

CHAPTER 1

Unemployment Benefit

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Unemployment benefit

Part 1: Entitlement

Section 14(1)(a) of the Social Security Act 1975 (hereinafter in Chapter 1 referred to as 'the Act'). (For meaning of 'Day of interruption of employment' see section 17(1)(c)).

1 Days which have been held to be days of employment

- i A woman undergoing a 3-day test for employment as a home help received no pay for those days and was held to unemployed while undergoing the test. CWU 47/49
- ii A man undergoing tuition to become a bus driver during which he received no remuneration was held not be employed on any of the 4 days in question. CU 162/50
- iii A music teacher at a college was paid according to the number of hours he worked during the term-time but received no payment during the holidays. Held that he was unemployed during the holidays. R(U) 20/51
- iv An applicant for employment as an insurance agent who was on a course of study during which he received no remuneration from the company by which he hoped to be employed (nor was there any undertaking that he would be so employed) was held to be unemployed while on the course. R(U) 30/51
- v A civil servant was suspended from his employment pending the investigation of alleged irregularities. He was later dismissed from the date of his suspension with no arrears of pay, He was held to have been employed during the period of suspension. See also R(U) 33/56 and 1.1.2 xv *below*. R(U) 28/52
- vi A man give up his employment as a bus conductor in order to help his wife in her seaside boarding-house during the summer season, at the end of which he claimed, and was paid, unemployment benefit. He again helped his wife during the Christmas holiday and on 30 December made a further claim for unemployment benefit which, it was held, was payable to him. See paragraphs 10-11 approving the test enunciated in Decision CU 235/50 (not reported). R(U) 8/55
- vii The claimant was a student at a teachers' training college and the question which fell to be decided was whether unemployment benefit was payable to him during the Easter vacation to be reduced in rate or extinguished under the National Insurance (Overlapping Benefits) Regulations 1948, as amended, by reason of the training grants which were paid to him by a local education authority for which the authority was entitled to reimbursement from a Government department. It was held that unemployment benefit was payable to the claimant at the full weekly rate and that the grants did not come within the definition of 'training allowance' in the National Insurance (Overlapping Benefits) Regulations. At paragraph 9 the Commissioner said that it was an anomaly that, 'when public funds are in either case the source from which payment is made, there should be different result according to whether the payer is the Ministry of Education or the local education authority. Such, however, appears to be the present position under the relevant provisions. It cannot be said, with justice to the claimant, that the allowance is payable by a Government department to him. The Government department....places the money at the disposal of the local education authority, who may or may not decide to pay it in a particular person. The grant is payable to the claimant by the local education authority and not by the Government department'. R(U) 38/56

- R(U) 13/58 viii After completion of his apprenticeship a man took a full-time training course during which, and for some time thereafter, his former employers paid him the monthly sum of £14. The payment was held to be a gratuitous payment and that he was entitled to unemployment benefit as the course had finished.
- R(U) 4/63 ix When employers, as an ext of grace, paid an amount of half wages to factor workers for a few days during a breakdown of plant, those days were held to be days of unemployment for the persons concerned since the payment was not wages, notwithstanding the amount of it was fixed by reference to wages, nor was it was retaining fee. It was an ext of grace on the part of the employers with no obligations attached. See also 1.12xv *below*.
- R(U) 3/67 x A claimant was held to be unemployed while attending a course lasting a week during which he received no remuneration. The course was run by a firm in London and at the end of it he became employed by the firm under a contract of service. Decision R(U) 4/59, 1.1.2v *below*, not followed.
- R(U) 6/68 xi A university hostel cleaner was 'laid off' during the vacation but resumed work when the next term began and was then paid an additional amount, described as a retaining fee, for the week of the vacation. It was held that the amount she was paid was not wages or reward for her service during these 4 week; nor was it paid in consideration of the claimant's agreeing to be available to work if required. It was paid as an inducement to her to resume her employment when the next term began and the days in respect of which the payment was made were held to be days of unemployment. Compare 1.1.2ii *below*.

2 Days which have been held not to be days of unemployment

Under regulation 7(1)(b) of the Unemployment, Sickness and Invalidity Benefit Regulations 1983 a day falls not to be treated as a day of unemployment if it is a day in respect of which a person is disqualified for receiving unemployment benefit; and see R(U) 3/75, paragraph 9.

- R(U) 24/53 i A professional footballers who was bound by his contract to give his services whenever they might be required was held to be not unemployed on any week day. See also R(U) 10/72/
- R(U) 38/52 ii A servant at a school was not required to do any work during the school holidays, but was later given 10s. for each of the weeks of the holiday period. Held she was not unemployed during those week.s Compare R(U) 6/68, 1.1.xi *above*.
- R(U) 7/54 iii A temporary school teacher who was engaged on a continuous contract from August to June and had a salary for that period which was equal to the annual salary of a permanent teacher was held to be not unemployed during a period of customary holiday although he was not in receipt of any payment during the holiday. See also 1.146iv *below*.
- R(U) 8/54 iv A ship's musician signed an agreement on the last day of the voyage undertaking to rejoin the ship when she next sailed. On rejoining the ship he was to receive half-pay for the intervening period. He was held not to have been unemployed during that period.
- R(U) 4/59 v A man undergoing training to become a bus conductor was paid a subsistence allowance but no wages. It was held that he was not unemployed during the period of training. See paragraphs 6-9 for a discussion of similar cases and see also R(U) 3/67, in which the present decision was criticised.

Unemployment benefit: entitlement

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- vi A salesman who was paid solely by commissioner and chose not to work for 5 days at Christmas-time was held not to be unemployed on any of those days. R(U) 11/60
- vii When employers have agreed to pay, and do in fact pay, a certain wage for a week, whether an employee works or not, no day in that week is a day of unemployment for that employee. See also 1.13.3viii *below*. R(U) 11/64
- viii A man entered into a formal contract of partnership with his wife for the carrying on of an hotel business than he could afford without interfering with his duties in his occupation of a ship's purser. He claimed unemployment benefit when he was not so employed but was held not to be unemployed since he was, in law and in fact, a partner in the hotel business. R(U) 22/64
- ix The claimant was guaranteed employment for 5 days a week or a payment equivalent to his time-rate for 40 hours provided he held himself available for his usual or for reasonable alternative work. Due to the miners' strike electric power was available on Wednesdays, Fridays and Saturdays only. The claimant worked only on two Wednesdays and on two Fridays, for which he was paid for a total of 16 hours each week. His claim for unemployment benefit for the other days in the week (other than Saturday) was disallowed by a Tribunal of Commissioners holding that the claimant's terms of employment could be varied or abrogated only by mutual agreement (which there was not) and the guarantee therefore continued to operate. The days Monday, Tuesday and Thursday in the 2 weeks in question were not, therefore, days of employment. See also R(U) 11/73, but compare R(U) 1/75. R(U) 10/73 (T)
- x The claimant was working for a period under an expired contract of employment. His salary was paid for 3 months, but there was then default on the part of the employers and he made a claim for unemployment benefit. Held, the days to which the claimant related were not days of unemployment and it accordingly failed. See in particular paragraphs 4-5. R(U) 5/75
- xi The claimant was suspended from his employment for 2 days and made a claim for unemployment benefit. His employment was covered by a guarantee agreement for 5 days a week or, if not work was available, to time-rate for 40 hours. The days to which the claim related were held not to be days of unemployment for the claimant. See paragraphs 3 et seq., R(U) 11/64, and R(U) 9/83, 1.1.2xi *below*. R(U) 1/76
- xii A man made a claim for unemployment benefit for days on which he had attended meetings of a local authority, of which he was an elected member. In respect of the days in question he received an 'attendance allowance' of £5 or £10 depending upon the duration of the meeting. His attendances at the meetings occupied over 21 hours a week, mainly in the evenings. It was held that on each of the days in question he was engaged to a significant extent in employment and was not unemployed. See paragraph 4 where the relationship between sections 14(1) and 17(1) of the Act is discussed. And see also 1.12.3vii and R(U) 5/83 *below*. R(U) 6/77
- xiii A roustabout worked a 28 day cycle on an oil rig, 15 days on and 13 off. As regards unemployment benefit it was held that the days ashore were periods of non-employment and the claimant was disentitled to benefit by virtue of section 17(1)(b) Social Security Act 1975. There was no day in the week for which benefit was claimed on which he would normally have worked and the escape provision in section 17(1)(b) did not apply. R(U) 10/80 referred to. R(U) 6/81
- xiv The claimant was a non-patrial in the terms of section 2(6) of the Immigration Act 1971. He had been permitted to enter the United Kingdom and had been granted a work permit enabling him to accept employment as an assistant research worker at a university. The permit was valid only for the particular employment for which it was issued and the claimant was in no circumstances authorised to take other employment without the prior permission of the Department of Employment. When the claimant's university employment ended and his work permit expired he claimed R(U) 1/82 (T)

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unemployment benefit. A Tribunal of Commissioners held that to be available for employment a claimant must not only be ready and willing to take up employment but he must also be able to do so in accordance with the legislation of the United Kingdom (paragraph 17); and that, following termination of employment and the expiry of his work permit, the claimant was not available to be employed in employed earner's employment within the meaning of section 17(1)(a)(i) of the Act (days of unemployment) (paragraph 17). R(U) 1/53, R(U) 1/55 and R(U) 13/57 followed. Commissioner's File CU 179/1980, *obiter*, not followed. See also R(U) 1/85.

- R(U) 9/83 xv A claimant for unemployment benefit had been suspended from his employment pending conclusion of criminal proceedings against him. During the period of suspension he was given full pay on his undertaking to repay it if he was convicted. Immediately upon the suspension, he registered for employment and was in fact and at law available for it. The question arose whether the days of suspension were days of interruption of employment for the purposes of entitlement to unemployment benefit. The Commissioner held that, although the claimant was available for employment within the meaning of s. 17(1)(a) of the Social Security Act 1975, as he was currently paid his remuneration during the period of suspension, that period was not a period of interruption of employment, notwithstanding that in certain circumstances he might subsequently be required to repay the remuneration paid. R(U) 1/76, 1.1.2xi *above* and 1.13.3x *below*, referred to; R(U) 28/52, 1.1.1v *above*; R(U) 33/56; and R(U) 4/63, 1.1.ix *above*, distinguished.
- R(U) 3/84 (T) xvi A professional part-time footballer was bound by the terms of a written contract to play for his club and to attend for training as and when required. He in fact played in matches for the club on Saturdays and trained on Tuesdays and Thursdays. Occasionally he played in matches during the week. Under the contract he was entitled to be paid and he was paid £30 a week during the playing season, plus certain bonuses contingent on the team's results. The main question in issue was whether, for the purposes of entitlement to unemployment benefit, the £30 a week was in respect of the whole of each week during the playing season, or only in respect of those days on which the footballer played or trained under his contract. A Tribunal of Commissioners held by a majority that the footballer's basic wage of £30 was earned in respect of a week and not in respect of any day in a week and accordingly, as his daily earnings on average exceeded the prescribed limits, no day in the playing season could be treated as a day of unemployment (paragraph 30). Decisions R(U) 24/53, R(U) 23/57 and R(U) 10/72 were affirmed, but R(U) 10/57 was held to have been wrongly decided and R(U) 8/59 was distinguished.
- R(U) 1/88 (T) xvii A school cleaner was dismissed unfairly and awarded compensation by an Industrial Tribunal. However the employer went into voluntary liquidation and there was no prospect of the award being paid. Claims for unemployment benefit were disallowed under r.7(1)(k) of the SS (U,S and IVB) Regs (day not treated as a day of unemployment where there is payable an amount awarded under s.68(2) of the Employment Protection (Consolidation) Act 1978, for unfair dismissal). A Tribunal of Commissioners held that 'payable' in r.7(1)(k) means 'due and owing' and that a sum is payable within the meaning of that regulation as soon as a statutory right to payment arises i.e. as soon as the award is made in the claimant's favour. The amount awarded to the claimant could not be held not to be payable to her simply because there was no prospect of it being actually paid. The decision of the Tribunal of Commissioners was upheld by the Court of Appeal (*Morton v The Chief Adjudication Officer*). See also R(U) 4/82, 1.10xii *above*. For a further synopsis of this decision see 18.6.2xi *below*.

3 Period of entitlement

i A claimant lost his employment because of his employer's insolvency and did not receive the 8 weeks wages in lieu of notice to which he was entitled. Unemployment benefit and earnings related supplement were paid for the respective maximum periods allowed by statute. Subsequently the claimant received a payment from the redundancy fund under section 122 of the Employment Protection (Consolidation) Act 1978 representing 8 weeks wages less the unemployment benefit and earnings related supplement paid in the notice period. A Tribunal of Commissioners held that 'recovery' in regulation 13(4) and (6) of the Social Security (General Benefit) Regulations 1974 means recovery for the benefit of the National Insurance Fund and that in the absence of a statutory provision enabling payment to be made out of the Redundancy Fund into the National Insurance Fund there was no recovery of unemployment benefit and earnings related supplement and consequently the terminal dates for payment of those benefits cannot be extended. See also R(U) 7/81. Followed and applied in R(U) 3/85 (T) at 17.3.15i *below* and effect of *Westwood v. The Secretary of State for Employment* explained. R(U) 6/80 (T)

ii A man lost his employment when his employer's business closed down. He was paid unemployment benefit (UB) with earnings related supplement (ERS). He had been given 12 weeks notice of termination of his employment, but did not receive it. Accordingly, albeit some time later, he received a payment out of the Redundancy Fund under section 122 of the Employment Protection (Consolidation) Act 1978. The amount of the payment was calculated upon the basis of his estimated wages for those 12 weeks, reduced by the amount of UB and ERS which he had received for them. As a result it was decided that those weeks could not be treated as weeks of unemployment for the purposes of entitlement to UB or ERS and that accordingly there had been an overpayment of both (although repayment was not required), but that those weeks could not be excluded from the calculation of the period of 156 days of unemployment at the expiry of which the claimant's entitlement to ERS would be exhausted. On appeal the local tribunal, by a majority, declined to follow the principles enunciated by a Tribunal of Commissioners in R(U) 6/80 *above* and found that the weeks in respect of which the redundancy payment was made should be excluded from the calculation of the period of 156 days. A Tribunal of Commissioners held that the local tribunal was wrong in not following the decision R(U) 6/80: it was binding on the tribunal and that those weeks should not be excluded from the calculation of the above period [*for the Commissioners' ruling on the notification of the insurance officer's decision in this case (which was given from the computer centre of the Department of Health and Social Security) and the practices followed in relation to such decisions, see 17.5.3i below*]. Followed and applied in R(U) 3/85 (T) at 17.3.15i *below* and effect of *Westwood v. Secretary of State for Employment* explained. Followed also in R(P) 1/85. R(U) 7/81 (T)

4 Requalification after exhaustion of right to unemployment benefit

i Claimant exhausted his rights to unemployment benefit on 16.7.80 and reclaimed it on 8.12.80. In the interim he was contracted to work for 5¼ hours a week as a technical college lecturer. He contended that the hours spent on preparatory work should be added to the actual hours of lecturing and that he had worked the requisite 16 hours in each of the 13 or more weeks since 16.7.80 needed to requalify for benefit. The Commissioner held that the non-contracted hours spent in preparation for lecturers did not count towards the 16 or more hours in each of the 13 weeks required to satisfy the requalification conditions in section 18(2)(b) of the Act (paragraphs 6 and 8) and that unemployment benefit was not payable. See also R(U) 5/88, 1.1.4 *iv below*. R(U) 3/82

- R(U) 6/83 ii It is not possible for a claimant to avoid having to requalify for unemployment benefit at the end of a period of 312 days interruption of employment by the simple device of not claiming the benefit, and so disentitling himself to it, for a period in excess of 8 weeks beginning towards the end of the 312 day period. No matter what reason the claimant may give for having failed to claim the benefit (e.g. that he was on holiday and not available for employment), it is for the insurance officer to decide on the evidence as a whole whether in fact, by failing to make or prosecute a claim, the claimant was in reality endeavouring to escape the need to requalify for benefit. The onus of proving that he was not is on the claimant. (Paragraphs 11 and 12.) The approach suggested in paragraph 12 of this decision was disapproved by a Tribunal of Commissioners in R(U) 7/86 (1.1.4 iii *below*).
- R(U) 7/86 (T) iii A claimant received unemployment benefit for 252 days during a period of interruption of employment. He then ceased claiming for more than 8 weeks, a period which was spent either at home or in different parts of the country attending dog shows, visiting friends and having a holiday. It was subsequently decided by the adjudication officer, and confirmed by the appeal tribunal, that he was to be treated as entitled to benefit for the purpose of section 79(4) (now re-enacted as section 18(4)) of the Social Security Act 1975 for part of that period by reason of regulation 16 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983. Before a Tribunal of Commissioners it was argued for the adjudication officer that the above section and regulation should be construed so that the provisions extended to the cases where a person chose not to make himself available for employment. The Commissioners rejected the argument and held that the only bar to entitlement to unemployment benefit under those provisions was delay or failure to make or prosecute a claim. The provisions could not apply where any other bar existed. The approach suggested in decision (R(U) 6/83 (1.1.4 ii *above*)) was disapproved.
- R(U) 5/88 iv The claimant, who had exhausted his title to unemployment benefit, was appointed to 2 part-time teaching posts. The 2 contracts involved attending schools and teaching for a total of 15 hours and 45 minutes. The claimant additionally spent 5 hours a week on preparatory work, 2½ hours for each appointment. The issue was whether the preparation time counted towards the requisite 16 hours in 13 or more weeks specified in section 18(2)(b) of the Act. It was held that a teacher's professional obligations included the preparation of his work and that professional obligation was a contractual obligation notwithstanding that it was not written in the contract. The Commissioner added that with the coming into force on 30.4.87 of the Education (School Teachers Pay and Conditions of Employment) Order 1987 it was quite clear that from that date preparation time must be counted in addition to teaching time when calculating under section 18(2)(b) the hours worked. See also R(U) 3/82, 1.1.4 i *above*.

5 Entitlement to reduced rate unemployment benefit

- R(U) 6/89 i A claimant did not have enough credited contributions to satisfy the second contribution condition for unemployment benefit. She argued that she should at least be entitled to a reduced rate of unemployment benefit, even though section 33 of the Social Security Act 1975, which provided that regulations could be passed to allow this, had been repealed on 1.11.86. Her first argument was that regulation 18 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (which allowed for the payment of partial unemployment benefit) had not been revoked, and must still have effect. The Commissioner rejected this argument, saying that this regulation could not operate independently of the relevant section of the 1975 Act under which it had been passed. He relied on the case of *Watson v Winch* [1916] 1 KB 688 and stated that no subordinate legislation can be read in isolation from the enabling Act. Her second argument was that she was assisted by section 16(1)(c) of the Interpretation Act 1978. This section provides that, unless the contrary intention appears, an Act which repeals a law does not affect any right or privilege which has accrued or been acquired under that law. The Commissioner held that the claimant had not acquired a right or privilege by having "entitlement"

to credits, as her entitlement to unemployment benefit was not to be decided until she actually made a claim to benefit. She made such a claim on 13.4.87. The Commissioner also considered that the legislation which repealed section 33 of the Social Security Act 1975 did contain a contrary intention and therefore section 16(1)(c) of the Interpretation Act 1978 would not have assisted the claimant. See also 2.1.4 i, 17.1.1 xiv, 17.3.3 iii *below*.

Part 2: Availability for employment

Section 17(1)(a)(i) of the Act. (N.B. Under regulation 9 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 a person engaged in the manning or launching of a lifeboat or in the performance of duty as a part-time fireman maintained in pursuance of the Fire Services Act 1947-1959 is deemed to be available for employment in employed earner's employment).

1 Onus of proof

- R(U) 12/52
(T) i At paragraph 7 of this decision a Tribunal of Commissioners said: 'In our opinion, in order to prove that he is available for employment in an employed contributor's employment (now "employed earner's employment"), a claimant must show that he is able and willing to work in an employed contributor's employment on conditions and for hours similar to those on and for which persons are employed in the area within which the claimant is prepared to work. In other words, a claimant's profession of ability or willingness to work must not be hedged about with restrictions which will render his chance of obtaining employment negligible.' See also 1.2.3 viii *below*. And see R(U) 36/52. See also R(U) 1/53 (paragraph 7) and R(U) 34/53 (paragraph 6).

2 Availability accepted

- CU 109/48 i A married woman who had done part-time work for 12 years restricted her availability for work from 11 a.m. to 3 p.m. daily and was held to be available for employment in an employed contributor's employment. See also R(U) 4/57.
- CU 10/49 ii A trainee at a technical college was held to be available for work on the 2 days a week on which he was not at the college.
- R(U) 3/65 iii A share fisherman whose vessel was undergoing repairs decided to take a week's holiday with his family at an address about 160 miles away from his home. He completed a form stating that he would be available for work during the holiday period and would return immediately if required. It was held that he had proved his availability since he was temporarily suspended from work for a period which it was known would be of short duration. See also R(U) 4/66.

3 Availability not accepted

- R(U) 25/51 i A school welfare assistant was willing to accept morning work only during the school holidays for 2-2½ hours daily. It was held she was not available for employment.
- R(U) 12/52
(T) ii A school secretary who claimed unemployment benefit during the school holidays would only accept part-time clerical work and was held by a Tribunal of Commissioners not to be available for employment. See also R(U) 36/52.
- R(U) 23/52 iii A claimant did not claim unemployment benefit because he was awaiting the result of an appeal to his former employers for reinstatement and felt that it would be unreasonable to apply for other work. It was held that he was not available for employment during that period.

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- iv A single woman aged 45 was willing to accept local employment only and was unwilling that any prospective employer should be told that she was a typhoid carrier. It was held that she was not available for employment. R(U) 42/53
- v A licensed dock boatman who was under a duty to keep watch in case his services should be required claimed unemployment benefit when, due to slackness of trade, he rendered no services. It was held that he was not available for employment. See also R(U) 1/82. R(U) 1/53
- vi A county councillor was held not to be available for employment when he attended council meetings as a councillor, but that the voluntary unpaid duties he performed did not prevent him being regarded as unemployed. R(U) 34/53
- vii A claimant with a limited field of employment contended that she could not be held not to be available for employment during the school holidays until she had been offered and had refused employment. That contention was rejected and it was held that the claimant was not available for employment. The Commissioner added that it would have been a waste of time to offer the claimant employment which it was known she would refuse. R(U) 44/53
- viii A casual dock worker was held not to be available for work when he was on holiday since employers in the docks expected to find labour "on the stand". The Commissioner pointed out that the question is not whether employment is available for the person but whether he is available for employment. See also R(U) 2/57, R(U) 4/66 and R(U) 1/82. R(U) 1/55
- ix A married woman who, for two years, had been employed on three days a week only declared, when that employment came to an end, that she would not accept employment for more than three days a week. It was held that she was entitled to unemployment benefit for the three days on which she had formerly been employed but that she could not be said to be available on the other days. See also R(U) 4/53. R(U) 15/58
- x A woman who gave up her job to accompany her husband on an overseas posting with the armed forces was not available for employment during the period between leaving her employment and leaving GB (SS Act 1975, s 17(1)(a)(i)). To be available for work claimants must generally be prepared to accept at once any offer of suitable employment. It was the claimant's intention to "export" her entitlement to UB to Holland. Taking temporary employment would have defeated that intention. See also 1.5.5 vi. R(U) 2/90 (T)

Part 3: Trade dispute

Section 19(1) of the Act as amended by section 111(1) of the Employment Protection Act 1975. (For definition of 'trade dispute' see section 19(2)(b) as meaning any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises or not.)

1 Meaning of 'trade dispute'

- i Owing to shortage of material a workman was given notice and other employees, who were regarded as trouble-makers, were also given notice terminating their employment for the same reason. As they were key-men the work of the factory came to a standstill. It was held that the stoppage of work was due, not to a trade dispute, but to the determination of one or both parties to have no further relations with the other. At paragraph 9 a Tribunal of Commissioners said that to be a trade dispute within the meaning of the statutory definition a stoppage of work must be in the nature of a strike or lock-out, this is to say it must be a move in a contest between an employer and his employees, the object of which is that employment shall be resumed on certain conditions. See and compare R(U) 19/53. See also R(U) 12/60 and R(U) 11/63 and compare R(U) 1/65. See R(U) 1/87, 1.3.7 *ix below*. R(U) 17/52 (T)
- ii As a protect against the discharge on redundancy of 12 men other employees stopped work for 2 hours to attend a mass meeting. They were not allowed to recommence work and were discharge, although the majority of them were subsequently offered re-engagement. It was held that the action of the employers was a step taken in furtherance of the dispute which concerned the employment or non-employment of certain workers. R(U) 36/53
- iii As a result of a dispute between joiners and scaffolders an employer discharged 7 employees, including the claimant, who was a joiner. In support of his claim for unemployment benefit the claimant referred to the Industrial Disputes Order 1951, contending that only an 'issue' and not a 'dispute' existed. It was held that the claimant had lost employment by reason of a stoppage of work due to a trade dispute which concerned his conditions of employment and in which he was directly interested. What constituted a 'dispute' for the purposes of (what was then) section 13 of the National Insurance Act 1946 (now replaced by section 19 of the Act) must be decided by reference to the statutory definition of trade dispute. See for example 1.3.3 *i below*. R(U) 36/58
- iv A claimant was discharge when he and other workers refused to terminate a meeting which was concerned with their terms of employment and extended over the meal-break into working hours. It was contended that the claimant's discharge was due to an unreasonable act on the part of the foreman and that a trade dispute did not exist until 'hostile action' was taken by one side or the other. Such a definition of 'dispute' was held to be too narrow and that a trade dispute was in existence at the time of the meeting. At paragraph 7 the Commissioner said: '....the holding of the meeting and discharge of the men because of their insistence on attending the new meeting represented further steps in the dispute (see Decision R(U) 36/53). On this view it is very clear that the stoppage of work was due to a trade dispute, and that the claimant lost employment by reason of the stoppage.' R(U) 21/59

- v As a result of a sum of money being withheld by the foreman from a fellow workman of the claimant 19 employees, including the claimant, left their place of work in protest and the employers then closed the site for several weeks. Held, the protest was not over the terms or conditions of employment, or with the employment or non-employment of any person, and that there had not, therefore, been a trade dispute as defined.
- R(U) 26/59
- vi The claimant was a member of the crew of the vessel, the skipper of which was a member of a religious sect. As a condition of employment on the vessel the skipper ordered that non-members of the sect would have their meals at a separate table. The claimant and other members of the crew refused to accept that condition and left. As a result there was a stoppage of work, which, it was held, was caused by a trade dispute. A dispute which arises out of a purely personal matter, such as religious beliefs, choice of dress or opinions as to race and colour may develop into a trade dispute.
- R(U) 12/62
- vii A dispute which arises about the safety of a machine may, in certain circumstances, be a trade dispute. Thus, when a claimant who was employed at a car factory lost employment in an incident concerning the safety of a machine the decision of the local tribunal that there had been a trade dispute was reversed by the Commissioner on appeal by the insurance officer.
- R(U) 3/71
- viii In pursuance of a national claim by workers in the building industry for improvements in pay and other conditions of employment stoppages of work occurred at a number of building sites throughout the country. The site at which the claimant was employed was not at first affected, but later pickets from a nearby town persuaded the claimant and others on the site to 'down tools', with the result that the claimant lost employment. It was held (a) that picketing in furtherance of a trade dispute shows that a trade dispute is in progress; (b) that a trade dispute can arise between an employer and persons who are not his employees and between one group of employees and another group of employees, not being employed by the same employer; and (c) the pickets imported a trade dispute between themselves and the claimant's employers into the claimant's place of employment. See in particular 12-17.
- R(U) 1/74
- ix A trade union claimed the free provision of protective clothing for members of the union who were employed by a main contractor responsible for the erection of the boilers at a new power station. The employers offered to supply the clothing on payment by the employees. H.M. Factory Inspectorate advised that the provision of the clothing was not a specific requirement of the Health and Safety at Work Act 1974, but was an arrangement for welfare within the meaning of that Act by which negotiation on the question of payment was permitted. The negotiations broke down, however, and a withdrawal of labour ensued. It was held that since the Act of 1974 imposed obligations and conferred rights connected with the employment, or conditions of employment, of employees any dispute concerning such matters was, by definition, a trade dispute. See paragraphs 21 *et seq.*
- R(U) 5/77
- x Early in 1984 negotiations began between a union and an employer about a 1984 pay award. Agreement was reached early on for office staff, but negotiations continued for the factory workers. In the meantime the employer complained of a 225% drop in efficiency and formed the opinion that the employees, in support of their pay claim, were no longer using their best endeavours to carry out their duties and were refusing to work overtime. After issuing warnings the employer locked out 15 employees and then extended the lock-out to all employees. The claimant argued that there was no trade dispute and, by inference, that the reduction in output was not related to the pay negotiations. The Commissioner held, however, that the definition of 'trade dispute' in section 19(2) was sufficiently wide to include any dispute which was connected with the manner in which the employment was carried out. Apart from this he held that the employees' action resulted from their discontent with the pace at which the pay negotiations were proceedings and there was, accordingly, a trade dispute.
- R(U) 5/87

2 Place of employment

Section 19(2)(a) of the Act.

i A taxi-cab washer was discharged from his employment because there was no work for him in consequence of the withdrawal of thier labour by the taxi-drivers

who used the garage at which the claimant was employed. The taxi-club drivers were in dispute with the cab owners over their rates of pay. It was held that the garage was the claimant's place of employment.

- R(U) 24/57 ii A lorry driver who was employed by a firm of ship repairers was given notice because of a shortage of work which resulted from a stoppage of work due to a trade dispute in the shipyards. The transport section in which the claimant was employed was organised as a separate branch of work and occasionally did haulage work for other firms in the area. It was held that the transport section was a separate place of employment from the ship-repairing premises and that there was no trade dispute in the transport section; that is to say, at the claimant's place of employment.
- R(U) 4/58 iii A man was employed unloading stones from a ship. He lost his employment during a stoppage of work which was due to a trade dispute in the shipyards. It was held that his place of employment was the docks where we worked and not merely the particular ship in which he happened to be working at the time. See also R(U) 8/71.
- R(U) 5/61 iv A claimant, and other, were employed as warehouse packers or shipping clerks in the export dispatch department of a firm of iron-founders. The claimant lost employment by reason of a stoppage of work due to a trade dispute in the fitting shop of the foundry and it was held that the stoppage of work was not at the claimant's place of employment. See and compare R(U) 3/62.
- R(U) 4/62 v The claimant was employed in the enamelling department of a firm which manufactured heating and catering equipment. There was a stoppage of work due to a trade dispute in the fitting shop as a result of which the claimant lost employment, but he claimed that the dispute was not at his place of employment. The work of the enamelling department consisted of processing castings and it was shown that the process of enamelling castings was commonly carried on a separate business. It was held that the enamelling department in which the claimant was employed was carried on at the premises in question, not as a 'separate branch of work' but as a step in an integrated process of production. The trade dispute was consequently held to be at the claimant's place of employment.
- R(U) 23/64 vi The claimant was employed by a firm of electrical contractors who were engaged on work at the premises of the Steel Company of Wales. He lost employment when it became impracticable for his employer to continue with the work because of a trade dispute between the Steel Company and its employees. It was held that the claimant had not lost employment by reason of a stoppage of work due to a trade dispute 'at his place of employment'. See in particular 7-11.
- R(U) 1/70 vii The claimant was employed as a repair man welder by the Ford Motor Company at their Dagenham estate. He worked at a paint, trim and assembly plant but lost employment because of a strike by women sewing machinists working in another plant. It was held that the company's Dagenham estate constituted one factory for the production of motor vehicles; and that, in the evidence, there was no work which was commonly carried on as a separately business in separate premises so as to bring the claimant within the exception contained in the second part of the statutory definition of 'place of employment'.
- R(U) 8/71 viii The place of employment of a dock pilot licensed to pilot vessels within the port of Port Talbot was held to be the whole port as it was in the case of registered dock workers. See also 1.3.2 iii *above*.

3 Loss of employment by reason of a stoppage of work due to a trade dispute

- i There was a stoppage of work due to a trade dispute at the claimant's place of employment. He himself had no part in the dispute, although he had a direct interest in it and also belonged to a grade or class of workers who were participating in the dispute, and work continued to be available for him which he would have been willing to do if he had not been prevented from doing it by threats of physical violence from pickets. In the result he lost employment and it was held that such loss was by reason of a stoppage of work due to the trade dispute since, by definition, a trade dispute may be not only between employers and employees, but also between employees and employees. See 1.3.1 iii *above*. R(U) 2/53
- ii The claimant's employers gave their work people notice of termination of their existing contracts of service and offered them fresh contracts on new terms. The new terms were not accepted and the claimant and other withdraw their labour, with the result that there was stoppage of work at the claimant's place of employment. It was contended on his behalf that he had been discharged by his employers, but it was held that the stoppage of work was due to a trade dispute and that the claimant had lost employment as a result of it. See in particular paragraph 16 and R(U) 17/52, 1.3.1 i *above*. R(U) 19/53
- iii The claimant, without giving any reason, voluntarily left his employment and 4 days later the firm by which he had been employed became involved in a trade dispute, as a result of which members of the claimant's grade or class of workers lost employment. It was held that the claimant was disqualified from receiving unemployment benefit for so long as the stoppage of work continued since it must be inferred that by leaving his employment when he did he anticipated the stoppage of work and lost his employment by reason of it. R(U) 30/55
- iv The claimant, who was employed as a coppersmith's labourer, withdrew his labour in sympathy with coppersmiths who went on strike, with the result that there was a stoppage of work. The claimant was already under notice on the ground of redundancy and would in any case have been unemployed the day after the stoppage began. It was nevertheless held that he had lost employment by reason of the stoppage of work due to a trade dispute at his place of employment and that he was, therefore, disqualified from receiving unemployment benefit so long as the stoppage continued. R(U) 17/56
- v The skipper of a trawler was discharged at the end of a fishing trip but the owners of the vessel intended to re-engage him a fortnight later. Meanwhile there was a general stoppage of work due to a trade dispute which prevented the claimant being re-engaged. It was held that he had not been finally discharged before the stoppage began and that he had lost employment by reason thereof. R(U) 19/56
- vi The claimant and other workers were dismissed by their employers because a work target which had been a matter of controversy for some time had not been attained. Other workers withdraw their labour in sympathy and there was a stoppage of work. It was contended on behalf of the claimant that the dispute to which the stoppage was due arose only on the dismissal of the claimant and others could not have caused it. It was, nevertheless, held that the stoppage was due to a trade dispute which had been smouldering and not to a new dispute arising for the first time after the men's dismissal. The claimant was, therefore, disqualified for receiving unemployment benefit so long as the stoppage continued. See also R(U) 5/86, 1.3.5 *x below*. R(U) 32/57
- vii The claimant and 11 other men were given notice by the employers on the ground of redundancy. A dispute arose regarding the order of discharge and the claimant, by agreement with his employers, left his employment a day-and-a-half before his notice was due to expire and before a stoppage of work which began later the same day. It was held that he had lost employment by reason of a stoppage of work which was due to a trade dispute at his place of employment since, if he had not foreseen the probability of the stoppage of work, he would have had no reason to work out his notice. R(U) 30/55, 1.3.3 iii *above*, distinguished. R(U) 29/59

- R(U) 6/71 viii The claimant was one of 26 dock workers specially engaged by the National Dock Labour Board to meet a peak demand at a particular port. A national dock strike was being threatened and the claimant's engagement was on the understanding that it would be terminated before the strike began. In anticipation of that happening the claimant was given a week's notice and his employment came to an end before the strike began. It was held that he had lost employment by reason of a trade dispute since his engagement had been on the understanding that its duration should depend, upon a specified date of termination, but upon a specified date; ie the national dock strike. See, in particular, paragraph 7.
- R(U) 15/80 ix A stoppage of work, caused by a trade dispute, was held to have ended when the employing company decided to permanently cease trading for reasons unconnected with the trade dispute.

4 The '12-day rule'

- R(U) 20/57 (T) i The claimant was discharged from a shipyard the day before a stoppage of work began. Under what was known as the '12-day rule' a presumption arose that he had lost employment by reason of the stoppage, but in the circumstances of that case it was held that the presumption was rebutted, the inference from that evidence being that the claimant's employment had terminated and had not merely been indefinitely suspended. At paragraph 4 of the decision a Tribunal of Commissioners said, however, that as the claimant had been discharged on the day before the stoppage began his claim for unemployment benefit made it necessary to consider the application of the principle laid down in decisions of the Umpire under the former Unemployment Insurance Acts which was referred to in those decisions as the '12-day rule'. It was added: 'This principle was applied for so many years in the interpretation of the provisions in previous Unemployment Insurance Acts which are produced in section 13 (1) of the National Insurance Act 1946) that in our opinion the legislature must be taken to have intended the principle to be applied in the interpretation of section 13(1). This principle was that an employee whose employment is indefinitely suspended within 12 working days of the stoppage of work at premises at which the employee habitually seeks work must *prima facie* be presumed to have lost employment by reason of the stoppage.'
- R(U) 21/57 ii A plater's helper who habitually sought employment at a shipyard claimed unemployment benefit when his employment was indefinitely suspended. A stoppage of work which was due to a trade dispute commenced 12 days later and he was then unemployed for a period of 3 weeks. It was held that the presumption raised by the '12-day rule' that he had lost employment as a result of the stoppage of work at his place of employment was rebutted. Held further that 12 days means 12 consecutive week days excluding recognised or customary holidays. See paragraph 20 for certain observations relating to the '12-day rule'. See also Decisions R(U) 26/57, R(U) 29/57, R(U) 31/57, R(U) 3/58, R(U) 8/58 and R(U) 9/58.
- R(U) 6/71 iii At paragraph 8 the Commissioner said, with reference to the '12-day rule', that there is 'an obvious element of arbitrariness in this so-called rule; and it may well be that, having regard to the general decasualisation of dock labour, the inference or presumption which it embodies is less readily justifiable nowadays in relation to dockers'. The Commissioner added that in the case with which he was concerned he did not find it necessary to invoke the so-called rule and accordingly

reserved his opinion as to the validity and applicability of it in present day circumstances. (It is to be observed that there is no reference to, or mention of, the so-called '12-day rule' in any reported decision between R(U) 9/58 until the present decision, R(U) 6/71).

5 Shall be disqualified for receiving unemployment benefit so long as the stoppage continues

i The claimant, having withdrawn his labour because of a dispute at his place of employment, contended in support of his claim for unemployment benefit that for some time before the strike began he had been working short-time and that he would, in any event, have been unemployed for 2 days during the period of the stoppage. It was held that the claimant was disqualified for receiving unemployment benefit so long as the stoppage of work continued since, even if he would have been employed for other reasons on certain days during the period of the stoppage, that would not save him from disqualification in respect of those days. R(U)32/55

ii A man lost employment due to a stoppage of work at his place of employment. He and other employees were prepared to return to work on a particular date but, owing to delays in the resumption of negotiations, the stoppage continued for a further week. It was held that once it is established that a stoppage of work originated in a trade dispute, then the onus of proving that the continuance of the stoppage was due to different causes (ie the desire of the employers to retaliate) falls upon those who allege that that was in fact the cause. The claimant had not discharged the onus of proving that the delay in the resumption of work was due to causes other than the original dispute and was held to be disqualified for receiving unemployment benefit until work was resumed. R(U)1/56

iii An agreement to end a stoppage of work due to a trade dispute was made between employers and their employees, but the resumption of work was gradual due to a shortage of work as a result of the stoppage. It was held that the stoppage continued until a substantial proportion of the labour force has resumed work. At paragraph 6-7 the Commissioner enunciated the principles for determining when a stoppage of work comes to an end. See also R(U) 7/58 and R(U) 5/86. R(U)25/57

iv The claimant had participated in a national trade dispute in the printing industry and lost his employment from 20th June to 6th August, when the dispute came to an end. He and other employees were prepared to resume work on 6th August, but the management said that in future only non-union employees would be engaged. That condition was not accepted and in consequence the stoppage of work continued until work was finally resumed on 21st August. It was held that the claimant was disqualified for receiving unemployment benefit until and including 20th August on the ground that his loss of employment until that date continued to be the result of a trade dispute even though it was not the dispute which had caused the original stoppage. A conflict between employers and employees as to whether the employees shall or shall not be members of a trade union falls within the terms of the statutory definition of a trade dispute. R(U)12/60

v The claimant, who was 60 years of age, was given notice by the National Coal Board that his employment as a salvage worker would end on 20th January. Meanwhile, on 9th January, a national coal strike began and the claimant together with other members of the National Union of Mineworkers withdrew his labour. He made a claim for unemployment benefit from 24th January. The strike ended on 26th January and the claimant was held to be disqualified for receiving unemployment benefit for the inclusive period from 10th-26th January. See also R(U) 13/72. See also R(U) 12/80, 1.3.5 viii below. The principle that a person who has incurred disqualification for receiving benefit under section 19(1) of the SS R(U)12/72 (T)

Act 1975 continues to be disqualified for so long as the stoppage of work continues was reaffirmed in R(U) 5/86, 1.3.5 *x below*.

R(U) 4/79
(T) vi A fireman lost employment owing to a stoppage of work due to a trade dispute at his place of employment which lasted from 14 November 1977 to 16 January 1978. At first the claimant participated in the dispute but on 6 December 1977 he terminated his employment as a fireman and on 9 January 1978 he became regularly engaged in another occupation. The question was whether the claimant fell to be disqualified for receiving unemployment benefit for the period 6 December 1977 to 7 January 1978 in terms of section 19(1) of the Social Security Act 1975 as amended. It was held that disqualification under the section, once imposed, cannot be terminated because at some date after the stoppage commenced and disqualification was incurred the claimant ceased to participate in or be directly interested in the trade dispute. Followed in R(U) 2/85. In R(U) 5/86 (1.3.5 *x below*) a Tribunal of Commissioners considered R(U) 4/79 to have been wrongly decided in holding that section 19(1)(a) of the SS Act 1975 could not operate in favour of a claimant to end disqualification for receiving unemployment benefit during a stoppage of work due to a trade dispute.

R(U) 9/80 vii As a result of action taken by an employer intended to minimize the effects of a stoppage of work due to a trade dispute, an essential furnace collapsed and the stoppage was prolonged while repairs and modifications were carried out. It was held since the damage, though not inevitable, was a foreseeable consequence of the original stoppage of work, the prolonging of the stoppage for carrying out repairs was due to the trade dispute and unemployment benefit was not payable for the whole of the stoppage. On an application for judicial review of the Commissioner's decision to the Divisional Court, Mr Justice Forbes refused the application.

R(U) 12/80 viii A part-time security attendant lost employment for the duration of a trade dispute in which he had an interest. It was held that he was disqualified from receiving unemployment benefit for the whole of the period of the stoppage including the days on which he would not have been employed. R(U) 12/72 referred to. See 1.3.5 *v above*.

R(U) 15/80 ix Under section 19(1) of the Act a claimant was disqualified for receiving unemployment benefit during a stoppage of work due to a trade dispute at his employers' factory. During the stoppage the employers ceased trading permanently for reasons unconnected with the trade dispute. The claimant's disqualification ended at the date the company ceased to trade, the subsequent stoppage of work not being connected with the trade dispute.

R(U) 5/86
(T) x A colliery driver was on 10 March 1984 given 12 weeks notice of termination of his employment because of redundancy. On 23.3.84 a stoppage of work arising out of a national coal strike began at his colliery. The claimant did not attend work from 23.3.84 to 13.4.84 and on a number of days thereafter, but worked without a break from 11.5.84 until he left the colliery as redundant on 2.6.84. He then claimed unemployment benefit. The main matters decided by the Tribunal of Commissioners were:-

1. *Duration of the disqualification*

A person who has lost employment in the circumstances envisaged in section 19(1) of the SS Act 1975 and has thereby incurred disqualification continued to be disqualified for so long as the stoppage continues, even though he would have been without employment in any event because of redundancy. R(U) 12/72 approved;

2 *Participation in the trade dispute*

Whether a claimant is participating in a dispute is a question of fact to be decided in each case. The present claimant was found not to have been participating in the dispute at his colliery because on those days on which he did not attend he had been prevented by violent picketing from getting into work (R(U) 3/69 followed, 1.3.7 iii *below*). Had he participated, the Commissioners found alternatively that his participation would have ended when he became redundant. R(U) 4/79 (1.3.5 vi *above*) was considered to have been wrongly decided in holding that section 19(1)(a) ('the proviso') could not operate in favour of a claimant to end disqualification during a stoppage.

3. *Direct interest in the trade dispute*

The Commissioners concluded from the evidence that the trade dispute which caused the stoppage of work at the claimant's colliery was a dispute both as to wages and as to pit closures. The claimant was held to be directly interested in the dispute because the wages he would receive up to his redundancy would be increased if a settlement were made. He was therefore disqualified for receiving unemployment benefit. A claimant did not escape disqualification by way of the proviso to Section 19(1) by proving either that he was not participating in or was not directly interested in the trade dispute; the word 'or' in section 19(1)(a) was to be construed as 'and'.

4. *Duration of the stoppage*

There had been a gradual return to work and the Commissioners held that the stoppage of work ended on 21.11.84 when 77% of the workforce had returned; normal attendance was slightly below 85%. Because of the length of the dispute, and the change in production work during that time, production figures or percentages did not provide a guide as to when the stoppage ended; it was doubtful whether production was a relevant consideration at all.

An appeal by the claimant's Association from the Commissioners' decision was dismissed by the Court of Appeal, whose judgement is appended to decision R(U) 5/86.

6. Disqualification for receiving unemployment benefit ‘except in a case where, during the stoppage, he has become bona fide employed elsewhere....’

- R(U) 39/56 i The purpose of excepting from disqualification a person who has become *bona fide* employed elsewhere is to remove the disqualification from a person who has severed relations with the employer in whose service the stoppage of work occurred in such a way as to be altogether unaffected by the continuance or termination of the stoppage. Thus a boilermaker who lost employment as a result of a stoppage of work due to a trade dispute and obtained intermittent work in his usual occupation in a different port, but returned to his former employer on the termination of the dispute, was held not to have proved that he had become *bona fide* employed elsewhere. See also R(U) 29/57, but compare R(U) 6/74, 1.3.6 ii *below*.
- R(U) 6/74 ii ‘*Bona fide*’, in the context of section 19, connotes honesty of motive or intention and implies that the employment is taken up for an honest motive and that it is genuine employment. It does not connote ‘permanently’ or ‘with the intention of permanently severing relations with the original employer’. Thus a maintenance fitter lost employment as a result of a stoppage of work due to a trade dispute and obtained employment elsewhere in his usual occupation. He then became unemployed again until the stoppage ended, when he returned to his former employment. It was held that he had become *bona fide* employed so as to bring the period of disqualification for receipt of unemployment benefit to an end when he obtained temporary work. See, in particular, paragraph 8-12. R(U) 39/56, 1.3.6 i *above*, not followed.

7 Not participating or directly interested in a trade dispute

- R(U) 18/58 i The ‘direct interest in a trade dispute’ contemplated by the Act must be a substantial and material one. An interest in the mere formal maintenance of an industrial agreement divorced from an probability of material changes does not constitute a ‘direct interest’. Thus a man who was employed in a steel-rolling mill lost employment as a result of an unofficial strike by scalers employed at the same mill. The claimant was paid at piece-rates and the scalers on time-rates and the matter in dispute concerned the bonus earnings of the scalers. It was held that neither the claimant (nor any member of his grade or class) was directly interested in the dispute. See paragraph 9 and compare R(U) 3/56, 1.3.8 ii, R(U) 3/62, 1.3.8 v and R(U) 4/62, 1.3.2 v.
- R(U) 30/59 ii Underground workers at a colliery were in dispute about pay for Sunday night work. The claimant was a surface worker and lost employment by reason of a stoppage of work due to a trade dispute. The surface workers did not participate in the dispute in any way. It was held that, although the surface workers would be interested in any dispute as to the circumstances in which bonus payments might be withheld from those participating in the dispute, it could not be said that they had a ‘direct interest’. See paragraph 7 and compare R(U) 25/26.
- R(U) 3/69 iii A claimant who had not acquiesced in the request of pickets to refrain from work, but who was prevented from going to work by force or intimidation, was held not to have participated or been directly interested in a trade dispute which led to a stoppage of work by reason of which he lost employment. But when, after the pickets left, having been withdrawn, the resumption of work was postponed because certain employees were in dispute over the payment of compensation for loss of wages due to the action of the pickets, the claimant was held to have had a direct interest in the dispute because he stood to be directly affected by the outcome. See also R(U) 5/86, 1.3.5 x *above*.

- iv A claimant who was employed as an engineering works tool-room fitter was, with others, laid off because of a strike of crane men and slingers over their pay. It was held that, although the tool-room fitters had an interest in the crane men's and slingers' dispute, it was not a "direct" interest. See paragraph 8 for a discussion of the meaning of the phrase 'direct interest' and compare R(U) 14/71, at paragraph 11 of which the Commissioner said that the question whether a person is directly interested in a trade dispute must always depend very much on the particular facts and circumstances of each case; see also R(U) 1/84 Appendix 2, 1.3.8 viii *below*. R(U) 13/71
- v The claimant, a paint-line operator at a British Leyland factory, lost employment when workers in the assembly block withdrew their labour in consequence of a dispute over pay. It was held that the claimant's remuneration could not be altered without an alteration to the agreement under which he was employed and that his interest in the strike assembly workers was indirect. A claimant will have a direct interest in a trade dispute if a change in the terms of his employment would occur without any act or event breaking the chain of causation between the outcome of the trade dispute and the change. His interest will not be direct if some act or event must be interposed between the outcome of the dispute and the occurrence of the change. See, in particular, paragraphs 14-17. R(U) 8/72
- vi The claimant, an hourly paid worker at a Dumbarton factory, lost employment from 28 August 1974 to 6 December 1974 because of a trade dispute between his employer and certain craftsmen. An agreement involving wage increases for craftsmen and hourly paid workers at the employer's Cumberauld factory was concluded on 5 October 1974. It seemed clear that similar wage increases would have been given to the hourly paid workers at the Dumbarton factory but for the dispute with the craftsmen. Shortly after that dispute was settled such increases were in fact given. R(U) 6/78
- The Commissioner held that as the claimant's future wages depended on the settlement of the dispute with the craftsmen he had a direct interest in that dispute from 28 August onwards and fell on be disqualified for receiving unemployment benefit under the provisions of section 22(1) of the National Insurance Act 1965 (now section 19(1) of the Social Security Act 1975).
- In *Watt v. the Lord Advocate* the Inner House of the Court Session, reversing the decision of the Lord Ordinary, reduced the Commissioner's decision on the grounds that the claimant's interest in the dispute was not a direct interest in the sense that 'the outcome of the dispute [was] likely to affect the claimant, not at a number of removes, but virtually automatically without further intervening contingencies' (per Mr Commissioner Shewan in R(U) 13/71, 1.3.7 iv *above*, quoted with approval by the Lord President). The Commissioner had asked himself the wrong question and in so doing had acted *ultra vires*. Also 18.5.1 i, *below*, and see R(U) 13/71, 1.3.7 iv *above*.
- vii A foundry worker lost employment when he was laid off by reason of a stoppage of work which was due to a trade dispute at his place of employment. The dispute arose following the introduction of a separate agreement between management and the foundry workers affecting the operation of an incentive bonus scheme. Previously all manual workers participated in the same scheme and bonus payments were calculated on the average efficiency of the works as a whole; but under the separate agreement the bonus paid to foundry workers fell to be calculated separately and to be the efficiency of the foundry alone. This operational change resulted in a rise in the bonus payments being paid to the foundry workers. The stoppage began when the direct engineering workers, being dissatisfied with and having given notice to terminate their bonus scheme, withdrew their labour in pursuit of their demands for a new scheme. It was held that the claimant was not directly interested in the dispute because the foundry workers would not have been directly affected by any settlement reached with the direct engineering workers. Any changes affecting the foundry workers would not be automatic but would be brought about only by further negotiation and agreement. R(U) 5/79

Although all the workers were interested in the trade dispute about bonus payments in a general way, this was not a direct interest. An interest will not be direct if some act or event must be interposed between the outcome of the dispute and the outcome of the change. 'Directly interested' relates to the trade dispute and not to the outcome of that dispute: 'direct interest' applies to the subject matter of the dispute, and a direct interest may arise even when there has been no resultant change. See R(U) 1/84 App. 2, 1.3.8 viii *below*.

R(U) 5/86
(T) viii A claimant did not escape disqualification for receiving benefit during a stoppage of work due to a trade dispute at his place of employment by proving either that he was not participating in, or was not directly interested in, the trade dispute. The provisions of section 19(1)(a) of the SS Act 1975 did not apply in the alternative; the word 'or' in that section was to be construed as 'and'. For a full summary of this decision see 1.3.5. x *above*.

R(U) 1/87 ix The claimant was one of 28 fleshers who stopped work on 2.5.84 following disagreement with the company over rates of pay. Returning to the premises the following morning they found the gates locked, and on 4.5.84 were given dismissal notices dated 2.5.84. Following a meeting on 6.8.84 between fleshers and management, 13 fleshers were re-employed but the claimant was neither invited to the meeting nor offered re-employment. The Commissioner decided that the claimant had lost employment on 2.5.84 as a result of a stoppage of work due to a trade dispute at his place of employment. But taking account of the full history of events the Commissioner held that the claimant's dismissal was a true one and not a manoeuvre in the dispute, and that the claimant ceased to participate in or be directly interested in the dispute, from the date of his dismissal (R(U) 5/86 followed).

8 Participating or directly interested in a trade dispute

R(U) 19/55 i The claimant was employed as a ripper at a colliery, but his normal work was brought to an end by a strike of fillers at the colliery. Alternative work was available for him but he took no positive steps to offer his services and it was held that he had not discharged the onus of proving that he was not participating in the trade dispute.

R(U) 3/56 ii The claimant, a rivet-heater, became redundant as a result of a stoppage of work due to a trade dispute at his place of employment. The dispute was caused by riveters striking for more pay. On the basis of established practice it was probable that the granting of the riveters' claim would affect the earnings of the rivet-heaters, hence their respective earnings were inter-related. The claimant was held to be directly interested in the dispute. At paragraph 9 the Commissioner said that in terms of the statute the onus is clearly upon the claimant to establish that he is *not* directly interested in a trade dispute. A mere absence of certainty that the claimant's remuneration will continue to be affected proportionally by the rates of pay to the grades which are disputing their wages rates does not amount to proof that he is not directly interested in the dispute. See also R(U) 25/56, but compare R(U) 30/59 and see R(U) 1/84 App. 2, 1.3.8 viii *below*.

R(U) 1/60 iii The Boilermakers Society, of which the claimant, who was a shipwright, was not a member, was in dispute with the management about work which the Society claimed should be transferred from shipwrights to platers. Members of the Boilermakers Society withdrew their labour, with the result that there was a stoppage of work by reason of which the claimant lost employment. It was held by a Tribunal of Commissioners that, although the claimant did not participate in the dispute, he had a direct interest in it since the work available for him would have been decreased if, as a result of the dispute, certain work had been transferred

to platers. A person whose chances of employment are decreased has a direct interest in a trade dispute which relates to the question whether he, or those whom he helped, shall be assigned a certain type of work. See also R(U) 6/61 and R(U) 1/84 App. 2, 1.3.8 viii *below*.

iv A dispute arose as a result of a demand (with which the claimant was not in sympathy) by employees of the company that the company's superannuation scheme should no longer be compulsory. In the result there was a stoppage of work due to a trade dispute, in consequence of which the claimant lost employment. He was held to have a direct interest in the dispute because his legal obligation to continue to contribute to the scheme (which was a term of contract of employment) stood to be affected by the outcome of the dispute. See, in particular, paragraph 7. See also R(U) 1/84 App. 2, 1.3.8 viii *below*. R(U) 17/61

v The claimant lost employment by reason of a trade dispute at his place of employment, but, of the matters which formed the subject of the dispute, the only one which concerned him was a proposal to abolish the afternoon teabreak. It was held, nevertheless, that the claimant was directly interested in the trade dispute because, although his interest might in one sense have been 'insubstantial', the statute is concerned with the nature of a direct interest and not with the magnitude of it. See also R(U) 1/84 4/62, R(U) 4/65 and compare R(U) 18/58, 1.3.7 i, above, but see R(U) 1/84 App. 2, 1.3.8 viii *below*. R(U) 3/62

vi A plater's helper lost employment by reason of a stoppage of work which was due to a demarcation dispute between platers and shipwrights at the shipyard where he was employed. The platers' helpers took no part in the dispute, but the amount of work which would in future be available for them depended upon the outcome of it. It was held that the platers' helpers were directly interested in the dispute. See also *Punton v. Minister of Pensions and National Insurance*, 18.3.1 i. See also R(U) 8/80, 1.3.8 vii, and R(U) 1/84 App. 2, 1.3.8 viii *below*. R(U) 14/64

vii A claimant worked for a firm of coachbuilders and was a member of one of 5 unions representing workers at the firm. Wage negotiations were carried out, in the first instance, by local shop stewards of the 5 unions. If those negotiations failed to produce an acceptable offer were continued by a works conference on which all 5 unions sat. The members of the conference were delegates and any offer was subject to acceptance by the members of their respective unions. In 1978 an offer was made which was referred to the various union members. Members of 3 of the unions, including the claimant's union, accepted the offer. The members of the other 2 unions rejected it. It was a condition of the offer that it be accepted by all the workforce. Ultimately the dissenting unions accepted the offer, but before that their members organised industrial action in an attempt to obtain an improved offer. This resulted in the employer laying off the entire workforce including the claimant for 2 days and. The claimant claimed unemployment benefit for those 2 days and the question arose whether he had a direct interest in which was admittedly a trade dispute. It was held that he had. The fact that any improved offer would have had to be referred back to the members of the 3 unions who had accepted the original offer did not prevent the claimant's interest from being direct. The words 'virtually automatic' used by the Commissioner in R(U) 13/71 (1.3.7 iv *above*) and approved by the Inner House of the Court of Session in *Watt v. The Lord Advocate* (1.3.7 vi *above*) covered the position. See R(U) 1/84 App. 2, 1.3.8 viii *below*. R(U) 8/80

viii Directly interested in trade dispute - meaning of 'directly interested'. A claimant for unemployment benefit was one of a number of production workers at a factory who were laid off following a withdrawal of labour by the factory's maintenance engineers concerning a wage dispute. The production workers had a different union from that of the engineers and a separate agreement with the management. However, the factual situation was that, if the engineers' demand was conceded by the employer, a similar concession would have to be applied to R(U) 1/84 Appendix 2

the production workers. The House of Lords, in reversing the decision of the Court of Appeal and restoring the decision of the Commissioner that the claimant was directly interested in a trade dispute and so disqualified for receiving benefit, held that, where different groups of workers, belonging to different unions, are employed by the same employers at the same place of work, or possibly (although that did not arise in the present case) at different but industrially linked places of work, and there is a trade dispute between the common employers and one of the unions to which one of the groups of workers belong, those in the other groups belonging to other unions are directly, and not merely indirectly, interested in that trade dispute provided that two conditions are fulfilled. The first is that, whatever may be the outcome of the trade dispute, it will be applied by the common employers, not only to the group of workers belonging to one union participating in the dispute, but also to the other groups of workers belonging to the other unions concerned. The second condition is that this application of the outcome of the dispute 'across the board' should come about automatically as a result of one or other of three things: first, a collective agreement which is legally binding; or, secondly, a collective agreement which is not legally binding; or, thirdly, established industrial custom and practice at the place (or possibly places) of work concerned. See also R(U) 5/86, 1.3.5 x *above*.

- R(U) 2/85 ix The claimant's union was in dispute with his employers regarding proposed compulsory redundancies. These did not affect the claimant, but he supported the union in their dispute. It was agreed that they should present the employers with an ultimatum to withdraw redundancy notices by 20 April 1983, but no sanctions were specified. The claimant's factory was on holiday from 9 to 17 April 1983 inclusive and on close of work on 8 April the factory was occupied by some of the work force, led by some shop stewards. The claimant did not approve or join this action. On or about 16 April the employees were advised by the employers not to return to work on the 18th until further notice. On the evening of 18 April the claimant advised his employers that he was not participating in the strike and was prepared to work wherever required in any of their other factories. The dispute was later resolved and there was a partial return to work by some of the work force, including the claimant, on 19 May, followed by a full resumption of work on the 26th. The question in issue was whether the claimant was disqualified under section 19(1) of the SS Act 1975 for receipt of unemployment benefit. The Commissioner accepted that the claimant was not a person directly interested in the dispute for the purposes of that section. On the question whether he was 'participating' in it he held that the stoppage of work began on the morning of 18 April 1983; that where a person who has once participated in the trade dispute maintains that he has ceased to do so, it is appropriate to look at the situation when the stoppage of work causing the loss of employment occurred; that the date of stoppage of work was the latest date by which any disassociation from previous participation in a trade dispute required to be established; and so the claimant had to be regarded as participating in the trade dispute when the stoppage began and suffer disqualification under the section. R(U) 4/79 (T) followed.
- R(U) 5/86 x A claimant did not escape disqualification for receiving benefit during a stoppage
(T) of work due to a trade dispute at his place of employment by proving either that he was not participating in, or was not directly interested in, the trade dispute. The provisions of section 19(1)(a) of the SS Act 1975 did not apply in the alternative; the word 'or' in that section was to be construed as 'and'. For a full summary of this decision see 1.3.5 x *above*.

Part 4: Misconduct

Section 20(1)(a) of the Act.

1 Meaning of misconduct

- i The word 'misconduct' means simply such misconduct as would lead a reasonable employer to terminate a claimant's employment, but what kind of misconduct would have that result much depend upon the nature of the particular employment. Thus a road sweeper employed by a local authority who made an unsuccessful charge of assault in a Magistrates' Court against his supervisor was dismissed by his employers but was held not to have lost his employment through misconduct. R(U) 24/55
- ii The word 'misconduct' has to be interpreted in the light of common sense and not every breach of every trivial rule of an employer would amount to misconduct. But a postman who was dismissed from the Post office for breach of a rule forbidding Post Office servants to bet by post was held to have lost his employment through misconduct. R(U) 24/56
- iii It is not necessary that the acts or omissions relied upon as constituting misconduct should always arise out of a person's employment, and a person may be guilty of such misconduct as would induce or compel a reasonable employer to dispense with his services on the ground that he was not a fit person to hold his particular employment. Thus where, as the result of being convicted of driving his own car after working hours while under the influence of drink, a lorry driver lost his employment through misconduct. See also *infra* 1.4.8 and R(U) 24/64, *infra* 1.4.8 iii. R(U) 7/57
- iv 'Misconduct' implies an element of blameworthiness and, although it may be constituted by mere carelessness, it is necessary to discriminate between the type and degree of carelessness which may have to be put up with in human affairs and the more serious type which justified withholding unemployment benefit on the ground of loss of employment through a person's own avoidable fault. The decision must depend upon the facts of each case. The manager of a branch pharmacy was discharged after cash shortages were discovered. He was found not guilty of embezzlement but was held to have lost his employment through misconduct. See also *infra* 1.4.7 (iii) and R(U) 17/64, *infra* 1.4.7 vi. R(U) 8/57
- v 'Misconduct' in the sense in which it is used in the context of the Act means conduct which is casually, but not necessarily directly, connected with the person's employment, and, regard being had to the relationship of employer and employee and the rights and duties of both, can fairly be described as blameworthy, reprehensible and wrong. A man was dismissed from his employment with British Rail because of his refusal to join a trade union. It was held, for the reasons given in paragraph 14-23, that he had not lost his employment through misconduct. See also *infra* 1.5.2 vi and 1.7.1 v. R(U) 2/77

Unemployment benefit: misconduct

2 Absence from work

- i An electrician was dismissed from his employment because of his persistent absence from work without leave, and was held to have lost his employment through misconduct. During a period of 17 weeks he had been absent from time to time for a total of 30 days. R(U) 22/52
- ii An employed person is expected to do all he reasonably can to notify his employer promptly of the reason for his absence from his place of employment, and to keep his employer notified if the absence continues. Thus a claimant who was absent through illness and by reason of domestic circumstances, but failed to explain the reasons for his absence, was held to have lost employment through misconduct. R(U) 23/58
- iii A claimant was held to have been guilty of misconduct when he did not return to work for 10 days after his holiday had ended. The reason for his not doing so was that he was sick, but he gave no explanation to his employers. R(U) 11/59
- iv A labourer was dismissed from his employment, after previous warnings, because of unauthorised absences from work without any reason being given. It was accepted that the employment was harmful to his health and that he had absented himself so as to attend the Employment Exchange for the purpose of seeking more suitable employment. Nevertheless, it was held that his repeated absences constituted misconduct. Compare R(U) 34/52, *infra* 1.4.7 i. R(U) 8/61
- v A claimant was suspended from work by his employers for a month because of unauthorised absences. He was held to have lost his employment through misconduct, but that the period of disqualification for the receipt of unemployment benefit should be limited to the period of his suspension. R(U) 10/71
- vi A claimant was dismissed from his employment for overstaying his holiday and an industrial tribunal found, under section 22 of the Industrial Relations Act 1971, that he had been unfairly dismissed. He was, nevertheless, held by the Commissioner to have lost his employment through misconduct. The industrial tribunal dealt with a different question from that raised by (what is now) section 20(1)(a) of the Act and their decision did not conclude any matter before the statutory authorities under that Act; nor were their findings of fact binding on those authorities. See, in particular, paragraphs 14-15; and see also *infra* 1.4.10 iii. R(U) 2/74

3 Dishonesty

- i A labourer was dismissed from his employment after being convicted of theft and was held to have lost his employment through misconduct. CU 190/50
- ii A labourer was dismissed from his employment for stealing from a fellow-worker and was held to have lost his employment through misconduct. R(U) 10/53

4 Disobedience

- R(U) 41/53 i The refusal to carry out a reasonable order and disregard of the available negotiating procedure for the avoidance of trade disputes may amount to misconduct.
- R(U) 14/56 ii Disobedience of an order due to a genuine misunderstanding does not amount to misconduct. Thus when, following an accident, a van driver was instructed not to drive, but nevertheless did so and was dismissed, it was accepted he had acted on a genuine misunderstanding and was not guilty of misconduct.
- R(U) 35/58 iii On engagement a man was told by his employers that he would be required to work a reasonable amount of overtime. He refused to do so when asked, although he had ample warning, and offered no reasonable excuse for his refusal. He was consequently dismissed from his employment and was held to have lost his employment through misconduct. He was legally obliged to work overtime and his neglect to comply with his employers' reasonable order amounted to misconduct.

