

ying the requirement to attend the two activities. Accordingly, Ruiz did not fail to take reasonable steps to comply with his CMAA.

Formal decision

The AAT affirmed the decision of the SSAT that Ruiz satisfied the activity test and qualified for newstart allowance during the period under review.

[A.T.]

Activity test: failure to comply

TEMPEST and SECRETARY TO DEET

(No. 10868)

Decided: 16 April 1996 by E.K. Christie.

Tempest appealed to the AAT about a decision to cancel payments of newstart allowance. The decision to cancel newstart allowance was made by the DEET because Tempest had allegedly failed to comply with the activity test as required in s.601(1) of the *Social Security Act 1991*.

The facts

Tempest had been advised by the CES of a job with a local business. The work that Tempest was to do required him to wear steel capped safety boots which cost round \$50. As Tempest did not own a pair of steel capped safety boots he inquired with the CES to see if they could provide them for him.

The CES officer at Indooroopilly CES told him that he was not eligible for boots as it was only a 6-week job. Tempest thought that if the job was offered to him, then the CES would supply the boots.

Neither Tempest nor his parents could afford to pay for work boots, so he did not turn up for work on the morning he was to start. The CES imposed a non-payment period on Tempest on the basis that he had failed to comply with the activity test.

Failure to comply

The AAT looked closely at whether Tempest had been advised by the CES as to his obligations under the activity test. It was unclear whether Tempest had received any more than standard advice from the CES about how the activity test worked, and what the implications of not turning up to work would be. The DEET relied on the fact that the CES generally

made people aware of the consequences of non-compliance through information brochures given at time of registration with the CES. The DEET did concede that Tempest's limited educational background and general disadvantage within the labour market, imposed a special requirement on CES to ensure that he fully understood the significance of not turning up for a job.

The AAT found that there was no activity agreement in place at the time he attended the job interview. Furthermore, the AAT found that both Tempest and the employer had been told that the CES could provide work boots if Tempest did not have a pair.

It was argued by the DEET that this was a clear non-compliance with the activity test, and that the fact that Tempest had failed an actual job start made the non-compliance a more serious kind of breach of the activity test than other examples of non-compliances with the Act. The DEET conceded that there had been conflicting advice given by separate CES offices about the provision of work boots. Notwithstanding this concession, the DEET submitted that the legislation was clear, and that Tempest had simply not taken the job offer seriously.

The AAT looked at the activity test in s.601 of the Act, noting that formal notice provisions of the Act had not been complied with in this matter. The AAT also looked to Tempest's past conduct, finding that there had been no previous problems or breaches.

The AAT considered the DSS policy guidelines which were relevant, because consideration is given to whether or not a person is unable to commence work through no fault of their own. The AAT determined that this was the case with Tempest because he had received conflicting advice on the provision of work boots, and this was a significant factor in Tempest not turning up for work. The AAT concluded that Tempest was willing to undertake suitable paid work.

The AAT considered the status of policy in the decision-making process, referring to *Re Aston and Secretary to the Department of Primary Industry* (1985) 8 ALD 366 and *Re Drake and Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634. It concluded that policy guidelines are relevant in determining the requirements of the activity test, and that such guidelines can ensure the integrity and consistency of the decision-making processes.

The AAT also noted with concern that Tempest did not understand his obligations under the activity test, and the responsibility to inform claimants of

obligations lay directly with the DEET. In noting this, the AAT referred to *Re Wan and Secretary, Department of Social Security* (1992) 30 ALD 899.

Formal decision

The AAT set aside the decision under review and decided that Tempest was entitled to newstart allowance from the date it was cancelled.

[B.M.]

Case management activity agreement: failure to comply with terms

CHRISTOPOULOS and SECRETARY TO DEETYA
(No. 11066)

Decided: 11 July 1996 by B.G. Gibbs.

The DEETYA cancelled Christopoulos' newstart allowance on the basis that he had failed to comply with the terms of his case management activity agreement (CMAA).

Background

Christopoulos, who had been in receipt of newstart allowance since June 1991, signed a CMAA on 26 April 1995.

On 20 November 1995 his Case Manager referred him to a New Work Opportunities interview on 30 November 1995 at 2.40 p.m. At about 2.30 p.m. on 30 November Christopoulos informed his Case Manager that he could not attend the interview. It was rearranged for later in the afternoon. Christopoulos did not attend and was subsequently breached for failing to comply with the terms of his CMAA.

The evidence

The Case Manager's evidence was that Christopoulos did not attend the interviews because he could not be bothered.

Christopoulos alleged that he had been prevented from attending the interviews because he was unable to locate the keys to the steering lock of his brother's car which he was using to drive to the interview.