

OHL and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. Q83/174)

Decided: 3 October 1984 by J.B.K. Williams.

The AAT affirmed a DSS decision to cancel an unemployment benefit held by Alexander Ohl.

Ohl was employed by a meat processing company, which had closed its plant and dismissed all its workers in March 1983. Ohl was then granted unemployment benefit. On 20 April 1983, the company announced that it had agreed

with Ohl's union (the AMIEU) to re-open the meatworks on 26 April and to re-employ all except 17 of its former workers.

However, work did not resume on 26 April and the meatworks did not re-open until 26 May 1983. In the intervening period, the union insisted that all former workers be re-employed; and the company eventually agreed to this demand. Ohl unsuccessfully sought other employment in this intervening period; but the DSS cancelled his benefit on 4 May on the basis that his present unemployment was due to his being engaged

in industrial action, and so disqualified by s.107(4) of the *Social Security Act*.

Ohl claimed that the disqualification in s.107(4) should not be applied to him because he had tried to leave the meat industry to find other employment during the relevant period. But the AAT concluded that, while he 'had unsuccessfully applied for other jobs, he would nevertheless [have] been in employment during the relevant period with the company, had it not been for the dispute between the AMIEU and its members and the company': Reasons, p. 6. He was accordingly disqualified by s.107(4).

Unemployment benefit: postponement

PEARSON and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. V83/55 and V83/161)

Decided: 7 September 1984 by R. Balmford.

Colin Pearson was appealing against two decisions of the DSS to postpone payment of unemployment benefit. The first matter concerned postponement in April 1982 after Pearson left GMH on the ground that Pearson's unemployment was due to his misconduct as a worker (s.120(1)(b)); the second postponement occurred after Pearson left Silverwood and Beck in June 1982 on the ground that his unemployment was due to his voluntary act which was without good and sufficient reason (s.120(1)(a)).

The legislation

Section 120(1) of the *Social Security Act* provides:

The Director-General may postpone . . . the date from which an unemployment benefit shall be payable to a person . . .

- (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;
- (b) if that person's unemployment is due to his misconduct as a worker . . .

GMH matter

The senior personnel officer from GMH gave evidence. He described the disciplinary system, agreed to by the unions, involving several stages of verbal warning, counselling and then dismissal. Pearson commenced work in the foundry at GMH in March 1982. In his third week of employment he had a second stage disciplinary counselling after being told not to leave his place of work without contacting his supervisor. During the counselling he apparently agreed that he had left his place of work to go over to the engine plant where he used to work, in order to find employment in that area. Pearson complained about the dirt and dust in the foundry. But the area was said to comply with safety requirements, safety equipment was available and Pearson's medical examination showed that he was able to work in that area. Attempts were made to find a job in the engine plant for him, but these were unsuccessful. A few days later Pearson again left his place of work and a third stage counselling was set up where he said he could not work in the foundry area. His job was then terminated.

The Tribunal concluded that Pearson's unemployment in April 1982 was due to his misconduct as a worker.

Silverwood and Beck matter

Pearson gave 4 reasons for leaving his employment with Silverwood and Beck: travelling was difficult, working conditions were bad, he was not receiving the award wage and he could only do a sit down job because he had arthritis in his hip.

The AAT agreed with the SSAT that the travelling involved in getting to and from the job was not unreasonable. Pearson's foreperson at Silverwood and Beck gave evidence about working conditions, which were described as not noisy or dirty; and a variety of safety equipment was available.

The AAT noted that Pearson gave no evidence that he was underpaid at Silverwood and Beck and pointed out that, if this was so, there were ways to remedy this. Medical reports indicated that he was fit for the sort of work he had undertaken. Finally, the Tribunal referred to Pearson's work history and suggested that this showed a certain consistency on Pearson's part.

The Tribunal concluded that Mr Pearson's voluntary act of leaving Silverwood and Beck in June 1982 was 'without good and sufficient reason'.

Formal decision

The decisions under review were affirmed.

Unemployment benefit: claim for backpayment

GRAY and DIRECTOR-GENERAL OF SOCIAL SECURITY
(No. N83/902)

Decided: 26 October 1984 by R.K. Todd.

Norman Gray had worked as a self-employed motorcycle stunt man at country shows for some weeks prior to November 1982, registering a business name in October. In mid-November he enquired at a DSS office about his eligibility for unemployment benefits. He claimed that he was told that he would not be eligible because he had a registered business. Over the next 2 months he unsuccessfully applied for a number of jobs, borrowed \$1000 from a finance company and was supported by his parents.

In February 1983, Gray claimed and was granted unemployment benefit, which was backdated to 7 days before his claim, in accordance with s.119(1A) of the *Social Security Act*. When the DSS refused to backdate payment of this benefit to November 1982, Gray sought review by the AAT.

The legislation

Section 119(1) of the Act provides that unemployment benefit is payable 7 days after making a claim, or after becoming unemployed, 'whichever was the later'. Section 119(1A) is an exception to this, as is s.119(1)(b), which dispenses with the 7-day waiting period when a person has served a waiting period within the past 12 weeks. But there are no other

exceptions; and s.116 provides that a claim for unemployment benefit shall be in writing, in a form approved by the Director-General and lodged with a Registrar.

No basis for retrospective claim

In the present case, the AAT said, Gray had not completed a form and attempted to hand it in: if he had, there would 'have been grounds for saying that he had made a claim, and made it in writing.' And if he had clearly said that he was making an oral claim, which the DSS had not accepted, there would have been a basis for considering an *ex gratia* payment, as in *O'Rourke* (1981) 3 SSR 31. But neither a written nor an oral claim had been attempted in November 1982; and