



TC01891

Appeal number: TC/2011/00297

NATIONAL INSURANCE –whether married woman had made an election to pay reduced rate contributions –on balance of probabilities, election made–no liability to pay class 1 contributions following election- appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NORMA REYNOLDS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE BARBARA J KING

Sitting in public at North Shields on 27 February 2012

The Appellant was unable to attend

Lisa Storey, of HMRC for the Respondents

DECISION

The Appeal

5 1. In 2006, the appellant, Mrs Reynolds appealed against a decision issued by the Pension Service concerning her entitlement to UK Retirement Pension. That appeal came before a Social Entitlement Chamber Tribunal on 1 July 2008 but the decision was set aside so that HMRC could issue a section 8 decision about her contribution record.

10 2. HMRC issued a decision on 10 May 2010 that Mrs Reynolds was not liable to pay Class 1 National Insurance contributions in the period from 7 October 1968 to 5 April 1975 and Mrs Reynolds has appealed that decision. Her appeal is late but the Respondents have not made any objections to the appeal being admitted. I give permission for this appeal to proceed.

The Issue

15 3. The issue in dispute is whether Mrs Reynolds made an election to pay married woman's rate National Insurance contributions in 1968 and again on two occasions in 1969. Mrs Reynolds says that she never made any such election. The Respondents, HMRC say that an election was made by signatures on a form but that these forms
20 were destroyed under a policy not to retain all documents after six years.

The evidence

4. Mrs Reynolds was unable to attend the hearing because she now lives in Canada. She has been notified of the hearing and has agreed that the appeal should proceed in her absence. The Tribunal considered that it was fair and just to proceed.
25 Mrs Reynolds has had the opportunity to provide written evidence for the hearing.

5. Mrs Reynolds has written several letters since 2006 saying that she worked for over 10 years in the United Kingdom before she went to Canada. She believes that she paid National Insurance contributions throughout the time she worked in the UK. She believes she never signed an election to pay reduced rate contributions; she never
30 went on the sick; never went on maternity leave; and was never out of a job whilst in the UK.

6. Mrs Reynolds has not produced any wages records or other documentary evidence from the time when she worked in the UK. She relies on her memory. On her claim form for Retirement Pension, completed on 16 May 2006, when asked to
35 name her employers she named hospitals in Coventry, London, Glasgow and Sunderland but could not remember all the dates when she had worked there.

7. Mr Alan Greenshields of HMRC attended and gave evidence about HMRC's procedure in the keeping of National Insurance records. He had been involved in record keeping for HMRC from 1965 to 1967 and then again from 1975 onwards. His

evidence was about general procedure in the keeping of records. He did not say that he had made any specific entries regarding Mrs Reynolds.

5 8. HMRC have produced a bundle of documents for the hearing. This includes a National Insurance record sheet, known as an “RF1”, which was started for Norma Reynolds on 2 January 1962. I inspected the original of this document at the hearing and in the absence of Mrs Reynolds asked questions of Mrs Storey and Mr Greenshields to try and establish whether this RF1 is a genuine record and whether there is a possibility that any of the entries on it are false or inaccurate.

10 9. The entries show that Mrs Reynolds (nee Mercury) was born in 1940. She came to the United Kingdom from St Vincent on 15 October 1961 and started working as a student nurse in 1962.

15 10. When her record was started she was allocated a National Insurance number with the suffix A. This meant that her ‘contribution year’ for National Insurance purposes started on the first Monday in March each year. The Appellant was immediately credited with 40 contributions for the period from the first Monday in March 1956 until her 16th birthday. This crediting was given to all new entries into the National Insurance scheme at that time.

20 11. In the contribution year 61/62 Mr Reynolds paid nine full rate National Insurance contributions (ie Class 1 contributions) in the period between entry into the scheme on 2 January 1962 and the end of her contribution year at the beginning of March 1962.

25 12. In the contribution year 62/63 the Appellant paid 49 contributions but she was credited with three contributions giving her a total of 52 contributions –a full year. The reason she was credited with three contributions is that she made two claims for Sickness Benefit from the local ministry office in Coventry (local office number 209). The first on 25 May 1962 and the second on 18 October 1962.

13. In the contribution years 63/64 to 65/66 she paid 52 full contributions in each year.

30 14. In 66/67 she paid 51 full contributions and was credited with one contribution following a claim for sickness benefit made on 13 April 1966.

15. The documents produced by HMRC also included “Deduction Cards” sent by employers to the “Ministry of Pensions and National Insurance.” These covered all the years from 1961-62 through to 1972-73.

35 16. In the year ended 5 April 1969 there was a computer print out from St Thomas’ Hospital, London The column headings had not been copied onto page 88 of the document bundle prepared by HMRC. I was shown the full page of the computer print out with the headings of each column. The entries show that Mrs Reynolds had earned £4, with no off takes, and a leaving date of 30 November 1968 is given.

