



**TC04857**

Appeal number: TC/2015/03617

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SCARLET BAND BUS AND COACH LIMITED**                      **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE SCOTT**  
**MEMBER: MICHAEL ATKINSON**

**Sitting in public at Darlington Magistrates Court on 29 January 2016**

**Mr Graeme Torrance for the Appellant**

**Mrs Linda Ramsay, Officer of HMRC, for the First Respondents and  
Mr Michael Peacock, in person.**

## DECISION

1. This is an appeal by Scarlet Band Bus and Coach Limited (“the appellant”) against the decision issued by the first respondent (“HMRC”) on 26 September 2014 under Section 8 of the Social Security Contributions (Transfer of Function etc) Act 1999.

2. That appeal was lodged with the Tribunal on 1 June 2015 and HMRC do not object to the appeal being admitted out of time. Accordingly the appeal is admitted late.

3. On 25 August 2015 the Tribunal admitted the second respondent (“Mr Peacock”) as an additional party to the proceedings.

### **The disputed decision**

4. HMRC’s decision was to the effect that Mr Peacock is entitled to statutory sick pay (SSP) from the appellant for the period of incapacity from 29 March 2014 to 7 May 2014 and the relevant amount is £451.78.

5. HMRC argued that Mr Peacock was incapable for work for the period 29 March 2014 to 7 May 2014 because of his diabetes which, in the language of the legislation, is a “bodily disablement”. HMRC argue that having considered the certificate from Mr Peacock’s GP and having referred Mr Peacock to Medical Services, who had confirmed that Mr Peacock was unable to perform his normal duties due to diabetes, the reason for the inability to work is illness and therefore SSP is payable. In summary Mr Peacock has been examined by his GP and an independent medical examination and they both determined that he is incapable of carrying out his duties as a bus driver due to a bodily disablement.

6. Mr Torrance argued that the reason that Mr Peacock could not work was quite simply because he did not have a PSV licence. Mr Peacock has had the same condition during the whole period of his employment. That condition is not an illness. The fitness for work certificate states that the reason for the absence is because of the revocation of the driving licence not because of illness.

### **Discussion**

7. We do not set out at length the relevant legislation. In summary in terms of the Act, employers are liable to pay SSP to employees who satisfy all the relevant conditions. There is no dispute between the parties as to most of the conditions or the amount of money at stake. The only condition which is in issue is whether or not Mr Peacock was unfit for work due to incapacity or illness.

8. For SSP purposes a day of incapacity for work means a day on which the employee is, or deemed to be, incapable by reason of some specific disease or bodily

or mental disablement of doing work which can reasonably be expected to do under his contract.

9. Mr Peacock has been employed as a PSV driver with the appellant since September 2011. At all relevant times Mr Peacock has had diabetes. In  
5 February 2014, his GP advised that it was now time to manage that diabetes utilising insulin rather than reliance on diet. Obviously Mr Peacock took that advice. He also followed his GP's instructions to contact the DVLA to advise them of that change in circumstances. It is for that reason that the GP submitted a statement of fitness for work which read: "Diabetic on insulin awaiting re-assessment by DVLA".

10. Mr Peacock received a letter from DVLA on 28 March 2014 advising him that his PSV licence had been revoked because DVLA required evidence spanning a period of three months confirming that Mr Peacock was stable on insulin. He now has a PSV licence because that information was duly provided.

### **Decision**

11. Although the argument advanced by Mr Torrance was understandable and indeed ingenious, as we explained to all of the parties, we have no hesitation in finding that the only reason that Mr Peacock was unable to work was because he had to take insulin for his diabetes and DVLA regulations required a short period of assessment. Accordingly, Mr Peacock was incapacitated by reason of a bodily  
20 disablement and the appellant is required to make payment of the SSP in the sum of £451.78.

12. For all these reasons the appeal is dismissed.

13. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days  
25 of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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  
30 notice.

35 **TRIBUNAL JUDGE**  
**RELEASE DATE: 2 FEBRUARY 2016**