receipt of an age pension.) In September 1980 he had enquired as to his eligibility for a United Kingdom pension and had sent some application forms to the United Kingdom for this purpose. He was granted a UK pension and on 26 November 1980 the UK pension authority advised the DSS of their decision. Subsequent to this, the DSS advised Mr and Mrs Ridley that their pensions had been reduced by half the amount of their United Kingdom pensions, pursuant to section 28 (2) of the *Social Security Act*. [Presumably their other private income had already taken them over the 'free' income limit of $897 each.]

Section 28 (2) says:

> The annual rate at which an age or invalid pension is determined shall . . . be reduced by one-half of the amount (if any) per annum by which the annual rate of the income of the claimant or pensioner exceeds—
>
> . . .
>
> (b) in the case of a married person —$897 per annum.

Mr Ridley then wrote to the UK pension authority withdrawing his (and his wife's) applications for pensions. When he discussed the situation with the DSS, they advised Mr Ridley that as he had deprived himself of income (the UK pension) the reduction in his age pension would continue. He applied to the AAT for review of this decision.

Section 47 (1) says:

> If, in the opinion of the Director-General, a claimant or a pensioner has directly or indirectly deprived himself of income in order to qualify for, or obtain, a pension, or in order to obtain a pension at a higher rate than that for which he would otherwise have been eligible, the amount of the income of which the Director-General considers the claimant or pensioner has so deprived himself shall be deemed to be income of the claimant or pensioner.

'Deprivation of income': intention is critical

The AAT said there was no dispute that Mr and Mrs Ridley deprived themselves of income when they declined the UK pensions, but the issue was whether they did so in order to obtain pensions at a higher rate than that for which they would otherwise have been eligible.

The Tribunal said that the phrase 'in order to' in s.47 was purposive so that their *intention* in declining the UK pension had to be ascertained. The *result* of declining the pension was not the determining factor:

> The mere fact that consequences flow from a person's act and that he was aware before he did the act that they would or might do so does not necessarily mean that that was his actual purpose in doing the act.

(Reasons for Decision, para. 9)

The Tribunal found that Mr Ridley had withdrawn his application for a UK pension to prevent any loss of pensioners' fringe benefits to which they would soon become entitled.

The AAT was 'satisfied that [the applicant] and his wife intended not to accept United Kingdom pensions and thus to jeopardize their chances of obtaining pensioner benefits unless they would be substantially better off with those pensions than with pensioner benefits': Reasons for Decision, para. 10.

Any effect which non-acceptance of that pension had on the amount of the age pension was simply a consequence of, and not the purpose for, their refusal.

Formal decision

The determination under review was set aside and remitted to the Director-General for reconsideration with the direction that the applicant and his wife did not directly or indirectly deprive themselves of income in order to qualify for or obtain a pension at a higher rate than that for which they would have otherwise been eligible.

SZUTS & SZUTS and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. V82/288)

Decided: 27 April 1983 by J.O. Ballard.

Edward and Helen Szuts were age pensioners. The level of their pensions was fixed by taking account of income from a superannuation scheme. But the DSS refused to deduct from that income a loss which the couple had suffered on the business of letting two flats.

On review of that decision, the AAT referred to the definition of 'income' in s.18 of the *Social Security Act* –

> '. . . any personal earnings, moneys, valuable consideration or profits earned, derived or received by that person for his own use or benefit by any means from any source whatsoever, within or outside Australia . . .'

This was to be contrasted with the provisions of the *Income Tax Assessment Act* 1936, particularly s.51, which allowed deduction of losses and outgoings incurred in gaining the income.

The Tribunal quoted and adopted the words of an English judge in *Longsdon* v *Minister of Pensions and National Insurance* [1956] 1 All E.R. 83. In that case, the judge considered the argument that 'income' in the *National Insurance Act* 1946 (U.K.) means 'income after deduction of expenditure':

> It would have been a perfectly simple thing if that had been the intention of Parliament to have put in the word 'net' or some such word . . . on the contrary, Parliament has simply used the word 'income' without adding any words of limitation or qualification of any kind. I think I am bound to give that its natural and ordinary meaning: '. . . that which comes in'.

Accordingly, the losses on the flat letting could not be deducted from the superannuation income.

Formal decision

The AAT affirmed the decision under review.

Unemployment benefit: work test

PYE and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. Q82/19)

Decided: 29 April 1983 by J.B.K. Williams.

