

s.34(2), this also exhausted the Tribunal's powers. Similarly, if both parties consent to dismissal, an order to dismiss an application under s.42A(1) also exhausts the Tribunal's jurisdiction.

Nicholson told the Tribunal that, although his solicitors were acting on his instructions in withdrawing his appeal, he had not understood the effect of dismissal. According to the Tribunal:

'... that makes no difference. His reasons for withdrawal, his understanding of that effect, are of no relevance. What is involved is a fundamental question of statutory interpretation. The Tribunal has only those powers which are expressly conferred upon it and when its powers have been exhausted in respect of a particular decision, then the matter is at an end.'

(Reasons, para.19)

Formal decision

The Tribunal accordingly directed that it had no jurisdiction to review the decision.

[J.M.]

Unemployment benefit: living in remote area

ATKINSON and SECRETARY TO DSS

(No. 5002)

Decided: 5 April 1989 by J.A. Kiosoglous.

Atkinson sought review of a DSS decision to refuse unemployment or sickness benefit during the period 25 June to 6 October 1987. The DSS considered he did not qualify for unemployment benefit as he was living in a remote area of low employment prospects, and by remaining there was not taking reasonable steps to secure suitable paid work. As he did not suffer a loss of salary, wages or other income because of an incapacity for work, the delegate argued, the only possibility of paying him sickness benefit was to hold that but for his incapacity he would have qualified for unemployment benefit. The delegate also considered that the claim for sickness benefit lodged on 1 October 1987 was outside the 5-week period which would prohibit payment of arrears.

The legislation

During the relevant period, s.116(1) of the *Social Security Act* dealt with eligibility for unemployment benefit, s.117(1) with sickness benefit and s.121(1) (a) and (b) with the amount payable as sickness benefit, and s.125(3) with the 5-week rule.

The facts

The applicant was a qualified diesel fitter who, in January 1987, left his home in Queensland where he had been unemployed for 10 months, to seek work in Mintabie, South Australia. He had been told Mintabie, an opal mining centre, contained a heavy concentration of earth-moving equipment and there was plenty of work there for persons with his qualifications. On arrival he discovered the company which had offered him work had been involved in a dispute and there was no work for him. He remained in Mintabie in receipt of unemployment benefits for 6 months and told the AAT he searched for work every day. He gave details of his work efforts.

On 20 May 1987 his benefit was suspended because he failed to attend an interview with a field officer of the DSS. The interview was to have been a discussion about his work efforts because he had remained in an area of low employment prospects. He denied having been notified of the meeting and said he had remained because there was more potential work for someone of his qualifications at Mintabie than in Queensland and elsewhere, and he had insufficient money to move elsewhere. The area was not one of low employment prospects for him.

On 9 August 1987 Atkinson suffered a back injury. He lodged a claim for sickness benefit which was rejected on the grounds that, pursuant to s.117 and 121, he had not shown he had suffered a loss of income, and by remaining at Mintabie he was ineligible for unemployment benefit and thus ineligible for sickness benefit.

The DSS also contended that Atkinson had been engaged in opal mining in Mintabie. He said that in walking about looking for work he did some 'noodling', i.e. looking for opals in rubble and tailings. There was evidence that he had applied for and received an explosives and mining permit. Atkinson remained adamant that he had never been engaged in serious efforts to mine opals.

The decision

The AAT was satisfied that, until he injured his back, the applicant was

unemployed and qualified for unemployment benefits. It took into account his particular expertise and abilities in finding that Mintabie was not an area of low employment prospects for him. It also concluded that the casual mining work he had done was undertaken in the hope of finding permanent paid employment.

As he would have qualified for unemployment benefit he also satisfied the requirements of s.117(1)(c)(ii) for sickness benefit. However, as his application for sickness benefit was outside the statutory 5-week period the claim could not be backdated, pursuant to s.125(3).

Formal decision

The AAT set aside the decision under review and decided that Atkinson should receive unemployment benefit between June and August 1987, and sickness benefit for the next month.

[B.W.]

Unemployment benefit: postponement

SECRETARY TO DSS and BOON-KIAT FOO

(No. 5139)

Decided: 15 June 1989 by G.L. McDonald.

Boon Kiat Foo had come to Christmas Island to work in the phosphate mine in 1974. The mine closed early in 1986, and Foo returned to Malaysia, after receiving a redundancy payment, apparently with the intention of marrying and returning to Christmas Island.

In May 1988, Foo returned to Christmas Island at the invitation of members of the Bahai community living there, in the expectation of finding work on the Island. After his arrival on the Island, Foo applied for and was granted unemployment benefits. Several weeks later, the DSS decided to postpone payment of unemployment benefits to Foo for 12 weeks. Foo appealed to the SSAT against the DSS decision. The SSAT set aside the suspension of Foo's unemployment benefits; and the DSS then appealed to the AAT.