

the application for reinstatement, suggesting instead that he should lodge a new claim for DSP.

The DSS referred to a decision of O'Connor J in *Re Mulheron and Australian Telecommunications Corporation* (1991) 23 ALD 309 where she set out the principles to be applied in considering an application for an extension of time. The matters canvassed included whether the person had rested on his rights; prejudice that would be caused to the respondent; wider prejudice to the general public; the merits of the application; and the fairness as between the applicant and other persons in a like position if an extension of time is granted. The advocate for the DSS further argued that there was little merit in Manoli's case under s.94. An appeal would have to consider his qualification for DSP as at the time of his application (November 1992) or during a period of 3 months immediately from that date (s.100(3)).

The AAT then went on to consider s.42A, as recently amended, and canvassed other decisions in which the issue of reinstatement of the matter to the list were considered.

The AAT concluded that Manoli had received appropriate notice of the 2 conferences and that he had forgotten to attend both. The AAT was not satisfied that he had given a reasonable explanation of his failure to appear, and considered that he had had a reasonable opportunity to present his case. Nor had he provided any further evidence with respect to his qualification for DSP, indicating that the likelihood of his success in his application was remote. The AAT also pointed out that it was open to him to lodge a fresh claim for DSP.

Formal decision

The AAT rejected the application for reinstatement under s.42A of the *AAT Act*.

[R.G.]

Stay application

SECRETARY TO DSS and HERON
(No. 9521)

Decided: 23 May 1994 by H.E. Hallowes.

The DSS applied for review of a decision of the SSAT setting aside decisions of 2 authorised review officers of DEET which cancelled

Heron's newstart allowance and imposed a 2-week non-payment period. The DSS also asked for an order staying the effect of the SSAT decision under s.41 of the *AAT Act*.

The legislation

Section 41 provides that an application to the AAT for a review of a decision does not, subject to this section, affect the operation of the decision. However, the AAT may stay the operation or implementation of a decision if it considers it appropriate.

The AAT attempted to inform Heron of the application and the orders sought, but he did not appear when it was first listed for hearing. The matter was then adjourned and a new address was found for him. A further letter of advice was sent to him but the two listings notices and the further letter were returned to the Tribunal by Australia Post as unclaimed. Finally, a new address was obtained again and he was advised of a hearing date of 23 May 1994. There was still no appearance but the departmental officer explained that she had arranged for a hand-delivered copy of the DSS's statement of issues to be given to him before the time of the hearing. On this basis, the AAT was satisfied on the balance of probabilities that Heron was aware of the date and time of the hearing.

After considering s.37 of the Act, the AAT went on to consider the arguments for the stay. It was noted that the amount involved was \$527.40 and the DSS argued that if the SSAT decision was implemented an issue arose as to recoverability of the amount if the AAT set aside the SSAT decision. The AAT then considered the decision in *Wan and Secretary to DSS* (1992) 72 SSR 1035 which was also concerned with the issue of whether or not a person had failed to attend an interview which could be characterised as a 'course', and noted the complexities of these issues. After considering other relevant cases, the AAT decided to stay the decision and was satisfied that Heron was in receipt of some financial support even though he did not provide any evidence on this to the AAT.

Formal decision

The AAT stayed the operation of the SSAT decision.

[R.G.]

Overpayment: income from a family trust

KING and SECRETARY TO DSS
(No. 9481)

Decided: 19 May 1994 by J.R. Dwyer, I.L.G. Campbell, W.G. McLean.

The SSAT affirmed a decision of the DSS to cancel payment of newstart allowance to King from 12 May 1993, and to raise an overpayment of \$17,713.63 being social security payments made between 15 August 1990 and 11 May 1993 (including tax payments).

King was granted unemployment benefits from 15 August 1990. On 14 April 1993 the DSS wrote to King and advised that a data-matching exercise with the Tax Office had revealed that King had an income of \$13,666 for the financial year 1991-92. The amount did not accord with the income advised to the DSS for the same period. King told the DSS that, although he had received \$13,666 from the King family trust, he did not know that he had received the money as he was not aware that he was a beneficiary under the trust. He had never actually received the money. King stated that he did not read the tax returns prepared by his father's accountant on his behalf, and did not understand that the money declared was his income. He came to an arrangement with his father, that his father would pay him the tax refund which would have been payable from the Tax Office. King told the AAT that the money (the trust distribution) was not his as it really belonged to his father.

King's father, L. King, told the AAT that money had been distributed to his son under the trust, but that the distribution was on paper only. He stated that this arrangement was 'a way of minimising the tax as far as I was concerned': Reasons, para.21. A letter from the trust's accountant states that King had received a distribution from the trust, but pursuant to an agreement between King and his father this money had been loaned back to the trust for 5 years interest free, in consideration for L. King providing free lodging to his son. Both King and his father denied this agreement. The AAT was given copies of King's tax returns which revealed a distribution from the trust in each year that he had received a social security benefit, except for the year 1992-93.