Gordon Pye applied to the DSS for unemployment benefit in June 1981. He lived in a Queensland country town and told the local CES that he was not prepared to accept work away from that town because his home address was the only possible contact point for his wife, from whom he had been separated for two years.

The DSS rejected his claim for unemployment benefit on the basis that he was not willing to undertake suitable work: s.107(1)(c)(i), *Social Security Act*.

On review, the AAT noted that Pye had lived in the town since 1976; that he had been away from the town 'quite frequently'; that he had 'no ties' with the town; that his work skills were more likely to be in demand 'in industrial areas than in a small rural community'; and that the prospect of his wife trying to contact him was 'becoming increasingly remote' and could be met by leaving a forwarding address: Reasons, p.5.

Accordingly, Pye's refusal to move showed an unwillingness to undertake suitable work.

Formal decision

The AAT affirmed the decision under review.

DARBY and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. N82/128)

Decided: 11 April 1983 by E. Smith.

Mark Darby attended an 'Outward Bound' course from 21 January to 15 February 1981. He had been in receipt of unemployment benefits from 5 November 1980 but his benefit was refused for the 26 days of the course. The SSAT recommended that he should receive benefit for that period as he satisfied s.107 of the Act. The Director-General's delegate rejected that recommendation and Darby appealed to the AAT.

The relevant part of s.107 is set out in *Martin* (in this issue).

The AAT had a good deal of evidence before it relating to the objectives of the Outward Bound course. Its Executive Director, Mr Richards, gave evidence that the essence of the course was to encourage 'self-reliance, confidence, and an understanding of self': Reasons for Decision, para. 5. It also had as one of its aims the increase of a person's employability.

Darby stated that his intention in undertaking the course was to qualify for work with Outward Bound, although he thought that it may improve his job prospects in other areas. In fact, Darby was later employed by Outward Bound after he completed a two year Diploma course majoring in recreation (which he commenced on 23 February 1981).

Meaning of 'unemployed'

In deciding whether Darby should be refus-

ed benefit under s.107(1)(c) the AAT referred to *Thomson* (1981) 38 ALR 624. The Federal Court in that case—

> . . . recognized the possibility that the activities being pursued by a person without work may be so fundamentally incompatible with the person's being regarded as unemployed that no further enquiry is necessary, but is the usual case (of which it thought Miss Thomson's case was an example), the solution will be arrived at 'by reference to all the circumstances, of which the activities being pursued for the time being by the applicant for benefit will be one'.

(Reasons for Decision, para. 24)

The Tribunal also cited the passage from *Thomson* which states that the various requirements of s.107(1)(c) are not divorced from each other. The Court there said—

> Thus, evidence that a person without paid work is seeking work may be relevant, not only to the question whether that person has taken reasonable steps to obtain work [s.107(1)(c)(ii)], but also to the question whether that person is willing to undertake paid work, and again to the question whether the person is, in the relevant sense, unemployed. Conversely, the fact that a person is a full-time student may often evidence not only that the person is not willing to undertake paid work but also that, in a relevant sense, the person is not unemployed. [(1981) 38 ALR at p.629.]

The AAT also mentioned that *Thomson's* case stressed the need to consider the applicant's intention at the relevant time.

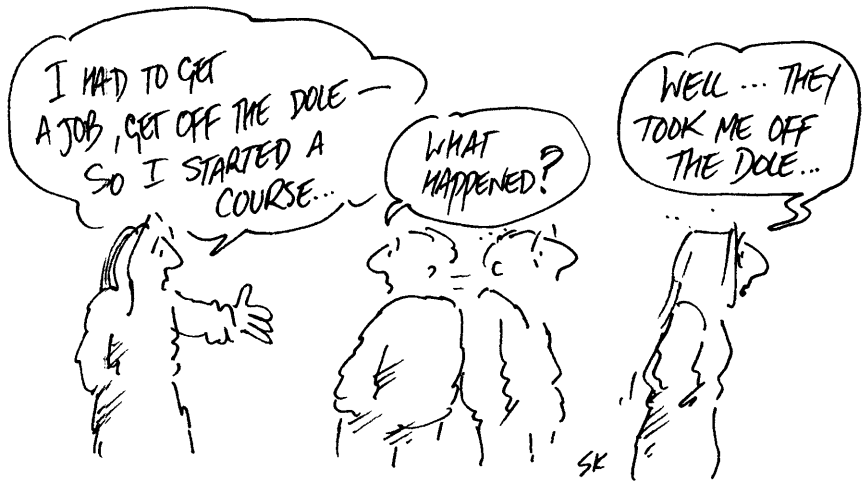
The AAT's assessment

In looking at Darby, the AAT could not accept that he would have interrupted his course to attend interviews for employment or otherwise seek employment. His intention appeared to be that he undertook the course to advance his prospects of finding employment at its completion and not as something to fill in while he looked for employment, unlike *Thomson's* case. It was clear to the Tribunal that—

