

Administrative Appeals Tribunal

Newstart Activity Agreement: refusal to sign agreement; whether refusal constitutes unreasonable delay in entering agreement

HEWITSON and SECRETARY TO THE DFaCS
(No. 2002/1178)

Decided: 25 October 2002 by J. Handley.

The issue

The issue for determination in this matter was whether the refusal by Hewitson to sign a Newstart Activity Agreement (NSA), despite his agreement to abide by its terms, of itself constituted 'unreasonable delay' in entering that agreement. Centrelink in August and October 2001 determined that such refusal did constitute unreasonable delay, and that Hewitson had therefore twice committed an activity test breach, the effect of which was the imposition of six-month periods of reduced payments at 18% and 24% rate reduction respectively. The SSAT affirmed these decisions on 11 December 2001.

Background

Hewitson had been unemployed for about 25 years, and in May 2001 attended Centrelink and completed various documents regarding a 'Preparation for Work Agreement'. He was later referred to an employment provider 'Employment AMES' (AMES) for 'intensive assistance activity', and was advised that this would involve renegotiation of the 'Preparing for Work Agreement'. In July 2001 he attended an interview at AMES where this agreement was renegotiated, but although Hewitson indicated he was prepared to abide by the agreement and meet its terms, he refused to actually sign it. Later that month he again attended an interview at AMES where, on learning that he again would not sign any agreement, no agreement was prepared. Following each of these interviews AMES advised Centrelink of Hewitson's refusal to sign, and in turn breach action against him was initiated.

The law

The *Social Security Act 1991* (the Act) provides by s.593(1) that a person is qualified for NSA if when not a party to a Newstart Activity Agreement '... the person is prepared to enter such an agreement ...'. By s.607(1) of the Act where a person is required to enter a Newstart Activity Agreement and where '... for any ... reason, the Secretary is satisfied that the person is unreasonably delaying entering into the agreement ...' the Secretary may give the person notification that he or she is being taken to have failed to enter the agreement, a consequence of which is that NSA ceases to be payable.

Discussion

Hewitson contended and the Tribunal accepted that he was at all times willing to be bound by the agreement negotiated through AMES, and did not object to any terms in the agreement, but that his view was that he was under no obligation to actually sign any agreement, and would not do so.

The Tribunal noted the decision in *Secretary, Department of Social Security and Chadwick* (1996) 44 ALD 479 that the question of whether entering an agreement had been unreasonably delayed must be determined against the objective standard of what a reasonable person would do. A contract or agreement, the Tribunal concluded, may be oral, written or a combination of both, and noted that although many persons would not take objection to signing such an agreement there was nothing in the legislation specifically requiring such signature. As beneficial legislation, had such a requirement been considered essential then it would have been explicitly provided for in the legislation. There was no evidence that Hewitson had delayed or refused to enter the Agreement — indeed he was, the Tribunal concluded, denied the opportunity to 'enter' it because he was breached by Centrelink and further because, on the occasion of the second interview with AMES, no agreement was in fact negotiated or prepared, and so none could be 'entered into'. Centrelink had determined that an agreement would only exist if Hewitson was prepared to sign it, and so denied him the opportunity to demonstrate his commitment to it and his willingness to undertake its terms,

notwithstanding his express indication of willingness to be bound by them.

Formal decision

The Tribunal set aside the decision under review and determined that Hewitson had not unreasonably delayed entering into a Newstart Activity Agreement.

[P.A.S.]

Activity test breach: applicability of legislation

SECRETARY TO THE DFaCS and HOSIE
No. 2003/47

Decided: 17 January 2003 by J.Cowdroy.

Background

Hosie was in receipt of newstart allowance whilst he was employed on a casual basis for a short period in November 2000. He earned a gross amount of \$225.30 but on an 'Application for Payment of Newstart Allowance' form he declared gross earnings of \$60. Centrelink determined that Hosie had knowingly provided false information in relation to his employment earnings and applied an activity test rate reduction period of 18% reduction for 26 weeks. The matter was heard on the basis of written submissions.

The issue

The issue was whether the words 'when required to do so under a provision of this Act' in s.630AA of the *Social Security Act 1991* (the Act) encompassed a notice issued pursuant to s.68 of the *Social Security Administration Act 1999* (the Administration Act).

Legislation

Section 68 of the Administration Act states:

- (1) Subsection (2) applies to a person to whom a social security payment is being paid.
- (2) The Secretary may give a person to whom this subsection applies a notice that requires the person to do either or both of the following: