Dr David Jones (TC4643)

Dr Jones was a consultant anaesthetist. He lived some 20 miles from the Royal Gwent Hospital in Newport, where he normally worked as an NHS employee. He also had a private practice, mainly at the Royal Gwent and another Newport hospital, St Joseph's. Occasionally he practised at three other hospitals, St Woolos, Llanfrechfa Grange and Caerphilly, in and around Newport; however he never travelled directly between home and these hospitals, only to and from one of the others. HMRC accepted that travel between hospitals when he was working at both in his private practice was deductible.

Unlike Dr Samadian, who used to attend the two hospitals where he worked on fixed days of the week and rented consulting rooms by the hour, Dr Jones had no consulting rooms at the hospitals, and indeed no direct connection with them at all. He was booked to be the anaesthetist for a particular operation by one of a large number of surgeons with whom he worked. The surgeon who booked him dealt with the hospital arrangements. Dr Jones had no regular pattern of work; he might do two operations in the same day, on consecutive days or, on one occasion, 27 days apart.

His counsel submitted that these were significant differences between the facts in his case and those in Samadian, and that he should therefore be able to claim his travel expenses from home or his employment and the hospitals where he was working privately. It should be said that HMRC accepted there was no attempt to claim travel to the Royal Gwent for his NHS employment.

However, the tribunal disagreed. It took as its starting point a statement from Mr Justice Sales in the Upper Tribunal judgment in Samadian that travel expenses between a home and a place of business were allowable in exceptional circumstances only, even when the home itself was also a place of business — for example, hypothetically realising once at the hospital that the patient’s notes had been left at home, and returning to collect them. This is on the basis that travel between home and workplace will always reflect, in part, the decision to live in a different location from the workplace.

The tribunal in Dr Jones's case did not, therefore, consider the differences relevant. Neither the fact that he did not hire consulting rooms, even on a temporary “name on the door” basis, nor that he was a subcontractor to a surgeon rather than working directly for the patients he was treating, make any difference.

The tribunal accepted, as was also the case in Samadian, that Dr Jones had a “place of business” at his home. It expressed the test of deductibility as whether “there was a pattern of regular and predictable attendance to carry out significant professional
functions as more than just a visitor”. This would be sufficient to distinguish the Court of Appeal decision in *Horton v Young* 46 TC 60 when a self-employed bricklayer was held to be an itinerant worker operating from his home and therefore could claim travel expenses to the sites at which he worked during the year.

Applying this test, the tribunal held that the number of journeys to the two hospitals from home in the year — about 100 round trips to one and 50 to the other — were sufficient:

“The simple number of journeys in the space of a year to just two locations strongly indicates a pattern of regular and predictable attendance. The fact there is a range in the number of days between operations across the year does not, in our view, disturb the pattern, particularly as the length and timing of the longer ‘gaps’ are consistent with the taking of holidays in the normal course of professional life.”

Dr S Jain (TC4788)

The taxpayer, a consultant orthopaedic surgeon, was employed by his local NHS trust in Kent and had a private practice at another hospital. He also provided medical reports for litigation purposes under contract for several agencies. He had to visit clients to prepare the reports and carried out these consultations once a month at The Spire in Washington, Tyne and Wear, and the BMI Manor in Bedford.

He claimed travel and subsistence expenses against his earnings from the report work and accounted for the income using the receipts basis. HMRC refused the expenses claim and said the earnings should be reported by reference to the date when an invoice was issued rather than the date payment was received. This was because the payment was earned when the taxpayer completed his task.

The taxpayer appealed.

Looking first at the accounting issue, the First-tier Tribunal said there were two occasions when the taxpayer could be said to have completed the preparation of each report. For those where no further questions were raised, this was the date when the invoice was submitted; for those where further questions were raised, it was the date the supplementary invoice was submitted. It followed that these were the dates when the taxpayer's earnings should be accounted for.

On travel expenses, the tribunal found that the taxpayer's home was a place of business for the medical report business, but The Spire and the BMI Manor were also his places of business. Therefore, the costs of travel between them and his home, even though that too was a place of business, were not incurred wholly and exclusively for the purposes of the business and were not deductible under ITTOIA 2005, s 34.

The subsistence costs were also not deductible because they had the dual purpose of providing nourishment.
The taxpayer's appeal was dismissed.

Summary

Key Points

- Dr David Jones follows the decision in *Samadian* in denying travel expenses between home and private hospitals.

- Lack of regularity and no hire of a consulting room were outweighed by frequency of visits.

- Still hard to reconcile these decisions with *Horton v Young*, especially on importance of “base of business”.

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