



TC04025

Appeal number: TC/2013/08000

NATIONAL INSURANCE CONTRIBUTIONS – Whether additional payments made to qualify for increased state pension – Insufficient evidence of further payments – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

JAMES PLANT

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

As both parties consented and the Tribunal considered that it was able to determine the matter without a hearing this application was determined on 17 September 2014 on the papers without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009

DECISION

1. Mr James Plant appeals against a decision made by an officer of the Board of
5 HM Revenue and Customs (“HMRC”) under s 8 Social Security Contributions
(Transfer of Functions) Act 1992 on 15 October 2013 which, following a review,
varied the decision of 28 June 2013 that he had made the National Insurance
Contributions (“NIC”) as set out in the schedule appended to this decision.

2. The effect of HMRC’s decision was that, as a result of his contribution record,
10 which Mr Plant contends is incorrect, as it does not take account of NIC payments
made between 1972-73 and 1978-79, he is only entitled to a reduced, as opposed to a
standard, state pension.

3. As he was not in receipt of a full state pension Mr Plant, who now lives in
Australia, contacted the Department of Work and Pensions (“DWP”) in September
15 2012. On 25 January 2013 the DWP replied to Mr Plant enclosing a list of all
contributions shown on his national insurance record from 1963 to 1991. However, in
his response Mr Plant told the DWP that NIC payments had been omitted from some
of the periods shown the list as, other than a year of ill health and periods of
unemployment, he had worked continuously from when he left school at 15 in 1962
20 until he left for Australia in 1990.

4. Mr Plant’s file was then passed to HMRC for further investigation and on 27
February 2013 HMRC sent him a list of contributions shown on his record asking for
details of his employers during the periods in which no contributions were recorded.
However, despite obtaining information from Mr Plant (who was unable due to the
25 passage of time to produce any documentary evidence of his employment such as
payslips etc.) and a list of his employments from the DWP, HMRC were unable to
trace any further contributions.

5. Further correspondence and telephone calls between Mr Plant and HMRC were
also unable to resolve the differences between them.

6. Therefore, on 3 July 2013 HMRC wrote to Mr Plant enclosing the decision,
30 dated 28 June 2013, that he had paid NIC as shown in the attached schedule. On 2
September 2013 Mr Plant requested a review of that decision.

7. When undertaking that review the officer responsible traced a further 13 class 1
(employed persons) NIC payments that has not previously been recorded on Mr
35 Plant’s national insurance record. She therefore included these and while upholding
the original decision in principle, on 15 October 2013, made a new decision taking
account of these newly traced contributions.

8. On 20 November 2013 Mr Plant appealed to the Tribunal.

9. In his subsequent correspondence with the Tribunal Mr Plant confirmed that he is no longer in possession of any documentary evidence and suggests, in his email of 14 April 2014 that the Tribunal:

5 “... could consider requesting employers to tender relevant records to the Tribunal concerning my matter.”

10. However, in the adversarial system that applies to Tribunal (and Court) proceedings it is for the parties and not the Tribunal to make requests to third parties (such as former employers) to obtain and produce evidence in support of their case. I would also add that as this Tribunal, the Tax Chamber of the First-tier Tribunal, was
10 created by statute its jurisdiction is defined and limited by legislation and it does not extend to the power to override a statute or supervise the conduct of HMRC. This is clear from the decision, which is binding on me, of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TC).

11. Mr Plant also raises the issue of the burden of proof, for example in his letter of
15 30 July 2014 to the Tribunal Mr Plant states:

20 “My entitlement to a full pension is based on the deductions made from my wages from various employers who had the responsibility under law to remit monies to the appropriate authorities. The system for pension payments in the United Kingdom depends on employers remitting monies to the authorities as there is no mechanism for employees to check that these payments have been made. The responsibility under law for checking that remittances have been made rests with the authorities. Now HMRC, the relevant authority is attempting to place the burden of proof on me, a former employee, to
25 show that deductions were made and remittances were made by my employers.”

12. Although I sympathise with Mr Plant, who accepts that he does not have the documentary evidence to establish that NIC payments were made, I am afraid that an appeal such as this, against a decision made under s 8 Social Security Contributions (Transfer of Functions) Act 1992, Regulation 10 of the Social Security Contributions (Decisions and Appeals) Regulations 1999 provides:
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If on an appeal ... it appears to the Tribunal that the decision should be varied in a particular manner, the decision shall be varied in that manner, but otherwise shall stand good.

35 13. The long established effect of such a provision is that the onus lies on the Appellant to satisfy the Tribunal upon sufficient evidence that the decision appealed against was erroneous (eg *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657.

40 14. Given that it was possible to trace 13 contributions not previously identified during the course of the review I have considered whether, relying on the unreliability of HMRC’s records, it could be inferred that contributions had been made in respect of all of missing periods.

15. However, although such an approach has some attraction it does not, in my judgment, amount to sufficient evidence to establish that NIC payments have been made.

5 16. Therefore, in the absence of evidence of additional NIC payments having been made by Mr Plant between 1975-76 and 1996-97 I am left with no alternative but to dismiss his appeal

10 17. This document contains full findings of fact and reasons for the 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.

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**JOHN BROOKS
TRIBUNAL JUDGE**

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RELEASE DATE: 23 September 2014

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Appendix

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**James Plant
Schedule of National Insurance Contributions**

Contribution/Tax Year	Class 1	Class 2	Class 3
1962-63	9	0	0
1963-64	50	0	0
1964-65	47	0	0
1965-66	53	0	0
1966-67	49	0	0
1967-68	41	0	0
1968-69	42	0	0
1969-70	24	0	0
1970-71	25	0	0
1971-72	13	0	0
1972-73	0	0	0
1973-74	0	14	0
1974-75	0	0	0
1975-76	0	0	0
1976-77	0	0	0
1977-78	0	0	0
1978-79	0	0	0
1979-80	69.02	0	0
1980-81	243.00	0	0
1981-82	282.12	0	0
1982-83	482.16	0	0
1983-84	550.04	0	0
1984-85	558.07	0	0
1985-86	795.00	0	0
1986-87	912.64	0	0
1987-88	819.00	0	0
1988-89	1086.23	0	0
1989-90	918.55	0	0
1990-91	66.60	0	0