



TC02609

Appeal number: TC/2011/08184

National Insurance Contributions – jurisdiction – extent of Tribunal’s jurisdiction over appeal in relation to amounts credited to Appellant by way of contributions – appeal struck out on basis of no jurisdiction

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ARCHIBALD GRIEG STEWART

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE KEVIN POOLE

Determined in Birmingham on 5 February 2013. Full findings of fact and reasons issued subsequently.

DECISION

Introduction

1. This decision concerns the jurisdiction of the Tribunal in relation to certain
5 appeals on National Insurance Contribution matters.

2. I made an order on 5 February 2013 for this appeal to be struck out on the
basis that the Tribunal has no jurisdiction in relation to it.

3. Correspondence having been subsequently received from the Appellant's
representative indicating a wish to continue with the appeal, I took the view that the
10 Appellant was effectively seeking full findings of fact and reasons for my earlier
decision as a precursor to a possible appeal. I therefore treated the Appellant's
representative's email as a request for full findings of fact and reasons for my
decision.

4. I have accordingly prepared these findings and reasons.

15 The facts

5. This appeal has a long and complex history. It spins out of an appeal (possibly
more than one appeal) made by the Appellant to the Social Security and Child
Support Tribunal ("SSCST") in respect of his entitlement to state pension and,
possibly, other matters.

20 6. The Appellant lives in Spain. He has a disabled daughter, for whom he has
acted as carer. He was born in 1944.

7. A dispute arose as to his entitlement to state pension. I am not aware of the
details of that dispute or how it has been litigated. There have however clearly been
appeal proceedings before the SSCST. In the context of those proceedings, there was
25 some disagreement as to the amounts of National Insurance Contributions which
should be credited to the Appellant, particularly in respect of the times when he was
caring for his daughter. There also appears to have been a dispute about his
entitlement to Carer's Allowance, but such matters lie outside the knowledge and
jurisdiction of this Tribunal.

30 8. A decision was issued by the SSCST (and apparently accepted by HMRC) to
the effect that the Appellant should have a total of 42 years' contributions shown on
his National Insurance record for the period up to 5 April 2001 and that his
entitlement to benefit should be calculated on that basis. There was some suggestion
35 that this decision was in fact legally flawed and the correct figure should only have
been 41 years. However, the Department for Work and Pensions appear to have
decided not to appeal on that point due to the small amounts at stake.

9. The Appellant maintains that he should be credited with further contributions,
in respect of some or all of the period from 2000 up to 2009, while he was acting as
carer for his daughter.

10. Having explained to the Appellant's representative in a letter dated 14 December 2012 that the Tribunal's jurisdiction did not appear to extend to cover the Appellant's appeal and sought further information to check this, a reply was received on 17 December 2012 which appeared to confirm that the Appellant accepted this position and agreed that he ought to be pursuing his appeal before the SSCST.

11. I therefore made the order on 5 February 2013, striking out the appeal on the basis that this Tribunal has no jurisdiction in relation to it.

The law

12. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides, so far as relevant, as follows:

“(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal –

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

...

(4) The Tribunal may not strike out the whole or part of the proceedings under paragraph (2)... without first giving the appellant an opportunity to make representations in relation to the proposed striking out.”

13. The jurisdiction of the Tribunal is set out in two provisions. First, by the Transfer of Tribunal Functions Order 2008 (SI 2008/2833) there were transferred to the First-tier Tribunal all functions previously carried out by the Appeal Tribunal previously constituted under Chapter 1 of Part 1 of the Social Security Act 1998. It is not in dispute that appeals relating to all aspects of National Insurance Contributions (both as to actual contributions made and as to contributions credited though not made) were thereby transferred to the First-tier Tribunal.

14. Second, by virtue of the First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (SI 2010/2655), the jurisdiction of the First-tier Tribunal was divided between the Social Entitlement Chamber and the Tax Chamber of the First-tier Tribunal. Under article 7 of that Order, it was stated that the general rule was that all appeals in respect of functions of HMRC were to be allocated to the Tax Chamber:

“To the Tax Chamber are allocated all functions, except those functions allocated to the Social Entitlement Chamber by article 6 or to the Tax and Chancery Chamber of the Upper Tribunal by article 13, related to an appeal, application, reference or other proceeding in respect of--

(a) a function of the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs;”

15. However, under article 6 of that Order, certain appeals were specifically allocated to the Social Entitlement Chamber:

5 “To the Social Entitlement Chamber are allocated all functions related to appeals--

....

(h) regarding entitlement to be credited with earnings or contributions;”

10 **Decision**

16. The Appellant’s representative has made it clear that the substance of the Appellant’s appeal, insofar as it relates to National Insurance Contributions, is that he should be credited with further contributions over and above those which are actually shown as paid on his contribution record. His appeal is therefore regarding his
15 “entitlement to be credited with contributions”.

17. It is therefore clear that the jurisdiction in relation to that appeal is proper to the Social Entitlement Chamber (and, within it, the SSCST) and not the Tax Chamber (and the First-tier Tax Tribunal). Accordingly, it is appropriate that his appeal before the Tax Tribunal be struck out and I therefore confirm that the appeal is STRUCK
20 OUT.

18. 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
25 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.

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**KEVIN POOLE
TRIBUNAL JUDGE**

RELEASE DATE: 22 March 2013