JUDGMENT No. 189/88

IN THE FEDERAL COURT OF AUSTRALIA)
QUEENSLAND DISTRICT REGISTRY) No. G279 of 1987
GENERAL DIVISION)

ON APPEAL from the General Administrative Division of the Administrative Appeals Tribunal constituted by the Honourable Mr.Justice Hartigan (President)

BETWEEN:

ALAN GEORGE SKYRING

Applicant

AND:

SECRETARY, DEPARTMENT OF SOCIAL SECURITY

Respondent

MINUTE OF ORDER

JUDGES MAKING ORDER: Fox, Sheppard & Beaumont JJ.

DATE OF ORDER: 12 April 1988

WHERE MADE: Brisbane.

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. No order be made on the notice of motion in respect of competency.
3. The applicant pay the respondent's costs of the appeal.
4. No order be made as to costs on the notice of motion.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

NOT FOR GENERAL DISTRIBUTION

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REASONS FOR JUDGMENT
EX TEMPORE

FOX J.

We have before us two applications. One is an application to hold as not competent an appeal brought by the applicant, Mr Skyring, from a decision of the Administrative Appeals Tribunal which rejected an appeal by him from the Social Security Appeals Tribunal. The other is the appeal itself, which although so-called in the Administrative Appeals Tribunal Act 1975, is a proceeding in the original jurisdiction of the Court. In that proceeding the Court can only decide questions of law.

The matters in question were really two. One is whether

by reason of what was taken to be a receipt of money by Mr Skyring, the pension payable to him should have been as it was, appropriately adjusted for the month or months in question. This situation arose quite some time ago and would now seem to be one that does not call for any investigation, even if the contention once had some merit.

The other is more recent and is a decision that was taken within the Social Services Security Department that Mr Skyring was no longer an unemployed person and was not entitled to unemployment benefits under the Social Security Act 1947. The second is more current than the first, but I do not take time to decide whether it is of sufficient currency to justify the application which was made, or the hearing of the appeal.

The objection to competency was really on two grounds. One was that there was no question of law involved. The other was that, if there was a question of law involved, it was utterly untenable and we therefore should dismiss the action.

The course which has been followed has allowed the arguments raised by Mr Skyring to be fully stated by him, and indeed restated by him several times. I therefore do not propose to make any decision on the application with regard to competency, but proceed to consider the arguments presented by Mr Skyring in relation to the second of the matters that I have mentioned, namely the decision that he is no longer entitled to unemployment benefits.

The first thing of note, I think, is that, on the definitions in the Social Security Act, the course which was taken was certainly open to be taken and is not shown to be wrong, except conceivably on the basis with which I will presently deal.

The Departmental position was, at the time of the decision referred to, that Mr Skyring, who has qualified as an engineer with a degree of Bachelor of Engineering and is and was a member of the Institute of Engineers, was in receipt of income in the course of carrying on his profession so as to render him ineligible for social security benefits.

The position, as I understand it, is that Mr Skyring in the period under examination did a substantial amount of work of a professional nature for a company known as Austral Mining and received a substantial payment, or a series of payments aggregating $32,000. The amounts referred to in the case are smaller and came from a different source, but Mr Skyring has told us of the larger amount. He says that in both his returns to the Department, and what he now claims to be the position, the payments made to him should not be recognized as payments because they were illegally made.

They are said to be illegally made because they were not made in bullion, or coin. I am not quite sure how much further Mr Skyring, in the course of argument, finally extended this to paper money.

The argument put is that the requirement about payment by a proper tender of money is to be found in s.16 of the Currency Act 1965 and that that deals with payment in coins. That section says nothing about paper money. Mr Skyring said he was not paid in coins nor was he paid, if it be material, in notes.

Although he dealt with the cheques that were sent to him and arranged with a friend and helper, Mr Cusack, for them to be banked by Mr Cusack and drawn upon, he submitted that he did not receive payment. He was reluctant to answer our direct questions as to whether he applied part, or the greater part, of those payments for his own benefit.

I think he eventually said that some $20,000 of the amount was paid to him, or applied for his benefit. A further amount he was prepared to pay Mr Cusack for services rendered by him in connection with an amount of clerical work done by Mr Cusack.

At all events, there can be no doubt that the cheques sent by Austral Mining were in substantial part at least banked, or kept for the benefit of Mr Skyring and the cheques were in fact cleared in the ordinary way, and ultimately, of course, went to the debit of Austral Mining's bank account.

