



TC01301

Appeal number: TC/2010/04040

National Insurance Act 1946 and National Insurance and Industrial Injuries (Collection of Contributions) Regulations 1948 – Appellant disputed NI record – Appellant maintained she was employed throughout a nil contribution period by her family’s firm and paid full Class 1 contributions – evidence indicated that she had been self-employed in the firm and a waiver of Class 2 contributions had been granted during the period– appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MRS JOAN MOSS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)
MRS ANN CHRISTIAN (MEMBER)**

Sitting in public at City Exchange, Leeds on 16th March 2011

Mrs Moss in person

Mrs L Rutherford, Officer of HM Revenue and Customs, for the Respondents

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DECISION

The decision under appeal

1. This appeal is brought by Mrs Joan Moss against a decision made on 2 December 2009 by HM Revenue and Customs under the Social Security Contributions (Transfer of Functions etc) Act 1999 that she paid nil Class 1 (employed) National Insurance contributions during the contribution years 1 April 1953 to 5 April 1960 and 8 class I employed contributions in the contribution year 5 April 1960-1961, ('the appeal period').

10 The issue in dispute

2. The period of 'nil' payments on Mrs Moss' National Insurance record meant that it was not taken into account by the Department for Work and Pensions when Mrs Moss' state retirement pension entitlement was assessed. As a result, Mrs Moss was awarded her pension at the reduced rate. Mrs Moss says that she was employed by her family's firm for the entirety of the appeal period and believes that class 1 contributions as an employed person were paid during that period. HMRC accept that Mrs Moss worked throughout the period but says that her National Insurance record does not show any contributions.

3. Mrs Moss' contribution record also showed nil contributions for the period after 1967 onwards. However, prior to the appeal being lodged, an exchange of correspondence between Mrs Moss and the Department regarding her entitlement to credits for part of this period, that is from 1978 to 1986, under the Home Responsibilities Protection Scheme indicates that this issue has now been resolved.

4. The Tribunal heard evidence from Mrs Moss and also from Mr Alan Greenshields an officer of the Records Department of the National Insurance Contributions office at Longbenton, Newcastle upon Tyne for HMRC. Mr Greenshields provided a witness statement, the contents of which were read to the Tribunal and which he affirmed to be the truth. The statement summarized the administration of National Insurance procedures relating to registration for National Insurance and record keeping generally.

5. The Tribunal was provided with a bundle of documents including Mrs Moss' National Insurance contribution history. Also included was a sample copy of form CF8 being the application for a National Insurance card and a sample form CF169 being a waiver of arrears letter, together with a copy of leaflet N148 relating to late or unpaid contributions. Finally the Tribunal was supplied with a copy of the exchange of correspondence between the Appellant and HMRC and other copy relevant documentation.

6. There is no record of Mrs Moss being registered for National Insurance before 10 July 1961 when her National Insurance record was set up at the Redhill Social Security office. Her National Insurance record reflects contributions paid from that date.

7. Mrs. Moss contends that she paid full National Insurance Class 1 contributions from July 1954 having worked for her family's firm Rubans de Paris at 39A Maddox Street, London W1 from the time she left further education to leaving employment due to maternity on 30 April 1967. HMRC accept that Mrs. Moss worked throughout
5 this period but say that her National Insurance record for the appeal period is as referred to the decision under appeal and thereafter full contributions for the years 1961-1962 to 1966 and twenty-nine contributions in the contribution year 1966-1967.

The Statutory Context

8. The National Insurance Scheme was introduced on 5 July 1948, and provided for
10 compulsory National Insurance contributions, classified as Class 1 - employed person, Class 2 self- employed person, Class 3 - non-employed person.

9. Regulation 2 of the National Insurance and Industrial Injuries (Collection of
Contributions) Regulations 1948, ('the Regulations'), provided that a person who
15 attained school leaving age was required to apply for a National Insurance card. Each person was required to register at a youth employment office of the Ministry of Labour, if they were aged 18 or under, or at a local office of the Ministry of National Insurance, if they were over age 18. At the time of registration the person was given a National Insurance stamp card and allotted a National Insurance number. The
20 Department was entirely reliant on individuals registering when required to do so, failing which the Department would not be aware of that person's existence.