5 Offensive behaviour

- R(U) 12/56 i A clerk was discharged as a result of complaints from colleagues that he used obscene language and made improper remarks. The Commissioner said: 'It cannot be doubted that unseemly conduct, connected with an employment and deliberately indulged in, which not unreasonably causes offence to fellow-workers, constitutes 'misconduct' This has long been recognised under the analogous provisions of the old Unemployment Insurance Acts.' The claimant was held to have lost his employment through misconduct.

6 Sexual offences

i The claimant, who was employed as a gardener by a local authority, lost his employment as a result of being convicted of a sexual offence under section 13 of the Sexual Offences Act 1956 which he had committed outside working hours. It was held that he had lost his employment through misconduct but that the period of disqualification should be reduced. As to which see 1.8.2 *v below*. R(U) 1/71

7 Unsatisfactory performance of duties

i A man who was employed as a thread tapper was dismissed from his employment because, although the quality of his work was satisfactory, his output was below the required standard. There was no evidence of deliberate or wilful negligence, but the claimant was naturally a slow worker. Held, he had not lost his employment through misconduct. R(U) 34/52

R(U) 13/53

ii The driver of a good vehicle damaged his vehicle and its load as a result of negligent driving. It was found not to have been merely a trivial error of judgement and he was held to have lost his employment through misconduct.

R(U) 8/57

iii The manager of a branch pharmacy was discharged following the discovery by the management of cash shortages. And, although he was found not to have been guilty of embezzlement, he was held to have lost his employment through misconduct.

R(U) 2/60

iv Part of a claimant's duty on night shift was to attend to frost fires, and it was alleged that on one night he allowed them to go out. He admitted that one fire had gone out, but said that he had rekindled it immediately. It was held that it had not been proved that he had lost his employment through misconduct. See also 1.4.9 *below*.

R(U) 7/61

v The night sister at a hospital was dismissed on the ground that, according to her employers, she had slept while on duty and had failed to do her rounds and instruct the nurses working under her. Her alleged conduct, which she denied, was not described in more detail and there was no evidence to support the allegations made against her. It was held that it was not established that she had lost her employment through misconduct. See also 1.4.10 i and compare R(U) 10/63, 1.4.10 ii *below*.

R(U) 17/64

vi An insurance agent admitted having lost £400 of his firm's money, but gave no proper account of how he had lost it. The employers did not discharge him, but regarded the employment as having been terminated. It was held that he had lost his employment through misconduct. If an employee cannot account for his employer's money, it is incumbent upon him to provide an explanation which is consistent with the exercise of due care. The failure to do so may justify an inference of carelessness of a type and degree amounting to misconduct.

R(U) 3/79

vii A warranty clerk was dismissed from his employment for being under the influence of drink. It was held that on the evidence the claimant showed signs of drink to an extent incompatible with the proper performance of his duties and that that amounted to misconduct in the sense of section 20(1)(a) of the Social Security Act 1975 (which is not a question between the claimant and his employer but one between the claimant and the insurance fund). Local tribunals dealing with questions under section 20(1)(a) would do well to avoid using the terms 'proper dismissal' and 'unfair dismissal'. Local tribunals imposing disqualification should also indicate that they have given consideration to the period of disqualification having regard to the guidance given by a Tribunal of Commissioners in decision R(U) 8/74, 1.8.1 viii *below*.

8 Acts unconnected with employment

i A chartered accountant was dismissed when his employers learned that he had been convicted of an offence for fraud committed before he had commenced his R(U) 26/56

employment with those employers. He was held not to be disqualified for receiving unemployment benefit on the ground that he had lost his employment through misconduct. In general, the alleged act of misconduct must have been during the period of the employment that was being followed, though not necessarily connected with that employment. Compare R(U) 2/77, 1.4.1 *v above*.

- R(U) 14/57 ii Behaviour outside working hours may be relevant when it is being considered whether employment has been lost through misconduct. But to justify disqualification for receipt of unemployment benefit it must be proved (a) that the claimant was guilty of industrial misconduct, and (b) that it was through such misconduct that he lost his employment. Thus an airframe fitter was held to have lost his employment through misconduct when he was discharged as the result of a complaint about his drunkenness outside working hours while lodging in the premises of one of his employers' customers. See also R(U) 20/59, paragraphs 10 *et seq*.
- R(U) 24/64 iii A bus driver was convicted of an offence in connection with a private vehicle and was disqualified for holding a driving licence for 6 months. His licence was restored after one month and he then resumed his employment. It was held that he had incurred disqualification for receiving unemployment benefit for a period of 6 weeks on the ground that he had lost his employment through misconduct. See, in particular, paragraphs 6-8. See also R(U) 7/57, 1.4.1 iii *above*.
- R(U) 1/71 iv A man was convicted of a sexual offence committed outside working hours and was held to have been guilty of industrial misconduct. Whether a sexual offence committed outside the person's employment constitutes misconduct is a question of fact. See paragraph 11 and see also the Commissioner's observations at paragraphs 13-14; and see also 1.4.6 i *above*.

9 Proof of misconduct

- R(U) 10/54 i It is not necessary that a person who has been tried for an offence in a Magistrates' Court should have been convicted of that offence in order to prove that he lost his employment through misconduct. It is the duty of the statutory authorities to make up their own minds as to what constitutes misconduct in an industrial sense irrespective of what conclusions may have been reached by employers or by the court. See also R(U) 2/74, 1.4.2 vi *above*.
- R(U) 2/60 ii The onus of proving misconduct is on those who allege it, and it must be clearly proved. The proof is not restricted to such evidence as would be admissible in a court of law and hearsay evidence may be accepted. Its value should, however, be carefully weighed; particularly when a claimant denies the facts relied upon as showing

misconduct, the most direct evidence of those facts should be adduced. See also R(U) 12/56, paragraphs 8 and 10; R(U) 7/61; and compare R(U) 10/63.

iii A claim for unemployment benefit was disallowed by a local tribunal on the basis of the claimant's misconduct. Evidence that he refused to commence his duties of employment at the required time conflicted. The burden of proving a case of misconduct lies with those who allege it. Misconduct has not been proved. Benefit was payable. R(U) 3/80 referred to. R(U) 2/81

10 Evidence of misconduct

i The dismissal of a night sister at a hospital for what was alleged to have been unsatisfactory conduct was confirmed by the hospital management committee after a hearing at which she had been present and assisted by her trade union representative. The secretary to the hospital management committee declined, however, to provide information to be put before the statutory authorities. The allegations were denied by the claimant and were not supported by evidence brought before the statutory authorities. The decision of the hospital management committee could not, in itself, be taken as evidence establishing misconduct. For, even if the findings of fact had been given upon which the committee's decision was based, it would have been desirable that the most direct evidence of the facts in question should have been adduced. There is no parallel between a conviction for an offence by a court of law and the findings of a body such as the hospital management committee. R(U) 7/61

ii A police constable was required to resign from his employment when he was found guilty of an offence after proceedings taken under the Police (Discipline) (Scotland) Regulations 1952. He consistently denied the charge, but it was held that he lost his employment through his misconduct. A finding by the Chief Constable, after police disciplinary proceedings, that an accused person has committed certain acts constitutes very cogent evidence that he committed those acts. It is more comparable to the finding of a court of law than to the finding of a body such as a hospital management committee. Evidence was also given for the Commissioner by his senior police officer. R(U) 10/63

iii A man who was said to have overstayed his holiday was dismissed by his employers, but it was found by an industrial tribunal that he had been unfairly dismissed within the meaning of section 22 of the Industrial Relations Act 1971. It was held that he had lost his employment through his misconduct and overstaying his holiday. The decision of the industrial tribunal was conclusive of the matter it decided, but did not conclude any matter before the national insurance statutory authorities. Further, the industrial tribunal's findings of fact were not binding on the statutory authorities, although there was evidence on which those authorities could act. Findings of fact reached after inquiry by a judicial authority are cogent evidence on which the statutory authorities can act, but, in general, where the claimant and the employers are both parties to proceedings, it is more likely that facts will be fully investigated than in proceedings for the statutory authorities to which the employer is not a party. Statutory authorities are not, however, bound to decide the facts in the same way as the industrial tribunal. Paragraph 14. See also R(U) 10/54, and R(U) 24/55. And compare R(U) 5/74. R(U) 2/74

Part 5: Voluntarily leaving employment

Section 20(1)(a) of the Act.

1 Voluntarily leaving

- R(U) 33/51 i An actor and others in a repertory company issued an ultimatum that if certain demands were not met they would leave the company. They were treated by the directors as having given notice and the claimant was held to have left his employment voluntarily.
- R(U) 16/52 ii It is an established principle of unemployment insurance law that, if a person deliberately and knowingly acts in a way which makes it necessary for his employer to dismiss him, he may be regarded as leaving his employment voluntarily. A woman who was employed as a canteen assistant, subject to satisfactory medical examination, refused to have an X-ray examination and in consequence was given notice by her employers. It was held that she left her employment voluntarily. Compare R(U) 7/74.
- R(U) 2/54 iii A woman whose request for leave of absence from her employment was refused by her employers nevertheless took the day off. When her employers complained she gave notice, to take effect 3 days later, but was told to go at once. It was held that her actions amounted to leaving her employment voluntarily. See, in particular paragraph 9.
- R(U) 9/59 iv A claimant may, in certain circumstances, properly be held to have left his employment voluntarily notwithstanding that, in form, the employment has been terminated by the employer, since there are various ways in which an employee may invite dismissal. If it appears that, in accordance with his own desires, he has brought about the termination of his employment he may properly be held to have left voluntarily. Similarly an employee who brings about his own discharge by failing or refusing to implement the conditions of his employment may also be held to have left his employment voluntarily. See also *infra* 1.5.4.
- R(U) 27/59 v A man gave notice to terminate his employment, but subsequently realised that he had acted hastily and foolishly and he then sought to withdraw his notice. He was not allowed to do so by his employers and was held to have voluntarily left his employment.
- R (U)1/96 vi A woman gave four weeks notice to her employer. The following day the employer asked her to leave the next day. The woman had terminated her employment when she gave notice, and this amounted to voluntarily leaving. This was not affected by her employer's later action (whether this was viewed as not requiring her to work out her notice, or as counter-notice). For another synopsis of this decision see 1.8.2 ix.

2 Did not leave employment voluntarily

- i A claimant cannot be regarded as having left his employment voluntarily without

just cause if he is discharged for refusing to pay his trade union subscription. Compare R(U) 9/59, 1.5.2 iii *below*.

- ii A civil engineer was awaiting trial for acts committed before his current employment began and by agreement with his employers he ceased work pending the result of the trial. He was convicted and did not return to his employment. Held, he did not leave his employment voluntarily but merely anticipated a decision by his employers to dismiss him. R(U) 1/58
- iii A man was discharged after a year's employment because he refused to join his employer's superannuation scheme. It was not shown that, on engagement, he was made aware that he would be expected to do so and it was held that, although he invited discharge, he could not be regarded as having left voluntarily. R(U) 9/59
- iv A man was held to have had just cause for leaving his employment voluntarily when he gave up '... what had amounted to perhaps less than half-time employment, which ... cannot have looked to him anything but precarious, for the chance, which fairly soon materialised, of other employment which was full-time'. (See paragraph 5.) The change he sought was not from secure to precarious employment but was from partial employment, relying upon the National Insurance Fund for benefit and credits during more than half the year, to full-time employment as a contributor not relying on the Fund at all. R(U) 20/64, 1.5.4 ii and R(U) 4/70, 1.5.4 iii *below*, distinguished. R(U) 4/73
- v The written terms of the claimant's employment made no reference to a requirement to work overtime, but after starting work he was told by the foreman that he was expected to do overtime on every working day. He refused to do so and also refused to accept other work which did not involve overtime working. He was then given a week's notice. Held, although the claimant could have avoided dismissal by acceding to his employer's wishes, he had not acted in such a way as to repudiate his contract of service and had not, therefore, voluntarily left his employment. R(U) 7/74
- vi A man who was dismissed from his employment with British Rail because he refused to become a member of a trade union was held, for the reasons given in paragraphs 24-27, not to have voluntarily left his employment without just cause. See also 1.4.1 v *above* and 1.7.3 *below*. R(U) 2/77
- vii A claimant who volunteers for redundancy may be afforded the protection of section 20(3A) of the Social Security Act 1975 and therefore shall not be deemed to have left their employment voluntarily. "Dismissal" in section 20(3A) covers any situation where the employer, in anticipation of future redundancies, has made it clear that some employees must leave the employment. If the claimant and the employer then come to some mutual agreement as to when and on what terms the claimant leaves then that is a case of dismissal under section 20(3A). The existence of a mutual consent to the employee being a volunteer for redundancy or to leaving at a particular date, even if the employee could have worked a little longer or need not have volunteered does not prevent such an employee from being able to take advantage of section 20(3A) of the Social Security Act 1975. R(U) 3/91

3 Onus of proof

- i It is for those who assert that a person has voluntarily left his employment to prove it, but the onus then shifts to the claimant to show that he did not leave without just cause. In other words, the claimant must prove that he had just cause for voluntarily leaving his employment. Both matters must be proved on a balance of probabilities. See paragraph 7 and 1.5.8 ii *below*. R(U) 20/64 (T)

4 What, in general, constitutes just cause for voluntarily leaving employment

- R(U) 14/52 i A person is not, in general, justified in giving up his employment unless he is reasonably assured of obtaining other employment without appreciable loss of time.
- R(U) 20/64 (T) ii It is not sufficient for a person to prove that he acted reasonably, in the sense of acting reasonably in his own interests, since the interests of the National Insurance Fund and other contributors have to be taken into account as well. The notion of 'just cause' involves a compromise between the rights of the individual and the interests of the rest of the community. (para. 8) It is not practicable to lay down any hard and fast rule to guide the statutory authorities as to the precise circumstances in which just cause or not just cause for leaving is shown, for each case must depend upon its own particular circumstances. (para. 9) See also para. 10-16 where circumstances which may justify a person's leaving his employment are considered by a Tribunal of Commissioners.
- R(U) 4/70 iii The primary purpose of the Unemployment Insurance Scheme is to insure against unemployment involuntarily incurred, and it is implicit in it that each insured person has a duty to all the other contributors to the Unemployment Insurance Fund not to incur unemployment by his own conduct. The phrase 'just cause' is indefinable, and whether 'just cause' is established in any given case depends on the precise circumstances of that case (para. 15). See also 1.5.8 iii *below*.

5 Just cause accepted: domestic considerations

- R(U) 14/52 i A man aged 61 lived and worked 70 miles distant from where his wife lived. His wife was 68 years of age and in poor health and lived alone. He left his employment voluntarily in order to be with her, and it was accepted that he had just cause for doing so.
- R(U) 19/52 ii A married woman left her employment voluntarily in order to join her husband, who was in the Army and had been posted to a new station where, it was expected, he would remain for some time. Held that she had just cause for voluntarily leaving her employment.
- R(U) 6/59 iii A school teacher lived with his wife and 4 children in a tied cottage which they occupied as a result of his wife's employment as a cook at a manor house. The claimant left his employment in order to look after the youngest child while his wife was away following her employment, on which occupation of the tied cottage depended. Held, the claimant had just cause for voluntarily leaving his employment.
- R(U) 31/59 iv A man was held to have had just cause for voluntarily leaving his employment when he moved out of 2 attic rooms in which he was living with his wife and year-old

baby into a house which was too far from his place of employment to enable him to go there every day.

v A painter who lived and worked in England left his employment to go to Scotland, where his father was dying. He made enquiries of his employers before leaving about re-employment on his return, but in the event there was then no vacancy for him. The enquiries he made before he left his employment were held to be tantamount to asking for leave of absence, so that he had just cause for voluntarily leaving his employment. R(U) 32/59

vi A woman who gave up her job to accompany her husband on an overseas posting with the armed forces had just cause for voluntarily leaving her employment (Social Security Act 1975, section 20(1)(a)(i)). The wife of a member of the armed forces might establish just cause for voluntarily leaving her employment provided that she leaves that employment no earlier than is reasonably necessary in order to arrange her own and her family's affairs. See also 1.2.3 xiii, 1.5.5 ii and 19.2.5 vii. R(U) 2/90 (T)

6 Just cause accepted in cases relating to employment and business matters

i An apprentice was instructed by his trade union to leave his employment because he was not being paid enough or at the correct rate. Held, that the mere fact that he had been instructed by his union did not, in itself, constitute just cause for his leaving his employment voluntarily, but it was nevertheless accepted that he had just cause for doing so on the ground that he had a grievance of his own which the union had been trying to remedy. CU 248/49

ii A piece-worker refused to accept the change in the terms of his employment and was summarily dismissed by his employers. The change would have meant a substantial reduction of his weekly earnings and it was held that by refusing to accept the new terms he had brought his employment to an end, but that, as he had not been given a reasonable opportunity to consider the matter, he had just cause for doing so. R(U) 15/53

iii The claimant, a man aged 52, was a director and manager of a company which was in financial difficulties. Another company agreed to purchase all the shares, but during the negotiations it transpired that the prospective purchasers were not prepared to allow the claimant to remain on the board or continue to employ him on the terms on which he had formerly been employed. In consequence he would have had security for no more than 12 months and no reasonable future prospects. He was held to have had just cause for voluntarily leaving his employment. R(U) 25/52

iv An electrician left his employment rather than yield to pressure to join a trade union. It was held that he had just cause for voluntarily leaving his employment. R(U) 38/53

v A claimant whose usual employment was as a waiter agreed to help out at a holiday camp until his services as a waiter were required. He was then put on different unskilled work and left of his own accord to seek work as a waiter, which he soon obtained. The principle that a man ought to be reasonably sure of obtaining fresh employment before leaving that which he had was accepted, but it was nevertheless held that the claimant had just cause for voluntarily leaving his employment since it was not of a suitable kind and was a mere stop-gap or makeshift. R(U) 40/53

1.5.6-7

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- R(U) 18/57 vi An apprentice electrician was held to have had just cause for voluntarily leaving his employment when he refused to do some work which his employer had, in effect, admitted was outside the scope of his apprenticeship. He was given the choice of obeying the order to do the work or leaving, and he chose the latter alternative. See, in particular, paragraph 8.
- R(U) 3/73 vii It has always been accepted that a person should be encouraged to take a job on trial in the hope that it will suit him. Accordingly a man who resigned as a trainee office manager after 6 weeks of a probationary course of 6 months because he considered he was not suited to the work, and that it would be unfair to his employers to continue training him, was held to have acted in a reasonable manner and to have had just cause for voluntarily leaving his employment.
- R(U) 4/73 viii A man was held to have had just cause for leaving his employment voluntarily when he gave up ‘... what had amounted to perhaps rather less than half-time employment, which ... cannot have looked to him anything but precarious, for a chance, which fairly soon materialised, of other employment which was full-time’. See paragraph 5 and 1.5.2 iv *above*.

7 Just cause not accepted: domestic considerations

- R(U) 6/53 i A girl aged 21 voluntarily left her employment because her parents, with whom she lived, were moving to a new district and would not agree to her living on her own. It was held that she was of an age at which, under suitable conditions, she could reasonably be expected to live away from home, at any rate until such time as she had obtained a situation in the place to which her parents had gone, and that she had not had just cause for voluntarily leaving her employment.
- R(U) 14/55 ii A Post Office telephonist resigned from her employment when she got married and drew her marriage gratuity, which was payable to her only if she left the service. She had hoped to be re-engaged in a temporary capacity, but the Post Office was not then re-engaging employees who had resigned. It was held that she had not shown just cause for voluntarily leaving her employment since she took the risk of unemployment for her own financial gain.

8 Early retirement

i A man could have remained in his employment until he attained the age of 65, but elected to retire at the age of 60 and take superannuation allowance. It was held that he had voluntarily left his employment without just cause. The question was not whether it was reasonable and proper for him to retire on pension; it was whether it was reasonable, if he did so, to be paid unemployment benefit. R(U) 26/51

ii A police sergeant retired after 25 years' service although it would have been open to him to remain in the Police Force for several years longer. At the time of his retirement he was living in his own house, which he had arranged to buy a year previously, and found it difficult to travel to and from his place of employment because he had recently been transferred. Before retiring he had consulted several prospective employers and he began other employment about 2 weeks later. It was held by a Tribunal of Commissioners that the claimant had voluntarily left his employment without just cause. See also 1.5.3 i *above*. R(U) 20/64 (T)

iii A police inspector retired from the Police Force at the age of 51 when he had qualified for his national police pension by completing 30 years' service. The compulsory retirement age for an inspector was 55, but if the claimant had continued to serve after completing 30 years' service it would have been financially less advantageous to him. It was held that he did not have just cause for voluntarily leaving his employment when he did. See also 1.5.4 iii *above*. R(U) 4/70

iv In determining under section 20(1)(a) Social Security Act 1975 whether a claimant has just cause for voluntarily leaving his employment and thereby avoids disqualification for receiving benefit, it is not for the statutory authorities to conclude that because certain arrangements are in the public interest the claimant has just cause for his action. A claimant could have retained employment as a school teacher until 65 but retired at 62 in response to an offer of early retirement by his local education authority which certified his retirement was in the interests of the efficient discharge of the education authority's functions. In giving up his employment he had no reasonable prospects of alternative employment. In the absence of other reasons for leaving employment 'just cause' for doing so was not established. R(U) 26/51 referred to. R(U) 3/81 affirmed by Court of Appeal, *sub nom. Crewe and others v. SS Commissioner* [1982] 1 WLR 1209; [1982] 2 All ER 745 CA; [1982] ICR 706; R(U) 3/81. Appendix. See also R(U) 1/83 *below*. R(U) 3/81

v A civil servant was asked by his employer to retire under a special early retirement scheme. He agreed to do so and, when he claimed unemployment benefit, the question arose whether he had left his employment voluntarily within the meaning of section 20(1)(a) of the Act. The Commissioner held that because he had acceded to the request made to him to retire under the premature retirement scheme he should not be regarded as having left his employment voluntarily within the meaning of that section (paragraph 9). R(U) 3/81 distinguished. R(U) 1/83

9 Just cause not accepted in cases relating to work and business matters

i The claimant left his employment voluntarily because he considered it to be beyond his ability although his employer was not dissatisfied with his work. He also produced some evidence of physical disability, but it was held that he did not have just cause for voluntarily leaving his employment. See, in particular, paragraph 9 as to considerations for relating to physical disabilities to be taken into account. R(U) 13/52

ii The claimant left his employment with a non-union firm because of an objection by his trade union to demarcation of duties. He was a skilled carpenter and, after returning to work after an absence due to sickness, he found that a cabinet he had been making had been finished by an unskilled man. Held, he had voluntarily left his employment without just cause. R(U) 18/52

1.5.9-10

- R(U) 4/87 iii The claimant, an established civil servant, gave up his employment voluntarily to seek work as a social worker. He was unemployed for 4½ months before he obtained such employment. He contended that he had just cause for leaving his employment voluntarily because he served the public interest by going to work with the mentally handicapped. The Commissioner, referring to the Court of Appeal's decision in *Crewe v. Anderson* (see R(U) 3/81 *above*) to the effect that general public interest could not constitute just cause, held that the claimant did not have just cause. For another synopsis of this decision see 1.8.2 viii *below*.

10 Trial Period

- R(U) 1/92 i A man who left his employment voluntarily after the end of his sixth working week was held not to be assisted by the trial period provision (Social Security Act 1975, section 20A and Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983, regulation 12G). It was held by the Commissioner that in considering the trial period reference should not be made to 'working week', but the definition of a week in Schedule 20 of the Social Security Act 1975 (ie a calendar week commencing with Sunday) applied to "week" as used in section 20A of that Act and regulation 12G of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983.

Part 6: Refusal of suitable employment

Section 20(1)(b) of the Act.

1 Onus of proof

i It is for the insurance officer to show initially that a situation is suitable for a person, but if a *prima facie* case of suitability is made out the burden of proof shifts to the claimant to displace it. See, in particular, paragraphs 12-14. And see R(U) 9/64, *infra* 1.4.2 iv, paragraph 11. R(U) 26/52

ii An electrician was notified of a vacancy for a maintenance electrician, but refused to fill up a form which he was required to do prior to being interviewed by the prospective employer. He alleged that the work was of a type he was not competent to do, but it was held that by neglecting to go for an interview he had not displaced the *prima facie* case of the suitability of the situation. R(U) 32/52

2 Suitability of employment

i A man who had been a supervisor in a firm in London went to Birmingham in the belief that he had secured employment there, but it did not materialise. Ten days later he was offered a post at a monthly salary, but refused it because he was short of money and wanted a situation in which he would be paid weekly. Held, it was proper to consider whether the offered employment compared favourably with his former employment and that, on that basis, the situation offered could not be regarded as suitable after only 10 days' unemployment. R(U) 14/54

ii Whether, in a particular case, a situation offered is in suitable employment must be judged in the light of the circumstances at the time of the offer, and the fact that the restrictions imposed by the claimant had in the past been properly reasonable, though a relevant consideration, is not conclusive. A married woman, after being employed part-time as a tailor's finisher for 15 years, had been unemployed for over 3 months when she refused full-time similar employment because of her domestic responsibilities. It was held that her restrictions on hours of work were not reasonable in view of her domestic circumstances and past record and that she was entitled to a longer time in which to find employment comparable to that which she had lost after 15 years' service. R(U) 2/59

iii After being unemployed for 3 months a former rubber millroom worker who was unfit for heavy work refused employment as a weaver at a wage which was the agreed rate for the job. One of his reasons for such refusal was that his net income would have been £1 a week less than he was receiving by way of unemployment benefit, national assistance and the value of the milk tokens. It was held by a Tribunal of R(U) 10/61 (T)

Commissioners that the offered employment was not unsuitable in his case. See also R(U) 15/62.

R(U) 3/63
(T) iv The effect of (what is now) subsection (4) of section 20 of the Act is that, *prima facie*, employment in an occupation other than the claimant's usual occupation is not suitable, but that under the concluding words of subsection it may be deemed not to be unsuitable after 'the lapse of such an interval from the date on which he becomes unemployed as in the circumstances of the case is reasonable'. On the facts of the case a Tribunal of Commissioners held that a period of 3 weeks was too short a time to enable it to be said that a situation as a van driver salesman was not unsuitable for the claimant, whose occupation had formerly been a superintendent storekeeper.

R(U) 9/64 v A joiner who had been unemployed for 15 weeks refused to take employment in his usual occupation with a building firm because he would not have been allowed to have tea-breaks without loss of pay. He contended that the offered employment was not suitable for him on the ground that the conditions of it were less favourable than those which he might reasonably expect to obtain (see section 20(4)(b) of the Act). It was held, for the reasons given in paragraphs 11-14, that the offered employment was suitable for the claimant.

R(U) 5/68 vi A man who was unemployed for 4½ months had been employed for many years as a sheet metal worker and had recently been doing skilled work. He refused to apply for a situation as a sheet metal worker at a wage which, for the first 4 weeks, would have been far below the agreement rate. It was held that the offered employment was unsuitable in the claimant's case. Section 22(5) of the National Insurance Act 1965 (now section 20(4) of the Act) did not provide a definition of suitability, but describes three sets of circumstances in which employment is not suitable and one in which it may be found to be suitable. If none of the circumstances apply the statutory authorities are free to make their own decision. See, in particular, paragraphs 9-16.

3 Good cause accepted for the refusal or failure to apply for suitable employment

R(U) 41/52 i After 10 days' unemployment a young single woman, a factory worker, refused to apply for unskilled factory employment in a far distant town because she lived with her aged and invalid mother who depended upon her financially. She had previously had steady employment in her own town and after 2½ weeks she obtained further employment in that town. It was held that in the circumstances, particularly in view of the very short spell of unemployment, the claimant had good cause for refusing to apply for the offer of employment. At paragraph 5 of the decision the Commissioner said that if the claimant's spell of unemployment had been much longer the question of good cause might have had to be considered on a radically different basis and such matters as the extent to which her mother was physically dependent upon the claimant's services would have been of greater moment.

R(U) 34/56 ii A furniture upholsterer who had been employed by the same firm for a number of years was on short-term working. He was offered temporary full-time employment in

the same occupation with another firm, but refused to apply for it. Held, for the reasons given in paragraphs 7-8 of the decision, the claimant had good cause for his failure to apply for the situation.

iii A married woman who had been unemployed for 9 months refused to apply for employment which began at 7.15 a.m. each day because she had a young baby. Her mother-in-law was able to look after the baby from 9 a.m. to 5.30 p.m. daily, but that made it impossible for the claimant to accept employment which began before 9 a.m. It was held that, in the circumstances, she had good cause for refusing the offered employment. R(U) 20/60

4 Good cause not accepted for refusal or failure to apply for suitable employment

i A married woman refused employment because her prospective employer would not allow her time off to prepare a mid-day meal for her husband and son and was held to be disqualified for receiving unemployment benefit for 6 weeks. A married woman with domestic responsibilities who wishes to work outside her home must be prepared to accept employment on the terms generally recognised by employers. C.U. 365/49

ii A registered disabled person, aged 60, refused to apply for employment as a desk-chair attendant because he was afraid of becoming a seasonal worker. It was held that he did not have good cause for his refusal or failure to apply for that situation. R(U) 18/51

iii A woman who had been unemployed for 9 months would not accept an offer of suitable employment unless her prospective employer agreed to give her 3 weeks' holiday within a month of commencing employment. Held, she did not have good cause for refusing an offer of suitable employment. R(U) 23/51

iv A man lost employment by reason of a stoppage of work at his place of employment. Some 3 months later (the stoppage of work having been treated as being ended, and the claimant having been in receipt of unemployment benefit for approximately 6 weeks) he refused an offer of suitable employment with another firm. Held, the reason given in paragraphs 29-35 of the decision that the claimant did not have good cause for his refusal of the offer of suitable employment. R(U) 1/52

v An unemployed stonemason who lived in a country district refused to do haymaking for 2 weeks on the ground that it was not his trade and because he thought it might prejudice his prospects of obtaining work in his trade if he took the offered employment. Held, that he had not shown good cause for refusing suitable employment. R(U) 35/52

vi A plumber refused an offer of employment in his own trade on the ground that in the past he had been permitted, for medical reasons, to seek his own employment. Held, the offered employment was suitable and the claimant had not shown good cause for refusing it. R(U) 29/53

1.6.4

- R(U) 20/55 vii A man was offered employment as a ship's plumber at a place over a hundred miles away from where he lived at a wage was in accordance with the generally accepted rate. He refused to accept the situation on the ground that no subsistence allowance was payable, although it subsequently transpired that the employers paid a subsistence allowance notwithstanding they were under no obligation to do so. It was held that the claimant had not shown good cause for his refusal to apply for a situation in suitable employment and that the question of good cause must be determined in relation to the terms of employment as represented to the claimant. If those terms were such that there is no good cause for refusal it is immaterial that they are less favourable than the actual conditions of employment. At paragraph 6 of the decision the Commissioner said that the crucial question is whether the job as offered to the claimant was such that he had no good cause for refusing it. The 'good cause' must be determined, in other words, in relation to the terms of employment as represented to the insured person.
- R(U) 32/56 viii A married woman aged 21 refused to apply for employment at a Royal Ordnance Factory on the ground that it would be too dangerous. Held, she did not have good cause for refusing to apply for a situation in suitable employment.
- R(U) 34/58 ix An unmarried labourer aged 22, who lived in Shetland, was unemployed for 7 months and had no prospect of further employment. He was offered, but refused employment as an unskilled worker some 750 miles away from his home. It was held that he had failed to show good cause for refusing a situation which could not be regarded as unsuitable in his case.
- R(U) 10/61 (T) x A man who had been unemployed for 3 months refused to take employment in a different trade at a wage which was at the agreed rate. One of his reasons for such refusal was that if he took the job his net weekly income would be less than he was receiving by way of unemployment benefit, national assistance and the value of the milk tokens. Held by a Tribunal of Commissioners that the claimant did not have good cause for refusing an offer of suitable employment. See also 1.6.2 iii.

