

IN THE HIGH COURT OF NEW ZEALAND
(ADMINISTRATIVE DIVISION)
WELLINGTON REGISTRY

M.270/86

IN THE MATTER of the Social
Security Act 1964
and its amendments

A N D it

IN THE MATTER of an appeal by way
of case stated from
a determination of
the Social Security
Appeal Authority in

BETWEEN WILLIAM ROE of Nelson,
Retired Medical
Practitioner

Appellant

A N D THE SOCIAL SECURITY
COMMISSION

Respondent

Hearing 8 April 1987
Counsel Appellant in person
G Burston for respondent
Judgment 10 April 1987

JUDGMENT OF DAVISON C.J.

This is an appeal by way of case stated from a
decision of the Social Security Appeal Authority ("the
Authority") dated 7 January 1986 dismissing the appeal
against a decision of the respondent.

THE FACTS

The facts are simple. The appellant and his
wife are former residents of the United States of America
who have settled in New Zealand. In June/July 1982 they
were granted national superannuation as provided for in
Part I sections 13-19 of the Social Security Act 1964
("the Act"). As from August 1982 both appellant and his

wife have also been in receipt of a United States retirement benefit paid by the United States Government through the Department of Health and Human Services, Social Security Administration.

The respondent, on becoming aware that the appellant and his wife were receiving in New Zealand both the New Zealand national superannuation and the United States retirement benefits, applied the provisions of s 70 of the Act as it interpreted them and deducted from the payments of national superannuation the payments received from the U.S. Government.

Section 70(1) of the Act upon which the respondent relied provides:

- "(1) For the purposes of this Act, if -
- (a) Any person qualified to receive a benefit under this Part of this Act is entitled to receive or receives, in respect of that person or of that person's spouse or of that person's dependents, or if that person's spouse or any of that person's dependents is entitled to receive or receives, a benefit, pension, or periodical allowance granted elsewhere than in New Zealand; and
 - (b) The benefit, pension, or periodical allowance, or any part of it, is in the nature of a payment which, in the opinion of the Commission forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under this Part of this Act or under the War Pensions Act 1954 which is administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received -
- the rate of the benefit or benefits that would otherwise be payable under this Part of this Act shall be reduced by the amount of such overseas benefit, pension, or periodical allowance, or part thereof, as the case may be. "

The result of the respondent's application of s 70(1) was that the U.S. retirement benefits of both the appellant and his wife when aggregated totalled \$263.32 per wee (N.Z. equivalent), which sum being greater than the

New Zealand national superannuation of \$207.88 at the full married rate, no N.Z. national superannuation was payable.

The appellant appealed to the Authority.
The Authority's decision was as follows:

" Appeal against decision to apply the provisions of s 70 in respect of pensions paid to the appellant and his wife from the United States of America.

The appellant contributed, during the period while he was in practice as a medical practitioner in the United States - as did his employers from time to time - to the Government fund from which he now receives a retirement pension. The same is true in the case of the appellant's wife in respect of the period during which she worked. Their contributions, and those of their respective employers, were compulsory and were - as we noted in the Decision No 34/85 - by way of a tax. Consequently, in our opinion, the pensions payable to the appellant and his wife form part of a programme which, in terms of s 70, provides for payment of pensions for one of 'the contingencies for which benefits, pensions or allowances may be paid under' Part 1 of the Social Security Act 1964 i.e. retirement.

The Commission has accepted that the section does not provide for aggregation, and has adjusted the appellant's wife's national superannuation entitlement accordingly.

The appeal can not be allowed except to the extent stated in the last preceding paragraph. "

The Authority in its decision allowed the appeal to the extent that it found that s 70(1) does entitle the Commission to aggregate the U.S. retirements of both the appellant and his wife and adjusted the wife's N.Z. national superannuation accordingly. In other respects it dismissed the appeal.

The appellant has now appealed by way of case stated against that part of the Authority's decision upholding the application of s 70(1) to the appellant's case.

The questions of law stated for the opinion of this Court are:

- (a) Was the information before the Authority sufficient to enable it to determine whether the retirement benefit paid to the appellant by the Department of Health and Human Services, Social Security Administration, in the United States of America is in the nature of a payment which, in terms of s 70 Social Security Act 1964, forms part of a programme administered by or on behalf of the Government of the United States of America which provides benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under Part I of the said Act?
- (b) Is the retirement benefit so received by the appellant in the nature of a payment which forms part of such a programme?
- (c) Have the provisions of s 127 of the said Act been complied with by the sending, to the appellant, a copy of the Authority's decision dated 7 January 1986?

DECISION

Question (a)

The evidence before the Authority as to the nature of the U.S. retirement benefit came first from a Report furnished by Mr R J Gillett on behalf of the respondent to the effect that inquiries made on behalf of the respondent showed that -

- " The United States retirement benefit is a contributory type pension in that eligibility is determined on the basis of contributions made through the tax system. However that is not relevant in determining the nature of the benefit. Quite simply the United States

retirement benefit, paid to the appellant, is that country's income maintenance assistance available for retired persons just as national superannuation is this country's income maintenance assistance available for retired persons. "

Second from a letter written by Mr Gillett to the Director of the Social Welfare Department, Nelson, in which he said:

" In this particular case Mr Roe receives a United States of America Old Age Pension administered by the Department of Health and Human Services Social Security Administration. The pension is funded mainly by compulsory contributions by employed residents of that country which together with the employers' required contribution are collected by the Treasury Department through its Internal Revenue Service.

