



TC04164

Appeal number: TC/2013/02658

Procedure – employer’s appeal against HMRC decision on statutory sick pay – employee affected joined as second respondent to the appeal – established that appellant does not dispute entitlement to SSP, only dispute is whether it has been paid or not – Tribunal jurisdiction not engaged – appeal struck out – second respondent applied for reinstatement – reinstatement refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**BRIAN ROBERT ELLIS CLEAVER t/a
B.R.E. CLEAVER FRUIT & VEG WHOLESALER**

Appellant

-and-

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

**First
Respondents**

-and-

**JENNIFER MUTTOCK (also known as JENNIFER
BENNETT)**

**Second
Respondent**

TRIBUNAL: JUDGE KEVIN POOLE

Sitting in chambers in Temple Court, Bull Street Birmingham on 14 November 2014

DECISION

Introduction

1. This decision relates to an application by the second respondent for the
5 reinstatement of the appeal after it had been struck out by the Tribunal by an Order
released on 15 October 2014.

2. The appeal is of a slightly unusual nature. It is an appeal by the appellant
against a decision of HMRC addressed to him to the effect that his former employee
the second respondent was entitled to statutory sick pay in a certain amount and the
10 appellant was liable to pay it.

3. In common with the Tribunal's usual procedure in such appeals, the second
respondent (having a clear interest in the outcome of the appeal, being the person
whose entitlement to statutory sick pay was under consideration) was informed of the
appeal and that she would be joined as second respondent unless she objected. No
15 objection was received from her and she was therefore added to the proceedings as
second respondent.

4. During the course of the appeal, it became apparent that the appellant did not
in fact dispute the second respondent's entitlement to statutory sick pay in the amount
stated by HMRC. The only dispute was as to whether the sick pay had in fact been
20 paid.

5. I therefore took the view that, as the Tribunal's jurisdiction had been
exhausted, it was appropriate to strike out the appeal, which I did by Order dated 15
October 2014. The second respondent then applied for the reinstatement of the
appeal. This decision relates to that application for reinstatement.

25 The facts

6. The second respondent was at one time an employee of the appellant, as a
packer and driver in his fruit and vegetable wholesale business. In the summer of
2012 she was off work through illness. Her employment with the appellant was
terminated on 15 September 2012. In the meantime, she had complained to HMRC
30 that she had not received the statutory sick pay ("SSP") to which she was entitled.

7. After investigating her claim, HMRC issued a formal decision dated 20
December 2012 addressed to the appellant, to the effect that the second respondent
was entitled to SSP of £618.12 for the period from 25 July 2012 to 17 September
2012, and that the appellant was liable to pay it. This decision was ultimately
35 appealed to the Tribunal on 11 April 2013.

8. In accordance with its usual practice in such cases, the Tribunal wrote to the
second respondent (as a person potentially affected by the Tribunal's decision on the
appeal) and informed her that it proposed to join her as an additional party to the
proceedings. No response was received from her, so she was joined as second
40 respondent by a direction of the Tribunal released on 8 November 2013. It may be

that the reason for her non-response was that the address the Tribunal was using was 16 Abbey Road, whereas it seems the correct address was 18 Abbey Road. Also, whilst the decision was issued in the name of Jennifer Muttock (which name the Tribunal has been using for the purposes of the appeal) it also appears the second respondent goes by the name of Jennifer Bennett.

9. In any event, the appellant's representative wrote to the Tribunal on 10 December 2013 (received on 13 December 2013) requesting the issue of a witness summons requiring the second respondent to attend the hearing as a witness. The Tribunal wrote to HMRC on 17 December 2013, asking if it was their intention to call the second respondent as a witness. They replied that they did not so intend, and it was at this point that the error in the second respondent's address held by the Tribunal came to light.

10. The Tribunal wrote to the second respondent on 31 March 2014, apologising and asking for her response on the matter of being joined into the appeal as a party.

11. The second respondent wrote to the Tribunal (received 7 April 2014), maintaining her assertion that she had not received any SSP. On the same date, the Tribunal received a letter from the appellant's representative, renewing the application for a witness summons addressed to the second respondent.