Part 7: Neglect of reasonable opportunity of suitable employment

Section 20(1)(c) of the Act. (See also as to suitability of employment, supra 1.6.2).

1 Neglect

- i A woman who had been unemployed for 9 months was held to have neglected to avail herself of a reasonable opportunity of suitable employment when she refused to accept an offer of employment unless the prospective employer would give her 3 weeks' holiday within a month of starting work. R(U) 23/51
- ii An electrician was notified of a vacancy for a maintenance electrician but refused to fill up a form preparatory to having an interview with the manager of the prospective employers. It was held that by neglecting to interview the employer he had not shown that the employment was, as he alleged, unsuitable for him. R(U) 32/52
- iii A man went for an interview with a prospective employer in a dirty and unshaven state and, as a result, was not engaged. It was held that the claimant's attitude amounted to neglect to avail himself of a reasonable opportunity of, suitable employment. R(U) 28/55
- iv A man who for some years had been employed as a teacher refused to register with the General Teaching Council for Scotland and, in consequence was given notice of dismissal. It was held that he had neglected to avail himself of a reasonable opportunity of suitable employment. R(U) 5/71
- v A man who was dismissed from his employment with British Rail because of his refusal to join a trade union did not, for the reasons given in paragraphs 28-37, neglect to avail himself of a reasonable opportunity of suitable employment. See also *supra* 1.4.1 v and 1.5.2 vi. R(U) 2/77

Part 8: Period of disqualification

1 General considerations

- C.U. 19/48 i The commencing date of a period of disqualification should normally be the day following the end of employment. But where a claimant has received, or been entitled to, benefit, disqualification should begin on the first day of the benefit week following the date of the decision. See also C.U. 155/50 and R(U) 35/53, *infra* 1.8.1 iv.
- C.U. 190/50 ii The object of the provision for disqualification is not to punish the insured person, but to protect the National Insurance Fund from claims which the insured person has brought upon himself by such misconduct as might have been expected to lead to dismissal. It follows that the fact that the insured person may have been fined or imprisoned for his offence is not in itself a reason for reducing the period of disqualification. On the other hand, all the circumstances of the particular case must be taken into account, including the question whether the claimant ought to have realised that what he was doing involved a risk of dismissal. (The same principle would, presumably, apply in cases of voluntarily leaving without just cause and in cases of disqualification under paragraphs (b) and (c) of section 20(1) of the Act.) (See also R(U) 8/74, *infra* 1.8.1 viii, paragraph 16.)
- R(U) 27/52 iii The statutory authorities have a discretion as to the length of the period of disqualification, subject to a limit of 6 weeks, but they should exercise the discretion judicially and, unless there are mitigating circumstances in the nature of the misconduct, they should not impose a disqualification which in effect affords no real protection to the National Insurance Fund. See also R(U) 8/74, *infra* 1.8.1 viii.
- R(U) 35/53 iv When a workman was dismissed for misconduct and received wages for 4 days following the day of his dismissal it was held, following decision C.U. 155/50, that disqualification was correctly imposed from the fifth day; that is to say, the day after the last day for which the claimant received payment from his employers.
- R(U) 24/56 v Disqualification under (what is now) section 20(1) of the Act should be imposed for an unbroken period.
- R(U) 1/57 vi The fact that a person who has lost his employment through misconduct would probably have been dismissed on a later, though undetermined, date is not a ground for imposing less than the full statutory period of disqualification.
- R(U) 13/64 vii The obtaining of other employment after being dismissed for misconduct, or having voluntarily left employment without just cause, does not operate to reduce the period of disqualification if there is further employment within the 6 weeks of the termination of the first employment.
- R(U) 8/74 (T) viii Held by a Tribunal of Commissioners: (a) the statutory authorities have a complete discretion as to the period of disqualification to be imposed (subject to the maximum statutory period of 6 weeks), but the discretion must be exercised judicially and all the circumstances relevant to the question of whether disqualification should be imposed at all should be taken into account (paragraph 16); (b) disqualification for the maximum statutory period of 6 weeks is not necessarily appropriate only in the most serious cases; references to disqualification not being a penalty have been misunderstood (paragraph 16), compare C.U. 190/50, *supra* 1.8.1 ii; (c) the reference to the burden of proof in paragraph 3 of R(U) 17/54 is erroneous (paragraph 18); (d) the dictum of the Commissioner at paragraph 7 of the decision on Commissioner's files C.U. 273/73 is approved (paragraph 20). (In the unnumbered decision referred to the Commissioner pointed out that the Act says nothing about the insured person having to prove mitigating circumstances and that the exercise by the statutory authorities should not be fettered by a

‘burden of proof’ approach. The statement that if there are mitigating circumstances the determining authority should impose disqualification for a period less than the maximum is not materially different from the statement that they should choose the period in accordance with the merits of the case. The correct approach is to adhere firmly to the statutory language, regarding each case as one in which a sensible discretion has to be exercised in such manner as the justice of the case may require.)

2 Disqualification for less than the maximum period

- i When a goods vehicle driver was dismissed for misconduct after damaging his vehicle and load through negligent driving it was held, for the reasons given in paragraph 13 of the decision, that there were mitigating circumstances which justified a shorter period of disqualification than the maximum. see 1.4.7 ii, *above*. R(U) 13/53
- ii A claimant voluntarily left his employment without just cause, but it was ascertained that the employment would in any case not have lasted for more than 3 weeks. Held, that he should not be disqualified for receiving unemployment benefit for more than 3 weeks. (Maximum period of disqualification was 6 weeks). R(U) 5/54
- iii A man was due to return to work from his holiday on 4th January. He was sick from 30th December to 18th January but did not inform his employers, who discharged him (by telegram) on 14th January. Held, he was disqualified for receiving unemployment benefit (on the ground of misconduct) from that date. R(U) 11/59
- iv In the case of a claimant who was found voluntarily to have left his employment without just cause the period of disqualification imposed was for 3 weeks because ‘the factors he had to weigh up were somewhat finely balanced and he had made determined efforts to find alternative employment before giving notice’. (Maximum period of disqualification was 6 weeks). R(U) 4/70
- v In the case of a person who loses employment through misconduct, the less closely misconduct is related to the employment the more justification is there for reducing the period of disqualification. Thus a man who was employed as a gardener and who lost his employment as a result of being convicted of a sexual offence was disqualified for one week only. (Maximum period of disqualification was 6 weeks). See also R(U) 27/59 and R(U) 8/61. R(U) 1/71
- vi A claimant was suspended from work by his employers for a month because of unauthorised absence. Held, the period of disqualification should be confined to the period of the suspension. R(U) 10/71
- vii A conflict of evidence is no justification for reducing a period of disqualification. The justification for imposing a lesser period than the maximum statutory period is on finding that there were mitigating circumstances or, since the choice of the period is discretionary, simply by taking a common-sense view that the case does not merit the maximum period. See R(U) 8/74, 1.8.1 viii, *above*. R(U) 2/72
- viii An established civil servant left his employment to seek social work with the mentally handicapped. The Commissioner was impressed by the point that there was a shortage of people willing to work with the mentally handicapped and a public need for such workers. Exercising the ‘sensible discretion’ referred to in R(U) 8/74(T) he held that one week’s disqualification was appropriate (Maximum period of disqualification was 6 weeks). For another synopsis of this decision see 1.5.9 iii *above*. R(U) 4/87
- ix A woman gave four weeks notice, but her employer did not allow her to work out that notice. The Commissioner said that this was relevant when deciding the period of disqualification. He held that one week’s disqualification was appropriate in this case. (Maximum period of disqualification was 26 weeks). For another synopsis of this decision see 1.5.1 vi. R(U) 1/96

3 Non-satisfaction of contribution conditions not tantamount to disqualification

- R(U) 13/80 i Benefit was claimed for 2 periods of interruption of employment in respect of which the relevant contribution conditions were not satisfied for the first period but would have been for the second had it not linked with the first as a single period of interruption of employment. It was held that the non-satisfaction of the contribution conditions was not tantamount to disqualification and regulation 7(1)(b) and (c) of the Unemployment Benefit Regulations 1975 did not apply. Benefit was not payable for either period. Considered in R(U) 7/85.

Part 9: Restricted availability

Regulation 7(1)(a) of the Unemployment, Sickness and Invalidity Benefit Regulations 1983 (hereafter in Parts 9-15 of Chapter 1 referred to as 'the Regulations'). These regulations consolidated the 1975 Regulations as amended up to 28 November 1983 and regulation 7(1)(a) replaced and re-enacted regulation 7(1)(a) of the 1975 Regulations, which itself replaced and re-enacted in identical terms the relevant regulations of the 1948 Regulations as amended in 1955, and of the 1967 Regulations.

1 When regulation 7(1)(a) is applicable

i A married woman who lived in a small village had been employed on Monday, Tuesday and Friday each week and, when that employment came to an end, she said that she was available for employment on those days only, but was not available for full-time employment. She gave as her reason for limiting her availability for employment that she had household duties in looking after her husband and a boarder. It was held that she was entitled to unemployment benefit for the 3 days on which she had formerly been in employment; that she was not available for employment on the other days; and that regulation 6(1)(aa) of the 1948 Regulations was not relevant because she had not imposed restrictions regarding the employment she was prepared to accept on those days, but had refused the possibility of employment altogether. The phrase in the regulation 'where in respect of any day a person places restriction on the ... hours ... or other conditions of employment which he is prepared to accept ...' clearly implies that on the day in question he is prepared to accept employment of some kind. R(U) 15/58

ii A married woman with 2 young children limited her availability for employment to a radius of about 6 miles from where she lived, but within that limit she was prepared to work full-time from Monday to Saturday. It was held that she was not without reasonable prospects of securing employment, nor was the absence of such prospect due to the restrictions she imposed on the nature, etc., of the employment she was prepared to accept. Regulation 6(1)(aa) of the 1948 Regulations did not, accordingly, apply. R(U) 31/58

2 Effect of the regulation

i A woman who lived at home with her mother, her brother and sister placed restrictions on the hours of employment which she was prepared to accept and in consequence had no reasonable prospects of securing employment. It was, however, accepted that her restrictions were reasonable within the meaning of paragraph (iii) of regulation 6(1)(aa) of the 1948 Regulations and it was held by a Tribunal of Commissioners that, since the claimant satisfied one of the conditions specified in the Regulations, it was not open to hold that she was not available for employment solely because of a lack of prospects of employment due to the restrictions she had placed on the nature, etc., of the employment she was prepared to accept. See paragraphs 9-11. R(U) 4/57
(T)

ii A young married woman who, before her marriage, had been employed full-time as a domestic servant restricted her availability for employment after her marriage to part-time domestic work to enable her to look after her husband. There was no such work in the district in which she lived and she had not reasonable prospects of securing employment within the limits she imposed. It was held that for her claim for unemployment benefit to succeed she must satisfy one or other of the conditions specified in paragraphs (i)-(iii) of regulation 6(1)(aa) of the 1948 Regulations; that paragraphs (i) and (ii) were not relevant in the case of the claimant; and that she could not satisfy the condition in paragraph (iii). The days to which her claim for unemployment benefit related accordingly fell not to be treated as days of unemployment. R(U) 17/57

iii A young single woman lived in her mother's boarding-house, which was closed during the winter months. She was employed in the boarding-house by her mother R(U) 3/59

during the summer and held herself as being available for employment in employed contributor's employment during the winter months only. It was held that by so restricting her availability she had no reasonable prospects of securing employment and that it could not be said that her restrictions were nevertheless reasonable under sub-paragraphs (i), (ii) or (iii) or regulation 6(1)(aa), of the 1948 Regulations. As to the first of those sub-paragraphs, the adverse industrial conditions which prevented her from securing employment during the winter months were not temporary, that is to say lasting for a limited time only and then ceasing; but were normal and annually recurrent industrial conditions in the locality. There was no suggestion that there was any physical reason for the claimant restricting her availability to the winter months so that sub-paragraph (ii) did not apply; as to the third sub-paragraph, the Commissioner said that its main purpose was to safeguard a claimant who restricted himself from accepting employment which was different from, or on less satisfactory conditions than those in, his usual occupation. It might be that such a restriction could be regarded as reasonable for a time, but the longer the person concerned remained unemployed the less reasonable that inflexible attitude would become. Sub-paragraph (iii) was, accordingly, irrelevant in the case of the claimant. See also R(U) 6/59.

R(U) 20/60 iv It was held that, as a consequence of the restriction she imposed on her availability for employment, a young married woman with a young baby was held to have no reasonable prospects of securing employment and that her inability, or refusal to consider employment which began before 9 a.m. could not be said to be reasonable under any of the 'escape' provisions of regulation 6(1)(aa) of the 1948 Regulations. The claimant's lack of employment was not due to any temporary adverse industrial conditions in that area in which she lived, there was nothing in her physical condition which required her to limit her availability, and there was no connection between her usual occupations and the restrictions she imposed, which arose solely from her being the mother of a young child.

R(U) 1/69 v The claimant had an agreement with the B.B.C. under which they had first call upon his services, but there were days upon which his services were not required by the Corporation and he made a claim for unemployment benefit in respect of those days, though he held himself available on such days for employment only as an actor. It was held that by entering into his agreement with the B.B.C. the claimant had placed restrictions on the nature and conditions of the employment which he was prepared to accept and in consequence had no reasonable prospects of securing employment which could be fitted in with his commitments to the Corporation. Sub-paragraphs (i) and (ii) of (what was then) regulation 7(1)(b) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 (by which regulation 6(1)(aa) of the previous Regulations was re-enacted) did not apply; nor could the restriction be said to be reasonable under sub-paragraph (iii) of the regulations. See paragraph 8.

R(U) 6/72 vi The claimant had spent the whole of his working life in the building and construction industry, but retired from his employment as a technical manager at the age of 62 on medical advice. He subsequently made a claim for unemployment benefit, but declared that he would take employment only as a technical manager at a minimum salary of £5,500 per annum in, or near, the town in which he lived, and in any case outside London. There was clear evidence that he had no prospects of obtaining employment within those limits and it was held that in consequence of such restrictions he had no reasonable prospects of securing employment. The locality restriction might have been reasonable in view of the claimant's physical condition, but the restriction as to the remuneration he required was not reasonable, so that, since sub-paragraph (ii) of regulation 8(1)(b) of the 1967 Regulations spoke of 'restrictions' in the plural, the claimant was not assisted by that sub-paragraph. Similarly, even if it were to be assumed that the restriction as to the remuneration he required was reasonable within the meaning of sub-paragraph (iii) of the regulation, the same could not be said of the locality restrictions, so that, since sub-paragraph (iii) was also in the plural and spoke of 'restrictions', that sub-paragraph did not assist the claimant. The days to which the claim for unemployment benefit related accordingly fell not to be treated as days of unemployment in relation to the claimant.

Part 10: Payments on termination of employment

Regulation 7(1)(d) of the Regulations. (This regulation on consolidation replaced regulation 7(1)(d) of the 1975 Regulations, which itself re-enacted in identical terms regulation 7(1)(e) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 as substituted by regulation 2 of the National Insurance (Unemployment and Sickness Benefit) Amendment Regulations 1971. The present regulation differs materially from the pre-1971 Regulation. For the history of the previous Regulations see R(U) 2/68, 1.10.1i, below.)

1 Nature and amount of a payment on termination of employment

i When the service agreement under which a claimant was employed for a fixed term was prematurely determined by the employers and the claimant was paid a lump sum, it was held that, notwithstanding the amount he received was less than the remuneration he would have been paid if his employment had continued, it was nevertheless a payment in lieu of remuneration within the meaning of what was then regulation 7(1)(e) of the 1967 Regulations, Compare R(U) 5/73, 1.10.1iv, *below*. R(U) 2/68

ii Regulation 7(1)(e) of the 1967 Regulations spoke (and the present regulation speaks) only of a payment in lieu of remuneration and does not mention that the payment must be equal or equivalent to the remuneration. It is clear that the principle of equality or equivalence which to some extent featured in earlier Regulations had been deliberately abandoned. Accordingly, once it is clear that a composite payment includes an element of compensation for less remuneration, it is unnecessary to split it up so as to qualify the amount of that element. See also paragraphs 38-41 of R(U) 6/73, 1.10.1v, *below* and R(U) 7/80, 1.10.1 viii, *below*. R(U) 3/68

iii The claimant was an employee of a limited company when a receiver was appointed as agent of the company under the terms of a trust deed. The conditions of the claimant's employment included a provision that if it became necessary to terminate his employment for the reasons of redundancy he would be entitled to 10 weeks' warning and 4 weeks' notice. In fact he was given 8 weeks' notice of termination by the receiver and a payment equivalent to 7 weeks' wages, having worked for one week of his notice. Held, that it was a payment in lieu of notice but that it related only to the notice in fact given and not to the longer period to which he would have been entitled by the terms of his employment. See paragraphs 6-7. R(U) 5/72

iv A payment in lieu of notice is *in its nature* a payment made in consideration of an employee's agreement to forego his contractual or statutory right to notice, or if he has been prematurely dismissed without receiving such notice, a payment made in satisfaction of his resulting right to claim damages or compensation. Similarly, in the context of the regulation, a payment in lieu of remuneration is *in its nature* a payment made in consideration of an employee's agreement to forego remuneration to which he is contractually entitled, or, where he has been prematurely dismissed in circumstances which deprive him of a contractual right to earn, a payment made in satisfaction of his resulting right to damages or compensation. See paragraph 12. R(U) 5/73

v It has been consistently held that the amount of a payment in lieu of notice or in lieu of remuneration is not decisive of the days in respect of which it is received. The days in respect of which such payments are received are established by reference, and by reference only, to the period of notice to which the claimant was legally entitled (but did not receive), or by reference to the period during which he was legally entitled to continue to serve (but did not serve). Thus, when a man who was contractually entitled to one month's notice was summarily dismissed and paid an amount equivalent to 3 months' salary, it is held that he had received a single payment in lieu of both notice and of remuneration. See paragraphs 18-21 and see also R(U) 37/53 and R(U) 6/73, 1.10.6i *below*, but compare R(U) 2/68, 1.10.1i, *above*. R(U) 5/73

R(U) 7/73 vi The claimant was entitled to one month's notice to terminate his employment
(T) and on the termination of it, without notice, he was paid an amount equivalent to 3 months' salary, one-third of which was described as 'wages in lieu of notice' and the remainder as 'severance pay'. It was held by the majority of a Tribunal of Commissioners that (what was then) regulation 7(1)(e) of the 1967 Regulations, as substituted by the 1971 Amendment Regulations, referred only to a payment having one or other or both of the specified characteristics, and that if it is such a payment the regulation applies to it irrespective of the amount of it. There was no warrant for dividing it into parts. Held further that the claimant did not receive the notice to which he was entitled, but received payment in lieu thereof which was also a payment in lieu of the remuneration he would have earned if he had worked out his notice. Neither the quantum of the payment nor the description of its parts affected the quality of it. The 'severance pay' (which appeared to be a bounty payment) could not be isolated and treated as a separate payment in lieu of remuneration leading to an extension of the disallowance period, which, it was held, was a period of one month. See paragraphs 35 *et seq.* But see R(U) 3/83.

R(U) 1/79 vii A Squadron Leader in the Royal Air Force was prematurely retired a little over 4 years before his service would normally have terminated. He received a special capital payment of £8000.34 under the terms of compensation of redundant members of the Armed Forces. The Chief Commissioner held that the payment was in part in lieu of remuneration which the claimant would have received had his service not been terminated and that, applying R(U) 3/68, 1.10.1ii *above*, and R(U) 7/73, 1.10.1vi, such payment was in respect of each of the days from the termination of his service until his career would have ended in normal retirement. Accordingly regulation 7(1)(d) of the Social Security (Unemployment Sickness and Invalidity Benefit) Regulations 1975 operated to prevent payment of unemployment benefit for the maximum period of 12 months from the date of termination of service. In *R. v. National Insurance Commissioner, Ex parte Stratton* [1979] 2 WLR 389, the Court of Appeal, affirming the Divisional Court, held that the true nature of the special capital payment was that of a payment by way of compensation for being made redundant and was not a payment in lieu of remuneration within the meaning of the regulation. Also 18.1.2viii *above* and see R(U) 3/86, 1.10.1ii *above*, R(U) 7/73, 1.10.1vi, *above*.

R(U) 7/80 viii Trading difficulties forced a ship repair yard to take steps to reduce its workforce as quickly as possible. A scheme was agreed between the employers and the employees' trade union whereby the union forewent entitlement to 90 days' notice of the redundancies as provided by section 99 of the Employment Protection Act 1975, and each employee who volunteered for redundancy received a payment in lieu of at least the wages he would have received between his date of leaving and the end of the period of 90 days commencing with the date of the agreement. The question arose whether the payment fell within the ambit of regulation 7(1)(d) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975. It was held that it did. For all practical purposes the employees concerned had a right to the full 90 days notice or a cash equivalent. The payment was not solely an inducement to volunteer for redundancy or compensation for accrued rights in a job, as the terms of the relevant agreement provided income for a prescribed period. It is immaterial whether a payment in lieu of remuneration is exactly equal to the remuneration which would otherwise have been payable. See also R(U) 3/68, 1.10.1ii *above*, and R(U) 7/73, 1.10.1v, *above*.

- ix In January 1978 the claimant and other employees were notified that the factory at which they were employed was to close over a period of some months commencing in March 1978, and that they would, on becoming redundant, be allowed to choose one of two forms of terminal payment. The claimant was entitled to 12 weeks notice under the Contracts of Employment Act 1972 (as amended) but received only 4, being given notice on 21 April 1978 that his employment would end on 19 May 1978. In respect of the termination of his employment payment was made to him of a sum or sums 'in first and final satisfaction' of all claims against the employer, in terms of the alternative he had chosen. No part of the sum was regarded by employer or employee as payment in lieu of notice. It was held that the general notice of intended closure given in January 1978 did not amount to a specific notice of termination of employment. It is not in all cases an inevitable inference to be drawn that a 'package' settlement of all claims includes a payment in lieu of notice thereby attracting the operation of regulation 7(1)(d) of the 1975 regulations. It is proper to consider the true nature of a terminal payment without necessarily splitting it into component parts and to determine whether it represents compensation for the loss of future rights (e.g. to earn a wage, i.e. an income loss) or compensation for the loss of a capital asset (i.e. a means of earning remuneration). In the circumstances the payment was of a capital nature designed to compensate for the loss of a capital asset and did not include a payment in lieu of notice. R(U) 4/80
- x A claimant was employed under an agreement providing for termination of employment on 6 months notice given by either party. Under a severance scheme to reduce staff numbers above a certain age an employee offered early retirement could retire and be paid, as consideration, a capital sum determined by his age and salary. The amount of notice to which he would have been entitled if he had not retired by mutual consent, without any such notice, was not a factor in the calculation of the lump sum. The claimant retired early under the scheme and received a payment in full and final settlement of all entitlements. The Commissioner, after examining the scope and effect of the decision of the Court of Appeal in *R. v. National Insurance Commissioner, Ex parte Stratton* (see 1.10.1 vii above), held that as the only factors determining the amount of the capital sum were the amount of the claimant's salary and his age no part of that sum was paid to the claimant in lieu either of notice or of the remuneration he would have received had the employment not been terminated and accordingly regulation 7(1)(d) of the 1975 regulations had no application. R(U) 2/80
- xi A claimant was employed by the Central Electricity Generating Board, or its predecessors, for over 30 years and was entitled under his terms of service to 12 weeks notice of termination. A decision by the Board to close the power station where the claimant worked was made in March 1975 and redundancy terms were negotiated with the workforce. The terms included the waiver of entitlement to notice to facilitate administrative arrangements. The claimant was informed in a letter dated 8 October 1976 that, if he accepted the offered terms, he would receive a state redundancy payment and an 'ex gratia lump sum' and that his employment would be terminated on grounds of redundancy on 31 October 1976. He accepted these terms. It was held that the payments made to the claimant were genuinely redundancy payments containing no element of payment in lieu of notice or remuneration and therefore regulation 7(1)(d) of the 1975 regulations did not apply. R(U) 1/80
- xii A claimant for unemployment benefit had been dismissed from his employment by a limited company. He was awarded compensation by the industrial court for unfair dismissal and awarded compensation. The award was amongst other things, for the wages he would have earned during the period of the claim, had he not been dismissed. The award was duly registered in the County Court but subsequently the company was subject to a compulsory winding up order. The R(U) 4/82

question in issue was whether in those circumstances the award of the industrial tribunal was 'payable' within the meaning of regulation 7(1)(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (days to be treated as not being days of unemployment). The Commissioner held that the award was not payable within the meaning of the regulation. For that purpose a sum is 'payable' if its amount is ascertained and cannot be disputed and it is legally due in the sense that court remedies for its recovery are immediately and unconditionally available. After the winding up order they were not. Leave of the Court had to be obtained (paras 12-15). The Commissioner reserved the position regarding voluntary liquidation and where the employer is not incorporated but is insolvent. See also R(U) 1/88, 1.1.2 xvii *above*.

R(U) 3/83
(T) xiii A domestic appliance manufacturers, due to reduced demand for the product, consulted with the trade unions under section 99 of the Employment Protection Act 1975 to achieve voluntary redundancies on agreed terms before the expiry of the 90 day consultative period provided by that section. It was agreed that volunteers for redundancy would receive severance payments, described as *ex gratia*, which would include an amount calculated by reference to the balance of the 90 day period unexpired at the date of the volunteer's leaving. The claimant was accordingly paid a payment in lieu of notice representing one week's pay (£98.44) and a lump sum of £984.40 based on 10 weeks wages, making a total of £1,082.84. The questions arose (amongst others) whether section 90 conferred upon the employee a right to be employed and paid for the 90 days and whether the payment of £984.40 (which was in respect of a period after the contractual termination of the employment) was a payment in lieu of remuneration within the meaning of regulation 7(1)(d) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (see R(U) 7/73 paragraph 40). A Tribunal of Commissioners held that:-

1. Section 90 of the Employment Protection Act 1975 confers no entitlement upon an employee to be employed and paid for a 90 day notice period (paragraphs 12 and 13);

2. the payment received by the claimant, described as *ex gratia*, was truly a payment in lieu of the remuneration which he would have received if his employment had not been prematurely terminated and was a payment in lieu of remuneration within the meaning of regulation 7(1)(d) (paragraph 17);

3. the statement in decision R(U) 7/73, paragraph 40, in so far as it suggests that a payment in lieu of remuneration can only be considered in relation to fixed term contracts, is no longer correct. (Subject to the reservation in para 1 *above*, (R(U) 7/73, 1.10.1 vi and 1.10.2 iii *above*, and R(U) 9/73 followed.)

R(U) 4/83 xiv A claimant for unemployment benefit had been employed by the Central Electricity Generating Board for 29 years and 2 months. He then voluntarily accepted premature retirement. Under the terms of the Board's superannuation service but under that scheme for the 'purchase' of the 10 additional months there fell to be deducted and there was deducted a monthly sum from his gross pension. The question arose whether the claimant's gross pension, regardless of the sum deducted from it, should be taken into account for the purpose of abating his unemployment benefit in accordance with section 5 of the Social Security (No. 2) Act 1980. The Commissioner held that it should not. The deduction made in accordance with the rules of his superannuation scheme was compulsory and a payment under a binding obligation which reduced the gross pension payment should be disregarded for the purpose of abatement under section 5. Followed in R(U) 3/83.

xv The claimant's employment terminated on 24.11.89 and his employers made a payment to him of £19,000.00 which was stated to be an *ex gratia* payment including a payment in lieu of notice. This sum included the following elements: £12,423.00 for six months salary; £1,242.41 for thirteen days holiday pay; £116.49 for past expenses and £3,248.59 for the employer's contribution to the claimant's pension fund for a period of six months. The Commissioner held that:

1. the phrase "in respect of" in reg. 7(6) of the SS (Unemployment, Sickness and Invalidation Benefit) Regs. 1983 is wide enough to cover any payment which would not have been made by the employer to the claimant but for the ending of the employment;
2. a payment under reg. 7(1)(d) of the SS (Unemployment, Sickness and Invalidation Benefit) Regs. 1983 must be severed into its component parts in order to determine whether the whole or any part falls within the list of excluded payments in reg. 7(6);
3. holiday pay of £1,242.41 could be exempted under reg. 7(6)(b) of the SS (Unemployment, Sickness and Invalidation Benefit) Regs. 1983; £116.49 for past expenses could not be exempt under regs. 7(6)(a) or (c); whether the sum of £3,248.59, stated to be the employer's contribution to the claimant's pension fund, could be exempted under reg. 7(6)(e) was not decided as it was not crucial to the determination of the case;
4. the remainder of the payment received by the claimant was compensation within the meaning of reg. 7(1)(d) of the SS (Unemployment, Sickness and Invalidation Benefit) Regs. 1983.

See also R(U) 5/92, 1.10.1 xvi.

xvi A claimant for UB had been employed by the Central Electricity Generating Board for 30 years when his employment terminated due to redundancy. Upon the termination of his employment the claimant received a payment of £20,400.63 from his employer. This sum included the following elements: £4,558.00 statutory redundancy pay; £141.97 accrued wages; £1,471.42 holiday pay and £14,229.24 termed as severance pay. This severance pay was calculated entirely by reference to the claimant's years of service prior to the termination of employment. The Commissioner held that:

1. that "made ... in respect of the termination of the employment ..." is wide enough to include all payments made on and with reference to the termination of the employment;
2. Reg. 7(6)(a) of the SS (Unemployment, Sickness and Invalidation Benefits) Regs. 1983 is limited to wages, salary, bonuses, commission and "remuneration" of that kind already accrued under the contract at the date of termination;
3. Reg. 7(6)(c) of the SS (Unemployment, Sickness and Invalidation Benefits) Regs. 1983 includes some kind of payment (money or kind) in the nature of wages or holiday pay not caught by reg. 7(6)(a) or (b), for example rights under a share option agreement;
4. that the "severance pay" was a payment "made ... in respect of the termination of the employment." The fact that the severance payment was calculated by reference to past years of service did not bring it within head (a) of reg. 7(6) of the SS (Unemployment, Sickness and Invalidation Benefits) Regs. 1983;

1.10.1-2

5. the Commissioner distinguished this case from *R v. National Insurance Commissioner, ex parte Stratton* [1979] QB 361 and R(U) 1/80 and R(U) 4/80 due to the change in the legislation in 1989.

See also R(U) 4/92, 1.10.1 xv.

R(U) 1/94 xvii The terminal payment that the claimant received when his employment came to an end was less than the appropriate amount of pay for the period of notice. The Commissioner held that where the person who pays the compensation says that it or part of it is paid in lieu of notice of termination of employment the ineligible period does not end until “the due date” even though the claimant accepted salary for less than the full notice period.

R(U) 1/95 xviii This case concerns a claimant who was dismissed from his employment for misconduct and received an *ex gratia* payment. Whether the payment was compensation in respect of the termination of employment and the effect of the dismissal on ineligible period. The AO decided that the payment was compensation and that there was an ineligible period within the meaning of reg. 7 of the SS (Unemployment, Sickness and Invalidity Benefit) Regs. 1983. The tribunal found that the payment was compensatory and that it did not fall within the exception in reg. 7(6)(c). The “ineligible period” should be based on the period of notice to which the claimant would have been entitled.

The Commissioner allowed the appeal stating that the tribunal was right to decide that the payment was compensation. The Commissioner held however, that as the claimant was dismissed for misconduct there was no “period of notice” so that there was no “due date” as defined in reg. 7(6). The ineligible period must therefore be decided in accordance with para. 8(1)(c) of Sch. 14 to the Employment Protection (Consolidation) Act 1978 rather than on the claimant's net pay.

R(U) 1/97 xix Whether a resettlement grant paid to a clergyman was made “in respect of” the termination of “employment” and whether there is a “period of notice applicable to” the incumbent of a parish. The AO decided that the grant was a compensation payment on termination of employment so that the claimant could not qualify for benefit during the “ineligible period”. Also there was no “due date” so the ineligible period had to be calculated according to the arithmetical formula in the regs.

The AT allowed the appeal on the grounds that the claimant was self-employed and so the expression “termination of employment” could not apply in his case.

