[2016] UKFTT 0807 (TC)

TC05532

Appeal number: TC/2016/02546

INCOME TAX – Taxpayer employed in drainage and sewage industry - Claimed deduction of expenses for laundering work clothes - Section 336 ITEPA 2003 - Evidential inadequacy - Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR MATTHEW MULHERAN **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL
MISS SUSAN STOTT FCA CTA

Sitting in public at Liverpool Civil and Family Court, 35 Vernon Street, Liverpool L2 2BX on 8 September 2016

Dr J D Banks B.A. LL.M PhD, a Representative, for the Appellant

Mrs Helen Roberts, an Officer of HMRC, for the Respondents

DECISION

1. The Appellant appeals against a Notice of Coding, issued on 19 January 2016, for the year ending 5 April 2017. He seeks the reinstatement of tax relief (through inclusion in his coding) for alleged expenses of employment amounting to £2,200.

2. The basis of Mr Mulheran's appeal is put in his Notice of Appeal in this way:

> *"I work in the drainage and sewage industry. The work involves exposure to a range of industrial diseases including Leptospirosis and Hepatitis B and the expenses of employment relate to health and hygiene costs for cleansing and sanitising work clothes on a daily basis as permitted under section 336 of the Income Tax (Earnings and Pensions) Act 2003...."*

3. Mr Mulheran did not personally attend the hearing of his appeal before us. We were not given any reason for his absence. Nor were we asked to adjourn in order to allow him to attend. Accordingly, and without wishing to labour the obvious, there was no chance to ask him any questions to confirm or clarify what he had said in his Grounds of Appeal, signed by him on 6 May 2016, his (unsigned) 'Statement of Facts' dated 9 November 2015, or in the several letters which he had written.

4. Dr Banks appeared on Mr Mulheran's behalf. There appeared to be some procedural irregularity in that the bundle contained an authorisation for Dr Banks (i) to act as Mr Mulheran's *legal* representative (as opposed to simply his representative) and (ii) in connection with another appeal, and not this one. We nonetheless decided to hear Dr Banks, who confirmed to us that he was not authorised to conduct reserved legal activities and was not otherwise a legal representative within the meaning of Rule 11(7) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/283). At the end of the hearing, we made an order to ensure that the position was regularised, in accordance with Rule 11(2). That order was complied with when Mr Mulheran filed a Notice of Acting nominating Dr Banks as his representative.

5. The Appellant bears the burden of establishing, to the requisite standard (namely the balance of probabilities) that the Notice of Coding is wrong and that the expenses are allowable.

6. Section 336(1) ITEPA 2003 reads as follows:

> "**Deductions for expenses: the general rule**
>
> (1) The general rule is that a deduction from earnings is allowed for an amount if—
>
> (a) the employee is obliged to incur and pay it as holder of the employment, and
>
> (b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment."

7. In Mr Mulheran's absence, the best evidence available to us is the documentary evidence in the bundle. Dr Banks appeared as a representative, and, whilst he made submissions, which we have carefully considered, we decline to treat those as admissible evidence (that is, as facts going to discharging the burden of proof) on Mr Mulheran's behalf.

8. Whilst employment expenses were claimed by the appellant in 2010/11 (£2460) 2011/12 (£2760) and 2011/12 (£2880) we do not consider that we can derive any real assistance from them in this appeal. Each of those claims was made subject to an enquiry under section 9A TMA 1970, which enquiries were all cancelled on 6 January 2016 on the basis that HMRC acknowledged that the enquiries had been opened outside the relevant enquiry windows. Accordingly, the figures were allowed although we take note that HMRC had sought, but unsuccessfully, to challenge them.

9. All that can be realistically be said is that those figures are all considerably in excess of the fixed sum - £60 - which HMRC will accept, without additional evidence (and by way of a concession to the otherwise strict terms imposed by section 336 of ITEPA 2003) as representing the average cost of upkeep and replacement of uniforms: see Employment Income Manual EIM 32485 - 'Other expenses: clothing: the cost of upkeep and replacement of uniform and protective clothing: laundry costs'. HMRC is entitled to make this concession by way of the combined operation of ITEPA 2003 sections 366 and 367.