In the absence of payment by coins, or possibly by notes, Mr Skyring says that he was not paid and therefore did not satisfy the relevant limiting or disqualifying terms of the

Social Security Act, to be found in s.107. There is no separate problem about the application of that provision, and I shall not take time to discuss it.

In sum, he is saying that he does not earn money and will not earn money unless he is paid in bullion, or coin, or perhaps notes. He says the cheques are not authorised as currency and he is not obliged to accept them and that even if he does so, the payments are not legal and he does not have to acknowledge them and they should not be taken into account for the purposes of the Social Security Act. Payment by cheque is doubtless not legal tender, but is a very well-established method of payment, and is not less so when the cheque is cleared through the banking system. It seemed at times that Mr Skyring's real challenge was to the banking system.

Section 36(1) of the Reserve Bank Act 1959 provides:

> "36(1) Australian notes are a legal tender throughout Australia."

At some stage Mr Skyring argued to the effect that this subsection was not consistent with s.16 of the Currency Act. I have said that I was left in some doubt as to Mr Skyring's position about notes, but he has also submitted that the governing section is s.16 of the Currency Act and that s.36(1) of the Reserve Bank Act should not be treated as qualifying it. In my view, it is plain enough that s.36(1) is quite consistent with s.16(1). The latter deals with a tender of coins, and restricts the number of coins which can be paid in any particular

denomination, so that a superfluity of coins is not transmitted or handed over. Section 36(1) also makes Australian notes legal tender.

Mr Skyring turned to history and sought to rely on some old Acts and old decisions. They are not of any present relevance. He sought to support his argument also by reference to s.115 of the Constitution, which imposes a restraint on what the States can do in relation to coining money and related matters. He does not accept that section 51(xiii) could cover the present situation. It reads:

> "51(xiii) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks and the issue of paper money:"

It seems to me that on the grounds argued, the decision below was entirely correct and I might say, correct substantially for the reasons given, although I suspect because of the argument being presented somewhat differently there, those reasons to some extent travel along different lines than those that I have just given. I should say that Mr Skyring has taken every care to put before the Court all the available material and has at times been very emphatic, perhaps over-emphatic about some parts of his argument, in the belief, I think, that the Court is more impressed with emotional or strongly emphatic argument than it might otherwise be. He should understand that this is not so. By a process of long training, we are accustomed to listening and taking into account what we hear and weighing it. We also have a reasonable knowledge of related matters, including the banking

system and commerce and for that matter, of legal history.

Mr Skyring has presented the same argument in one form or another in a number of courts in recent times, he would say in different contexts, or slightly different contexts with slightly different emphasis, but has failed on every occasion. The result, therefore, is that I would dismiss the appeal and make no order on the motion for competency.

SHEPPARD J.: I am in agreement with the orders which have been proposed by the presiding judge and with the reasons that he has given. I wish, however, to add a few remarks of my own. As has been said, there were two appeals to the Tribunal. In relation to the first, so it seems to me, the evidence discloses that the applicant did negotiate cheques given in payment to him for the work in question through his bank account. He says, by way of explanation, that that was done under some form of duress and that he needed the money. The fact is that is what he did. In George v. Cluning (1979) 28 A.L.R. 57, Mason J. (as he then was) said (p. 62):-

> "In my opinion the appellant, through his solicitors, by receiving the respondent's personal cheque without objecting to it on the ground that it did not constitute legal tender, must be taken to have accepted the cheque as payment of the amount for which it was drawn. The practice of giving and accepting personal cheques in payment of debts and liabilities is now so widespread that there is a general expectation on the part of persons making payments that a personal cheque, given in payment of a debt or liability, will be accepted unless the

> payee objects before or at the time of receipt that the cheque does not constitute legal tender".

I would add that if there is an objection but nevertheless a taking of the cheque and a negotiation of it through a bank account, any objection taken at the time is usually, but, of course, depending on the circumstances, waived. To my mind, that puts an end to the first appeal.

The second appeal and the way that it was dealt with by the Tribunal concerned the question whether the applicant was unemployed. In relation to that matter, the Tribunal's finding was as follows:-

> "I accept the submission of the respondent that the evidence is that the applicant over the period 31 March 1984 to 2 December 1985 engaged in work of a remunerative nature earning approximately $7000 from W.D.T. Engineers. I accept the submission that upon that basis, the applicant could not satisfy the Director-General that he was unemployed. At the very most what could be said on behalf of the applicant was that he may have been under-employed. In my view, then, the decision under review ought to be affirmed".

