

**DECISION OF THE UPPER TRIBUNAL**  
**(ADMINISTRATIVE APPEALS CHAMBER)**

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007:

The decision of the First-tier Tribunal under reference SC946/15/03459, made on 8 February 2016 at Manchester, did not involve the making of an error on a point of law.

**REASONS FOR DECISION**

**A. History and background**

1. The claimant was awarded a jobseeker's allowance from September 2013. In July 2015, he was referred to Mandatory Work Activity and notified of a four week placement. He failed to attend on the first day and was asked why he had not done so. The decision-maker decided that he did not have good cause for failing to attend and imposed a sanction for four weeks. The claimant exercised his right of appeal. The First-tier Tribunal dismissed his appeal, but gave him permission to appeal to the Upper Tribunal. The Secretary of State's representative has not supported the appeal and the claimant has replied in detail.

**B. Why the claimant did not attend to participate in the activity**

2. The claimant set out his reasons in his letter of 10 September 2015:

The reason why I did not take part in the mandatory work activity is because my Jobseeker's Agreement (signed jointly by myself and my advisor and which remains in force according to the Jobseeker's Allowance Regulations 1996 reg 36) states quite clearly under the agreed restrictions on my availability for work section that I restrict my availability for work to work that pays at least the national minimum wage; a copy of which you should have on record.

Furthermore, the Jobseekers Act 1995 states under the entitlement section that a claimant is entitled to a Jobseeker's Allowance if they are available for employment and have entered into a Jobseeker's Agreement which remains in force; on which I have met and currently meet both conditions.

3. In his letter of appeal to the First-tier Tribunal, the claimant set out his argument in more detail. I summarise:

- the activity involved four weeks unpaid work;

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- he had agreed with his adviser to look only for work that paid the minimum wage or higher;
- the Jobseekers Act provided for entitlement so long as the claimant was willing and able to take up employed earner's employment and had entered into a jobseeker's agreement;
- 'employed earner's employment' was defined by the Social Security Contributions and Benefits Act 1992;
- the activity involved work for unpaid, non-taxable activity;
- as such it was not employed earner's employment;
- so he did not turn down an offer of employment;
- the activity was not necessary given its duration and his relevant experience in work;
- it was not training given that it offered no qualifications;
- it was not a work trial given that it did not lead to paid employment afterwards.

**C. The First-tier Tribunal's decision**

4. The tribunal dismissed the appeal. The judge explained her decision. First she rejected his argument that the activity was not appropriate:

It is explicit in his job seeking agreement that he may be required to take part in certain schemes to help improve the chances of finding work. This was such a scheme. It is not for this tribunal to consider whether the scheme was appropriate or not. The Regulations provide that a claimant may be required to take part in such schemes. The tribunal did not consider that the appellant considering that this scheme was inappropriate for him was good cause for his nonattendance.

5. The judge then rejected his 'minimum wage' argument:

This condition in his job seekers agreement relates to work he was seeking not to the type of scheme he was being required to attend.

**D. Analysis**

6. The issue for me is whether the judge's decision involved the making of an error on a point of law. It did not.

*The activity is not overridden by the basic conditions of entitlement*

7. Entitlement to a jobseeker's allowance is governed by the Jobseekers Act 1995. The legislation is contained in that Act and in regulations made under it. The basic conditions of entitlement are set out in section 1. There is no dispute that the claimant satisfied those conditions. That is a necessary but not a sufficient condition for entitlement. The Act makes that clear. Section 1(1) provides that an allowance 'shall be payable *in accordance with the provisions of this Act.*' And section 1(2) is expressly 'Subject to the provisions of this Act'. The

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question then arises what other provisions made be relevant. In this case, there are two.

8. One relevant provision is section 17A:

**17A Schemes for assisting persons to obtain employment: 'work for your benefit' schemes etc.**

(1) Regulations may make provision for or in connection with imposing on claimants in prescribed circumstances a requirement to participate in schemes of any prescribed description that are designed to assist them to obtain employment.

(2) Regulations under this section may, in particular, require participants to undertake work, or work-related activity, during any prescribed period with a view to improving their prospects of obtaining employment.