10. If the individual was employed. They were required to hand the card to their
employer who paid contributions on their behalf. Under regulation 2(4) of the
Regulations, the employer paid the total cost of the contribution but the employee's
25 share was recovered from their wages. When the contribution card expired it was surrendered to the Department in exchange for a new card. Contributions paid on an expired card were then recorded on the individual's Permanent National Insurance Contribution record, which, on introduction of the scheme, was kept in clerical form on form RF1 and after 1975 on the computerized document RD19, being the
'Technical copy of National Insurance account'.

30 The Background

11. Mrs Moss did not register for National Insurance at the time she left school in
1954, having gone on to further education. School leaving age was 15 for a person
who, like Mrs. Moss, was born in 1938. She was nonetheless treated as having entered
35 into insurance on 1 April 1953 which was the end of the school term following her 15th birthday on 20 March 1953. Contributions were credited to her record from that date. Form RF1 shows that she was credited with twenty-three contributions in the contribution year 1952-53 and forty-nine contributions in the contribution year 1953-1954. Mrs Moss left further education in July 1954.

12. HMRC say that Mrs Moss' record shows that it was not until 10 July 1961 that she
40 registered for National Insurance contributions at Redhill, Surrey. To register Mrs. Moss was required to complete a form CF8. HMRC were unable to produce a copy of Mrs Moss' original completed form CF8 but a sample of the form was produced in

evidence. As well as asking for identity particulars, additional details about the person's circumstances were required. Question 5 on form CF8 asked about previous insurance and occupation details. Question 6 asked for details of the employment which was about to commence. The person was then required to sign the form
5 declaring that the information given was accurate. At the time of registration Mrs Moss gave her address as being 'Blythe' Woldingham, Surrey and she told the Department that she had been a student up to 9 July 1954. HMRC say that it is therefore reasonable to assume that Mrs. Moss indicated on form CF8 that she had not previously registered, nor had she paid National Insurance contributions. Had she
10 indicated that she had previously been employed and liable to pay contributions for the past period then the period of non-compliance would have been investigated by the local office

13. Upon registration, Mrs. Moss was issued with a National Insurance card for the 1960-1961 contribution year bearing number YB089005C. She would have then been
15 required to hand her card to her employer or to stamp it herself if she was self-employed, rather than employed.

14. HMRC say that, if Class 1 (employed person) non-compliance was discovered, a waiver of contributions was not an option. Recovery of the employee's contributions was made from the employer. The employer was held liable to pay both his and the
20 employee's share of the debt. Where recovery of the debt could not be made and it was established that the employee was ignorant of the employer's failure to pay, contributions were treated as paid. This was to ensure that the employee did not suffer any loss of entitlement to benefit as a result of the employer's failure to comply with this legislation.

25 15. HMRC say that Mrs. Moss would have been questioned as to why she had not previously registered and paid contributions. They contend that the information given at the time Mrs Moss registered for National Insurance must have led the Department to believe that a period of self-employment existed between 1954 and 1961 when
30 Class 2 contributions should have been paid. HMRC say that, although a previous period of liability existed in respect of which Mrs. Moss had been non-compliant, it must have been decided that it was not financially viable to pursue collecting the arrears. This was known as an 'administrative waiver'.

16. HMRC says that a contributory could not apply for a administrative waiver nor was a waiver given automatically. It was awarded only after careful consideration
35 had been given to the circumstances of the case by a National Insurance inspector and had been decided that either to pursue recovery of the contributions would be impossible or the cost of prosecuting the contributor might outweigh the value of recovered contributions. Hardship caused to the individual was also taken into account. All available information was considered and a report was then submitted to
40 a senior officer to approve the inspector's recommendation. HMRC says that such details were obtained by interviewing the person involved. Details of the value of the contributions which had been waived were submitted to the Department's Finance Officer and all cases were subject to random audit checks by an independent body and audit inspectors. Consequently, an administrative waiver was subject to the scrutiny
45 of several layers of management within the department before it was awarded.

