Secretary had made an error of law by including in her income the increase in the value of the business's stock over a year. (It was apparently agreed that the appropriate period for calculating Fisher's income was the taxation year— the period in which unemployment benefits were payable occupied some 7 months of that year.)

Fisher argued that the definition of 'income' in s.3(1) of the *Social Security Act* 1947 should be read as referring to money available for a person's sustenance; so that one should only consider the cash flow, rather than the stock, of the farming business.

Heerey J noted that the definition of 'income' included 'profits', and he referred to a passage from *Re Spanish Prospecting Co Ltd* [1911] 1 Ch 92, 98, to the effect that 'profits . . . can only be ascertained by a comparison of the assets of the business at the two dates', and said:

> 'In my opinion, it would be at variance with the general understanding of the term to speak of "profits" of a farm, or any other business in which goods are brought (or acquired by natural increase) and sold over a given period, in a sense which excluded the opening and closing stock. Used in such a sense, a misleading picture would be created. Such businesses are continually turning money into stock by purchases and stock into money by sales. To ascertain how much better or worse off the trader is at the end of any period compared with the beginning, stock on hand at both those dates must be taken into account.'

(Reasons, p.5)

For Fisher to succeed, Heerey J said, it would be necessary to conclude that the legislature intended the word 'profits' in s.3(1) to be used in special sense — as including only cash transactions and ignoring the stock position at the beginning and end of the trading period. Heerey J found 'no indication of any such special intention in the Act': Reasons, p.5.

Formal decision

The Federal Court dismissed the application.

[P.H.]

AAT's Reasons: sufficient?

McAULIFFE v SECRETARY TO DSS

(Federal Court of Australia)

Decided: 21 June 1991 by von Doussa J.

This was an appeal, under s.44 of the *AAT Act*, from the AAT's decision in *McAuliffe* (1990) 57 *SSR* 766.

The AAT had affirmed a DSS decision that McAuliffe had not been 'unemployed' during a period when he had received unemployment benefits and had received an overpayment of $10 265.70, in consequence of false statements or representations.

McAuliffe's appeal was based on the contention that the AAT had not provided adequate reasons for its decision as required by s.43(2B) of the *AAT Act*.

The legislation

Section 43(2B) of the *AAT Act* provides that, where the AAT gives in writing the reasons for its decision, those reasons shall include its findings on material questions of fact and a reference to the evidence ot other material on which those findings were based.

Were the Reasons adequate?

Von Doussa J agreed that a failure to comply with s.43(2B) of the *AAT Act* would constitute an error of law on the part of the AAT even where there had been material before the tribunal to support the AAT's decision. But the judge held that there had been a sufficient compliance with s.43(2B) and rejected each of McAuliffe's objections to the AAT's reasons.

McAuliffe argued, first, that the AAT's failure to include in its reasons any findings on whether he met the qualifications for unemployment benefit, other than that of being 'unemployed', was an error of law.

However, Von Doussa J said that the decision by the AAT, that McAuliffe was not 'unemployed' during the relevant period, rendered it unnecessary for the AAT to consider whether he might have met other aspects of the qualifications for unemployment benefit. A failure by the AAT to include findings on questions of fact which did not form part of its decision did not constitute a failure to comply with s.43(2B).

McAuliffe also objected that the AAT had merely cited a number of previous decisions as supporting its decision that the applicant was not 'unemployed' and had not explained the principles from those decisions on which the AAT relied.

After noting that a mere reference to the source of non-contentious principles would be sufficient for the purposes of s.43(2B), von Doussa J said:

> 'The question whether the appellant was "unemployed" during the whole or part of the period when benefit was paid was essentially a question of fact and degree to be decided according to the . . . principles [set out in the earlier cases]. The mere reference to relevant decisions by name was in my view sufficient in the circumstances of this case to identify the principles employed in the reasoning process of the Tribunal. In my opinion the failure to spell out those principles expressly in the reasons does not constitute a breach of the obligations imposed by s.43(2B) of the *AAT Act*.'

(Reasons, pp.17-18)

Thirdly, McAuliffe objected that the AAT had not indicated what part of his evidence had been accepted and what part rejected. In response, von Doussa J said that the AAT's reasons should be read as whole and not over-zealously. Reading the reasons in this way, and in the light of the documentary evidence before the AAT, the AAT's findings of fact and the reasoning which supported those findings were sufficiently indicated, von Doussa J said.

However, von Doussa J did find one inadequacy in the AAT's reasons: its decision that payments made to McAuliffe during the relevant period constituted a debt due to the Commonwealth was not supported by reasons sufficient for the purpose of s.43(2B). The AAT had not included a finding as to the statement or representation of McAuliffe identified by the AAT as false, and a further finding that the payments to McAuliffe had been made in consequence of that falsehood, so that there had been a total failure to fulfil the obligation imposed by s.43(2B).

But it did not follow that the AAT's decision must be set aside. As the material before the AAT had left only one conclusion open to the tribunal, namely that the payments of benefit to McAuliffe had been made in consequence of his false statements or representations, the appeal should be dismissed, in the exercise of the power conferred by s.44(4) of the Administrative Appeals Tribunal Act. In reading s.44(4) in this way, von Doussa J followed *Austin v Deputy Secretary, Attorney-General's Department* (1986) 12 FCR 22; *Director-General of Social Services v Hales* (1983) 13 *SSR* 138 and *Re Pepi and Director-General of Social Security* (1984) 23 *SSR* 270.

Formal Decision

The Federal Court dismissed the appeal.

[P.H.]