10. The 2014/15 Notice of Coding included expenses of £2350.

11. A 2014/15 self-assessment tax return was filed on 17 September 2015. It only claimed employment expenses of £60. This is obviously a considerable reduction from the expenses which had claimed in previous years but is in line with the concession already referred to. Several obvious questions arise. But the only explanation came from Dr Banks, which was that *'Mr Mulheran was under the impression that this was all he was going to get, regardless of the circumstances'*. However, for the reason already explained, and also in the absence of Mr Mulheran, we cannot give any real weight to that explanation.

12. Mr Mulheran has not put forward any evidence to explain or impugn his own claimed expenses for 2014/15 of £60. On the face of it, the plain inference must be that Mr Mulheran, in making that claim, was not advancing any claim to expenses of more than £60 in 2014/15.

13. The 2015/16 Notice of Coding initially included expenses of £2350. However, that claim was withdrawn, and no return was submitted for 2015/16. The 2015/16 coding was amended, and a potential underpayment was calculated.

14. In relation to 2016/17 Mr Mulheran has not advanced any admissible evidence, as in our view he could have done, as to the amount of expenses actually incurred so as to satisfy HMRC that a sum of more than £60 would be properly allowable.

15. Put simply, he has failed to discharge the evidential burden placed upon him in relation to that claim, and hence in relation to his appeal. The Tribunal's direction

dated 3 June 2016 gave him the opportunity to provide any documents which he intended to rely on at the hearing. He did not take advantage of that opportunity.

16. Even if the explanation advanced by Dr Banks - that it was neither practical nor possible for Mr Mulheran to provide evidence of his expenditure on cleaning clothes - were admissible evidence, we would not accept it. It is inherently implausible that, if the expenses were incurred, no evidence would ever have been available. If Mr Mulhearn were indeed washing his working clothes at home, several times a week, then he would, in the ordinary course of things, be incurring demonstrable expense: for example, in terms of detergent. As the appellant himself says in his own letter of 17 September 2015, which puts forward a case that he was washing clothes at home, rather than at work: *'You should also note that for washing domestically, given the excessive usage, and wear and tear on a domestic washing machine, the figure would be the same, as a percentage of domestic utility and shopping bills'*.

17. It seems to us that, in the ordinary course of things, any such purchases would be reflected on shopping receipts. If the expense were to be claimed, then those receipts would have to be kept since they would be needed to allow the relevant figures to be extracted and the claim for expenses to be made.

18. As such, we must reject Mr Mulheran's assertion, in his 'Statement of Facts' that *'it is simply not possible for anyone to provide individual receipts for the type of expenses that are being claimed here'*.

19. The way forward for Mr Mulheran was clear. It was set out, in a simple and comprehensible way, in HMRC's letter of 5 October 2015. If Mr Mulheran wanted to claim more than £60, then he would need to send HMRC 'evidence of the actual amounts paid by [him]'.

20. Instead of choosing to provide admissible evidence as to his expenditure, he instead simply invites the Tribunal to accept his claim, in effect on his own 'say-so'.

21. We decline to do so. Likewise, we decline to express any view on Dr Banks' repeated assertions that HMRC's disallowance of this claim was part of a 'crusade' by HMRC to reduce expenses to a 'conjured up' figure of £60, except to note that the language of Mr Mulheran's 'Statement of Facts', if this document was indeed Mr Mulheran's own composition (since he did not attend, he could not be asked) was decidedly polemical on the subject of allowable expenses.

22. Finally, and for sake of completeness, we note that Mr Mulheran positively asserted, in his letter of 12 October 2015, that '*my employer did not provide any laundry facilities, and ... there are no payments or vouchers to cover laundry costs'*. We also note that HMRC in its letter of 23 October 2015 sought to challenge that assertion by reliance on a very short note of two phone calls, made to representatives of Mr Mulheran's employers, which ostensibly record their answers that laundry facilities are provided on site. If the point was genuinely to be taken by either party, then the state of the evidence, for both parties, is so inadequate that it is perhaps

fortunate, given our conclusions, that we do not need to make any findings in this regard.

23. For the above reasons, the appeal is dismissed and the Notice of Coding issued on 18 February 2016 stands.

24. 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.

Dr CHRISTOPHER McNALL
TRIBUNAL JUDGE

RELEASE DATE: 29 NOVEMBER 2016