The Commission has previously decided that pensions paid under the United States of America's Social Insurance System are part of a programme providing benefits for the contingencies for which national superannuation is paid. "

Third from a previous decision of the Authority (No 34/85) in which it had considered the nature of United States benefit with which this present case is also concerned.

The Authority is given wide powers to receive evidence both by way of report - see s 12M(4) and by way of statements, documents, information or matters which in the opinion of the Authority may assist it to deal with the matters before it - see s 12M(5).

It was clearly entitled to consider the three matters referred to above in reaching its conclusion as to the nature of the U.S. retirement benefit. In fact, I did not understand the appellant to argue either before the Commission or the Authority that the nature of the benefit was in any way different from that described by the Authority.

There was, in my view, clearly sufficient information before the Authority to enable it to make the determination it did in respect of the nature of the U.S. retirement benefit and Question (a) must be answered Yes!

Question (b)

This question follows on from Question (a) and the answer is not really in doubt. The information before the Authority to which I have referred together with letters from the U.S. Department of Health and Human Services, Social Security Administration, make it abundantly clear that the United States benefit is paid as part of a program administered by the United States Government. Again I did not understand the appellant to contend otherwise. The answer to Question (b) is Yes!

Question (c)

Section 12P of the Act provides:

" On the determination of any appeal, the Secretary shall send to the Commission and to the appellant a memorandum of the Authority's decision and the reasons for the decision, and the Commission shall forthwith take all necessary steps to carry into effect the decision of the Authority. "

The appellant submitted that the Authority's decision, which I have set out in full earlier, did not comply with s 12P in that it did not refer to the various arguments addressed to it. I do not accept that such is necessary. All that is required is that the decision should indicate why the Authority (except for the matter of aggregation) dismissed the appeal. The Authority's decision did give a sufficient reason for its decision where it said:

" Consequently, in our opinion, the pensions payable to the appellant and his wife form part of a programme which, in terms of s 70, provides for payment of pensions for one of 'the contingencies for which benefits, pensions or allowances may be paid under' Part I of the Social Security Act 1964 i.e. retirement. "

Question (c) must be answered Yes!

GENERAL

Although I have dealt with the questions asked in the case, the real issues troubling the appellant and ones which were raised before me were these:

First that the United States benefit is not paid for any of the contingencies referred to in s 70(1) of the Act; and

Second that the appellant and his wife should be entitled to receive the full N.Z.national superannuation as well as the full U.S.benefit.

Dealing with the first matter - contingencies - it does appear that the wording of s 70(1) in which the word appears may be a little difficult to understand. The combined effect of s 70(1) (a) and (b) may in relation to the present case be expressed as follows.

If a person qualified to receive N.Z.national superannuation receives a benefit or pension granted in the United States of America and that benefit or pension forms part of a programme which is administered by or on behalf of the United States Government providing benefits or pensions (for any of the contingencies for which benefits and pensions are paid in New Zealand) under Part I of the Social Welfare Act than the N.Z.superannuation benefit shall be reduced by the amount of the U.S.benefit.

The words "for any of the contingencies for which benefits and pensions are paid in New Zealand" trouble the

appellant. But if I substitute for those words, the words "of the same type as benefits payable" then I think the appellant may understand the section more readily. The U.S. retirement benefit is clearly on the evidence a benefit paid by the U.S. Government of the same type as a N.Z. national superannuation benefit. Both are paid by the respective Governments and both are paid as part and parcel of programmes for assistance to age-related beneficiaries. There can be no room for argument that the U.S. benefit is not paid for any of the contingencies set out in Part I of the Act.

I turn now to the appellant's second contention. I note that this was based on the submission that the receipt of a benefit from a private fund such as the "Mutual Provident Fund" in New Zealand does not result in a deduction from the national superannuation benefit and so the receipt of the U.S. retirement benefit should not have that effect either. The reason why the receipt of a private fund does not result in a deduction is that the Act, s 70(1), applies only to Government administered funds. It is only Government administered funds - such as the U.S. retirement benefit - which are required to be deducted. The policy behind that is no doubt that Governments of countries do not consider it their obligation to pay retirement benefits to a person when another Government is also doing so. If a person, however, wishes to provide for additional retirement benefits by paying into a private fund for such purpose, he is entitled to follow that course.

The U.S. retirement fund is not a private fund. It is a Government administered fund and results in the deduction provided for in s 70(1).

Although the answers earlier given to the three questions posed in the case stated determine the result of this appeal, I have nevertheless dealt with the appellant's expressed general concerns regarding his benefit in order to assist him to understand the operation of the Social

Welfare Act. I trust that he now understands somewhat better than previously why the U.S. benefits have been deducted from his and his wife's N.Z. national superannuation.

The appeal must be formally dismissed.



R K DAVISON
CHIEF JUSTICE

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