

news

Venables v Hornby – pensions victory for early retiree

The Inland Revenue is inherently suspicious of early retirement where employees, but in particular directors, carry on some form of reduced employment or office with the same employer. However, on 4 December 2003, the House of Lords reached its decision in the long-running saga of *Venables v. Hornby*. By a majority of four to one the appeal was allowed and the assessment to tax made against Mr Venables discharged.

Background

The somewhat unusual facts - a summary

- At age 53, Mr Venables switched from being a full-time executive director to a part-time unpaid non-executive director of the Company.
- He wished to receive his pension from the Company's pension scheme (in fact, his tax-free commutation was paid to him in 1994).
- The pension scheme rules allowed early retirement in "normal health", but bizarrely were silent where a member was in ill-health.

The main issues

A quick recap

- The main issue was whether or not a director who took on a reduced role as a non-executive director had "retired" for the purposes of the pension scheme.
- If Mr Venables had not "retired", were the payments made to him unauthorised and therefore subject to tax?

The case history

Inland Revenue

High Court

- The Inland Revenue Special Commissioners concluded that Mr Venables *had* retired but on the grounds of ill-health (so the early pension was not authorised by the scheme rules).
- The High Court judge held that Mr Venables was not barred from retiring early on pension despite his non-executive directorship.
- In addition, Mr Venables *had not* retired on grounds of ill-health.

NB: The House of Lords suggested, in case it affected other members, that the omission in the scheme rules regarding ill-health early retirement could be cured by looking at the intention of the trust.

The case history

The Court of Appeal

- The pendulum swung back the other way when, in September 2002, the Court of Appeal concluded that "retirement" meant cessation of "service" as an "employee".
- Crucially, this included service as a director (whether executive or not).
- It followed that Mr Venables had not retired and the payments made to him by the pension scheme were unauthorised.

The House of Lords

The key conclusions

- According to a majority of three Law Lords (two disagreed), Mr Venables was an employee of the Company.
- A contract of employment could exist even though:
 - there was no written agreement;
 - as a controlling shareholder, Mr Venables could prevent his own dismissal.
- In addition, the word "retire" under the scheme rules meant retirement as *either* an employee *or* a director (not needing termination of both).

Mr Venables an employee?

The "for"

And the "against" ...

- Lord Millet (giving the majority judgment) noted that payments to Mr Venables stopped when he became a non-executive director.
- Also, if Mr Venables only retired on ceasing to be a non-executive director, his final remuneration for pension calculation purposes could "quite possibly [be] nil".
- A minority of two Lords disagreed that there was a contract of employment. Nevertheless, one of them agreed that there had been retirement, as executive responsibilities and remuneration had ceased.

Conclusions

Essentially, all of the various decisions made in this case have hinged on the interpretation of the particular scheme rules and the meaning of words such as "retire" and "employee". The judgement separates continuing non-executive directorship from terminated employment.

This will not help an employee who merely becomes part-time, although the more flexible regime proposed from Spring 2005 is likely to do so. But in the run up to 2005, the House of Lords' decision should offer real hope to directors wishing to draw pension early.