TC02007

Appeal number: TC/2009/16873

Class 3 National Insurance contributions - reclaim for contributions paid when the legislation required 44 qualifying years of contribution for full pension to be payable, later found to have been unnecessary when the law was changed to confer full pension rights after only 30 qualifying years - whether the contributions had been paid in error - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ROBERT JEAN PAGES **Appellant**

-and-

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

Tribunal: JUDGE HOWARD M. NOWLAN

Sitting in public at 45 Bedford Square in London on 16 April 2012

The Appellant was neither present, nor represented

Lorraine Ruterford of HMRC on behalf of the Respondents

DECISION

Introduction

1. This was a case where, whilst it was easy to have considerable sympathy for the Appellant, the outcome was clear because the facts were identical to those of an existing authority. Since indeed I had been one of the two judges sitting in the Upper Tribunal when the decision of Judge Berner in the earlier case had been confirmed, and when the then appellants' claims for NIC contribution refunds in the situation relevant to the present Appeal had been denied, it was clear to me that this Appeal had to be dismissed.

2. I had been informed in advance that the Appellant did not propose to attend the hearing, and was content for it to proceed in his absence.

The facts

3. The present Appellant ceased to be employed in 2002, at which time he had had fewer than the 44 qualifying years for National Insurance contribution purposes that at that time were required to assure a person of the full state pension. He had no need therefore to make any further contributions, but it was open to him to make voluntary Class 3 contributions, that would add to his "qualifying years", and thus potentially increase his state pension entitlement.

4. In May 2006 the Government published a White Paper indicating that thought was being given to reducing the number of qualifying years for which contributions had to be made in order that a man could secure the full state pension from 44 years to only 30 years. On 26 July 2007 a change in the law introduced the change that had been referred to in the White Paper.

5. The Appellant had been making voluntary Class 3 contributions by direct debit from 2002 until some time in 2007 when he cancelled the direct debit on discovering that, having now made contributions for in excess of the 30 years by then required to entitle him to the full state pension, it was pointless to make any further voluntary Class 3 contributions. It was true that for some people there might remain some purpose in continuing in this situation to make further Class 3 contributions, because some benefits were still potentially increased by continuing to make contributions for more than the 30 years, and up to the earlier 44-year period. The present Appellant said however, and I entirely accept this, that as a single man he was not interested in those other benefits. So far as he was concerned, once the law had been changed, there had been no purpose in his having made contributions once he had 30 qualifying years of contribution for NIC purposes.

6. HMRC refunded to the Appellant those contributions that he had made in the short period after the May 2006 announcement of a possible change in the law. This was doubtless on the basis that those contributions had been made in error. In order for HMRC to be justified in having repaid those contributions there had to have been an "error", and the regulations made it clear that for there to have been an error, there must have been an error at the time the contributions were paid, and that error had to relate to some past or present matter. Having refunded contributions made after May 2006, HMRC implicitly accepted that making contributions in ignorance of the content of the White Paper meant that those contributions were made in error. For

even though the law at that time still required contributions to be made for a 44-year period to entitle the contributor to a full state pension, anyone who was aware of the White Paper could have sensibly concluded that they should delay making voluntary Class 3 contributions in order to wait and see whether the 44-year period was indeed reduced to one that would mean that their further contributions were in the event unnecessary.

7. This appeal relates to the fact, however, that the Appellant claimed a refund of a further £1,444, being the contributions that he had paid between 2002 and the date of the issue of the White Paper. This claim related in other words to contributions made in the period when no member of the public could or would have been aware of any fact that indicated that such contributions would eventually become, or might become, surplus and pointless. It is fair to record in the Appellant's favour that on account of the eventual change in the law, and bearing in mind that the Appellant was only making contributions to enhance his eventual state pension, all the contributions that he sought to recover will actually have conferred no benefit on him. This is because even by 2002 he had already secured in excess of the 30-years' qualifying years, and any further contributions will, with the benefit of hindsight, have been pointless.

