

Federal Court decisions

Adequacy of AAT's reasons for decision

MCAULIFFE v SECRETARY TO DSS

(Full Federal Court)

Decided: 28 September 1992 by Spender, Foster and O'Loughlin JJ.

This was an appeal from the decision of von Doussa J.

McAuliffe received payments of unemployment benefit between August 1986 and July 1987. The DSS then decided to cancel McAuliffe's unemployment benefit on the ground that he was not 'unemployed' within s.107(1)(c)(i) of the *Social Security Act 1947*; and to recover \$10 265.70 from McAuliffe — representing the total amount of benefit paid to him.

The AAT affirmed the decision of the DSS: *McAuliffe* (1990) 57 SSR 766. An appeal to the Federal Court was dismissed by von Doussa J: *McAuliffe* (1991) 63 SSR 892.

The principal ground of appeal was that the reasons for the AAT's decision had not complied with s.43(2B) of the *AAT Act 1975*. That section requires the Tribunal to give reasons for its decision, including a reference to the evidence, the Tribunal's findings of fact and the Tribunal's reasons.

The Full Federal Court said that a substantial failure on the part of the AAT to

state reasons for a decision would be an error of law within s.44(1) of the *AAT Act 1975*, that failure would not be established by the AAT's failure to deal with every argument that might have been raised in proceedings before it or with every possibility that could be adverted to.

In the present case, the AAT said, the AAT may have expressed its reasons loosely, or in 'an unhappy choice of language'. But the AAT had sufficiently indicated its process of reasoning and its findings on material questions of fact in support of its decision that McAuliffe had not been 'unemployed' during the relevant period.

The Full Court acknowledged, as had von Doussa J, that the AAT had not given adequate reasons for its decision that the payments of unemployment benefit made to McAuliffe amounted to an overpayment. However, the Full Court agreed with von Doussa J that the material before the AAT had left only one conclusion open to it, namely that the payments of benefit to McAuliffe had been made in consequence of his false statements or representations.

Accordingly, the finding that there had been an overpayment leading to a debt to the Commonwealth under s.246(1) of the 1947 Act had been inevitable.

Formal decision

The Full Court dismissed the appeal.

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The DSS then decided that Kalwy was indebted to the Commonwealth, under s.246(1) of the *Social Security Act 1947*, for the moneys paid by the DSS to the bank accounts. The AAT affirmed that DSS decision, finding that Kalwy had participated in the conspiracy. However, the AAT made no finding that Kalwy had received any of the moneys in question.

Identifying the debtor

Section 246(1) of the 1947 Act provided that, where moneys were paid under the Act in consequence of a false or misleading statement or a failure to comply with the Act, there was a debt due to the Commonwealth.

The Full Court said that it was a necessary implication from s.246(1) of the 1947 Act that the debt created by that provision was a debt due by the person or persons to whom the moneys had been paid.

The Court referred to an earlier version of s.246(1) — then numbered as s.140(1) — which had clearly identified the recipient of an overpayment as the person who would owe the debt to the Commonwealth. That reference had been omitted from s.246(1) at one point in its legislative history; but the Minister's second reading speech had not suggested that this was intended to expand the range of persons who could be treated as debtors to the Commonwealth. The Court said that this 'previous legislative history' did not contradict its reading of s.246(1).

The Full Court also pointed to the subsequent enactment of the successor of s.246(1), namely s.1224 of the *Social Security Act 1991*. The latter provision clearly limited debtors to the Commonwealth to the person or persons who had received the overpayment in question. Reference to that subsequent legislation was legitimate as a guide to the meaning of s.246(1), the Full Court said, referring to *Grain Elevators Board (Vic.) v Dunmunkle Corporation* (1946) 73 CLR 70.

As the AAT had made no finding on an essential ingredient in the creation of a debt under s.246(1), it had committed an error of law, the Court said. The matter should be sent to the AAT so that it could consider this aspect of the matter, on the basis of the evidence already given to the AAT.

Formal decision

The Full Federal Court set aside the AAT's decision and remitted the matter for further consideration according to law.

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Overpayment: necessity to prove debtor received payment

KALWY v SECRETARY TO DSS

(Full Federal Court)

Decided: 29 September 1992 by
Beaumont, Hill and O'Connor JJ.

This was an appeal, under s.44(1) of the *AAT Act 1975*, from the AAT's decision in *Kalwy* (1992) 67 SSR 950.

Kalwy had allegedly participated in a conspiracy to defraud the DSS, through the payment of unemployment benefits to bank accounts opened and operated in false names. A prosecution against him had been dismissed at the committal stage.