his voluntary act which, in the opinion of the Director-General, was without good and sufficient reason;

(Subsection (2) declares that the period of postponement 'shall be not less than six weeks or more than 12 weeks'.)

The DSS had taken the view that Measey had been earning 'at least average wages' in Sydney and had left his job to move to Queensland because housing was cheaper there. This was not a 'good and sufficient reason' for his voluntary unemployment. A DSS memorandum had commented that 'unemployment benefit should not be paid to assist him to take advantage of an inequable [*sic*] real estate situation.'

However, the AAT was told that Measey had been paid significantly below award wages in his Sydney job — in the ten weeks before he had left that job he had averaged $152 a week, whereas he was now being paid the appropriate award of $219 a week. (He had found a job shortly before the AAT hearing.)

The AAT was also told, in a letter from Measey and by his wife, who appeared for him, that the family had moved to Queensland because it was a healthier environment for his children. The AAT accepted this evidence and concluded that the desire to improve his children's lot and prospects in life by moving from a metropolitan to a more rural atmosphere was not at all unreasonable; and his Sydney employment was unsatisfactory — nothing more than a 'stop-gap'.

The AAT decided that the applicant had acted reasonably and had 'shown good and sufficient reason for his unemployment within the meaning of that phrase in Section 120(1)(a) of the Act': Reasons for Decision, para. 13.

The AAT set aside the decision under review and substituted a decision that no postponement be imposed.

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