17. In the same tax year, 1968-69 Mrs Reynolds had also worked at Robroyston Hospital in Glasgow and earned £524-11s-4d.
18. The following year 1969-70 the print out from St Thomas' Hospital shows gross earnings of £410, Graduated contributions of 17s-10d and tax of £23-12s whilst in the employment with St Thomas'. Further columns show that a P45 had been received from a previous employer (Robroyston Hospital) where Mrs Reynolds had earned £89 and paid £7- 8s in tax.
19. The deduction card for 1969-70 from Robroyston Hospital confirms that Mrs Reynolds earned £89-13s-3d, paid £7-8s in tax and graduated contributions of 2s-7d. She is recorded as having left Robroyston hospital on 8 May 1969.
20. In 1970-71 there are earnings from St Thomas' hospital and from Sunderland General Hospital.
21. In 1971-72 there are earnings from Sunderland General from which Mrs Reynolds left on 25 October 1971 and from Bedford Hospital Management Committee.
22. In 1972-73 there are earnings from Queen Charlotte's and Chelsea Hospitals with a leaving date of 31 July 1972 recorded.
23. There are other entries on the RF1 which show entries such as NPE which I was told stands for 'non participating employment'. The letters NPE have been entered on 6 June 1966, 4 December 1967, again in the contribution year 68/69 and again on 13 October 1969. This signifies that Mrs Reynolds started to pay contributions into what HMRC call a 'company pension scheme.' In the case of someone working for the National Health Service ("NHS") this is likely to have been an NHS pension scheme. Whether or not Mrs Reynolds ever received an NHS pension may depend on how much she eventually paid into this scheme and whether she withdrew her contributions on one or more occasion when she left the employ of a particular hospital.
24. The entries on the RF1 which are crucial to this case are those notated as "MW1/NP" which have been entered on three occasions -7 October 1968, 14 May 1969 and 13 October 1969. HMRC say that these entries show that an election to pay only the reduced rate has been made by Mrs Reynolds.
25. I have to decide whether these entries have been entered accurately on the record card for Mrs Reynolds particularly when the actual 'election form' -a CF9 – alleged to have been signed by Mrs Reynolds on each occasion has not been retained by HMRC.
26. Mrs Reynolds states that she has paid contributions throughout the time she worked in the UK. She does not distinguish between graduated pension contributions, superannuation contributions and National Insurance contributions. She does not comment on whether she recalls paying contributions to any NHS pension scheme. She has not supplied any written confirmation of any of these.

Findings

27. Mrs Reynolds disagrees with the entries for “MW1/NP” and with the entries for claims for Sickness Benefit, having said in correspondence that she never made a claim for sickness benefit.
- 5 28. On balance I find that the entries on the RF1 re Sickness Benefit are correct. The fact that the claims have been made has had no detrimental effect on the counting of contribution years and there is no evidence that false entries about this would have been to anyone’s advantage. What this shows is that Mrs Reynold’s memory about what she was doing in 1962 and 1966 is not 100% accurate. I would not expect it to be. Without written evidence made at the time and then kept, very few of us would remember whether we had been off work, for a short period due to illness, over 40 years ago.
- 10
29. On 15 October 2010 HMRC sent Mrs Reynolds a list of the hospitals at which she had worked and for which they held records. Mrs Reynolds has not said that any of these are incorrect. The list included St Thomas’ hospital. I mention this hospital in particular because I note that when she first claimed Retirement Pension Mrs Reynolds entered the name of some of the hospitals at which she has worked but she did not enter the name of St Thomas’ – and it appears that it was in connection with her work at St Thomas’ that the MW1/NP entries have been made.
- 15
30. On balance I find that the records kept by HMRC provide a much more accurate picture of her employment than that which Mrs Reynolds was able to remember.
- 20
31. The first MW1/NP entry has been made on 13 October 1968 and the leaving date recorded by St Thomas’ Hospital is 30 November 1968. During 68/69 full contributions were paid for Mrs Reynolds via her work at Robroyston. They therefore did not know about any MW1/NP declaration. The suggestion put forward by HMRC is that Mrs Reynolds went to work at St Thomas’ hospital for a very short period – whatever period gave rise to earnings of £4 in 1968 – and that following discussions with St Thomas’ Mrs Reynolds decided that if she signed the declaration she would then only be subjected to a small deduction from what were small payments of wages.
- 25
32. Mrs Reynolds was not present to comment on that suggestion but she has previously been sent the information which alleges that she was employed at St Thomas’ and she has never stated that she did not work there.
- 30
33. The date of the second MW1/NP entry is 14 May 1969 which appears to coincide with the time when she again went to work at St Thomas’.
- 35
34. The third MW1/NP entry is 13 October 1969 which coincides with the date of the “NPE” entry. HMRC suggest that this indicates that Mrs Reynolds entered into the company or NHS pension scheme as at that date and for that reason she was encouraged to sign a further declaration so that the deductions from her wages were kept to the minimum.

35. Particularly when each of these MW1/NP entries coincides with the date of another work related matter affecting Mrs Reynolds I find it improbable that a simple clerical error, or case of mistaken identity, has been made on each occasion. I find on balance that each of the MW1/NP entries has been entered accurately on the RF1 for Mrs Reynolds.

36. I find that this means she had signed an election to pay reduced rate contributions, whether or not she can remember doing so. She was not therefore liable to pay class 1 contributions in the period from 7 October 1968 to 5 April 1975.

37. The Respondents decision of 10 May 2010 is confirmed and the appeal is dismissed.

38. 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

Barbara J King

TRIBUNAL JUDGE

RELEASE DATE: 16 March 2012

25