(3) In subsection (2) 'work-related activity', in relation to any person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so.

The Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 (SI No 688) are prescribed for the purposes of section 17A: see the definition of 'the Mandatory Work Activity Scheme' in regulation 2(1).

9. The other relevant provision of the Act is section 19:

**19 Higher-level sanctions**

(1) The amount of an award of a jobseeker's allowance is to be reduced in accordance with this section in the event of a failure by the claimant which is sanctionable under this section.

(2) It is a failure sanctionable under this section if a claimant-

...

(e) without a good cause fails to participate in any scheme within section 17A(1) which is prescribed for the purposes of this section.

10. The legislation I have set out so far shows beyond argument that it is not possible to avoid a sanction by relying merely on the basic conditions of entitlement to a jobseeker's allowance. The legislation expressly makes entitlement to, and payment of, an allowance conditional on satisfying not only those conditions but other requirements as well; it also makes entitlement and payment subject to the limitation that sanctions may be applied.

*The activity is not governed by the terms of the claimant's jobseeker's agreement*

11. The claimant has referred to the terms of his jobseeker's agreement. This is governed by section 9 of the Act and Chapter V of the Jobseeker's Allowance Regulations 1996. He is right that he agreed to look for work at or above the national minimum wage. That complies with regulation 31(c), which provides for

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the agreement to include 'any restrictions on the claimant's availability *for employment*'. I have emphasised those words, because the claimant has argued that the minimum wage condition applied to the activity. The condition does not apply, because the activity is not employment. The judge put it well when she said that the condition related to the work he was seeking. The activity did not involve employment as the claimant would not be gainfully engaged in business on his own account while taking part (and so not self-employed) or acting under a contract of service with the provider (as so not employed). As such, he would not satisfy the definitions of 'employed earner' or 'self-employed earner' in section 2(1) of the Social Security Contributions and Benefits Act 1992. The correct analysis is that the provider would be providing a service to him - not the other way round - by conferring on him the benefit of the course. This was not an employment relationship of any sort.

12. There is some support for this conclusion in the provisions about remunerative work. It is a condition of entitlement to a jobseeker's allowance that the claimant 'is not engaged in remunerative work': section 1(2)(e). And regulation 53(1)(l) of the Jobseeker's Allowance Regulations 1996 provides that a person participating in the Mandatory Work Activity Scheme is treated as not engaged in remunerative work by virtue of doing so.

*The other provisions of the claimant's jobseeker's agreement*

13. It is also worth noting some other features of the claimant's jobseeker's agreement. One was to 'Carry out all reasonable steps to give you the best prospect of securing employment.' It listed his responsibilities as including 'do everything I can to ... improve my chances of finding work and overcoming things that might be making it harder for me to look for or get a job.' It also recorded his understanding that 'my adviser may require me to take part in certain schemes to help improve my chances of finding work.' Far from working to his advantage, the claimant's reliance on the terms of his agreement actually supports the Secretary of State's case.

*The course was appropriate*

14. That leaves the argument that the course was not appropriate because it was unnecessary given the claimant's work experience. That argument fails to take account of the benefits that the course offered in making the claimant more attractive to prospective employers. The mandatory work referral notification letter explained that one of the benefits was to 'help you develop ... disciplines to improve your chances of getting ... a job.' The letter notifying him of the placement set out some expectations of him that would allow him to show a prospective employer that he would be a good employee – attending for the period of the course, performing the activities, treating people politely, fairly and considerately, attending meetings, and meeting the standards of behaviour. These features, together with the more specific activities of the placement, would

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provide a valuable *up-to-date* addition to a CV for someone like the claimant who had been out of work for some time.

*The Human Rights Act 1998*

15. The claimant has also referred to this Act. The Articles he has cited, however, are not to be found there. They are taken from the Universal Declaration of Human Rights. They do not form part of his Convention rights under the 1998 Act.

*Conclusion*

16. The judge did not engage with the details of the claimant's argument, but her short reasons dealt clearly and correctly with the essence of the matter. She made the right decision and gave adequate reasons for doing so.

**Signed on original  
on 25 August 2016**

**Edward Jacobs  
Upper Tribunal Judge**