The Commissioner allowed the AO's appeal. The grant fell within the definition of “compensation” in reg. 7(6) of the Unemployment, Sickness and Invalidity Benefit Regs. 1983. The resettlement grant did not fall within any of the exceptions listed in para. (a) to (f) of reg. 7(6). There was no “due date” as defined in reg. 7(6) because an incumbent of a parish cannot be dismissed on notice in the manner of an employee. The “ineligible period” had to be calculated accordingly to the formula in para. (b) of the definition of “the standard date” in reg. 7(6). Therefore the claimant was not entitled to UB for any day during the ineligible period.

2 The effect of the description given to terminal payments

R(U) 5/60 i An accountant was employed to make investigations required by the Yarn Spinners' Agreement and was said by his employer to be entitled to a month's notice of termination. He was discharged without notice after the High Court had declared the Yarn Spinner's Agreement to be void by virtue of the Restrictive Trade Practices Act 1956. On discharge the claimant was paid a payment said to be ‘in lieu of notice’. It was held that, as a result of the judgement of the High Court, the object of the claimant's contract of service was frustrated and the contract was dissolved, with the result that the claimant had no legal right to compensation. Hence, the payment he received was gratuitous and did not disentitle him to UB.

1.10.2-4

ii There is nothing to justify the view that when a payment is made in consideration of an employee's agreement to forego remuneration to which he is contractually entitled it is legitimate, if the payment contains an element of bounty, to isolate that element and treat it as a separate payment. See paras. 15 and 16. R(U) 5/73

iii The description given to a terminal payment by the parties may be some evidence of its character, but that is by no means conclusive. A payment which is made truly *ex gratia* (i.e. out of kindness) by the employer, and not having the characteristic of either a payment in lieu of notice or in lieu of remuneration, would be outside the ambit of the reg. That does not, however, exclude the possibility of some composite terminal payment being made which includes an element of bounty. In such a case that ingredient would not prevent such a composite payment from being within the reg. because of its overriding characteristics. Followed in R(U) 3/83(T). See also as to the description given to a terminal payment, paras. 10(f), (g) and (h) of R(U) 7/73, 1.10.5 i *below*. R(U) 7/73 (T)

3 Crown servants

i The claimant held an appointment under the Ministry of Defence and on the termination of it received a sum described as terminal benefit. It was held that, as he was a Crown servant, reg. 7(1)(e) of the 1967 Regs. did not operate to defeat his claim for UB. But see now R(U) 8/73. R(U) 8/70

ii At para. 10 of this decision the Commissioner referred to a report by the National Insurance Advisory Committee presented to Parliament on the draft of the new reg. 7(1)(e) in which it was said that the requirement that a payment, in order to be taken into account, must be a legally enforceable one had been dropped and that in consequence public servants would be brought within the scope of the reg. See also para. 41 of R(U) 7/73, 1.10.2 iii *above*, in which the majority of a Tribunal of Commissioners observed that the language of reg. 7(1)(e), as substituted by the 1971 Amendment Regs., was different from its predecessors and was apt to cover the case of the public servant, who strictly had no legal right to notice or payment in lieu thereof. R(U) 5/73

4 'Whether or not a payment made in pursuance of a legally enforceable obligation'

i A payment, if in fact made, does not require examination as to whether it was made in pursuance of a legal obligation or not, and neither the presence nor the absence of a legally enforceable obligation to make it can affect the character of the payment or the object with which it was made. See para. 41. And see R(U) 5/73, 1.10.3 ii *above*, paras. 8 to 11. R(U) 7/73 (T)

ii A civil servant was entitled to nine months' notice to terminate his employment. On 20th March he was told that he was to be discharged as redundant and on 30th June his employment came to an end because the employing department was unable to provide employment for the whole period of the notice to which he was entitled. He was paid an amount equivalent to that which he would have received if he had remained in his employment for the full period of nine months. It was held by the majority of a Tribunal of Commissioners that the amount the claimant received was a payment both in lieu of notice and of the remuneration he would have received until the expiration of the period of notice if his employment had not been prematurely terminated; that the words in parenthesis in reg. 7(1)(e), 'whether or not a payment made in pursuance of a legally enforceable obligation', were apt to cause Crown servants to come within the scope of the reg.; that although both the claimant and his employing department described the payment as *ex gratia* or a bounty payment, the description was not conclusive. 'In the present reg. the parenthesis operates (and, as it seems to us, can only operate) to prevent any suggestion that the nature of the employment of the public servant excludes such persons from the scope of the Reg.. The public servant is thus included among employees in general who may be disentitled because of the character of the payment received, as in this case, the receipt of such payment being the proximate and effective cause of disentitlement.' See para. 19. R(U) 8/73 (T)

1.10.5-7

5 Meaning of 'notice'

- R(U) 7/73
(T) i At para. 42 of the decision the majority of a tribunal of Commissioners said that 'notice' in reg. 8(1)(e) refers to 'notice required for the termination of the employment and the period (whether enforceable or not) is ascertainable from the contract of employment, from statute, from the common law or from regulations incorporated in the agreement for employment'.

6 Application and effect of other Acts

- R(U) 6/73 i A man was entitled under the Contracts of Employment Act 1963 to a minimum of one week's notice to terminate his employment. It was agreed between his trade union and the employers that all redundant employees entitled to only one week's notice should receive a minimum payment of two weeks' money in lieu of notice. At para. 9 of the decision the Commissioner said that the payment for which the agreement provided was conceived partly in terms of the Redundancy Payments Act 1965 and partly in terms of the Contracts of Employment Act 1963 and was (he thought) intended to modify or amplify the provisions of both these statutes. He concluded (a) that the Redundancy Payments Act 1965 entitled employees to terminal payments whose amount fell to be calculated by length of service and that a payment under that Act was not, for the purposes of reg. 7(1)(e), either a payment in lieu of notice or a payment in lieu of remuneration (broadly speaking such a payment is referable to past services); and (b) that the Contracts of Employment Act 1963 did not, of itself, entitle an employee to a terminal payment but provided for minimum periods of notice of termination, the length of which fell to be calculated by length of service. See also sub-paras. (c)-(e) of para. 10 of the decision.

- R(U) 7/81
(T) ii A man, who was entitled to twelve weeks notice of the termination of his employment, lost it without notice through the closure of his employer's business. He was paid UB with earnings related supplement and later received a payment out of the Redundancy Fund under s. 122 of the Employment Protection (Consolidation) Act 1978. The payment was calculated on his estimated earnings for those twelve weeks, reduced by the amount of the UB and earnings related supplement received. The effect of this was that none of the days in that period of twelve weeks could be treated as a day of unemployment for the purposes of entitlement to UB or earnings related supplement and so an overpayment had been incurred (although no repayment was required). Nevertheless a tribunal of Commissioners, following the decision of a previous tribunal of Commissioners in R(U) 6/80 held that the days in respect of which the redundancy payment had been made should not be excluded from the calculation of the 156 days of unemployment at the expiry of which the claimant's title to earnings related supplement would become exhausted. Followed and applied in R(U) 3/85 (T) at 17.3.15 *i below* and effect of *Westwood v. Secretary of State for Employment* explained. Followed also in R(P) 1/85.

7 Effect of agreement to resign

- R(U) 9/73
(T) i The employment of a claimant was terminable by three months' notice on either side. Disagreements arose between him and his employers and, after certain discussions, it was mutually agreed that the claimant should be deemed to have resigned from his employment and he was paid an amount equivalent to three months' salary plus a further tax-free lump sum. It was held by the majority of a tribunal of Commissioners that, in mutually agreeing that the claimant should be deemed to have resigned, the claimant agreed to forego his right to three months' notice and the employer agreed not to require three months' notice to be worked out; that in receiving the payment, which was consideration for his resignation, the claimant was necessarily also receiving a payment in lieu of the notice to which he was entitled and which he forewent; that as a result he was disentitled to unemployment benefit for three months; that the terminal payment in lieu of notice included an element of the remuneration which the claimant would have received for the days he would have worked on notice had his employment not been terminated by arrangement; that it made no difference that the payment included, for consideration, a special payment; and that it had both the characteristics referred to in reg. 7(1)(c). Followed in R(U) 3/83 (T).

8 Effect of a decision of the industrial court

- i A claimant who had no written contract of employment was summarily dismissed after 39 years' service. He claimed compensation for unfair dismissal under the Industrial Relations Act 1971 but, after negotiations, the proceedings were settled upon terms that the claimant was paid a lump sum in return for which he agreed to relinquish any further claims for wrongful dismissal that he might have against the employers. It was held that if the claimant had been awarded compensation for unfair dismissal he would have received payment including an element representing a payment in lieu of remuneration, but that the payments he received under the compromise agreement must be regarded as containing the same ingredients as an award. Reg. 7(1)(e) of the 1967 Regs., as amended, accordingly deprived the claimant of title to UB for the period equivalent to the notice to which his contract of employment entitled him but that, since he did not have a written contract of employment, it was necessary to have recourse to the common law to ascertain what the length of notice should reasonably be. Applying common law principles the claimant was entitled to six months' notice. For consideration relating to the basis of claims for damages at common law for wrongful dismissal, and the difference between such claims and those for unfair dismissal, see paras. 9 and 13. Compare R(U) 2/74. R(U) 5/74
- ii A claimant for UB had been dismissed from his employment by a limited company. He was awarded compensation by the industrial court for unfair dismissal and awarded compensation. The award was, amongst other things, for the wages he would have earned during the period of the claim, had he not been dismissed. The award was duly registered in the County Court but subsequently the company was subject to a compulsory winding up order. The question in issue was whether in those circumstances the award of the industrial tribunal was 'payable' within the meaning of reg. 7(1)(1) of the SS (Unemployment, Sickness and Invalidity Benefit) Regs. 1975 (days to be treated as not being days of unemployment). The Commissioner held that the award was not payable within the meaning of the reg. For that purpose a sum is 'payable' if its amount is ascertained and cannot be disputed and it is legally due in the sense that court remedies for its recovery are immediately and unconditionally available. *After* the winding up order they were not. Leave of the Court had to be obtained (paras. 12-15). The Commissioner reserved the position regarding voluntary liquidation and where the employer is not incorporated but is insolvent. R(U) 4/82
- iii As compensation for unfair dismissal, an industrial tribunal awarded a claimant an amount representing the full amount of her lost wages for the first 13 weeks following her dismissal. For the next twelve weeks they awarded her only £4.60 a week, the difference between her former wages and the lesser wages they considered she would have obtained had she diligently sought employment. The question in issue was whether that sum could be regarded as 'a sum representing remuneration which the industrial tribunal considered [she] might reasonably be expected to have had for that day, but for the dismissal' within that meaning of r.7(1)(1)(iii) of the SS (US and IB) Regs 1975 (under the SS (US and IB) Regs. 1983, see r.7(1)(k)(iii)). The Commissioner held that, in the determination of whether a day was, or was not, to be treated as a day of unemployment, because in respect of that day there was payable to the person concerned an amount awarded by an industrial tribunal as compensation for unfair dismissal, the amount awarded was not material so long as some award was made under sections 68(2) and 74 of the Employment Protection (Consolidation) Act 1978. R(U) 6/85

Part 11: Employed to full extent normal and 'normal idle day'

Regulation 7(1)(e) of the Regulations. (N.B. The regulation is expressly made subject to regulation 7(2) and does not apply to a person unless (a) he has a customary or recognised working week or (b) he regularly works for the same number of days each week for the same employer(s).)

1 Does not ordinarily work every day in a week

CU 518/49

i The question whether a person is a person who does not ordinarily work on every day in a week is a question of fact which can only be decided in the light of the circumstances of each particular case. A claimant may, however, be a person who does not ordinarily work on every day in a week although he has no wish to be such a person, but the fact that a person has been kept away from work by periods of temporary sickness should not be taken into account. *Prima facie* a person who has in fact worked on some days only in a week for a year or more is a person who does not ordinarily work on every day in the absence of exceptional industrial circumstances. See also R(U) 33/57, R(U) 13/55 and R(U) 14/60. And see as to the burden of proof R(U) 14/59, 1.11.1 vi *below* and 1.11.3 xiv *below*. See also R(U) 14/53. R(U) 9/56 and R(U) 21/60. Distinguished CU/263/83.

R(U) 36/51

ii A registered disabled person who was 59 years of age had been employed for some 3 years as a factory watchman on Saturdays and Sundays only. He earnestly desired, but had not obtained, other work and it was held that he had, by force of circumstances, become a person who does not ordinarily work on every day in the week other than Saturday and Sunday and he was not, therefore entitled to unemployment benefit in respect of the other days in the week.

R(U) 30/53

iii A man was obliged to give up his employment as a groundsman, which he had followed for 25 years, because he suffered from angina pectoris. He then had different types of full-time employment for short spells, but for a period of 3 months he was employed at weekends only. It was held that he was not disqualified of receiving unemployment benefit for the days on which he did not work because his ordinary employment was full-time employment and he had not ceased to be a person who ordinarily worked on every day in the week. See R(U) 5/89 1.11.3 xiv *below*, in particular, paragraphs 4-5.

R(U) 8/56

iv A bank guard who was regularly employed on 3 days a week secured temporary part-time work for 18 weeks as a gardener on the other 3 days of the week. It was held that temporary part-time work did not remove him from the category of persons who do not ordinarily work on every day of the week.

R(U) 28/58

v A docker who was employed at a port where for several years there had been a shortage of work claimed unemployment benefit for a Monday on which he had not worked. In the year preceding his claim he had worked for 4 days or less during 33 weeks and his record of employment for the 2 preceding years was similar. It was held, although it was against his wishes, he had become a person who did not ordinarily work on every day of the week. The conditions causing his pattern of employment were not exceptional as they had prevailed for several years and the Monday for which the claim for unemployment benefit was made was not, therefore, a day of unemployment in relation to the claimant because, having worked on 4 days in that week, he had been employed to the full extent normal in his case. See in particular paragraph 6. See also 1.11.3 vi *below* and 1.11.3 xiv *above*.

R(U) 14/59

vi The burden of proving that a person does not ordinarily work on every day in the week rests on those who challenge the claimant's claim for unemployment benefit in respect of a particular day, or days. But if it is established that during the year ending with the day in question (or such other period as may provide a more suitable test in a particular case) a person has worked on less than 50 per

cent. of the days of the week in question (excluding any day of incapacity for work or holiday and days on which he was unemployed because his employment had been terminated) that day should be held to be one on which in the normal course the claimant would not work. But if he has worked on as much as 50 per cent. of such days then, prima facie, the onus of proving that he was a person who did not ordinarily work on every day in the week would not have been discharged. See also and compare R(U) 6/62 and R(U) 12/64. And see 1.11.3 xiv above, 1.11.5 ii *below* and R(U) 13/60, 1.11.5 iii *below*, R(U) 6/62 and R(U) 12/64. And compare R(U) 14/60 and R(U) 7/62.

R(U) 1/72

vii The claimant, a teacher who had not worked full-time for 3 years, had recently been employed for 3 days a week under 2 separate contracts. At the relevant time, following the expiry of one contract, he was employed for 2 days a week only and claimed unemployment benefit for other days in the week. It was held that by reference to his employment history he was a person who did not ordinarily work on every day in a week. See also 1.11.3 viii and R(FIS) 6/83 31.1.2 v *below*.

R(U) 2/73

viii The claimant was employed on a rota system under which a week of mid-shift was followed by a week of night-shift, which, in turn, was followed by a week on mid-shift. The time came when overtime ceased to be payable and the claimant then made a claim for unemployment benefit for a Saturday following a week of dayshift and for the next Monday preceding a week of night-shift. Held, that from the ending of overtime the claimant was a person who did not ordinarily work on every day in a week. See also 1.11.7 ii *below*.

R(U) 3/74

ix An insurance agent retired from his regular employment after 40 years with a company, but was immediately re-employed by the same company on different work on Monday, Tuesday and half of Wednesday each week. He did no work on Thursday, Friday or Saturday. It was held that he had become a person who did not ordinarily work on every day in the week and unemployment benefit was not payable to him for any Thursday, Friday and Saturday.

R(U) 2/83

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-ioners' file
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CU/263/83
(unreported)

x A claimant for UB was employed for some 7 alternative fortnights as a rigger on an off-shore oil rig. His contracts of employment began when he left the port of embarkation for the oil rig and ended when he returned to that port a fortnight later. Each such fortnight on the rig was followed by a fortnight on shore when he was not employed and began and ended during the course of a contribution week. On a number of occasions when he came back on shore he registered for employment and claimed unemployment benefit. After the fifth spell of employment, he was refused benefit under section 17(1)(b) of the Act (the 'normal idle day' rule) on the basis that he was always reasonably certain of being re-employed on the rig after his spell on shore. The Commissioner held that each time the claimant returned on shore his employment ended and section 17(1)(b) did not apply: however the pattern of his work showed a regular or customary cycle of work which satisfied the condition of regulation 7(2)(a) of the 1975 Regulations and by virtue of regulation 7(1)(e) of the Regulations (employment to the full extent normal in his case) he was not entitled to unemployment benefit.

xi A claimant, who had been employed full-time in the army for a short while, had been discharged unfit following an accident. He registered for employment and obtained work under a Community Employment Programme. This was one of many schemes designed to cater for the then current unemployment situation and to equip a person to be better able to obtain employment. The job was for 3 days a week and was expressed to be 'temporary and up to a maximum of 52 weeks' and there was a probationary period of 6 months. The claimant was registered for employment for the other 3 days a week and claimed unemployment benefit for them. At the time he was also seeking full-time employment. His claim was disallowed by the insurance officer and local tribunal on the grounds, in effect, that, by reason of his job, he was employed to the full extent normal in his case. He

sought leave to appeal to the Commissioner, but this was refused by the Commissioner without any reasons being given. On proceedings for judicial review being taken in the High Court regarding his refusal to grant leave of appeal, Woolf J., at the first hearing of the application, expressed the view that, having regard to the Manpower Services Commission's guide with regard to the sort of scheme under which the claimant was working, 'this is obviously a temporary employment of a limited nature. The fact of the matter is that, although there are decisions which deal with the regulation I am considering [reg. 7(1)(e) of the SS(US and IB) Regs. 1983] there has been no decision by the SS Commissioners on this precise type of circumstance.' He then referred to CU 518/49 as a 'signpost decision' closest to the present case, but expressed the view that it could be distinguished. (See *Connolly, ex.p., R. v. Secretary of State for Social Services* [1986] 1 All ER 998CA, 18.1.1 xiv *below*, with regard to a Commissioner's not giving reasons for refusing leave to appeal.)

2 Meaning of 'week'

R(U) 33/53

i For the purpose of determining whether a person has been employed to the full extent normal in his case the word 'week' means a calendar week commencing at midnight on Saturday/Sunday. Further, Sunday work must be taken into account when it is being determined whether or not a claimant has been employed to the full extent normal in his case. See paragraphs 8-9. And see definition in section 20 of the Act. Compare R(F) 1/82 *below*.

R(U) 14/80

ii An oil rig scaffolder worked a variable rota of 28 days involving 15 days on a rig and 13 days ashore. Held that the term 'customary working week' in regulation 16(6)(a) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations is not confined to 7 days periods and applied to the case. See also R(U) 15/60, 1.11.8 i *below*.

3 Has been employed to the full extent normal in his case

CU 518/49

i Whether or not a person has been employed to the full extent normal in his case is a question of fact which must be decided on the facts of the particular case. See, for example, paragraph 6 of R(U) 28/53, 1.11.1 v *above* and see R(U) 14/59, 1.11.1 vi *above* and R(U) 1/86, 1.11.3 xii *below* and 1.11.3 xiv *below*. Distinguished CU/263/83.

CU 272/50

ii A park watchman who was employed on Saturday and Sundays only during the winter, and had had no other employment during the past 3 years, was held to have been employed to the full extent normal during the weeks under review.

R(U) 13/55

R(U) 33/57

iii Save for the period of about 6 weeks a man had worked on Mondays to Thursdays only in each week for a period of some 3 years preceding the date of his claim for unemployment benefit. It more work had been available he would have been employed on Fridays also. It was held that the determination of what was normal in the claimant's case must be founded on the fact as they were and not on unfilled possibilities or future speculations; nor on facts applicable to other persons in the same employment. Accordingly the days in the weeks in which the claimant was idle were not days of unemployment in his case. There was nothing to show that there were any circumstances relative to his work which could be described as temporary and sporadic and brought about by conditions

unlikely to continue. Compare R(U) 5/57.

iv A machine moulder was employed on 4 days only each week for over a year, the fact that he did not work on 5 days being attributable to Government restrictions affecting building. It was held that such short-time working had become normal in the case of the claimant since the circumstances which caused the short-time working were not exceptional in the sense of being sporadic or unlikely to continue. CU 518/49. 1.11.1 i *above*, followed.

R(U) 19/58

v A man was working short-time and claimed benefit for a Saturday. His employment was governed by an agreement which provided that the normal working week was one of 5 days (Monday to Friday inclusive). The agreement also required the claimant to work on Saturdays if needed. In the 52 weeks preceding his claim for unemployment benefit he had worked on 39 Saturdays. It was held that the Saturday was not a day on which in the normal course the claimant would not work in an employed contributor's employment. See also R(U) 15/59, 1.11.4 iv *below*.

R(U) 28/58

vi Where, as in this case, it was held that the claimant did not ordinarily work on every day in a week, see 1.11.1 v *above*, it becomes necessary also to decide whether, in relation to the day which is claimed to be a day of unemployment, the claimant has been employed to the full extent normal in his case. The claimant, a dock-worker, had for the most part been employed on Tuesday, Thursday, Friday and Saturday each week, those being the days of arrival and departure of the vessels of a particular shipping company. In some weeks he had an extra day of employment, making a total of 5 days. It was held that the proper inference from the claimant's record was that in any week in which he worked on 4 days or more he had, in that week, been employed to the full extent normal in his case. The conditions causing the pattern of his employment were not exceptional as they had prevailed for several years. See also R(U) 13/60, 1.11.5 iii *below*.

R(U) 14/60
(T)

vii A married woman was employed as a shop assistant. It was her employers' policy to employ single women only on a full-time basis, but because of shortage of staff the claimant had been employed full-time for 15 months. There was then a falling off of trade and for the next 18 months she worked for the most part as a part-time employee. During the year preceding her claim for unemployment benefit for the 3 days in a week in which she was employed for 3 days only she had worked for 6 days in 14 weeks and for 3 days in 33 weeks. It was held that in the week in question she, being a person who did not ordinarily work on every day in a week, had been employed to the full extent normal in her case. The periods when she worked part-time were not 'periods of short-time working' because for a married woman part-time employment was normal. See in particular 10-12.

R(U) 7/62

viii The claimant was employed for approximately 6 months in employment where he had worked for 6 days a week. He then took up other employment in which Saturday was normally a non-working day. Five months after starting that employment he claimed unemployment benefit for a Saturday. Held, in determining whether in the normal course the claimant would not work on a particular day, the earlier employment should not be taken into account and that it was appropriate to have regard to the claimant's working experience in a period of less than a year. In view of his experience in his current employment Saturday was a day on which in the normal course he would not work. Compare R(U) 14/59, 1.11.1 vi *above*.

R(U) 1/72

ix A teacher who had not worked full-time for three years was employed under two contracts, one of which provided that he worked on Monday and Tuesday and the other Wednesday each week. When he made a claim for unemployment benefit the latter contract had expired and it was held that the full extent normal of the claimant's employment was that provided by the contract still current. See

paragraphs 6-7. See R(FIS) 6/83, 31.1.2 *v below*.

R(U) 2/83

x A claimant for UB was employed for some 7 alternative fortnights as a rigger on an off-shore oil rig. His contracts of employment began when he left the port of embarkation for the oil rig and ended when he returned to that port a fortnight later. Each such fortnight on the rig was followed by a fortnight on shore when he was not employed and began and ended during the course of a contribution week. On a number of occasions when he came back on shore he registered for employment and claimed unemployment benefit. After the fifth spell of employment, he was refused benefit under section 17(1)(b) of the Act (the 'normal idle day' rule) on the basis that he was always reasonably certain of being re-employed on the rig after his spell on shore. The Commissioner held that each time the claimant returned on shore his employment ended and section 17(1)(b) did not apply: however the pattern of his work showed a regular or customary cycle of work which satisfied the condition of regulation 7(2)(a) of the 1975 Regulations and by virtue of regulation 7(1)(e) of those Regulations (employment to the full extent normal in his case) he was not entitled to unemployment benefit.

Commissioners' file no.

xi A claimant, who had been employed full-time in the army for a short while, had been discharged unfit following an accident. He registered for employment and obtained work under a Community Employment Programme. This was one of many schemes designed to cater for the then current employment situation and to equip a person to be better able to obtain employment. The job was for 3 days a week and was expressed to be 'temporary and up to a maximum of 52 week's and there was a probationary period of 6 months. The claimant was registered for employment for the other 3 days a week and claimed unemployment benefit for them. At the time he was also seeking full-time employment. His claim was disallowed by the insurance officer and local tribunal on the grounds, in effect, that, by reason of his job, he was employed to the full extent normal in his case. He sought leave to appeal to the Commissioner, but this was refused by the Commissioner without any reasons being given. On proceedings for judicial review being taken in the High Court regarding this refusal to grant leave of appeal, Woolf J., at the first hearing of the application, expressed the view that, having regard to the Manpower Services Commission's guide with regard to the sort of scheme under which the claimant was working, 'this is obviously a temporary employment of a limited nature. The fact of the matter is that, although there are decisions which deal with the regulation I am considering [reg. 7(1)(e) of the SS(US and IB) Regs. 1983] there has been no decision by the SS Commissioners on this precise type of circumstance.' He then referred to CU518/49 as a 'signpost decision' closest to the present case, but expressed the view that it could be distinguished. (See *Connolly, ex.p., R. v. Secretary of State for Social Services* [1986] 1 All ER 998CA, 18.1.1 xiv *below*, with regard to a Commissioner's not giving reasons for refusing leave to appeal.)

CU/263/83
(unreported)

R(U) 1/86

xii Following many years of full-time work the claimant had for more than a year been in part-time employment only. The question was whether he was employed to the full extent normal in his case (regulation 7(1)(e) of the SS (Unemployment, Sickness and Invalidity Benefit) Regulations 1983). The Commissioner held that, applying the 'one-year rule', the claimant's part-time work could not be treated as 'stop-gap' employment. There being no evidence of any likelihood of return to full-time work the exception to the one-year rule in R(U) 3/86 (1.11.4 vi *below*) did not apply. See also Court of Appeal judgment in *Riley v. the Adjudication Officer* (R(U) 2/86, Appendix 1.11.5 *v below*) R(U) 6/86, 1.11.3 xiii *below* and R(U) 9/89 (T) 1.11.5 viii *below* (House of Lords decision).

R(U) 6/86

xiii After 3 years of unemployment the claimant obtained work for 3 days a week under the Community Programme. The maximum duration of the work was 52 weeks. The Commissioner rejected suggestions that a long-term unemployed claimant who had taken a temporary job for 52 weeks had no normal working week and that regulation 7(1)(e) of the SS (Unemployment, Sickness and Invalidity Benefit) Regulations was not applicable to him. Following the guidance of the Court of Appeal in

Riley v. the Adjudication Officer R(U) 2/86, Appendix, 1.11.5 v below) the

Commissioner set out the 3 stages involved in determining whether regulation 7(1)(e) disentitled a claimant from unemployment benefit for any particular day. See also R(U) 1/86, 1.11.3 xii above, R(U) 3/86, 1.11.4 vi below and R(U) 9/88 (T), 1.11.5 vii below (House of Lords decision).

xiv The claimant made a claim to unemployment benefit on 25/6/84. For the previous 15 years he had a part-time job, which was ongoing, working 2 evenings a week. He had also worked full time from 1956 until June 1984, apart from 1 year's unemployment in 1982 and 4 months on a Community programme. The Court of Appeal, applying *Riley v CAO* R(U) 2/86 Appendix and *CAO v Brunt* R(U) 9/88, upheld the Commissioner's decision that by January 1985 his pattern of work of 2 evenings had become his normal pattern. They found that the full extent normal rule still applied where part time employment had been carried out during the course of full time employment, and continued after it had ceased, rather than starting after the full time employment had ended. See also CU 518/49, 1.11.1 i, 1.11.3 i above, R(U) 30/53, 1.11.1 iii above, R(U) 2/86 Appendix (Court of Appeal decision), 1.11.5 v below, R(U) 3/86, 1.11.4 vi below, R(U) 9/88, 1.11.5 vii, 18.6.2 x below, (House of Lords decision).

R(U) 32/51

4 Has not been employed to the full extent normal in his case

i A woman who had been employed for 20 years as a totalisator clerk by the Racecourse Betting Control Board held herself to be available for employment by the Board whenever she was required, but in the normal course of events she was generally employed for less than a full week. It was held that the occupation of totalisator clerk was not limited to any particular days in the week and, as the claimant was employed irregularly for varying numbers of days in a week, it was impossible to apply to her the words 'employed to the full extent normal' in any particular week. Her claim for unemployment benefit was accordingly allowed.

R(U) 5/57
(T)

ii The claimant normally worked from Monday to Friday each week but was temporarily working for 4 days a week only, i.e. from Tuesday to Friday. On the weeks in question she worked for 3½ days only because Friday afternoon and Saturday were part of the customary holidays in her trade. She made a claim for unemployment benefit in respect of the Monday in that week and was held by a Tribunal of Commissioners not to have been employed to the full extent normal in her case in that week. The Monday was, accordingly, a day of unemployment for her. The full extent normal of her employment for that week was reduced by the holiday on the afternoon of Friday, which was a normal working day, but not by the holiday on Saturday, which was a day on which she did not normally work. See also R(U) 33/53.

R(U) 13/59

iii A man had a normal working week of 5 full days and made a claim for unemployment benefit for the Saturday in a week in which he had worked for 4½ days only. It was held that, although in that week he had worked *on* the number of days on which he normally worked, he had not worked *for* that number of days. He had not, therefore, been employed to the full extent normal in his case. But it was held further that his employment was so intermittent, and with one exception had lasted for periods so short, that it was in effect casual in relation to him. At paragraph 6 the Commissioner expressed the view that a man who has worked only for 4½ days in a week in which he normally works for 5 whole days cannot be said

Unemployment benefit: employed to full normal extent

1.11.4

to have been 'employed' to the full extent normal in his case since, in the context, 'employed' and 'worked' are interchangeable words.

R(U) 15/59

iv A claimant should be deemed to have been employed to the full extent normal in his case unless the extent of his employment in the week in question has fallen below the normal by at least one hour. Thus a man who normally worked on 4 days a week mainly as a result of short-time working, but also took additional employment as an assistant to a butcher for 5 hours on Saturday, was held not to have been employed to the full extent normal.

R(U) 2/61

v Most of the workers at the claimant's place of employment (a foundry) had for 20 years worked a 5-day week, but the claimant and some others always worked one day a week more than the majority of the workers. During the year preceding his claim for unemployment benefit for a Saturday the claimant had, however, worked on 17 Saturdays only because, due to adverse industrial conditions, the foundry in general was on a 4-day working week. It was accepted (see paragraphs 9-10) that the nature of the claimant's employment, and the long-standing regular practice extending over a great many years, showed that the recognised or standard working week for the claimant was always one day longer than the standard working week of the foundry in general and that he was in fact normally a 6-day worker. Therefore any week in which he worked less than 6 days was, for him, a period of short-time working and, if such short-time working was due to adverse industrial conditions (which it was held to be), it must be disregarded. Saturday, accordingly, became a day on which in the normal course the claimant would have worked and for which, when he did not work, unemployment benefit was payable.

R(U) 3/86
(T)

vi After 25 years full-time employment as a machine operator, followed by some 2 years of unemployment, the claimant was working regularly on Mondays, Tuesdays and Wednesdays as a painter's labourer for Community Task Force, on the understanding that this could lead to full-time employment with the Force. Held by a majority of the Tribunal of Commissioners that the work for 3 days a week constituted 'stop-gap employment'; that the 'full extent normal' test did not apply; and that the Thursdays, Fridays and Saturdays were days of unemployment for the purposes of unemployment benefit. The majority and minority decisions of the Tribunal, which arrive at the same result but by different routes, both discuss the general principles involved. This decision was considered by the Court of Appeal in *Riley v. the Adjudication Officer*, see Appendix to R(U) 2/86, 1.11.5 v *below*. See also R(U) 1/86, 1.11.3 xii *above*, R(U) 6/86, 1.11.3 xiii *above* and R(U) 9/88 (T), 1.11.5 vii *below* (House of Lords decision).