My decision

8. HMRC is not entitled to refund contributions unless it is required to do so, and my decision is that HMRC was neither required, nor therefore even entitled, to refund the contributions that the Appellant has sought to recover.

9. The earlier decisions of the First-tier Tribunal and the Upper Tribunal to which I referred in paragraph 1 above were referred to as the cases involving *Mr. Osborne and others v. HMRC* at the First-tier level (TC 00190), and *Clifford Bonner and others v. HMRC* and *HMRC v. Robert Brumpton* at the Upper Tier level. They related to broadly the same parties, though the further appeal to the Upper Tier involved only some of the parties, which accounts for the change of names.

10. Those earlier cases dealt with claims to recover contributions made in various periods, namely the period prior to any public announcement of any possible change in law, payments made in what I might refer to as the White Paper period, and payments made after the change in the law. So far as this appeal is concerned, I am of course only concerned with the issue of whether this Appellant has any legal basis for claiming refunds of contributions made in the first of those periods, in other words at the time when the following two points fairly describe the situation at the time when the contributions were made. The first observation to make in relation to the payments actually made by this Appellant in the relevant period is that those payments were at the time made entirely properly and correctly as Case 3 contributions, which under the then law were potentially increasing the Appellant's ultimate state pension. Secondly, it is impossible to dispute the fact that the payments were **not** made "in error of any past or present matter". It is fair to say that there was no need to have made the payments, in the sense that they were voluntary payments under the law then in force. It is equally appropriate to say that even if 44 qualifying years remained the requirement to sustain a full state pension, the Appellant could have delayed making the payments, and could have made them later. And had he waited until after May 2006 to consider making the payments, he might either have concluded that there was no point in making the payments, or had he then made the back payments, he would presumably then have recovered them just as he recovered the payments that he did make after May 2006. None of these points

derogate, however, from the fact that in the period between 2002 and 2006, it is impossible to say that the Appellant made some error as regards a "past or present matter" when he made the relevant payments. All that can be said is that he made the payments in ignorance of the fact that it would later emerge that those payments had been pointless, and will not in the event produce any potential benefit or increase in benefits for the Appellant. An error as regards some past or present matter cannot possibly encompass an inability to forecast some future event.

11. It accordingly follows that when the Appellant made the contributions in the period between 2002 and May 2006, he was making perfectly normal Case 3 contributions, and he cannot now reclaim them because he cannot succeed in establishing that he made the payments under some error as regards a past or then present matter.

12. I can appreciate that the Appellant will consider that he has some grievance as a result of this decision. After all, he was pursuing a course, during the relevant period, of paying in advance to increase his eventual pension entitlement that was sensible and prudent, and exactly the sort of thing that the government was encouraging people to do, and that the government is certainly now encouraging people to do even more strongly. He can thus legitimately feel somewhat aggrieved that he has lost money if he compares his situation with that of someone else in identical circumstances who simply ignored his likely future requirements, and chose not to be sensible and prudent. Having said that, however, from the standpoint of the government, it seems fair to say that the government, in reducing the required period of contribution for men from 44 years to 30 years, and from 39 years to 30 years for women cannot have contemplated that it would be faced with recovery claims from countless people for the recovery of voluntary Class 3 payments that they had made in the Appellant's situation. Technically speaking the government's exposure to such a refund claim revolves around the legal issue of whether the payments had been made in error as regards a past or present matter. But as a policy matter, it seems fairly clear that my decision on that legal point (consistent as it is with the decision in the earlier case at both levels) is one that seems consistent with the reasonable presumption that Parliament did not intend the exchequer to become liable to make substantial refunds of earlier contributions, when the change in the law merely reduced, from 2007 onwards, the number of qualifying years of contribution required to sustain the full state pension.

Right of Appeal

13. This document contains full findings of fact and the reasons for our 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.

HOWARD M. NOWLAN
TRIBUNAL JUDGE

Released: 30 April 2012