17. Mrs. Moss' record was noted that arrears of contributions had been waived and this is reflected in the notation 'CF 169 12.7.54 - 30.4.61 LO2915' on her form RF1. HMRC say that Mrs. Moss would have been given a letter in form CF 169, explaining that she was not being pursued for the arrears of contributions and also given leaflet N 148, which explains the effect non-payment of contributions had on future benefit entitlement.

18. Form CF 169 was only issued for periods of Class 2 (self-employed) or Class 3 (non-employed) non-compliance. HMRC says that one of the most common examples was where a person had an underlying entitlement to a certificate of exception on the grounds of small income. In such circumstances a certificate would be issued if the individual's income was expected to be insignificant. If the person had not applied for a certificate, the arrears of contributions, which had accrued could be waived on the grounds that the person would have been entitled to a certificate had they applied for one.

19. HMRC say that had Mrs Moss alleged that she was employed an investigation would have followed and a CF 169, certificate of waiver, would not have been applicable in her case. The only time in which Class 1 contributions would not have been treated as paid was when investigations had shown that the employer and employee were in connivance with each other, and both were aware that non-compliance had taken place.

20. Mrs Moss' RF1 record shows that, following registration, Class I contributions were received from her during the contribution year 1960-1961 which ran from 5 September 1960 to 3 September 1961. The eight contributions paid in that year related to the period from the date of registration on 10 July 1961 to 3 September 1961. Regular payments of contributions continued until the week ending 26th of March 1967 when Mrs Moss left work to have a child.

21. Mrs Moss' form RF1 also shows that a contribution 'statement of account' was sent to her on 16 November 1961 advising her that only eight contributions had been paid in the 1960-1961 contribution year. HMRC says that if Mrs Moss considered that she had been employed and paying Class I National Insurance contributions, this should have alerted her to the fact that her record was deficient in that year and she would have had the opportunity of raising enquiries with the Department if she did not agree with the record. There is however nothing to show that Mrs Moss called her record into question at that time.

22. In evidence, Mrs Moss said that the firm for which she worked was owned and run by her father John (Jack) Cabburn and that her brother Norman Cabburn was also employed in the business. She says that her father treated her as one of the staff as he wanted her to be the same as the other employees. She says that she was paid gross at the end of each week and a member of staff would come round and collect each employee's tax and National Insurance contributions. She never saw her contribution card and was paid the same wages as the other employees.

23. Mrs Moss says that she "could not and did not" go to the Department's local office in Redhill to register for National Insurance in July 1961. In correspondence

with HMRC she said that for her to have travelled from Woldingham to Redhill was “impossible”. She also says that she has no recollection of applying for or being given a waiver of contributions. However when asked in correspondence with HMRC where she registered for National Insurance she said it was “either Reigate, Redhill, or
5 Croydon I think”, but that she could not remember when she registered as “it was over 50 years ago”.

24. HMRC say that Mrs Moss must have registered for National Insurance to be given a National Insurance card and allocated a National Insurance number. Registering for National Insurance was a personal responsibility. It was not possible for an employer
10 to register an employee or for a third-party to register another person. HMRC also point out that the address at which Mrs. Moss lived at the time of registration was in Woldingham, and Redhill which was only a few miles away, was the appointed office for that area. It is not known why Mrs Moss says that it would have been ‘impossible’ for her to travel to Redhill. HMRC argue that Mrs Moss travelled daily
15 from Woldingham station to Victoria Station, London, during the course of her employment with Rubans and there was no reason why she could not have travelled just a few miles to Redhill to register.

25. Despite the documentary record, Mrs. Moss maintains that the Department has made a mistake. She says that when she initially queried her contribution record it
20 was discovered that her entitlement to Home Responsibilities Protection benefit had not been transferred onto her National Insurance record as it should have been and that this shows that errors may have occurred. She also says that the Department has been unable to provide her with a copy of her National Insurance cards for the appeal period, nor a copy of her original registration form CF8 or waiver certificate and that
25 these are further indications that the records may not be correct.

26. Mrs. Moss argues that when her new National Insurance record was created on the 10 July 1961 this was presumably connected to the fact that she was getting married in 1961 and that she would therefore be changing her name. She says that contributions applied to her contribution record following that date may not have been
30 connected to her employment record from 1954 to 1961 and that subsequently the Department has ‘simply created a waiver for the missing part’. She refers to this being ‘an apparently clever shortcut way to get the system to do what they [the Department] wanted’.