R(U) 2/88

vii The claimant worked full-time for over 40 years, was unemployed for some months and then commenced casual work for the Probation Service supervising community service workers. The Commissioner held that:

1. in regulation 7(2)(a) the phrase 'a recognised or customary working week in connection with his employment' related not to the work pattern of the particular claimant but to the work pattern in general in that particular employment (paragraph 5);
2. where a claimant worked a differing number of days week by week for the same employer the concept of regularity was not satisfied merely by reference to the minimum number of days worked (paragraph 6);
3. the term 'regularly works for the same number of days in a week for the same employer' in relation 7(2)(b) used ordinary English language and 'regularly' was an ordinary English word. It imported the concept of uniform re-occurrence or repetition as distinct from that which occurred casually, intermittently or, of course, irregularly (paragraph 8).

For another synopsis of this decision see 1.11.5 *vi below*.

R(U) 19/58

5 Evidence and considerations to be taken into account

i Whether ‘in the normal course’ a person would not work on certain days is a question of fact, and when an agreement which regulated certain conditions of a person’s employment spoke of a ‘normal working week of 5 days’ it did not determine what was the normal working week for that person. Thus, in the case of a claimant whose employment was governed by an agreement which provided that the working week was for 5 days, but that he could be required to work on Saturdays if needed, and he worked on 39 out of the previous 52 Saturdays, it was held that Saturday was not a day on which in the normal course he would not work. See also CU 518/49, 1.11.1 *i above*, R(U) 14/59, 1.11.1 *vi above* and 17.1.1 *xiv below*.

R(U) 14/59

ii The burden of proving that a claimant has been employed to the full extent normal in his case rests on the person who challenges the claim for unemployment benefit. When such a claim is being considered it should first be ascertained whether there is evidence that the claimant’s employment would normally be suspended on the day of a claim itself, and in the absence of such evidence the claimant’s record of employment on the day of the week concerned during the preceding year, or some other more suitable period, should be examined. If, during that period, there were days of holiday and days of incapacity for work, or days of unemployment because the claimant’s employment had been terminated, those days should be disregarded. If it is established that during the year ending with the day in question (or such other period as may provide a more suitable test in a particular case) a claimant has worked on less than 50 per cent. of the days of the week in question, excluding any days of incapacity for work or holidays or days of unemployment after employment had been terminated, that day should be held to be one which in the normal course the claimant would not work. But if he has worked on as much as 50 per cent. of such days it should be held that it has not been proved that in the normal course he would not have worked on the day in question. See also 1.11.1 *vi above*.

R(U) 13/60

iii The ordinary or normal extent of a person’s employment should be determined objectively and, in general, it is irrelevant to take into account the fact that a person may desire to obtain fuller employment than he succeeds in obtaining, and the fact that he has a disability which may restrict the extent or nature of his employment. One recognised way of ascertaining what is the ordinary or normal extent of a person’s employment is to scrutinise his record of employment over a reasonable period prior to the date of his claim for unemployment benefit. The period of a year may be regarded as a reasonable period, and if, in the majority of the weeks in that year, the person concerned has been employed for less than 6 days, the inference will generally be justified that the ordinary or normal extent of his employment is less than 6 days a week. See also 1.9.7 *i above* and see paragraphs 10-11 or R(U) 14/60 for a discussion by the Tribunal of Commissioners as to what evidence is necessary to determine what is ‘ordinary’ or ‘normal’. See also R(FIS) 2/83 and R(U) 3/86.

R(U) 15/60

iv When a person’s working days are normally covered by a rota, the days on which in the normal course he would not work have to be determined by reference to the rota and may vary from week to week. Thus a shift-worker who would, in the cycle of the rota system on which he was employed, have resumed work at 10 p.m. on a particular Friday after a break of 48 hours, and did in fact resume work at that time after a few days of temporary suspension, was held not to be entitled to unemployment benefit for that Friday, which was, for him, a normal rest day. See paragraphs 11-12; and as to the application of the Night Workers’ Regulation (now regulation 5 of the Regulations), paragraph 15. And see also R(U) 18/62.

R(U) 2/86

v After 7 years in full-time work, followed by 5 months of unemployment, the

claimant started part-time employment under the Community Programme. This employment consisted of 2 days work each week and was expected to last for a year. The Commissioner held that the claimant had a clear pattern of employment and was precluded from unemployment benefit for the days he did not work by the 'full extent normal' rule in regulation 7(1)(e) of the SS (Unemployment, Sickness and Invalidity Benefit) Regulations. An appeal by the claimant from the Commissioner's decision was allowed by the Court of Appeal. In their judgement the Court of Appeal considered in particular the application of the 'one-year before' and 'stop-gap' tests, and the relevance of the claimant's past work record and of evidence, where that was available, of his future work prospects (*Riley v. the Adjudication officer*, R(U) 2/86 Appendix). The Court of Appeal also considered decision R(U) 3/86, 1.11.4 vi *above*. The guidance in their judgement was followed in R(U) 6/86, 1.11.3 xiii *above*. See also R(U) 9/88 (T), 1.11.5 vii *below* (House of Lords decision).

R(U) 2/88

vi In a case concerning the full extent normal provision the Commissioner held that whether a person regularly worked for the same number of days in a week could normally be established by reference to the pattern of work preceding the material date, but a subsequent period was not in all cases necessarily irrelevant. For another synopsis of this decision see 1.11.4 vii *above*.

R(U) 9/88
(T)

vii The claimant was employed full-time for about 5 years after he left school. He was then unemployed for one year 9 months until he started work under a Community Programme Scheme for 2½ days per week. The employment was initially for 6 months but it could have been continued for a maximum period of a further 6 months. The claim for the remaining days of the week was rejected on the grounds that the claimant was employed to the full extent normal in his case (regulation 7(1)(e)). A Tribunal of Commissioners allowed the claimant's appeal (Commissioner's file No CU 274/84, but an equal against their decision was allowed by the Court of Appeal. The House of Lords disallowed the claimant's appeal against that decision and held that:-

1. in deciding whether during the period of his part-time employment the claimant was employed to the full extent normal in his case consideration had to be given, together with other facts, to the whole period that had elapsed since the claimant ceased to be employed full-time;

2. the fact that the part-time employment was for a fixed temporary period did not provide a basis for saying that such employment was not in the relevant week the normal pattern of the claimant - there was no other pattern of work sufficiently close in time in the past or in the immediately foreseeable future to be set against it.

Riley v Chief Adjudication Officer [1987] 3WLR 1224 CA approved (see R(U) 1/86 Appendix, 1.11.5 v *above*). For another synopsis of this decision see 188.6.2

xi *below*. See also R(U) 1/86, 1.11.3 xii *above*, R(U) 6/86, 1.11.3 xiii *above*, **1.11.3 xiv** *above*, and R(U) 3/86 (T), 1.11.4 vi *above*.

R(U) 17/60
(T)

6 Short-time working due to adverse industrial conditions

i The expression ‘short-time working due to adverse industrial conditions’ relates, not to the claimant’s personal experience, but to short-time working in the factory or industry in which he works; and the expression means an extent of working which is less, by at least an hour, than the full time of the claimant’s standard working week. The ‘standard working week’ may be that which has been generally agreed between an employer and a trade union or a local modification of such a week or, in the absence of such an agreement, the week which is recognised as a standard working week under a person’s contract of service. See also R(U) 1/64 and R(U) 2/73, 1.11.17 ii *below*.

R(U) 21/60
(T)

ii The claimant was employed as a crane-driver in the engineering industry. His employers made castings for steam locomotives for British Railways. It had been customary at his place of employment to work 6 or even 7 days a week. There came a time, however, when the hours of work were substantially reduced because the demand for casting for steam locomotives dropped considerably when the Transport Commissions decided that British Railways should change over to diesel engines. The claimant’s days of work were, accordingly, limited to 5 days a week and later were further reduced to 4 days. Subsequently there was a reversion to a 5-day week, followed by a further improvement in demand to the resumption of some Saturday work. It was caused by a specific event and was unlikely to continue in view of the character of that event and the steps taken to meet it. The period in question exhibited exceptional industrial circumstances, and when the normal course of working is being decided a period before those circumstances supervened should be examined. On that basis the claimant’s claims for unemployment benefit for Saturdays succeeded. In order to prove that the industrial circumstances were purely temporary, and unlikely to continue, the claimant did not have to rely merely on hypotheses as to the cause of the recession of trade or the recent improvement, but was able to point to a specific event the character of which enabled him to discharge the onus of proving that there were exceptional industrial circumstances relevant to his case. R(U) 13/55 and R(U) 33/57, 1.11.3. iv *above* distinguished. See also R(U) 1/61 and R(U) 2/61.

R(U) 5/62

iii The claimant had been employed on a rota system of working which was suspended when the workmen were put on short-time because of a trade recession. Short-time working was prolonged, but a year later it was still intended to revert to the rota as soon as economic conditions permitted. The date when that would become possible was, however, entirely speculative. Under the arrangements for short-time working the claimant should have done no work at all in one particular week, but he was unexpectedly called out on Friday of that week. According to the rota, which had been suspended, he was not due to work on that particular Wednesday. It was held that that Wednesday was a day on which in the normal course the claimant would not work. The best available evidence of what would in the normal course have been his working days and idle days was provided by his pattern of working before short-time working began. A period of short-time working due to adverse industrial conditions cannot be used for the purpose of determining a person’s normal course of work. The rota was indicative of what would, in the normal course, have been the claimant’s working days and idle days.

See also R(U) 10/80, 1.11.9 v *below*.

7 Meaning of short-time working

R(U) 13/60

i The term ‘short-time working’ implies not merely a reduction of working hours from what has formerly prevailed, but a reduction of working hours below the level of the recognised or standard number of hours. Further, when the term ‘short-time working’ is linked to the term ‘due to industrial conditions’ the implication is that the regulation is envisaging a situation which is not likely to be permanent. See also R(FIS) 2/83.

R(U) 2/73

ii Where a standard working week has been agreed between an employer and a trade union, that work is *prima facie* full-time working. Short-time working implies a reduction below the standard. The mere dropping of overtime ceased and the claimant reverted to the standard working week he became a person who did not ordinarily work on every day in a week. See also 1.11.1 viii *above*.

8 Night workers

R(U) 15/60

i A shift-worker was employed on a rota system which entailed a 20 week cycle. In the normal course of the cycle he would have resumed work at 10 p.m. on a particular Friday after a break of 48 hours. In fact he resumed at 10 p.m. on the Friday after a few days of temporary suspension. He made a claim for unemployment benefit for the Friday. Held, applying the Night Worker’s Regulations (see now regulation 5 of the Regulations), that the claimant had not been employed on the Friday. Held also that when a person’s working days are normally governed by a rota, the days on which in the normal course he would not work have to be determined by reference to the rota and may vary from week to week. The Night Worker’s Regulations and (what is now) regulation 7(1)(e) of the Regulations must be construed together. See, in particular, paragraphs 12 et seq. See also R(U) 1/61 and R(U) 14/80, 1.11.9 vi *below*.

R(U) 6/612

ii The claimant made a claim for unemployment benefit for a Saturday. In the preceding year he had worked on fewer than half of the Saturdays on which work was possible and during that year he usually worked on the day-shift but also worked on the night-shift in 3 widely separate weeks. In a full week of night-shift work, which began on a Monday evening and ended on Saturday morning, the Saturday became a day of employment by the operation of the Night Workers’ Regulations (see now regulation 5 of the Regulations). The claimant was employed on the night-shift in the week which included the Saturday for which his claim for unemployment benefit was made, but short-time working started in the factory on the previous Friday, so that in that week he did not work after the Friday morning. It was held that it was only the introduction of short-time working which took away the claimant’s employment on the Saturday in question. That day, therefore, was not a day on which in the normal course the claimant would not have worked. When it is being determined whether any particular day is a day on which in the normal course the claimant would, or would not work, the best available evidence relating to his normal prospects of work on that day has to be scrutinised. If his days of work vary according to the season of the year, then the matter must be judged according

R(U) 13/62 to the season in which the day in question falls. Similarly, if he works sometimes on day-shifts and sometimes on night-shifts, then the matter must be judged according to his previous record.

iii The claimant's normal extent of work in a week in which he claimed unemployment benefit was 4 night-shifts from Monday night to Thursday night and a Saturday afternoon shift, all of 8 hours' duration. He actually worked his usual 4 night-shifts and an afternoon shift of 8 hours on the Friday instead of the Saturday. Applying the Night Workers' Regulation (see now regulation 5 of the Regulations) he actually worked on 4 days instead of on his usual 5. It was held that the claimant had been employed to the full extent in his case. Although his employment was compressed into 4 days instead of 5, his total employment measured in hours had not been reduced at all. See R(U) 15/59.

R(U) 16/59

T

9 Meaning of 'termination' and 'employment of a casual nature'

R(U) 4/67

i The claimant had worked intermittently in the ship-repair yards for many years but did not normally work on Saturdays. He claimed unemployment benefit for a Saturday during a period when he was without work for fewer than 12 days. It was held that 'terminated' relates to 'termination' without any intention of resuming the relationship of employee and employer on the next available opportunity' and in that sense the claimant's employment had not been terminated. See as to the distinction between 'termination' and 'suspension' of employment paragraph 8; and as to the meaning of 'employment of casual nature' see paragraphs 11-12; see also R(U) 13/59. And see R(U) 17/59 and R(U) 18/59 and compare R(U) 19/59. See also R(U) 11/61.

R(U) 11/72

ii The claimant, who was employed as a riveter, during a period of about 4½ years had had 74 spells of employment with 9 different employers engaged in the ship-repair industry. The evidence defined group of employers in the industry and that no employer or employee in the industry had any claim to, or preference for, a particular employee or employer. The claimant's employment was held to have been terminated at the end of each spell of employment. See paragraphs 7 and 13 where the Commissioner considered and examined a number of decisions of Tribunals of Commissioners relating to the meaning of the word 'terminated'. See also as to 'termination' and 'suspension' of employment R(U) 7/68.

R(U) 2/75

iii The employer of the claimant, who was one of a number of lightermen, proposed to reduce the number of his employees from 9 to 6, but after negotiation with a trade union it was agreed to keep 9 lightermen on the pay-roll but to provide work and pay for only 6 at a time. The foreman was responsible for deciding who worked on any day. Those not working were given their national insurance cards and were entitled to seek work elsewhere. It was for the foreman, and not the employer, to tell the men whether they were needed for work on any particular day. The claimant made a claim for unemployment benefit for 7 periods during a period when he was not required to work under the existing arrangements. It was held that on the relevant days the claimant's employment had not only suspended, but suspended by the employer. The relevant statutory provision is not limited to suspension by the employer on disciplinary grounds and the employee's consent in no way negatives suspension by the employer. Such suspension need not be temporary as opposed to indefinite. See, in particular, paragraphs 20-25.

iv The curtailment of electricity supplies during a miner's strike led to the suspension of a man's employment when electricity was not available. At paragraphs

Unemployment benefit: employed to full normal extent

1.11.9-10

11(b) the Commissioner said the phrase ‘suspended by the employer’ (in section 17(3) of the Act) refers only to the fact of suspension and is not concerned with the question whether or not an employer has a legal right to suspend an employee. R(U) 10/80

v A wireless operator worked a rota of approximately 14 days on an oil rig and 14 days ashore. He was paid only for the period on the rig. Held his employment was not terminated while ashore and those days were idle days in the normal course of his employment. He was not entitled to unemployment benefit for the time ashore by virtue of section 17(1)(b) Social Security Act 1975. See also R(U) 5/62 and R(U) 14/80. Decision distinguished in R(U) 4/81. (See also R(U) 5/81.) R(U) 14/80

vi An oil rig scaffolder worked a 28 day cycle of 15 days on an oil rig and 13 days ashore. His contract was held to be continuous notwithstanding he had no obligations and was unpaid while ashore. R(U) 10/80 referred to. (See R(U) 4/81 and R(U) 5/81.) R(U) 4/81

vii Unemployment benefit was claimed by a roustabout on an oil rig who regularly worked a pattern of 15 days on the rig and 13 days ashore. He was unpaid for the period ashore and free to take other employment. His pattern of employment was more consistent with a continuing or running contract of employment than with regular terminations of employment followed by re-employment. The claimant was not entitled to benefit by virtue of section 17(1)(b) Social Security Act 1975. He was not assisted by regulation 16 Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (modifications to normal idle day rule). R(U) 7/68 referred to; R(U) 10/80 distinguished. R(U) 6/81

viii A roustabout worked a 28 day cycle on a oil rig, 15 days on and 13 days off. There was no obligation to re-engage him after each cycle but in practice this was done. His employment was held to have been suspended not terminated while ashore. R(U) 14/80 followed.

10 Meaning of ‘year’

R(U) 12/64

i The claimant was unemployed on a Saturday and in the year preceding that day he had worked on 23 out of 47 Saturdays, not counting days such as holidays. It was held that, applying the ‘50 per cent. test’, the day of claim was a day on which in the normal course the claimant would not work. In the formulation of the ‘50 per

Unemployment benefit:

1.12.1

cent. test' in R(U) 14/59, the words 'the year ending with the day in question' mean 'the year ending at the beginning of the day in question'. Thus the day of the claim is excluded from the period which falls to be examined.

Part 12: Following an occupation

Regulation 7(1)(g) of the Regulations. (NB: The present regulation refers to a person 'engaged in any employment', whereas before the 1975 Act the regulation spoke of a person 'following any occupation', which was always construed as meaning a gainful occupation.)

CU 30/49

1. Engaged in any employment

i A claimant was a partner with another man in running a boarding-house. It was open all the year round, but there were no visitors in October and the claimant left the running of it to his wife and his partner. Held, he was engaged in a gainful occupation. Compare CU 235/50, 1.12.2i, *below*.

CU 129/49

ii Two brothers were in partnership as market gardeners and from March to December they devoted the whole of their time to that business. During the winter months, however, they registered for employment and claimed unemployment benefit. They were held to be engaged in a gainful occupation as market gardeners. See also 1.12.3i, *below*.

CWU 7/49

iii The claimant was employed for 4 years as a part-time music teacher at a local school, and he was also employed as a church organist. When the former employment came to an end he registered for employment and claimed unemployment benefit. Held, that he was following a gainful occupation only on the weekdays on which he took choir practice.

CWU 42/50

iv A man who was not paid wages for the work he did, but was given 3 cwt. of potatoes and 2 meals on the days on which he worked, was held to be following a gainful occupation.

R(U) 12/55

v The claimant, who was registered for employment as a fitter, started business on his own account as a market salesman and merely claimed unemployment benefit for a period of 3 days while he was awaiting certain stocks to be delivered. It was held that unemployment benefit was not payable on the ground that the claimant was following an occupation. See also 1.12.5ii, *below*.

R(U) 16/61

vi A census officer was paid a lump sum which was held to be attributable to the whole period of his appointment. He was held to be following a gainful occupation throughout the period of his appointment and not only for the days on which he, in fact, was engaged in census operations. Followed in Decisions R(U) 3/72 and R(U) 1/73.

R(U) 4/64

vii A claimant who suffered from pulmonary tuberculosis worked at an occupation centre for disabled persons from 10 a.m. to 5 p.m. on Mondays and Tuesdays and from 2 to 5 p.m. on Wednesdays each week. His earnings never exceeded the permitted amount, but it was held that, although his activities were directed to his welfare and rehabilitation and not to earning a living, on the days he worked at the centre he was following an occupation. Compare R(U) 2/67, 1.12.2 iii *below* and see also 1.12.4iv, *below*.

R(U) 22/64

viii A man who was employed as a ship's purser entered into a formal contract with his wife for the carrying on of an hotel business as equal partners. After ceasing to be employed as a ship's purser he made a claim for unemployment benefit, but it was held that he had failed to prove that he was unemployed since, although he may have taken very little part in the running of the business, he was in fact in law a partner with the rights and responsibilities of a partner and was entitled to an

R(U) 7/70

equal share of the profits of the business.

R(U) 7/72

ix The claimant, who was otherwise unemployed, was a director of one co-operative association and secretary of another. It was held that each of those activities constituted following an occupation. See also R(U) 16/64, 1.12.3iii, *below*.

R(U) 3/77

x In the absence of directive evidence as to the number of days on which a person has worked during a period for which a claim for unemployment benefit is made it may be reasonable to make an estimate of the number of such days. Thus when a woman claimed benefit for 126 days and it transpired that she had worked on some of them, in the absence of evidence as to how many, an estimate was made.

R(U) 4/77

xi Regulation 7(1)(h) of the 1975 Regulations speaks of a person being 'engaged in any employment', and under Schedule 20 to the Act the word 'employment' includes, *inter alia*, any business which imports the notion of intended profit. Thus a man who, while in full-time employment, also had in partnership with his wife a fruit farm on which there were 3 cottages let to tenants unconnected with the farm was held to be engaged in employment within the meaning of regulation 7(1)(h). Nevertheless it was also held that the employment was consistent with full-time employment and that, although the rents from the cottages had been included in the business accounts, the cottages were not used in the business and the rents should, therefore, be disregarded when the profits of the business were being arrived at. See paragraphs 8 and 14-15. See also R(SB) 4/85 *below*.

R(U) 5/81

(T)

xii The consistency condition of regulation 7(1)(h) of the 1975 Regulation deals with the nature of the occupation itself, not with the insured person's activities in it whilst unemployed; satisfaction of the test requires that the occupation must be *capable* of being followed by the insured person concurrently with full-time employment. Accordingly a man who, after becoming unemployed, opened a coffee and gift shop in partnership with his wife, but whose self-employment in the business enabled him to do as much or as little work in the shop as he thought fit, was held to be engaged in employment which was consistent with full-time employment. R(U) 4/64 not followed: see paragraphs 11-13. And see also 1.12.3vi, *below*.

xiii The claimant was found by a Tribunal of Commissioners not to be entitled to unemployment benefit in respect of any of the days to which his employment as an assistant census officer related. While he satisfied the requirements of availability consistency and main occupation in regulation 7(1)(h) of the Regulations his daily earnings exceeded 75p and his appointment constituted employment for the whole of its period not just for specific days within the period. Different considerations apply to census enumerators. (R(U) 16/61 followed). R(U) 1/73 discussed). See also R(U) 5/84, 1.12.1xiv *below*.

R(U) 5/84

xiv A claimant, who had retired from a senior management position, took a consultancy post with a private dock company. He was required to do special assignments concerned with marketing their dock facilities for an estimated period of around 12 weeks a year for £3,500 a year. The company said that the claimant's availability was 'by mutual consent as and when required, providing it fits in with his schedule'. The claimant claimed unemployment benefit during the currency of this contract and contended that only those days on which he actually worked under it were not days of unemployment. The Commissioner held that the claimant was carrying on a profession or vocation throughout the whole of the 12 months covered by his contract; that accordingly he was employed throughout the period and that none of the days in that period was a day of unemployment. (*Bromsgrove Casting and Machine Ltd v. Martin* [1977] 3 All ER 487 distinguished.) (Paras. 1, 7 and 9.) See also R(U) 31/53, 1.12.4i *below*, R(U) 5/81, 1.12.1xiii *above*, R(U) 5/83, 1.12.3viii *below*, and R(G) 1/60.

CU 235/50

2 Not engaged in any employment

R(U) 11/57

i A man gave up his employment and, in partnership with his wife, took a small

Unemployment benefit: following an occupation

1.12.2-3

boarding-house at a seaside resort. The boarding-house was open during the holiday season and it was held that the claimant was not engaged in a gainful occupation during the off-season. See in particular, paragraph 4.

ii A man who had been in full-time employment, and was registered for employment as an accounts clerk, also had a grocery business which was managed by his wife. He himself took no part in the running of the business except to prepare the annual accounts. It was held that his personal activity was too slight for it to be said that he was following the occupation of a grocer. See also 1.12.5, *below*.

R(U) 2/67

iii After a lengthy illness, followed by unsuccessful attempts to resume employment, the claimant started attending a training centre for the mentally disordered. He went to the centre from 9 a.m. to 5 p.m. from Monday to Friday each week, but the arrangements were informal and patients could attend or not as they pleased. The object was therapeutic and not commercial, but those attending performed certain tasks and some of their products were sold. Held, distinguishing R(U) 4/64, 1.12.1 vii *above*, that the claimant was not following an occupation. For observations on the meaning of the phrase 'following any occupation' see paragraph 12.

CU 129/49

3 Earnings in relation to the permitted amount

i It was held that when the profits made by 2 brothers engaged in partnership in a market garden business were being calculated no deduction could properly be made for the wages which each brother had taken out of the profits of the business because such 'wages' must be regarded as a part of their respective remuneration. It was held that the earnings of each of the claimants exceeded the amount of earnings then permitted by the regulation. See paragraphs 19-24 as to methods of calculating earnings. See also 1.12.1 ii *above* and R(U) 1/67.

R(U) 6/57

ii A married man who had been employed as a machinist had an additional occupation as a school caretaker, in which occupation his daily earnings exceeded the amount then permitted by the relevant regulations (i.e. regulation 6(1)(h) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1948, as amended). He contended that a proportion of his wages should be treated as having been earned by his wife, who assisted him, but that contention was rejected and it was held that the days on which the claimant was employed as a school caretaker were not days of unemployment.

R(U) 16/64

iii A man who was not employed under a contract of service received payments on account of commission for orders he obtained for a firm of heating engineers. It was held that he was not unemployed and that on average his earnings exceeded the permitted amount.

R(U) 1/67

iv In the case of a man and his wife who carried on a boarding-house business in partnership, whereby the profits were shared equally, it was held that the appropriate period over which to determine the claimant's earnings from the business was a period of a year, and that on the facts his daily earnings on average exceeded the permitted amount. The claimant was, therefore, following a gainful occupation during the period under review and unemployment benefit was not payable to him. See paragraphs 12 *et seq.* Compare R(U) 4/74.

R(U) 7/70

v It was held that the earnings of a claimant who was director of one co-operative association and secretary of another should be aggregated, with the result that his earnings from two occupations exceeded the amount permitted by what was then regulation 7(1)(i) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1967.

R(U) 4/77

vi In the case of a man who, after becoming unemployed, opened a gift shop and coffee house in partnership with his wife it was held that, applying the discretion given by regulation 2(3) of the Social Security (Computation of Earnings) Regulations 1974, the right course was to calculate his daily earnings rate separately

1.12.3

Unemployment benefit: following an occupation

R(U) 6/77

for each of the weeks covered by the accounts he had submitted, and that the result of so doing was that he failed to satisfy the earnings condition of regulation 7(1)(h) of the Regulations. See paragraphs 8-10. See also 1.12.1 xii *above*.

R(U) 5/83

vii An elected member of a local authority received payments for his attendances at meetings and was held not to be unemployed on the days he did so; nor could his employment be disregarded under regulation 7(1)(h) of the 1975 Regulations because the payments he received constituted earnings derived from that employment and exceeded the permitted amount. See also 1.1.2 xii and R(U) 5/83 *below*.

R(U) 3/88
(T)

viii The claimant was a district councillor. He received an attendance allowance of £7 for each attendance at meetings of the council and its committees. Prior to some planning committee meetings he incurred expenses visiting the sites on which planning decisions had to be given. These visits did not constitute 'approved duties' within the meaning of section 174 of the Local Government Act 1972 and so they were not subject to reimbursement by the council. The claimant accordingly contended that the expenses should be deducted from his attendance allowance for the purpose of calculating his earnings under regulation 4 of the Social Security Benefit (Computation of Earnings) Regulations 1978. The Commissioner held that, although a person holding elective office is, in the terms of regulation 7(1)(h) of the Regulations, engaged in that employment throughout the period for which he is elected and holds office, remuneration he receives by way of attendance allowance for attending council meetings is remuneration in respect of the day of attendance only (paragraphs 10 and 14): expenses reasonably incurred by the claimant in visiting sites which were on the agenda of meetings of the planning committee which he was to attend some time later were to be regarded as reasonably incurred in connection with and for the purposes of those meetings and, since he was not reimbursed by the local authority, they were deductible under regulation 4 from any attendance allowances paid for attending those meetings (paragraph 14). See also R(U) 5/84, 1.12.1 xiv *above*.

ix For about 4 years before claiming unemployment benefit the claimant had owned a newsagents which was run mainly by part-time staff. The Tribunal held that:

1. the appeal tribunal erred in regarding the claimant's drawings from the business as earnings - a man who drew money from a business which he owned was no more earning by so doing than if he drew from his own bank account (paragraph 12);

2. expenditure shown in the profit and loss account which was attributable to domestic rather than business purposes should not be allowed as deductions in arriving at the profits for social security purposes (paragraph 13);

3. capital allowances, allowed by the inspector of taxes, did not represent a true method of allowing for depreciation in arriving at the profits of a business (paragraph 14);

4. there were 3 possible methods of allowing for depreciation - whichever method was applied it was important to apply consistently the same system in deciding the earnings of a person, and where different methods have been used, to make adjustments where necessary in arriving at the profits for social security purposes (paragraph 15).

R(U) 1/93

For other synopses of this decision see 17.3.1 viii and 17.3.10 v *below*.

x The claimant was the director of a limited company which employed him as a draughtsman. His work as a draughtsman finished when the contract on which he was working came to an end. His company received payment for his work under that contract. His subsequent claim for unemployment benefit was refused on the grounds that he was engaged in employment as a director from which his earnings were more than £2 on the daily average. The Commissioner held that the earnings had been paid to the claimant as an employee of the company for the actual period

of his work as a draughtsman. There was no evidence to show that he had received any payment for his work as a director of the company since his date of claim and therefore he was entitled to unemployment benefit from that date.

R(U) 2/94

xi The claimant, a local authority councillor, contended that payments to him by way of attendance allowance for his attendance at Council meetings did not constitute earnings, and that decisions R(U) 6/77 and R(U) 5/83 should be disregarded because there had been new local government legislation since those decisions were made. The Commissioner held that an attendance allowance payable to a councillor was still to be treated as earnings. He also held that a deduction could be made from the attendance allowance for expenses that had not been reimbursed, and that were reasonably incurred in connection with the claimant's attendance at the meetings for which the allowance was payable, but not for expenses that cannot be directly or indirectly referred to attendance at the meetings. See also R(U) 6/77 and R(U) 5/83 *above*.

R(U) 31/53

4 Whether available to be employed full-time in some employed earner's employment

i A man who was registered for employment as a maintenance engineer was also a director of a co-operative society, for which he received a salary of £20 a year. He was held to be entitled to unemployment benefit since he ordinarily followed his subsidiary occupation in addition to, and outside, normal working hours. See also R(U) 5/84, 1.12.1 xiv, *above*.

R(U) 11/56

ii A woman who had been employed part-time as a dentist's receptionist held herself to be available for part-time employment only. She had a subsidiary occupation as a book-keeper, the work involved in which, she said, could be done in her spare time if she were to be employed. It was held that unemployment benefit was not payable to her since the claimant was following an occupation and was not available for full-time employment.

R(U) 24/58

iii A cotton-mill worker had a subsidiary occupation as a fish and chip shop proprietor. He had been allowed to leave the mill at 11 a.m. instead of noon on Tuesdays and Fridays, those being the days when the fish and chip shop business was open at midday. He was temporarily suspended from his work at the mill and claimed unemployment benefit, but said that he would not open his fish and chip shop at midday on Tuesdays and Fridays if an employer refused to allow him an hour off on these days. It was held that the fact that a person, when otherwise employed, does some work in a subsidiary occupation during normal working hours does not prevent him from being available for full-time employment if it is plain that he will at once abandon his subsidiary occupation at any time at which it conflicts with normal full-time work.

R(U) 4/64

iv It was held that a claimant who attended an occupation centre where disabled persons could do simple remunerative work under arrangements made by the county health department with local firms was following an occupation which was not consistent with any full-time employment for which he was available. See

R(U) 11/54 paragraph 10 for certain observations relating to the distinction between 'consistency' and 'availability'. See also 1.12.1 vii, *above*.

5 Whether subsidiary employment is consistent with full-time employment

R(U) 12/55 i During a spell of unemployment a married woman took up work as a part-time collector for a clothing firm on a commercial basis. It was held that the work she did could ordinarily have been followed outside the normal hours of her usual employment as a shop assistant and that it was not, accordingly, inconsistent with full-time employment.

R(U) 15/56 ii The claimant was registered as a fitter, but started a business on his own account as a market salesman. It was held that employment was not consistent with full-time employment. So long as his occupation of market dealer prevented him from having any reasonable probability or expectation of obtaining full-time employment as a fitter it must be regarded as inconsistent with full-time employment as a fitter.

R(U) 12/57 iii In order to succeed in his claim for unemployment benefit a man who was registered for employment as a gardener/handyman, or alternatively as a handyman, had to show that he was available for full-time employment in some employed contributor's employment and that the occupation he was following was consistent with, and different in form from, that full-time employment. When he made a claim for unemployment benefit it transpired that when he was in his previous employment as a gardener he had also had 2 subsidiary occupations outside his normal working hours. It was held that those occupations were consistent with the full-time employment for which he was available. See also R(U) 16/56.