There is a question whether there is any legal basis upon which that claim could be challenged. In my opinion, none has been disclosed in argument. The fact that the finding cannot successfully be challenged in a court which may only interfere with decisions if there is an error of law means that this appeal, insofar as it concerns the second appeal to the Tribunal, must also be dismissed.

However, in the way that the matter was argued, further facts were referred to without objection from counsel for the respondent. These disclosed the receipt of the $32,000 referred to by the presiding judge. But upon the basis of what we were told about that sum, it has been received entirely by the applicant, either directly or indirectly. On his own statements, which will appear in the transcript, the amount was paid either to him directly or on his behalf and at his direction. That did not, however, deter the applicant from putting to us arguments based upon the Constitition and provisions of the Currency Act 1965 and the Reserve Bank Act 1959. That, indeed, so he said, was his avowed purpose in bringing the proceedings, because he has fundamental views about the way the monetary system is established in this and other countries and it is his wish to demonstrate that the system is an unlawful one. For this purpose, he relied very heavily on the content of the royal prerogative as it was at the end of the seventeenth century.

It should be understood that a number of cases show that the content of the prerogative in those years was much more extensive than it is now and that, because of statutory intrusions, the statutes having been passed, of course, either by the Parliament of the United Kingdom or the Parliament here, it now has a content which is very much reduced and which has really little but historical relevance to the law as it is in Australia and indeed in the United Kingdom, today; see Council of Civil Service Unions v. Minister for the Civil Service [1985] A.C. 374 per Lord Fraser at pp. 397-8 and per Lord Scarman at p. 407.

It seems that what the applicant wanted the employer, who owed him the sum of $32,000, to do was to pay him in gold coin, because, in his submission, that was the only lawful way he could be paid, and he relied for this purpose on the combined effect of ss. 16 and 22 of the Currency Act. As I understand what he told us, the employer was prepared to pay him in notes, but he refused notes, saying that he wanted gold coin or bullion. This, the employer refused to do. This led to a submission that in some way, section 36 of the Reserve Bank Act was invalid, it providing that Australian notes are legal tender throughout Australia.

The point upon which the applicant really wanted a decision is the one that I am now dealing with, but it is a point upon which he has already had the decision of the High Court of Australia. That decision is Re Skyring (1985) 58 A.L.R. 629. The decision is that of a single judge of the Court, Deane J. Amongst the submissions made to Deane J. was a submission that the combined effect of a number of sections of the Constitution was to erect a barrier against the issue by the Commonwealth of paper money as legal tender. His Honour said (p. 633) that the sections of the Constitution upon which particular reliance was placed were ss. 51(xii), (xiii) and (xvi) and 115. Mr. Skyring also referred to ss. 105 and 105A. Additionally, reference was made to the provisions of the Currency Act 1965 dealing with coins. Deane J. said that the argument, if accepted, would result in the invalidity of s. 36(1) of the Reserve Bank Act 1959 which provides that Australian notes are legal tender throughout Australia. Deane J. said (p. 633):-

> "I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender. Nor, in my view, would there be any substance in an argument that the provisions of s. 36(1) of the Reserve Bank Act 1959 are invalidated or overruled by the provisons of the Currency Act 1965. That being so, I am unpersuaded that there is any substance in the proposed proceedings against Mr. Justice Spender, nor am I persuaded that proceedings by certiorari against Mr. Justice Spender would in any event be appropriate".

Deane J.'s decision went on appeal to a Full Court which, in an unreported decision, dated 9 July 1985, dismissed the appeal. The submission to which I have referred was referred to. The Court said:-

> "Having listened attentively to the submissions made by the appellant in support of this appeal, we are not persuaded that the judgment of Mr. Justice Deane contains any error".

The appeal was dismissed. In my view, this case, insofar as it depends upon the same considerations as are referred to in Deane J.'s judgment is covered by the earlier case which, of course, binds us.

In the result I am of opinion that the appeal should be dismissed. It is unnecessary to deal with the objection to competency.

BEAUMONT J.: I agree

FOX J.: The order of the Court is that the appeal be dismissed, that no order be made on the notice of motion in respect of competency, and that the applicant pay the respondent's costs of the appeal. As to the notice of motion, the order will be that there be no order as to costs.

I certify that this and the eleven (11) preceding pages are a true copy of the Reasons for Judgment herein of the Court.

Associate: Sharon Rothner

Date: 12 April 1988

For the Appellant:	Mr A.G. Skyring in person
Counsel for the Respondent:	Mr S. Keim
Solicitors for the Respondent:	Australian Government Solicitor
Date of hearing:	Brisbane: 12 April 1988
Date judgment delivered:	Brisbane: 12 April 1988