12. There was then an unfortunate period of delay caused by the Tribunal. Finally, the matter was referred to me as duty Judge at the end of August 2014. After reviewing the file in detail, it seemed to me that the true nature of the dispute between the parties might be as to the payment of the SSP rather than as to the entitlement to it. On my instructions, therefore, the Tribunal wrote out to the parties on 10 September 2014 in an attempt to establish whether this was in fact the case, and pointing out that if it was, then the dispute would fall outside the Tribunal's jurisdiction and would be a matter to be taken up through the County Court.

13. By letter dated 15 September 2014 (received 18 September 2014), the appellant's representative confirmed that the second respondent's entitlement to SSP was not disputed, all that was disputed was whether it had been paid or not.

14. In the light of this (and in the absence of any representations from the second respondent), the matter was referred back to me and I made the Order striking out the appeal which was issued by the Tribunal on 15 October 2014. That Order was made on the basis of rule 8(2)(a) of the Tribunal's procedure rules, which provides that "the Tribunal must strike out the whole or a part of the proceedings if the Tribunal... does not have jurisdiction in relation to the proceedings or part of them."

15. In the Tribunal's letter dated 10 September 2014, the jurisdiction of the Tribunal was summarised in the following terms:

"The origin of the Tribunal's jurisdiction in this area lies in sections 8 and 11 of the Social Security Contributions (Transfer of Functions, etc) Act 1999. Section 8(1) states that:

‘Subject to the provisions of this Part, it shall be for an officer of the Board –

....

5 (f) subject to and in accordance with regulations made for the purposes of this paragraph by the Secretary of State with the concurrence of the Board, to decide any issue arising as to, or in connection with, entitlement to statutory sick pay....’

Section 11, headed “Appeals against decisions of the Board”, goes on to say:

10 ‘(1) This section applies to any decision of an officer of the Board under section 8 of this Act.....

(2) In the case of a decision to which this section applies –

15 (a) if it relates to a person’s entitlement to statutory sick pay..... , the employee and the employer concerned shall each have a right of appeal to the tribunal...’

The provisions of the Social Security Contributions (Decisions and Appeals) Regulations 1999 then set out in a little more detail how decisions are to be made and how appeals are to be conducted.”

16. As was then stated in the same letter,:

20 “... the jurisdiction of the Tribunal appears to relate to the original decision of HMRC as to the worker’s entitlement to statutory sick pay, and it does not appear to extend to the question of whether that entitlement has actually been satisfied by payment or not. This would be in line with the general jurisdiction of the Tribunal in tax matters – it is the specialist Tribunal entrusted with the task of establishing the correct amount of tax for which liability has arisen, but it has no role in relation to the recovery of that tax, which is dealt with through the normal Courts, if necessary after the Tribunal has determined the amount of the appropriate liability.”

30 17. For these reasons I was satisfied, when making the Order striking out the appeal which was released on 15 October 2014, that the Tribunal in fact has no jurisdiction in relation to what has been identified as the dispute between the appellant and the second respondent. It is accepted that the second respondent had the right to SSP in the amount stated in HMRC’s original decision; all that is disputed is whether or not that amount has actually been paid to her. That is not a dispute that is within the jurisdiction of the Tribunal. If the second respondent wishes to pursue that claim, she must do so in the County Court.

40 18. The second respondent has written to the Tribunal after receiving the strike out Order, asking for the appeal to be reinstated. Her letter was received on 31 October 2014. Her letter continues with her assertion that she has not been paid her SSP

entitlement, but she does not appear to accept that the Tribunal is unable to assist her in that dispute.

19. For the reasons I have set out above, the Tribunal cannot assist her in what she is requesting. She must take her claim to the County Court, where the only dispute will be the factual one which lies at the heart of this case, the dispute as to whether the second respondent has actually been paid the SSP to which the appellant admits she was entitled, but which he says he has paid.

20. In the circumstances it would be inappropriate to reinstate the proceedings. The second respondent's application to do so is therefore REFUSED. She must take her case to the County Court.

21. 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.

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**KEVIN POOLE
TRIBUNAL JUDGE**

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RELEASE DATE: 17 November 2014