R(U) 12/59 iv An unqualified accountant who was registered for employment as an accountant was also self-employed in doing accountancy work in the evenings. He stated that he was prepared to accept full-time clerical work in any capacity. It was held that the claimant's evening work was different in nature from and not inconsistent with the general clerical work for which he was available. His claim for unemployment benefit accordingly succeeded. See also R(U) 26/58.

R(U) 24/53 v An unemployed factory worker obtained part-time work as a relief park-keeper, his hours of duty being from 4 p.m. each day. He had no reasonable prospects of obtaining full-time factory work finishing before 4 p.m. and it was held that unemployment benefit was not payable to him while he followed the occupation of relief park-keeper. The fact that he could leave the subsidiary occupation at any time without notice was not the point; nor could he rearrange his hours as a park-

keeper and could only follow the full-time employment for which he was available by giving up that occupation. It was, therefore, held to be inconsistent with full-time employment. R(U) 11/54, 1.12.5 i, *above*, distinguished.

6 Professional footballers

i A professional footballer was bound by his contract to place his services at the disposal of his club at all times. He trained on Tuesday and Thursday evenings and normally played on Saturdays only, although there were occasional mid-week matches. It was held that he was following an occupation which could not ordinarily have been followed by him in addition to his usual employment and outside the ordinary working hours of that employment. R(U) 23/57

ii A professional footballer who lost his employment as a kiosk attendant (which was his principal employment) was under contract to play on Saturdays when selected and to attend for training as required by his club. It was left to his discretion to train as he thought necessary and he was paid a wage of £5 a week. Held the claimant was following the occupation of footballer on every day of the week. Held further that his daily earnings exceeded the amount permitted by the regulation then in force. The claimant's obligations had to be judged by the written terms of the contract under which he was employed and, unless there was satisfactory evidence to show that it had been varied or modified by the assent of the parties, either expressed or implied, the terms of the contract spelt the nature of the claimant's obligations. Compare R(U) 8/59, 1.12.6 iii, *below*. R(U) 8/59

iii The claimant was under a written contract to play football. He attended for training when required. He was paid 10s. a week, plus reimbursement for travelling expenses. Only part-time service was required and it was held that the claimant was available for full-time employment as warehouseman or packer and that the occupation of a footballer was in his case consistent with that employment. R(U) 10/72

iv The claimant, a single man, was a sales representative, which was his main occupation. He was also a part-time professional footballer. When his occupation as a sales representative came to an end he made a claim for unemployment benefit. He then entered into a contract with a football club under which he was paid a basic weekly wage of £7 during the playing season. In addition he received certain bonuses contingent on his playing in the first team and on the team's results. Held: (a) that under his contract the claimant was to be paid a basic wage of £7 a week whether or not he played in any match; (b) that the basic wage could not be earned in respect of any particular day in a week, but only in respect of a week, and that the payment must, therefore, be averaged over a week, with the result that the claimant's daily earnings exceeded the amount then permitted under the regulation; and (c) that the claimant did not, therefore, satisfy the earnings condition in (what was then) regulation 7(1)(i) of the "National Insurance (Unemployment and Sickness Benefit) Regulations 1967, so that no day during the currency of his contract of employment as a professional footballer would be treated as a day of unemployment. See paragraph 14 for criticism of the decision in R(U) 10/57. See also R(U) 5/83. R(U) 3/84 (T)

R(U) 2/93

v A professional part-time footballer was bound by the terms of a written contract to play for his club and to attend for training as and when required. He in fact played in matches for the club on Saturdays and trained on Tuesdays and Thursdays. Occasionally he played in matches during the week. Under the contract he was entitled to be paid and he was paid £30 a week during the playing season, plus certain bonuses contingent on the team's results. The main question in issue was whether, for the purposes of entitlement to unemployment benefit, the £30 a week was in respect of the whole of each week during the playing season, or only in respect of those days on which the footballer played or trained under his contract. A Tribunal of Commissioners held by a majority that the footballer's basic wage of £30 was earned in respect of a week and not in respect of any day in a week and

1.12.7

accordingly, as his daily earnings on average exceeded the prescribed limits, no day in the playing season could be treated as a day of unemployment (paragraph 30). Decisions R(U) 24/53, R(U) 23/57 and R(U) 10/72 were affirmed, but R(U) 10/57 was held to have been wrongly decided and R(U) 8/59 was distinguished.

7 Weekly earnings rule

R(U) 2/96
C.U. 137/49

i The claimant made a claim for her non-working days when the company she was employed by introduced short time working. She was issued with postal claim forms (UB25PF) by her employer on which an official of the ES had entered dates of claim. It was decided that she was disentitled to unemployment benefit because of the “weekly earnings rule” [reg 7(1)(o)]. The Commissioner held that it was important that the claimant be given a clear and proper notice from or on behalf of the Secretary of State. The claim forms issued could not be regarded as the appropriate statutory notice, and therefore no notice had been given.

ii The claimant, a clerk employed in a school, made a claim for non-working days in the Easter school break. Thursday was specified as the weekday for her claiming unemployment benefit. It was decided that she was not entitled to unemployment benefit for all the days, some because they were days of recognized holiday and some

because of the “weekly earnings rule” [reg 7(1)(o)]. The Commissioner held that entitlement is considered separately in respect of each day so that what might otherwise be treated as a claim in respect of a period is treated as a number of claims in respect of individual days.

Part 13: Guaranteed week

1 General principles

i The general rule is that where a minimum wage is paid in respect of any week in which work is done the recipient of that wage is not unemployed during that week. The wage is payment made in respect of each and all the days in the week and is a payment for the whole week. But a distinction must be drawn between a guarantee of employment and guaranteed wages. See also *infra* 1.13.3 i.

R(U) 21/56

ii Where a claimant’s employment is subject to a guarantee agreement the ultimate question is what does the employee undertake in consideration of the employer’s guarantee. See *infra* 1.13.3 iv and R(U) 30/56, *infra* 1.13.4 ii. See also R(U) 40/56.

R(U) 13/51

2 Effect of discharge where there is a guarantee agreement

i The employment of a bricklayer was governed by an industrial wage agreement which provided in certain circumstances for payment of a guarantee minimum wage of not less than payment for 32 hours a week. He was discharged because bad weather prevented work continuing and he made a claim for unemployment benefit for a Saturday. It was held that the guarantee wage agreement governing his employment did not prevent payment of benefit for that day.

R(U) 25/55

ii The employment of a plasterer who normally worked a 6-day week was governed by a guaranteed wage agreement which included a provision for payment of the full guarantee minimum wage in the event of his employment being terminated by 2 hours’ notice expiring at the normal finishing time on a Friday. His employment

- CU 137/49 was terminated because of inclement weather, but on the understanding that he would be taken on again when conditions improved. It was held that, following R(U) 13/51, *supra* 1.13.2 i, that after his discharge he was not to be regarded as continuing to receive wages for the Saturday.
- 3 When a day is not a day of unemployment under a guarantee agreement**
- R(U) 27/51 i The claimant was employed on a rotating shift system working a 3-weekly cycle of 132 hours. The factory at which he was employed then went on short-time and the hours were reduced to 108 in the cycle, with the result that the claimant had no work on Friday and Saturday. The guaranteed wage agreement provided for three-quarters of pay, which the claimant had already exceeded, and in applying the general rule, see also *supra* 1.13.1 i, it was held that unemployment benefit was not payable to the claimant for Friday and Saturday.
- R(U) 23/55 ii A machinist who normally worked a 44-hour week from Monday to Friday was prevented from working on a Monday by a shortage of material at the factory at which he was employed. His employment was governed by an agreement guaranteeing a minimum weekly wage equal to the sum he could earn by 34 hours of plain-time work in any week. It was held that he was not entitled to unemployment benefit as he received a guaranteed weekly wage and could not be regarded as unemployed on any day in that week. Compare C.S.U. 49/50, *infra* 1.13.4 i.
- R(U) 21/56 (T) iii The employment of a labourer in an iron foundry was covered by an agreement which provided for either 34 hours' work or a wage equivalent to plain-time for 34 hours with a provision that piece-work wages in excess of the normal hourly rate would not be taken into consideration. The claimant was a piece-worker and in the week in question he worked 35½ hours. It was held that the agreement guaranteed a minimum weekly wage, that during the relevant week the claimant was protected by the guarantee, and that he did not qualify for unemployment benefit for any day in that week.
- R(U) 2/58 iv The terms of a guarantee agreement which had previously been held by the Commissioner to guarantee wages for the whole of each week altered with a view to giving employees title to unemployment benefit for certain days on which they did no work during a period of short-time working. The parties agreed that the set purpose of alteration was to achieve that result, and that the alteration should have no effect 'industrially' or in the 'application' of the original agreement. A Tribunal of Commissioners held, however, that the agreement in its original form was still operative and that under it an employee was guaranteed wages equivalent to his inclusive hourly rate for 34 hours in any pay-week and was required to be at the employers' disposal for 34 hours at any time during that week. The claimant was not, therefore, unemployed on any day of the week. See paragraphs 13 *et seq*, and see the Appendix to the decision reproducing Decision C.U. 12/56 (not reported) which was followed in R(U) 7/60. See also R(U) 22/56, R(U) 40/56, R(U) 15/61, *infra* 1.13.3 vii and R(U) 1/76, *infra* 1.13.3. x.
- R(U) 7/60 v A laundry worker normally worked for 5 days a week but at the material time was working on 4 days, Monday to Thursday, only. She was employed under an agreement by which she was guaranteed a weekly wage and in return was required, in any week, to place her services at her employer's disposal throughout the period of her ordinary employment. She made a claim for unemployment benefit for Friday and Saturday, but it was held that those were not days of unemployment in her case.
- R(U) 15/61 vi There is no necessary correspondence between the period for which an employee holds himself available to his employers and the number of hours for which the employers guarantee payment. A nightworker was guaranteed 3 nights' employment in each normal pay-week, or payment for 34 hours, on condition that he was available for work during the period of the guarantee. He made a claim for unemployment benefit in a week of short-term working in which he worked 33 hours in 3 shifts instead of 4 shifts of 11 hours each. Held, following C.U. 12/56, see Appendix to R(U) 21/56 - *supra* 1.13.3 iv, that the claimant was not unemployed on the Friday for which the claim for unemployment benefit was made.

vii The claimant's employment was governed by an agreement which provided, subject to the employee's availability, that all hourly-paid workers should be employed for a period of 4 days or less in any pay-week such as to enable them to earn the equivalent of their inclusive hourly plain-rate pay for 34 hours. In the weeks in question the claimant was without employment on Tuesday and Wednesday in addition to Saturday, on which he did not normally work. His earnings for the other 3 days exceeded the amount specified in the agreement. Held, following R(U) 21/56, *supra* 1.13.3 iv, that the claimant was bound to hold his services at his employer's disposal on 4 days a week and that, therefore, he could not be unemployed on any of those days. The fact that the period stipulated in the agreement was 4 days or less did not assist him.

R(U) 11/64

viii The procedure for a casual dock worker was that he reported to the employment exchange in the afternoon and either was or was not given a green chard. If he was he attended a call stand and either was or was not given work on a particular ship. On a Sunday evening he was allocated to a ship which was expected to start unloading at midnight, but, because of the tides, could not berth in time, so that there was no work for the claimant, who was paid 'disappointment money'. It was held that the amount he was paid was in effect a guarantee of part wages for the period he would work on Monday if the ship docked in time and that unemployment benefit was not payable to him for the Monday.

R(U) 1/75

ix The claimant was covered by an agreement under which hourly-paid workers were guaranteed employment for 5 days a week or earnings equivalent to 40 hours if employment was not available. Due to government restrictions, and by agreement between the management and the unions, the factory changed to a 3-day working week (i.e. Thursday, Friday and Saturday) and the guarantee was suspended. The claimant was held not to be unemployed on the Monday, Tuesday and Wednesday. See in particular paragraphs 7-8.

R(U) 1/76

x The claimant was employed as a day-worker in an automobile factory, one of the conditions of his employment being that he would be guaranteed employment in five days in each normal pay-week, and in the event of work not being available for the whole or part of the five days he would be assured of earnings equivalent to his time-rate for 40 hours. As a result of a trade dispute the claimant was suspended for 2 days. It was held that 'availability' for employment and 'unemployed' are not synonymous and that the 2 days in question could not be treated as days of unemployment. See paragraphs 5-8 and see also *supra* 1.13.3 iv. and 1.1.2 xv *below*.

C.S.U. 49/50

4 Day of unemployment

i The claimant was guaranteed employment for 34 hours a week and in the week in question he worked for 35 hours in the first 4 days of the week. There was no work for him on the 2 remaining days but his claim for unemployment benefit was allowed on the ground that the guarantee was a guarantee of 'employment' as

R(U) 30/56

distinct from a 'guaranteed wage'. Compare C.U. 137/49, *supra* 1.13.3 i.

ii It is important that a guarantee agreement is examined in order to determine whether it is a guarantee of so many hours of work or a guarantee of wages. Thus where there was an agreement that, except in certain circumstances, a worker would not be 'stood off' without pay for more than 2 days or shifts in a pay-week and wages were guaranteed for the whole pay-week in which he was 'stood off' could not be regarded as covering the idle days and that they were, therefore, days of unemployment. See paragraphs 8-9.

R(U) 5/58

5 Incidence of holidays

i A worker was subject to an industrial agreement whereby Whit Monday was a normal working days for which a holiday was payable whether or not he was required to work. He was not so required and received the bonus payment only. It was held that the claimant was not unemployed on the Whit Monday since the agreement meant that he undertook to keep himself at the disposal of his employer on that day in return for the payment guaranteed.

R(U) 17/58

ii Under a guarantee agreement a 5-shift worker was guaranteed employment for 4 shifts in any pay-week. In a week in which a holiday occurred the guaranteed period was reduced in the same ratio as the normal working hours were reduced. In the week which included Good Friday, which was a recognised holiday, the claimant had no work on Thursday and made a claim for unemployment benefit for that day. It was held that the normal working week was reduced by the holiday from 5 days to 4 days and that, for the reasons given in paragraphs 6-7, the claimant was not unemployed on the Thursday.

R(U) 1/59
(T)

iii A guarantee agreement provided that when a recognised holiday occurred

the period of guarantee should be reduced 'proportionately'. It was held by a Tribunal of Commissioners that that meant that the normal period of guarantee should be reduced, not simply by the number of days of holiday, but by the ratio which the number of days of holiday bore to the claimant's normal working week.

Part 14: Holidays

CU427/50

Regulation 7(1)(h) of the Regulations.

1 General principles

i A person cannot be said to be 'on holiday' unless at the beginning of the period he had employment which had not been terminated. Thus a man who was unemployed and spent a weekend at the seaside was held not to be on holiday during that week. At paragraph 14 of the decision the Commissioner said that the mere fact that a claimant may say that he is taking a holiday is not conclusive that he is not available for employment. The words may be loosely used and may mean no more than an intention to take the opportunity of leaving home during a period when there is no work available. Such a person is not really 'on holiday' but has gone away from home for a change of air and surroundings, or for some other good reason. And see 1.14.2 ii and 1.14.6 iv, *below*.

R(U) 11/53

ii Recognised or customary holidays are those days which the employers and workers concerned have agreed (whether expressly or by implication based upon acquiescence) shall be non-working days. Once these holidays have been agreed they become a normal and recurrent incident of employment and an implied term of the contract of service in the establishment concerned and cannot be varied except by agreement between the parties. Further, where during a substantial numbers of years a holiday has been observed over a fixed period, it must be inferred, unless there are facts which negative the inference, that a holiday satisfied the requirements of a recognised holiday, even though the period of holiday does not synchronise with that generally recognised as a holiday period in the district. See also 1.14.3, *below*.

R(U) 1/62

2 Meaning of 'on holiday'

i An employee will be held to be on holiday during any day of recognised or customary holiday in his employment and applying to him unless his employment has been 'terminated' in the sense that both: (a) the legal obligations of the contract of service have been terminated, and (b) there is no intention that the employment shall be resumed on the next available opportunity. See also 1.14.6 v, *below*.

R(U) 7/63

ii The words 'on holiday' are not used in their colloquial sense but refer to an employment either existing or in suspense. If a man has finally terminated his

employment by leaving it without any intention of ever return to it in any circumstances, he does not become 'on holiday' if he goes for a visit to the seaside and so would in one sense be spoken of as being on holiday. See also 1.14.6 iv below and R(U) 8/64, 1.14.5 v, *below*.

C.S.U. 29/49 **3 Recognised or customary holiday**

See also 1.14.4. below.

- i R(U) 2/51 The claimant was a lace worker employed at a factory in Nottingham which was closed for 2 weeks in August for the Nottingham Fair. Wages were paid for the first week only. It was held that it had come to be recognised that the factory would close for 2 weeks during the Fair holiday and the claimant's claim for unemployment benefit in respect of the second week of the Fair was disallowed.
- ii R(U) 4/52 Six weeks after the claimant had commenced employment the employers closed down the factory for the recognised summer holiday. The claimant had not been qualified for holiday-pay and had to take an enforced holiday without pay. He was held to be 'on holiday' and the fact that he was handed his cards at the beginning of the holiday was no evidence of termination of employment.
- iii R(U) 20/52 A man who was employed by a firm, two-thirds of the employees of which were Jews, claimed unemployment benefit for 3 days of a Jewish holiday on which, the firm stated, they had closed for the past 10 years. The claimant was held to have been 'on holiday' since, although there may have been a shortage of work, the primary reason for closing was the firm's recognised custom of observing the Jewish holidays. The claimant, although not a Jew, was by the terms of his employment 'on holiday' during the period in question.
- iv R(U) 11/53 A claimant who worked night-shifts lost 3 shifts' work over the Christmas holiday, whereas the day-shift lost only 2 shifts' work. It was, nevertheless, held that the claimant was not unemployed on the extra day and that the night-shift workers were on holiday for one shift more than the day workers.
- v R(U) 39/53 The claimant was a spinner in a woollen mill which closed for 2 days' agreed holiday on Easter Monday and Tuesday. The mill was also closed on the previous Good Friday, but this was not recognised holiday under any agreement, expressed or implied. It was held that the claimant was entitled to unemployment benefit for the Good Friday. See also 1.14.1 ii, *above*.
- vi R(U) 27/58 The claimant was employed at a pottery which closed at Easter on Good Friday, Saturday and Easter Monday. There was a written holiday agreement concerning the Friday and Saturday, but over a long period the employers had agreed, at the request of the employees, that the Friday and Saturday preceding Easter Monday should be days of holiday. It was held that Good Friday and Saturday were days of recognised holiday and that the claimant was not entitled to unemployment benefit for either of those days.
- vii R(U) 24/59 The claimant's employers had for several years closed on Boxing Day in addition to particular holidays which were specified in a written agreement. It was held that Boxing Day had become a recognised holiday notwithstanding that it was a day other than those specified as holidays in the written agreement on conditions of employment.
- viii R(U) 10/62 The works at which the claimant was employed had been closed on Trinity Monday for the previous 10 years owing to shortage of orders following the Whitsun Holidays. Trinity Monday was not mentioned in any agreement specifying certain days as agreed holidays, but it was held that, although not mentioned in the agreement, that Monday had become a day of recognised holiday in the case of the claimant.
- ix The claimant, who was employed in a mill, normally worked during the evening

on Monday to Friday each week. A certain Monday and Tuesday in September were days of customary holiday and for a number of years it had been the practice for the mill to close at 5 p.m. on the Friday before the customary holiday. It was held, in view of the consistent practice, that the claimant was on holiday for the Friday and Saturday on which the mill was closed before the 2 days of customary holiday on the following Monday and Tuesday.

R(U) 2/64

x The claimant's standard working week was from Monday to Friday, with some liability to work on Saturdays, although he had not worked on a Saturday for the preceding 18 months. Because of short-time working he was suspended from his employment for the whole of the week preceding the 2 weeks of the agreed annual summer holiday, but for many years it had been the practice to close the factory on the Saturday immediately preceding that holiday period. It was held that unemployment benefit was not payable to the claimant for the Saturday since, by custom and practice, that day was recognised as a day of holiday.

R(U) 2/87

xi A claimant employed by an Education Authority as a supply teacher paid on a daily basis was refused unemployment benefit during a period when the school was closed for half-term holiday, on the ground that this was a period of recognised or customary holiday in connection with his employment. The Commissioner held that it was only necessary to consider regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations where employment had not been terminated (R(U) 7/68 cited). Any contract between the present claimant and the Education Authority terminated at the end of each day's work or period of work for which he had been engaged and, after the school had closed, the claimant was not on holiday but was unemployed.

4 When on holiday

R(U) 3/53

See also 1.14.3 above.

i The claimant was employed at a factory and by the terms of his employment he was entitled to a holiday with pay for 2 weeks each year, the period of which was to be decided by negotiation between representatives of the trade union, to which all workers at the factory belonged, and the factory management. The main bodies of the employees of the factory assented to a revised period of holiday but some, including the claimant, did not so agree. It was held, nevertheless, that the claimant was on holiday during that period since unanimity was not essential and the period agreed by the main body of employees became the holiday for all the dissentients.

R(U) 12/54

ii The factory at which the claimant was employed closed for a holiday from Good Friday, 16th April, to and including Monday, 3rd May. The claimant received 5 days' holiday pay and was advised by her employers to claim unemployment benefit for Saturday, 24th April. The employers stated that they had discharged the claimant 'temporarily' because of shortage of work, but she resumed her employment at the factory when it re-opened on 4th May. It was held that she was on holiday from 26th April to 3rd May although shortage of work coincided with the annual holiday. See paragraph 4.

R(U) 16/54

iii It was a condition of the claimant's employment that she was entitled to 2 days' holiday at Easter, but in fact the factory at which she was employed was closed for 13 week days (including the 2 days of holiday) owing to a shortage of material. It was held that the claimant was on holiday on the 2 days in question since her employment had not been terminated, but merely suspended. See paragraph 3.

R(U) 7/56

iv The claimant had been employed for approximately a month before the

R(U) 2/64 factory where she worked closed down for 2 weeks during a period of holiday, as agreed between the employers and the workers. The claimant did not qualify for holiday pay but was, nevertheless, held to be on holiday in common with other workers at the factory.

v A painter's labourer was held to be on holiday on a Saturday when it had been many years the practice to close the factory on the Saturday of the week before the annual summer holiday. See also 1.14.3 x *above*.

CWU 7/84

5 When not on holiday

R(U) 11/53 i A canteen assistant in a school meals service who received holiday pay during the first 2 weeks of the school holidays, but was stood off without pay for the remaining 3 weeks, was held not to have been on holiday during those 3 weeks since it was a period of suspension of her employment, which had not been terminated. See paragraph 14. See also CWU 88/48.

R(U) 16/55 ii A spinner in a woollen mill which was closed for 2 days' agreed holiday on Easter Monday and Tuesday was held to be entitled to unemployment benefit for the previous Good Friday since that was not a day of recognised holiday under any agreement, expressed or implied. See also 1.14.1 ii *above*.

R(U) 7/63 iii The claimant, who normally worked a 5-day week with Saturday as his normal idle day, was on short-time and working only on Tuesdays, Wednesdays and Thursdays. The factory at which he was employed was closed from Friday, 24th, to Monday, 27th December, and by agreement in the trade for former day was substituted as a holiday for Christmas Day and Boxing Day. It was held that the claimant was not on holiday on Saturday, 25th December.

R(U) 8/64 iv The claimant, whose sole employment for some 30 years was that of a professional musician, began to teach instruments in a school managed by a local authority. He was paid by the hour and received no holiday pay. During the term preceding the school's Easter holiday he was regularly employed as a teacher on 4 days a week. His engagements as a practising musician had varied in frequency, but he had been so engaged on about half the days in the year before the Easter holiday. It was held that he was not on holiday during the school's Easter holiday since his employment consisted of 2 parts, teaching and playing, and although the school's holiday was one cause of his unemployment, another direct cause was lack of success in obtaining paying engagements. To be 'on holiday' for the purposes of entitlement to unemployment benefit a man must be on holiday from his employment as a whole. See 1.14.2 ii *above*.

R(U) 1/66

v The claimant was employed in a factory ship which was usually at sea for several months at a time with intervals of about 10 days between voyages. It was agreed between the employers and the men that, because of the arduous conditions

of the employment, after 4 consecutive sea trips members of the crew should be able to miss a trip without breaking the continuity of their service for purposes of bonus and pension rights. The agreed holiday entitlement in the industry was 14 days' paid holiday each year. The claimant was ashore, but without employment, for a period of over 4 months and the question arose whether he was on holiday when he claimed

unemployment benefit. He was held not to have been on holiday. See paragraphs 14 and see also 1.14.2 ii *above*.

vi A school teacher whose employment in fact terminated on 24th July, but who secured a permanent employment to commence on 14th September at another school, was held by a Tribunal of Commissioners not to have been on holiday during the school summer holiday. See further 1.14.6 ix *below*. See also R(U) 2/66, 1.14.6 x *below*.

CWU 7/48

6 School holidays

R(U) 17/62

i A claimant was employed as a canteen assistant in the school meals service of a county education authority. She was in receipt of holiday pay during the first 2 weeks of the school holiday but was stood off without pay for the remaining 3 weeks, and it was held that during those 3 weeks she was suspended from her employment and that she was not, accordingly, on holiday during those weeks.

C.U. 21/48

ii A school teacher was paid a weekly salary plus a lump sum in respect of the summer holiday. Her employment was not terminated at the end of the summer term and she returned to work at the same school when the next term began. She was held to be on holiday during the summer holiday.

R(U) 38/52

iii The claimant was employed as a daily general servant at a school and had no work when the school was closed for a holiday. A week after she returned to her employment when the next term began she was paid £1 by her employers which, it was said, represented 10s. in respect of each week of her absence from the school. It was held that she had not been unemployed during the holiday and that the money had been paid to her as wages under a continuing contract of service. She was herself on holiday during the period in question.

R(U) 7/54

iv A temporary school teacher claimed unemployment benefit for the period during which the school was closed for the Christmas holidays. He was employed under a continuous contract of employment from August to June, his aggregate salary for that period being equal to the annual salary of a permanent teacher, but he was not paid for holidays. It was held that the period in question was a period of customary unpaid holiday in connection with the claimant's employment. See also 1.1.2 iii.

R(U) 1/62
(T)

v A person is on holiday during any day of recognised or customary holiday in his employment and applying to him unless his employment has been terminated in the sense of both (a) the legal obligations of the contract of service have been terminated and (b) there is no intention that the employment shall be resumed on the next available opportunity. Accordingly a man who entered the employment of a county education committee as a member of the temporary teaching staff of a school was held by a Tribunal of Commissioners to be on holiday and not entitled to unemployment benefit during the school Christmas holidays. His appointment had not been for a defined period and no express provision was made for its

termination by notice, but he was to render temporary relief duty on a day-to-day basis and he taught until the end of the term. Nothing was then expressly arranged about his returning to the school during the following term and, in fact, he did so. In those circumstances he was held to be on holiday. And see 1.14.10 i below. See also R(U) 4/88(T), 1.14.6 xii *below*.

R(U) 7/63 vi The claimant was employed as an evening attendant at a university library during the university term. He was paid for the weeks in which he worked, together with 7 days' holiday pay. He was held not to be on holiday during the university Christmas vacation on the ground that university vacations do not necessarily represent periods of holiday for all employees of the university. See paragraphs 4-5.

R(U) 18/64 (T) vii A professional musician who also taught at a school managed by a local authority, for which work he was paid by the hour but received no holiday pay, was held not to be on holiday during the school's Easter holiday. See 1.14.5 iv *above*.

R(U) 1/66 (T) viii A school teacher who was employed by an education authority for usually the same 3½ days each week on a temporary day-to-day basis received no pay for days on which she did not work or days during the school holidays. When the school closed for the Easter holidays her employment was not terminated in the sense explained in R(U) 1/62, 1.14.6 v *above*, and it was held by a Tribunal of Commissioners that the claimant was on holiday during the whole of the school holidays. At paragraph 18 it was observed by the Commissioners that the main purpose of insurance against employment is to insure against a risk rather than a certainty of unemployment, so that, if a person accepts an occupation where the work and the pay are intermittent and the holiday period is long, it can be justly said that he or she must be taken as accepting the employment with those incidents in it. See also R(U) 4/88 (T), 1.14.6 xii *below*.

R(U) 2/66 (T) ix The claimant had been employed as a school teacher for some 13 years until August 1963. Her next employment began at the beginning of July 1964 in a full-time teaching appointment terminable either at one week's notice or at the end of the summer term. The employment was, in fact, terminated at the end of the summer term and, following negotiations which began next day, the claimant eventually secured a permanent appointment from the beginning of the next term in the following September at another school under the same education authority. It was held by a Tribunal of Commissioners that the claimant was not on holiday during the school summer holiday. See paragraphs 14 and 28-30. See also 1.14.5 vi *above*.

R(U) 2/87 x In March the claimant, who was then employed by an engineering firm received notice terminating that employment with effect from the following July. From the following September until June the next year he attended a teacher's training course and a short time before the end of the course he was offered employment as a teacher from the beginning of the following September, which was the first day of the autumn term. The offer, which he accepted, was conditional upon his reaching the required qualifications standard, and in the August he was notified that he had duly done so. He so informed the local education authority and his contract thereupon became unconditional. His appointment was a permanent teaching appointment at a salary as a member of the authority's permanent and established teaching staff. Meanwhile, between the end of the course and the beginning of the summer holiday in July, he was temporarily employed on a day-to-day basis as a teacher. The claimant was held by a Tribunal of Commissioners not to have been on holiday during the school holidays. See paragraph 11 *et seq*.

xi A claimant employed by an Education Authority as a supply teacher paid on

a daily basis claimed unemployment benefit when the school closed for its half-term holiday. The Commissioner held that the 'recognised or customary holiday' provisions of regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations did not apply because any contract between the claimant and the Authority terminated at the end of each day's work or period of work for which he had been engaged. After the school had closed, the claimant was not on holiday but was unemployed (R(U) 8/68 distinguished).

R(U) 4/88
(T)

xii The claimant had a temporary part-time appointment as a teacher for about 6½ hours a week over 2 days a week. His contract was for a period of about 10 months which covered the Christmas holidays. His pay was spread uniformly over the entire period of the contract and represented 13/55ths of a full-time teacher's salary. He did not work over the school Christmas holidays and he claimed unemployment benefit for that period. The Tribunal held that all the days in the school holidays were days of 'recognised or customary holiday in connection with the claimant's employment', not just the days on which the term time would have worked. R(U) 8/68(T), 1.14.10 iv *below* followed. See also R(U) 1/62(T), 1.14.6 v *above* and R(U) 18/64(T), 1.14.6 viii *above*. For another synopsis of this decision see 17.4.1 xxii *below*.

R(U) 42/52
(T)

7 Effect of holiday pay

i A man was dismissed from his employment as a gardener and was given a payment representing 10 days' wages by way of holiday pay. He was not to be entitled to unemployment benefit for the 10 days following the termination of his employment. See paragraph 10 where the principles upon which the attribution of holiday pay should be decided are discussed. See also R(U) 13/54.

R(U) 21/53

ii The claimant received holiday pay for 2 weeks but agreed to forego the holiday for the second week and work for additional wages at ordinary rates. He made a claim for unemployment benefit for the days in the second week when he was prevented from working by a trade dispute in which he did not participate. It was held that, since he had received payment for the week in question, he could not be regarded as unemployed during that week.

R(U) 7/56

iii The claimant was employed as an inspector in an upholstery factory. It had been the practice for many years to close the factory for the last week in July and the first week of closure being agreed between the employers and the works representative. The claimant had not been employed long enough to qualify for holiday pay, but under the holiday agreement she was at liberty to take work, if available, throughout the holiday period. She sought work without success. Held, that she was on holiday in common with the other workers at the factory. See also R(U) 1.14.4 iv, *above*.

R(U) 25/57

8 Effect of holiday previously taken

See sub-paragraphs (i) and (ii) of regulation 7(1)(h) of the Regulations

i A building worker who was entitled to 2 weeks' holiday a year made a claim for unemployment benefit for a week over Christmas when his firm was closed for the annual holidays. He contended that he had already had 2 weeks' holiday, one in the previous August during former employment and the other after that employment had ended. It was held that as he was not under a contract of service during the latter week he could not be deemed to be on holiday in Christmas week.

ii After moving from one employment to another the claimant was allowed to take a week's holiday at the time which he had already arranged with his former employer. Shortly thereafter his new place of employment closed down for 2 weeks

R(U) 18/54 of summer holiday, which was the sum total of the annual holiday there observed. The claimant claimed unemployment benefit for the second of those weeks. Both periods of holiday occurred after 1st March. It was held, for the reasons given in paragraph 6, that unemployment benefit was payable to him.

