

VERVERELLIS and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N81/72)

Decided: 30 May 1983 by E. Smith.

The Tribunal *set aside* a DSS refusal to grant invalid pension to a 51-year-old man who injured his back while working.

The Tribunal concluded that Ververellis was presently unemployable due to his injury. His refusal to undergo a serious and potentially risky operation—risky in the sense that it might worsen his condition—did not prevent his incapacity being regarded as 'permanent'.

ZEMETNER and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. V82/232)

Decided: 13 July 1983 by R. Balmford.

The Tribunal *affirmed* a DSS cancellation of invalid pension held by a 52-year-old man who suffered from the after-effects of polio in one leg, osteoarthritis and pancreatitis.

'K' and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. A82/34)

Decided: 22 June 1983 by E. Smith.

The AAT *affirmed* a DSS refusal to grant an invalid pension to a 48-year-old kitchen maid suffering from degenerative arthritis affecting her back and legs.

On the medical evidence the Tribunal had little difficulty finding that she was permanently incapacitated for work. However the applicant was in full-time employment and although suffering pain she was performing her work to her employer's satisfaction.

CHEE and DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q81/161)

Decided: 21 June 1983 by J.B.K. Williams.

The AAT *affirmed* a DSS refusal to grant invalid pension to a 48-year-old woman who had lost her right knee cap in a car

accident and who also suffered from decreased vision in one eye.

Chee had not engaged in work since 1973, her accident occurred in 1980. There was no evidence that the applicant whilst looking for work had been unable to find any by reason of her disabling condition.

O'RAFFERTY AND DIRECTOR-GENERAL OF SOCIAL SECURITY

(No. Q 81/162)

Decided: 7 June 1982 by A.N. Hall.

The AAT *set aside* a DSS decision to cancel the invalid pension of a 44-year-old former fitter and welder and sheet-metal worker who had suffered a back injury at work.

The Tribunal concluded that the medical evidence upon which the DSS based the cancellation was not conclusive as to his capacity to work, for there was reason to believe that he had 'some psychological overlay upon his underlying organic symptoms'.

Federal Court Decision

Unemployment benefit: 'industrial action'

SAVAGE v DIRECTOR-GENERAL OF SOCIAL SECURITY

Federal Court of Australia

Decided: 4 August 1983 by Bowen CJ, Lockhart and Neaves JJ

This was an appeal from the decision of the AAT in *Savage* (1983) 11 SSR 111 where the Tribunal had decided that the applicant was not qualified to receive unemployment benefit because his unemployment was due to industrial action.

Section 197(4) and (5) of the *Social Security Act* reads:

(4) A person is not qualified to receive an unemployment benefit in respect of a period unless —

(a) the person satisfies the Director-General that the person's unemployment during that period was not due to the person being, or having been, engaged in industrial action;

(5) Sub-section (4) does not disqualify a person from receiving unemployment benefit in respect of a period occurring after the cessation of the relevant industrial action.

The facts

Savage was a member of the Amalgamated Metal Workers and Shipwrights Union, employed as a fitter by Toohey's Limited. In September 1980 the AMWSU and a number of other unions commenced industrial action in support of, in particular, a 35 hour week. The campaign, in which Savage participated, included stoppages, bans and restrictions on performance of work. On 11 November 1980 the appellant was asked to sign a letter saying that he was prepared to work in terms of the award without further disruption of normal production. The appellant, along with some 420 others refused to sign and was summarily dismissed. None of the

employees was paid until all were reinstated on 19 December 1980.

Industrial action: contract of employment

The appellant submitted that his dismissal prevented him from engaging in industrial action after 11 November. Thus he was qualified to receive unemployment benefit for the period 11 November to 19 December 1980.

The Federal Court rejected this submission. 'Industrial action' in s.107 did not require that a contract of employment be in existence.

In one sense it is true to say that the appellant's unemployment during the relevant period was due to his having been dismissed from his employment. But he was dismissed because he refused, as evidenced by his unwillingness to sign the letter presented to him for signature on 11 November... The words 'due to' suggest some element of caution. But unemployment may be due to industrial action notwithstanding that the relationship of employer and employee is technically terminated...

It is a question of fact depending on the particular circumstances of each case whether unemployment of the claimant for unemployment benefit is due to his or another member of the same trade union being, or having been, engaged in industrial action. The question is answered by broader considerations than the contractual relationship between employer and employee. The industrial context in which that relationship was shaped and severed is also relevant. Section 107 is not to be read in isolation from, but rather against, the background of the industrial scene.

(Reasons for Judgment, pp. 10-12)

In this case the Court formed the view that the appellant was clearly dismissed because he was engaged in the industrial action and that this dismissal was part of the 'battle of tactics' between the em-

ployer and the union.

This also appears to address the second submission by the appellant that no industrial action occurred between 11 November and 19 December 1980. It was not established, said the Court, that there was no evidence to support the AAT's finding that other members of the AMWSU were engaged in relevant industrial action during that period. Industrial action extended over the whole period.

Formal decision

The Federal Court dismissed the applicant's appeal, with costs.

Statistics

This table of applications lodged with and decided by the AAT, is compiled from information provided by the Department of Social Security.

	Jan. 83	Feb. 83	Mar. 83	April 83
Applications lodged*	90	123	103	112
Decided by AAT	19	23	27	36
Withdrawn	14	20	10	25
Conceded	8	30	40	37
No jurisdiction	2	4	5	7
Awaiting decision at end of month	1134	1180	1201	1208
* Applications lodged: type of appeal				
Medical appeal	81	86	70	85
Other appeals	9	36	31	37
FOI	4	1	2	0
State where application lodged				
ACT	0	2	0	1
NSW	60	80	58	50
NT	0	1	1	0
Qld.	8	6	5	6
SA	3	13	4	11
Tas.	1	2	6	0
Vic.	13	13	26	42
WA		6	3	2