27. HMRC dispute Mrs Moss’ arguments. They accept that it is sometimes possible
35 for a duplicate National Insurance record to exist for a person, and that this can arise, for example, where the person leaves work to have a child. They explain that if the person returns to work some years later they are required to obtain a National Insurance card, but if they are unable to quote the National Insurance number and the Department is unable to trace it from information the person supplies, then they are
40 re-registered and a duplicate record is created for that person. In this case however HMRC contend that if, as Mrs. Moss alleges, she was continuously employed from leaving school in the early 1950s, there would be no reason for her to be re-registered either when she married or at any other time.

28. A further point noted by the Tribunal is that according to form RF1, which would have been compiled from information provided by Mrs Moss, she was married on 1 September 1962 and not 1961 as she referred to. In correspondence with HMRC, she says that she could not remember when she was married but that “it was on 01 September in 1961, 1962 or 1963”.

29. HMRC add that, if there was any suggestion on registration that a previous record may have existed, then as a precautionary measure extensive traces were carried out of the Department’s records. In this case HMRC says that no previous record for Mrs. Moss was found. HMRC say that where a contribution card was produced (which in this case it was not), which could not be matched to a National Insurance record, they undertook extensive searches in the Department’s alphabetical index to find the correct record and that if this failed, enquiries were made with the local office nearest to the person where the person lived. The local office would then search the benefit records to see if the correct National Insurance number could be found. If they had no success they contacted the contributor direct to obtain details of where they had obtained the contribution card and any other information which might help in finding their record. If all efforts failed, the local office returned the enquiry to Index Special Section of the Department which then set up a new National Insurance record for the person. Such a record was prefixed with the letters "CR" which meant ‘constructed record’. The contributions were then brought to account and the person’s current National Insurance contribution card was noted with the new number. HMRC say that there was therefore no possibility of a card being surrendered to the Department but not being brought to account.

30. The burden of proof is upon Mrs Moss to provide evidence to support her contention that she paid National Insurance contributions during the appeal period. The Tribunal has no reason to doubt that Mrs Moss thought she was an employed person, paying Class 1 (Employed Person) contributions which were collected from her each week. It appears however that the Department must have been informed that Mrs Moss had been self-employed, otherwise form CF 169 could not have been issued.

31. Mrs Moss’ National Insurance records show that she registered for National Insurance purposes on 10 July 1961. Mrs Moss says that she cannot recollect registering and that she never went to Redhill. She maintains that she must have registered for National Insurance purposes immediately after ceasing her period of further education, but she is unable to recollect when or where this happened. Mrs Moss was clearly truthful in relating the history of events so far as she could recollect them, but the events in dispute took place over fifty years ago and it is quite possible that her recollection was incomplete or incorrect. HMRC have produced a substantial amount of historical documentary evidence in support of its case which is clear and consistent for the appeal period. It is therefore difficult for Mrs Moss to displace the presumption that what was recorded in writing must have taken place. Mrs Moss’ evidence in essence is comprised of unsubstantiated statements, some of which are inconsistent and which contradict the recorded documentary evidence that she did not, register for Class 1 (Employed Person) Contributions until July 1961. No evidence

has been produced to show that Mrs Moss' contribution record as contained on form RF1 and thereafter on RD19 is not an accurate record of her contributions.

5 32. Mrs Moss has not discharged the burden of satisfying the Tribunal that the decision against which she appeals is wrong. The Tribunal's conclusion therefore is that Mrs. Moss paid nil National Insurance contributions during the appeal period and that the Department's record of her contributions is correct. The Tribunal makes a finding of fact that Mrs Moss' permanent National Insurance record RF1 correctly records her National Insurance contributions from 1 April 1953 to 5 April 1961 and thereafter until 5 April 1975.

10 33. For the above reasons the Tribunal dismisses the appeal.

15 34. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

20 **Michael S Connell**

TRIBUNAL JUDGE
RELEASE DATE: 5 July 2011

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