> the course, and its completion, was the overriding consideration in the applicant's mind over the period 21 January–15 February 1981 and that he had a strong commitment to its completion.

(Reasons for Decision, para. 27)

The AAT concluded that, having regard



to the short duration of the course, the semi-isolation involved, Darby's commencement of a full-time course shortly after, and his propensity for outdoors training work, Darby did not satisfy any of the requirements of s.107(1)(c).

While the AAT said that 'what he did was directed to his ultimate benefit' and 'reflected considerable credit on him', it could not decide the case on the worth of his activities.

Formal decision

The Tribunal affirmed the decision under review.

MARTIN and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. T81/23)

Decided: 26 January 1983 by R. K. Todd.

Rodney Martin applied for unemployment benefit in March 1981. He had completed year 10 at the end of 1980 and unsuccessfully applied for an apprenticeship with various employers. From 28 April to 11 May 1981 Martin attended a 'block release' course in carpentry at the Hobart Technical College. The DSS decided that during that period he was not eligible to receive unemployment benefit.

Section 107(1) of the Act qualifies a person to receive unemployment benefit where

> (c) the person satisfies the Director-General that—
>
> (i) throughout the relevant period he was unemployed and was capable of undertaking, and willing to undertake, paid work that, in the opinion of the Director-General, was suitable to be undertaken by the person; and
>
> (ii) he had taken, during the relevant period, reasonable steps to obtain such work.

'Unemployed'

The AAT thought that *Thomson* (1981) 2 *SSR* 12 had clear application to the present case. There was no commitment to study as distinct from employment (evidence was given by the applicant that he would have dropped the course if offered a job) and Martin continued to seek employment. The fact that the course occupied his full-time attention for a fortnight did not affect the Tribunal's conclusion that he was 'unemployed' during that period.

Social utility

The AAT concluded by commenting on the manner in which its view of the Act accorded with the 'social utility' of the situation.

> It would be a distressing construction of the legislation if it were to be found that a young man of the simple candour and good intentions that were displayed by the present applicant were to be unable to receive unemployment benefit because he tried to better himself while continuing to try to obtain work, while someone otherwise in the same position but who remained indolent should receive such benefit.

(Reasons, para. 16)

Formal decision

The Tribunal set aside the decision under review.

Unemployment benefit: industrial action

GADD and DIRECTOR-GENERAL OF SOCIAL SECURITY (No. T82/53)

Decided: 13 May 1983 by E. Smith.

Kelvin Gadd was a fork-lift driver employed by the Electrolytic Zinc Company (EZ) and a member of the FEDFA union. On 21 September 1982, members of another union, the AWU, went on strike and, on 22 September, EZ stood down workers who were members of the FEDFA.

On 23 September, the FEDFA members decided to go on strike in support of the AWU and revoked this decision on 20 September. On 4 October, EZ purported to stand down, again, the FEDFA members because of the continuing industrial action by the AWU.

Gadd, and the other FEDFA members, remained stood down until 14 October, when the AWU ended its strike.

Meanwhile, Gadd had applied for unemployment benefit on 30 September 1982. The DSS rejected the application because, it said, his unemployment was due to industrial action by his union, the FEDFA. Gadd applied to the AAT for review of this decision.

The legislation

Section 107(4) of the *Social Security Act* provides that a person is not qualified to receive unemployment benefit unless

> (a) the person satisfies the Director-General that the person's unemployment during that period was not due to the person being, or having been, engaged in industrial action . . .

(Paragraph (b) deals with unemployment caused by the industrial action of *other* members of the person's trade union.)

'Industrial action' is defined in s.107(7) so as to include a strike.

The cause of the unemployment

The critical question before the AAT was whether Gadd was disqualified by s.107(4)(a) during the period 23–30 September—the period when his union had declared itself to be on strike. The AAT said