in plumbing. Over the next 4 years Harding found work in the plumbing industry hard to obtain, so he had begun to develop a small oyster farm in Port Macquarie. He had bought the lease in 1988, thereafter visiting for a couple of weeks each year to work on the farm. Harding had been unemployed for 6 months before returning to Port Macquarie.

Before his return to Port Macquarie, Harding had sold his house, car and boat in January 1994, in order to purchase another larger oyster lease as an addition to the smaller lease he had kept.

The negotiations for the larger lease were delayed, and this subsequently meant that the sale was not finalised until September 1994, leaving him unable to earn income for a much longer time than he planned.

The legislation

The relevant provisions of the *Social Security Act 1991* are as follows:

> '518.(1) Subject to subsection (2), a person is not qualified for a job search allowance on a day on which, in the opinion of the Secretary, the person has reduced his or her employment prospects by moving to a new place of residence without sufficient reason.'

Subsection (2) goes on to list exemptions, none of which was relevant to Harding's circumstances.

Reduced employment prospects

The question before the AAT was whether Harding had reduced his employment prospects by moving to Port Macquarie in May 1994. Harding submitted that if self-employment was within the parameters of employment then he had not reduced his prospects by moving. The DSS conceded that this would be correct.

The AAT looked to the definition of employment, and in doing so referred to *Secretary, Department of Social Security and Kitchener* (1991) 61 *SSR* 842. In *Kitchener* the AAT had to consider whether a move with the intention of attempting a self-employment venture had reduced the person's employment prospects. The AAT in *Kitchener* had decided that employment meant employment in a master/servant relationship.

The AAT held that *Kitchener* could be distinguished on the basis that the context in which 'employment' is used in the Inome Tax Regulations, on which the AAT in *Kitchener* relied, was very different to the context of the *Social Security Act 1991*.

The AAT went on to consider various dictionary definitions of employment, finding that self-employment was a concept included within the dictionary definitions of employment. The AAT also distinguished the decision in *De Boer and Secretary, Department of Social Security* (decided 15 October 1993) on the basis that this decision considered underemployment as a concept.

The AAT then considered *Green* v. *Daniels* and others (1977) 13 ALR 1 and *Director-General of Social Services v Thomson* (1981) 38 ALR 624 in which a broad definition of unemployment, not restricted to master/servant relatonships, had been accepted by the courts.

The AAT referred to the beneficial nature of the Act, and decided that a broad definition of employment was preferable, at least including self-employment. The AAT found that Harding was still available for other work while he was setting up his farms, and he was actively seeking other work throughout the period when his allowance was cancelled.

In addressing the issue under s.518, the AAT held this is a matter of fact to be determined, referring to *Secretary, Department of Social Security and Prince* (1990) 59 *SSR* 810 and *Borowiecki and Secretary, Department of Social Security* (1991) 22 ALD 797. The AAT held that Harding had not reduced his employment prospects by moving to Port Macquarie and job search allowance remained payable.

Formal decision

The AAT affirmed the SSAT decision to set aside the decision and substituted its decision that job search allowance remained payable.

[B.M.]

Portability of DSP: NZ reciprocal agreement

SECRETARY TO DSS and FAMA (No. 10732)

Decided: 8 February 1996 by D.W. Muller.

The DSS suspended Fama's disability support pension (DSP) after she had been in New Zealand for 4 weeks.

Background

Fama moved to Australia from New Zealand (where she was born) in 1983, and became an Australian citizen in 1985. In 1990 she was granted DSP.

In November 1994 Fama travelled to New Zealand with the intention of spending six months there. She had been informed by the DSS that her DSP would continue to be paid while she was away. The DSS suspended Fama's payments from 26 January 1995 based on the provisions of the Australia/New Zealand reciprocal agreement.

The legislation

Section 1209 *Social Security Act 1991* provides that a pension payable to a person under a scheduled international social security agreement is not payable when the person is outside Australia unless the agreement provides for payment.

The NZ reciprocal agreement limits the payment of DSP to an Australian resident present in NZ up to four weeks, being the corresponding entitlement under the NZ legislation.

Qualification for DSP

The AAT found that Fama did not qualify for DSP by virtue of the provisions of the reciprocal agreement. It noted that the DSS argument:

> 'fails to take into account the fact that the whole tenor of the agreement is to give to people who are from New Zealand an Australian benefit for which they otherwise would not qualify, or to give to Australians living in New Zealand a New Zealand benefit for which they otherwise would not qualify.'

(Reasons, para. 9)

Fama qualified for DSP because she is an Australian citizen. Thus, in accordance with s.1209, the agreement has no relevance to Archer's entitlement to DSP while overseas.

Formal decision

The Tribunal affirmed the decision of the SSAT.

[A.A.]

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