9 Part-time or casual workers

R(U) 31/56 i The claimant was a casual worker employed in a fish market which, according to a long-standing custom, was closed on the Saturday preceding August Bank Holiday. The claimant worked a normal day on the Bank Holiday. He was paid by the day and did not seek work elsewhere than in the fish market. It was held that when the fish market, which was his sole source of employment, was on holiday the claimant must be regarded as also on holiday.

R(U) 19/59 ii The claimant was employed as a postman on a day-to-day basis over Christmas and the New Year. New Year's Day was observed as a customary holiday in his postal branch and the claimant was not required to work on that day. He was again employed on the following day, but was held to have been on holiday on New Year's Day, which was a day in a season during which it had become customary for him to work for the Post Office.

iii An intermittently employed shipyard worker claimed unemployment benefit for 2 days as a customary holiday which occurred in a period of indefinite suspension lasting fewer than 12 consecutive days. It was held that he was on holiday and not entitled to unemployment benefit.

R(U) 1/62
(T)

10 Indefinite suspension of employment

R(U) 7/63 i An employed person will be held to be on holiday during any day of recognised or customary holiday in his employment and applying to him unless his employment has been terminated in the sense that both (a) the legal obligations of the contract of service have been terminated and (b) there is no intention that the employment shall be resumed on the next available opportunity. Thus a man who entered the employment of a county education committee as a member of the temporary teaching staff of a school was held by a Tribunal of Commissioners to be on holiday throughout the school Christmas holidays. He was employed on the understanding that he would render temporary relief duty on a day-to-day basis, but this appointment was not for a defined period; nor was any express provision for the termination of it by notice. He taught until the end of term, when nothing was expressly arranged about his returning to the school during the following term, though in fact he did so. And see 1.14.6 v, *above*.

R(U) 7/68 ii The words 'on holiday' in the regulation are not used in their colloquial sense, but refer to an employment either existing or in suspense. If a man has finally terminated his employment by leaving it without any intention of ever returning to it in any circumstances he does not become 'on holiday' if he goes for a visit to the seaside, and so would in one sense be spoken of as being on holiday. See 1.14.6 vii, *above*.

Unemployment benefit: holidays

1.14.10

iii The termination of an employed contributor's employment in (what is now) regulation 7(1)(h) of the Regulations is to be construed in accordance with the natural and ordinary meaning of the phrase and not in the special sense in which termination of employment had previously been understood by the Umpire under earlier legislation and by the Commissioner. See paragraph 22 et seq.

R(U) 8/68

iv A professional musician taught at a local education authority school as a part-time qualified music teacher. At one time he was working for 6 half-day sessions weekly on Tuesdays, Wednesdays and Fridays and drawing unemployment benefit for Mondays and Thursdays. His services were not required during the school summer holiday and he claimed unemployment benefit from the first day after the end of the term. His original engagement with the local education authority was for a fixed period, namely the summer term, but in fact, although there was no evidence of any subsequent re-appointment, he continued to give his services to the authority for 10 years. At the end of the summer term in question he was given his national insurance card and was not formally notified either that he would be re-employed when the next term began or that he was discharged, but in reply to an enquiry the Director of Education confirmed that the claimant would recommence on the first day of the autumn term. It was held by a Tribunal of Commissioners that there was throughout the relevant period a running contract of service by virtue of which the claimant continued to be employed by the local education authority, at the end of the summer term. Accordingly the days in the school holidays were days of recognised or customary holiday in connection with the claimant's employment. See paragraphs 7-8 and compare R(U) 7/63, 1.14.6 vii *above*. See R(U) 2/87 in which this decision is distinguished in the case of a supply teacher paid on a daily basis. Followed in R(U) 4/88 (T), 1.14.6 xii *below*.

Part 15: Seasonal workers

Regulation 21 of the Regulations. (Regulations 21 re-enacted regulation 19 of the 1975 Regulations, as amended up to 28 November 1983, and, save that the requirements of registration for employment during the off-season (see Section 5 below) had by then been revoked, is in substantially similar terms to those existing before the 1975 Act.)

1 Presumption that a person has become a seasonal worker

R(U) 3/51 i The length of time during which a person has followed an occupation of which the availability or extent varies with the season of the year without substantial employment in the off-season is material when it is being considered whether employment in such an occupation has become the normal employment of that person. In a case where he has followed such employment for 3 years or more without substantial employment in the off-season in any of those years there is a strong presumption that his normal employment is of a seasonal nature and that he has become a seasonal worker within the meaning of the Regulations, even though it is his age or infirmity or other circumstances beyond his control which have prevented him from obtaining employment all the year round. The presumption can only be rebutted by showing that the last 3 years do not afford a proper basis for estimating the person's prospect of employment; for example, because his failure to obtain substantial employment in the off-season was due to abnormal conditions in industry or other exceptional circumstances.

R(U) 14/53

ii In order to prove that a person who desires to obtain employment all the year round and, therefore, does not restrict his employment to a part (or parts) only of the year is, nevertheless, a seasonal worker because his normal employment 'is' for a part (or parts) only of a year, it must be shown that his employment has been thus limited for so long a time that in the circumstances a year of continuous employment would seem abnormal in his case. Although there may be strong (though rebuttable) presumption that, after 3 years of seasonal employment with no substantial employment during the off-season a person's normal employment is a seasonal occupation, there may be cases in which the facts would justify the conclusion that an insured person who had had less than 3 years of only seasonal employment had become a seasonal worker. See paragraphs 16-17. And see also 1/15/3 vi *below*. Followed in R(U) 2/82.

R(U) 2/82
(T)

iii A Tribunal of Commissioners considered whether the meaning and application of the first definition of a 'seasonal worker' (see now regulation 19(1) of the Regulations, as amended by SI 1979/940) depended on a claimant's employment record or on the characteristics of his occupation or occupations. It was held that they depended on the latter: than an insured person who has employment for a part or parts only of a year, albeit at approximately the same time in successive years in an occupation or occupations without the characteristics at which the definition is aimed is not included in the definition (paragraph 10); and that the identification of seasonal workers cannot be affected by drawing up lists of general occupations, styling some seasonal and the others non-seasonal; the occupation of the claimant must be examined in its individual context (paragraph 12). R(U) 14/53 (see 1.15.1 ii and 1.15.3 vi), CU 15/68, CU 3/70, CU1/75 and CU 1/76 followed. CSU 4/68 and CSU 3/73 not followed. R(U) 5/64 (see 1.15.2 xiv and 1.15.4 v) distinguished. See also R(U) 3/87, 1.15.1 iv *below*.

R(U) 3/87

iv The claimant worked full-time for some years up to 1980 as a rock roller for a confectionary manufacturer in Blackpool. The full-time employment ended because of 'the general decline in orders due to the economic climate' and during the years 1980-85 she worked only from January/February to October. About half the rock factories in the Blackpool area are opened all the year round. The Commissioner held that in determining

whether a person had become a seasonal worker the statutory authorities must look beyond the employment record to the characteristics of the occupation at which the definition was aimed (R(U) 2/82 (T), 1.15.1 iii *above*). That involved looking at how others in the same occupation were affected. An occupation although not inherently seasonal in its nature might be seasonal in the sense that the availability of work depended on factors which operated at approximately the same time in successive years. The changeover for the claimant from full-time work to the pattern which started in 1980 was, however, dictated not by seasonal factors but by hard times in the claimant's employer's rock rolling business. In the light of the information about other rock factories in the area and applying the 'characterising view' the Commissioner held the claimant was not a seasonal worker.

2 Persons held to be seasonal workers

- i A woman living in a seaside resort had been employed as a café waitress for 6 summer seasons. In one year her employment had been followed by 3 weeks' work as a domestic servant and she had also had the prospect of a few odd days' work at Christmas. It was held that, although anxious to find regular employment all the year round, she had become a seasonal worker by circumstances beyond her control. R(U) 3/52
- ii An electrician aged 61 who lived in a seaside town had only worked for parts of the year for some 4 years, but contended that he was not a seasonal worker because an electrician's occupation is one in which employment is to be had all the year round. It was held that 'normal employment in an occupation' refers to the claimant's personal occupation and not to be occupation as a whole. The claimant had become a seasonal worker. R(U) 21/52
- iii A claimant's normal employment was that of a hop picker for about 3 weeks each year. He was held to be a seasonal worker despite the fact that in the current year he had refused to accept an offer of employment as a hop picker. R(U) 20/53
- iv A part-time school dining attendant did no work and received no pay for the major part of the school holidays. The unpaid period during which she was suspended from employment aggregated more than 7 weeks in a year. She was held by a Tribunal of Commissioners to be a seasonal worker and that unemployment benefit was not payable during her off-season. See paragraph 15. R(U) 22/53 (T)
- v A school dining attendant was employed during school terms but unemployed during the holidays. It was held that she was a seasonal worker whose off-season corresponded with those parts of the school holidays for which she was not paid. R(U) 23/53
- vi A school clerk was not employed and was not paid during parts of the school vacation, which aggregated more than 7 weeks. It was contended that days of public holiday when the claimant was 'on holiday' should be excluded from the off-season as being days of unemployment. It was held by a Tribunal of Commissioners that the claimant was a seasonal worker and that her claim for unemployment benefit failed. See also (R(U) 10/59.) R(U) 27/53 (T)
- vii A dining-room attendant in the school meals service, who had been continuously employed in that service for 10 years except for the period of the school holidays, was discharged during a long period of sick absence. She would have resumed her employment had it been available to her and she tried unsuccessfully to obtain her employment. It was held that she was a seasonal worker and that the fact that at the date of her claim for unemployment benefit she was unable to obtain any seasonal R(U) 19/54

or non-seasonal employment did not in itself show that she had ceased to be a person whose normal employment was seasonal.

viii A man aged 64 worked as a car-park attendant for some years during the summer months and did not register for employment during the winter months for approximately 3 years. His employers paid him £1 a week during the winter months, but that was an act of grace and no conditions were attached to it. It was held that he was a seasonal worker. See also 1.15.5 iii *below*.

R(U) 4/55

ix A school dining-room attendant who had been employed in the school terms only for 5 years prior to her claim for unemployment benefit expected to come under revised conditions of service some months later, one of the effects of which would be an extension of the number of weeks of paid employment in the year to a total of 46. It was held that unemployment benefit was not payable to the claimant on the ground that she could not prove that she had ceased to be seasonal worker until she had had prior of work under non-seasonal conditions.

R(U) 6/55

x In the 3 years preceding his claim for unemployment benefit the claimant's employment had been in different occupations and for the summer months only. It was held that the claimant was a seasonal worker notwithstanding the fact that his employment each year had been in a different occupation.

R(U) 11/55

xi In 2 successive years a fisherman had a spell of over 7 weeks' non-employment when his boat was laid up for repairs. As an enrolled member of the R.N.V.R. he was precluded from working ashore under the age of 26. It was held that he could not escape classifications as a seasonal worker.

R(U) 28/56

xii The claimant, a man aged 65, was registered for employment as the skipper of a fishing vessel. For 2 out of the preceding 3 years he was sick during a period of non-employment in the spring and had had similar periods off work in 2 earlier years, in one of which he was sick. It was held that he was a seasonal worker and that, where the employment record is obscured by frequent spell of sickness, it may be necessary to look beyond the 3-year period to ascertain whether sickness was the reason for the non-employment or was merely coincident with it. See paragraphs 6-7.

R(U) 36/56

xiii In the 3 years preceding his claim for unemployment benefit the claimant's only employment had been as a temporary Post Office worker for about a week at Christmas time. He had also worked as an ice-cream salesman for a few days in August on one year and in March and August of the following year. It was contended that seasonal workers were persons who were employed in a seasonal occupation for at least a substantial part of the year and that, as the claimant's normal employment was of such a short duration, he was not a seasonal worker. It was, however, held that the claimant was a seasonal worker and that the expression 'part or parts only of a year' in the statutory definition of a seasonal worker includes any period of time, however short. Even if a person has only had one employment, and has followed it for only short periods, that may be held to be his normal employment when it is being decided whether he is a seasonal worker. See paragraphs 15-19.

R(U) 3/61

xiv A fisherman's employment fell into 2 clearly defined periods of the year between which he was unemployed except for odd days for 2 spells of about a month each. It was contended that he was not a seasonal worker and that his unemployment at those times was unavoidable because of the fishing boats had to be serviced and there was delay in getting that done because of poor facilities locally. It was held by a Tribunal of Commissioners that the claimant was a seasonal worker, see paragraphs 7-10. And see also 1.15.4 v *below*. Distinguished in R(U) 2/82.

R(U) 5/64
(T)

xv An assistant teacher in a school had had no employment during the periods of the school holidays for ten years except for a month's employment during the summer holidays four years previously. It was held that the pattern of the claimant's repeated employment and unemployment over many years clearly established that she had become a seasonal worker. R(U) 9/71

3 Persons held not to be seasonal workers

i A school-meals attendant who was employed during school terms only was not to be a seasonal worker. See para. 16 where three rules for determining whether a person is a seasonal worker are suggested. See also R(U) 5/51. R(U) 7/51 (T)

ii A disabled man had worked for eight years as a pleasure-boat attendant until his employer sold the boat. He then abandoned all hope of employment as a pleasure-boat attendant and registered for work as a night watchman. It was held by a tribunal of Commissioners that he was not a seasonal worker because it could no longer be said that his normal employment was 'for part or parts only of a year in an occupation or occupations of which the availability or extent varies with the season of the year'. R(U) 8/51 (T)

iii An 18-year-old girl, a professional skater, was normally employed for at least twelve days in every period of three consecutive months in the year and was held by a tribunal of Commissioners not to be a seasonal worker. See para. 3 for observations as to the meaning of "normally restricts". R(U) 9/51 (T)

iv A man aged 61 who had been a coal-miner for 43 years gave up that occupation because he suffered from pneumoconiosis. He was wholly incapacitated for two years, when he obtained seasonal work. He had three weeks' work the next year, but was then sick for four months, after which he again obtained seasonal work. It was held that he was not a seasonal worker. R(U) 12/51

v A registered disabled person was ill for three years, whereafter he worked at a holiday camp from August to September in one year and from May to September in the next two years. He had no other employment and claimed at the end of September of the last-mentioned year. It was held that seasonal employment had not by then become the claimant's normal employment applying the three year test laid down in R(U) 3/51. R(U) 43/52

vi A woman who was employed as a shop assistant for many years had for two years been employed only during the summer months at a seaside resort, although she continued to seek regular employment in her home town. It was held that she had not become a seasonal worker. See also 1.15.1 ii above. Followed in R(U) 2/82. R(U) 14/53

vii A man worked for over three years as a green-keeper at a golf club during the summer and as a billiards marker during the winter. His work as a billiards marker was subsidiary occupation and the days on which he followed it were treated as days of unemployment. It was held that, although for benefit purposes the claimant was properly treated as unemployed in the winter, he was in fact employed and was therefore not a seasonal worker. See paras. 4 to 7. R(U) 19/57

viii A registered disabled person began seasonal work some months after a period of non-seasonal work had ended. Meanwhile he had had no other employment. It was held, following the principle stated in R(U) 14/53, that as the claimant had no employment other than seasonal work in the three years immediately following the termination of his non-seasonal employment that period had to be considered when it was being decided whether he was a seasonal worker and not the period of three years commencing with the date on which he first commenced seasonal work. See paras. 8 to 9. R(U) 28/59

1.15.3-4

R(U) 2/63 ix The claimant had for several years preceding his claim for UB had about a week's work with the G.P.O. as a temporary sorter for Christmas. In two of the three preceding years he had worked as a clerk at other times of the year and had also obtained odd days of casual work. His clerical and other work in those three years exceeded the G.P.O. work in aggregate but never amounted in duration to as much as one-fourth of that part of the year which was outside the period in which the G.P.O. work was done. It was held that the claimant had not become a seasonal worker. See paras. 10 to 19 for a discussion on, and consideration of, R(U) 3/51 and R(U) 14/53.

4 Calculation of off-season

R(U) 29/51 i A land worker claimed UB and stated that there was no prospect of her obtaining further employment for the next two or three months. It was held that she had no reasonable prospects of securing other employment. See paras. 10 to 14 in which the Commissioner set out rules for fixing the commencement and termination of a person's seasonal work by reference to the last three years' normal employment.

R(U) 5/53 ii The claimant was admittedly a seasonal worker. At para. 5 of the decision it was said that, with regard to the duration of the claimant's off season, the averaging method for determining the length of it adopted in R(U) 29/51 was not appropriate in the present case because the claimant had no employment in one of the preceding years, and because of the abnormally short period of employment in another of those years.

R(U) 10/59 iii A seasonal worker began employment in 1957 and 1958 abnormally early. It was held that in averaging the dates for establishing the commencement of the off-season the years 1957 and 1958 were abnormal and should be disregarded, but the average of the years 1954, 1955 and 1956 was accepted. See also 1.15.5 vi *below*.

R(U) 19/62 iv A school meals attendant was neither employed nor on paid holiday for six periods in the year. Those periods varied in duration from one day to 29 days and totalled 47 days, excluding Sundays. Only two of the periods, totalling 36 days, lasted for seven days or more. It was held that the claimant was a seasonal worker on the ground that all periods when a person is normally not employed fall to be aggregated, whatever their duration, and they exceeded seven weeks in the aggregate in the case of the claimant. But that her off-season consisted only of the two periods totalling 36 days since the off-season did not include any period of less than seven consecutive days. The effect was that the period of the school's Christmas/New Year holidays did not fall within the claimant's off-season.

Unemployment benefit:

1.15.4-5

v A fisherman's employment fell into 2 clearly defined periods of the year between which he was unemployed for odd days for 2 spells of about a month each. It was held by a Tribunal of Commissioners that the claimant's current off-season was the aggregate of the 2 periods of the year during which he was normally not employed, and not just the period in which the current claim for benefit was made. See paragraphs 12-15. And see 1.15.2 xiv above. See also R(U) 6/64. Distinguished in R(U) 2/82.

R(U) 5/64
(T)

vi As the result of an industrial accident the claimant was incapable of any work for a little over a year, whereafter the only employment he was able to obtain was as a seaside car-park attendant, and he was so employed for approximately 4 months in each of the years 1972, 1973 and 1974. It was held by a Tribunal of Commissioners that each of the years considered when the 3-year rule was applied should conform with the definition of a year in (what is now) regulation 19(2) of the Regulations; that, as a result, the averaging process would not be needed to fix the opening date of the current off-season; that the application of regulation 19(3)(b) may require the use of an artificial method of pre-fixing the closing date of the off-season; and that the claimant had not become a seasonal worker. See paragraphs 14-16, in the last mentioned of which the Commissioners said: 'We ought not to conclude this decision without giving expression to the warning that the 3-year rule is a yard-stick and not a magic wand. It does not solve all cases. Particular circumstances will in many cases make the application of the rule inappropriate or unnecessary'. Reference was then made to paragraph 17 of R(U) 14/53. The 'averaging process' referred to was that described on R(U) 29/51.

R(U) 4/75
(T)**5 Registration for employment by a seasonal worker***Regulation 19(3)(a) of the 1975 Regulations (as originally prescribed)*

i A seasonal worker failed to register for employment during some 4 months of the period of 2 years preceding the day from which benefit was claimed. It was held that he did not satisfy (what is now) regulation 19(3)(a) of the Regulations.

R(U) 7/52

ii A seasonal worker who worked for part of the year only in employed contributor's employment (now referred to as 'employed earner's employment') failed to register at the Employment Exchange (nor Employment Service Agency) during another part of the year when he was self-employed. It was held that the word 'employment' in the context of the regulation did not include self-employment and that the claimant did not satisfy the relevant requirement of the Regulations.

R(U) 17/53

iii A seasonal worker aged 64 worked as a car-park attendant for some years during the summer months but did not register for employment during the winter for some 3 years. During the winter months his employers paid him £1 weekly as an act of grace and no conditions were attached to it. It was held that the winter months when he received £1 weekly were not periods when he was employed and that there were no grounds for treating the periods of failure to register as temporary periods.

R(U) 4/55

iv A seasonal worker who claimed unemployment benefit in his off-season had failed to register for employment during a period of 22 days in the 2 years preceding his claim. It was held that that period of failure to register would not be regarded as inconsiderable for the purposes of the relevant regulation. (See now regulation 19(3)(a)(ii) of the Regulations.)

R(U) 26/55

v A deck-hand fisherman who was found to be a seasonal worker regularly worked only in the summer months and failed to register for employment for 9 days in the 2 preceding years. It was held that 9 days was an inconsiderable period within the meaning of (what is now) regulation 19(3)(a)(ii) of the Regulations.

R(U) 13/56

vi During the 2 years preceding a seasonal worker's claim for unemployment benefit there were 4 period during which he failed to register at an Employment

R(U) 10/59

Exchange. Three of those periods were, respectively, of 6, 4 and 3 days and were held to be inconsiderable periods which could be disregarded for the purposes of the regulation. The remaining period, however, was one of 13 working days, which it was held could not be disregarded as being an inconsiderable period. Nor, in the absence of any explanation from the claimant as to the reason for his failure to register for employment, did the case come within head (3) of (what is now) regulation 19(3)(a) of the Regulations; namely, any temporary period throughout which a seasonal worker was not available to be employed by reason only of domestic necessity or compulsion of law, or by reason of any other circumstances of an exceptional character. See also 1.15.4 iii, *above*.

R(U) 19/60 vii In the 2 years immediately preceding his claim for unemployment benefit a fisherman, who was a seasonal worker, had not been registered for employment at an Employment Exchange for a continuous period of about 6 weeks, the reason being that he was attending classes and studying for his Mate's Certificate. It was held that that period of 6 weeks was a temporary period throughout which the claimant was not available for employment by reason of circumstances of an exceptional character. He therefore satisfied the additional condition as to registration of a seasonal worker for employment in (what is now) regulation 19(3)(a)(iii) of the Regulations.

R(U) 4/61 viii A seasonal worker claimed unemployment benefit during an off-season which began on 23rd November. She would not have satisfied the condition as to registration for employment if it had been appropriate to examine her record of registration in the preceding 2 years and it was only an inconsiderable period when she was not registered for employment. It was held that throughout the period of her claim in her off-season the claimant satisfied the condition relating to registration for employment since the 'day on which she became a seasonal worker' was less than 2 years before all the days for which benefit was claimed.

6 Substantial amount of employment during the off-season

Regulation 21(2) of the Regulations.

R(U) 5/55 i A seasonal worker whose current off-season was a period of 206 days (excluding Sundays) obtained temporary employment during the off-season for 23 days. It was not in his usual occupation and was not likely to recur. The claimant suffered from chronic bronchitis which seriously handicapped him and which was largely the cause of his having become a seasonal worker. It was held that the circumstances did not warrant the treatment of a fraction less than one-fourth as a substantial part of the current off-season and that the claimant accordingly failed to satisfy (what is now) the condition in regulation 21(2) of the Regulations. See paragraphs 9-11.

R(U) 6/60 ii A seasonal worker claimed unemployment benefit during an off-season comprising 69 days and the question was whether she had had a substantial amount of employment during that off-season. 'A substantial amount of employment means (see now regulation 21(2) of the Regulations) employment which is equal in duration to not less than one-fourth (or such other fractional part as may, in the circumstances of any particular case, be reasonable) of the current off-season.' At paragraph 5 of the decision the Commissioner said: 'One-fourth of 69 days is 17¼ days, and the insurance officer concerned asks whether 'a substantial amount of employment' in the present case should be taken as 17 days or 18 days. It makes no difference to the decision in this case which figure is taken, but I think that, in exactitude, the number of the whole days which is 'not less than' 17¼ days is undoubtedly 18 days.'

7 Expectation of a substantial amount of employment during an off-season*Regulation 21(2)(ii) of the Regulations.*

i A land worker who was held to be a seasonal worker had off-season from the beginning of November to the middle of the following April. There was evidence from a small-holder that he would have employed the claimant from and after the first week in March but for the bad weather and that he would be employing her for the remainder of her off-season. It was held that at the beginning of her off-season she had had a reasonable expectation of a substantial amount of employment during her off-season. See paragraph 7-8.

R(U) 16/51

ii A land worker who was held to be a seasonal worker claimed unemployment benefit on 20th December and said at that time there was no prospect of her obtaining further employment until the following February or March. In the following February she obtained domestic work for 11 days, but it was held that such work was fortuitous and that when she made her claim for unemployment benefit she could not reasonably have expected to obtain sufficient domestic work which together with the land work had had, would constitute a substantial amount of employment. See also 1.15.4i, *above*.

R(U) 29/51

iii A seasonal worker who was registered for employment as a ghillie had been able to obtain a substantial amount of employment in 2 of the 3 preceding off-seasons. It was however, casual employment and had markedly decreased in view of the claimant's age, with the result that he had little prospects of obtaining employment during his current off-season. It was held that he was not entitled to unemployment benefit since, although the history of past unemployment may generally be *prima facie* evidence of probable future employment, there was evidence in that case to rebut the presumption derived from the claimant's past record.

R(U) 9/55

R(U) 10/55

iv A seasonal worker whose current off-season amounted to 89 days obtained employment in the off-season for a total of 22 days. For one of those periods of 6 days his employment was of a kind of which he did not normally engage while one of the other periods was interrupted by 12 days' sickness. It was held that the claimant satisfied the additional condition required of a seasonal worker for entitlement to unemployment benefit since the employment in the off-season which it would have been reasonable to expect at the beginning of that off-season should not include the 6 days of abnormal employment but should include the spell of sickness. The amount of employment which the claimant might reasonably have expected thus totalled 28 days, which was more than one-fourth of the off-season.

R(U) 21/55

v A share fisherman who was a seasonal worker was unable at the beginning of his off-season to satisfy the condition of an expectation of a substantial amount of employment, but during the off-season he obtained a substantial amount of employment though not in his usual occupation. It was held that the employment was obtained fortuitously and could not reasonably have been foreseen.

R(U) 13/61

vi A seasonal worker who was a registered disabled person had prospects of obtaining employment for 26 days in his current off-season of 140 days. But the local tribunal decided that, in view of the claimant's disability, it was reasonable to reduce the fractional part of the off-season, for which the claimant had to prove a reasonable expectation of obtaining employment, from one-fourth to one-eighth, but on appeal by the insurance officer it was held that disability affords no ground for reducing the fraction to less than one-fourth. See paragraphs 8 *et seq.*

R(U) 9/71

vii An assistant teacher in a school had had no employment during the periods of the school holidays for 10 years except for a month's employment during the summer holidays 4 years previously. It was held that the pattern of her repeated employment and unemployment over many years established that she had become a seasonal worker and that on the evidence she had insufficient prospects of

R(U) 6/88 employment during the holiday to satisfy the additional condition in (what is now) regulation 21(2)(ii) of the Regulations.

viii A claimant worked in a hotel for approximately the same summer period in successive years. In the fourth year she was elected a County Councillor at the beginning of the season and during the following off-season she attended a considerable number of County Council meetings for which she received attendant allowance under local government legislation. It was not in dispute that she was a seasonal worker. The Commissioner held that the claimant's attendance allowance and duties as a County Councillor constituted 'employment' within the meaning of regulation 21(2). R(P) 2/76 followed. The number of hours for which she received attendance allowance payments was more than enough to constitute 'a substantial amount of employment' and she therefore satisfied the additional condition in regulation 21(2)(ii) imposed on a seasonal worker claiming unemployment benefit in her off-season. For another synopsis of this decision see 17.4.2 xiii below.

R(U) 18/53 **8 Share fishermen**

And see also 1.16.1 below

R(U) 7/59 i A share fisherman claimed unemployment benefit for a period which, applying the Seasonal Workers' Regulations, was his off-season. It was held that unemployment benefit was not payable since the Seasonal Workers' Regulations applied to share fisherman equally with and in addition to the Mariners' Regulations. See also 1.15.2iv and 1.15.7iv, *above*.

R(U) 14/61 (T) ii A share fisherman was employed more or less continuously for a period of 5 to 7 months in each of the 3 years preceding his claim for unemployment benefit. During the remained of each of those years he had had irregular short periods of employment, some of which were separated by breaks of more than 7 days. It was held that it was appropriate to treat the whole of the period between the periods of almost continuous employment as being *prima facie* an off-season and that the occasional irregular work obtained in that period would count as being a substantial amount of employment for the purposes of (what is now) regulation 21(2) of the Regulations. In the result, therefore, the claimant had had a substantial amount of employment in 2 of the 3 preceding his claim for unemployment benefit and had not, therefore, become a seasonal worker.

R(U) 3/61 iii In 2 successive years a share fisherman had been unemployed throughout the winter because of a comparative absence of fish, the cause of which was not established. There had been winter fishing from his port for many years previously and it was contended that the '3-year rule' should not be applied when it was being decided whether he was a seasonal worker on the ground that the preceding 3 years did not represent the normal state of affairs. It was held by the majority of the Tribunal of Commissioners that the claimant was a seasonal worker. In the absence of evidence that the failure of the fishing each winter was due to other than natural causes it could not be assumed that it was due to factors abnormal to the occupation of fishing.

9 Meaning of ‘part of parts only of a year’

i The expression ‘part or parts only of a year’ in the statutory definition of a seasonal worker includes any period of time, however short. But compare R(U) 27/51.

R(U) 8/62

10 Availability or extent varies at approximately the same time or times in successive years

i At paragraph 5 of the decision the Commissioner said that the answer to the meaning of phrase ‘extent varies at approximately the same time or times in successive years’ turns upon what is meant by ‘approximately’, which is a matter upon which opinions will naturally differ.

R(U) 8/62

11 Meaning of ‘normal’

i As a general rule what is normal may legitimately be inferred from what has been the claimant’s actual employment experience over the period of 3 years immediately preceding the day of claim. The working rule that 3 years is generally a sufficient and appropriate period over which to judge normality in this context has been adopted in a long series of Commissioners’ decisions, of which the leading

one is decision R(U) 3/51, supra 1.15.1 i. It has been recognised that in certain exceptional cases a longer or shorter period would be appropriate, and also that the actual dates of the claimant's spells of employment within the 3 years may have to be modified to some extent, if for some reason any of those dates fall to be disregarded as abnormal.

Part 16: Share fishermen

C.U. 495/49

(T)

The Social Security (Mariners' Benefits) Regulations 1975 (hereafter in Part 16 of Chapter 1 referred to as 'the Regulations').

1 Meaning of share fishermen

R(U) 29/58 i The claimant fished by himself from May to November and joined forces with other fishermen in the winter months, during which he was under contract of service to a firm of fish merchants and was paid piece-rates. It was held by a Tribunal of Commissioners that the claimant was a share fisherman as defined by (what is now) regulation 1(2) of the Regulations during the winter months and that single-handed fishing was 'some other occupation'.

R(U) 6/60

ii A fisherman was temporarily 'stood down' when the vessel on which he was employed changed to seine net fishing, which required a smaller crew. It was held that the claimant, who was not owner or part-owner of the vessel, ceased to be a member of the crew while he was 'stood down'.

R(U) 6/63

iii The claimant was the master and part-owner of a fishing vessel but, because it had become more difficult to muster a crew, the owners laid up the vessel for sale and the claimant took up employment elsewhere. It was proved that there was no intention of any further fishing trips. It was held that in the circumstances (what is now) regulation 6 of the Regulations did not apply.

iv A fishing vessel of which the claimant was master and part-owner was laid up for sale because of the difficulty of mustering a crew. There was no intention whatsoever of there being any further fishing trips and it was accepted that the master and members of the crew had ceased to be master and members of the crew of the vessel. See and compare R(U) 19/64, *infra* 1.16.7 ix.

R(U) 22/51

2 What constitutes 'work' as a share fisherman

Regulation 8(5) and (7) of the Regulations.

i The claimant, a share fisherman, was the master and owner of a fishing vessel manned by himself and 3 other men. On the day in question the vessel put to sea

to fish for pilchards, which were to be used as bait for long-line fishing, but owing to a scarcity of pilchards all the boats had to return to harbour about midnight. It was held that unemployment benefit was not payable to the claimant in respect of the day in question because he had fished for bait, which was a normal and essential part of his occupation, and had thus performed work as a share fisherman on that day. R(U) 9/52

ii Three boats manned by share fishermen left their mooring to proceed to the fishing grounds, but 2 of them ran aground at the harbour entrance, thus blocking the harbour mouth and forcing the third to return. The 2 which ran aground returned later in the day. It was held that the crew were not entitled to unemployment benefit because, as the boats were on their way to the fishing grounds, the crews on board were engaged in their occupation of fishermen and accordingly they were 'performing work as share fishermen'. R(U) 15/52

iii A share fisherman claimed unemployment benefit for the period during which his boat was laid up for the usual end-of-season overhaul in which it was his duty to take part. The overhaul was necessary for the efficiency of the fishing vessel. It was held that unemployment benefit was not payable to the claimant because, even if he did take part in the overhaul, he had failed to prove that there was no work as a share fisherman in connection with the vessel available for him. R(U) 33/52

iv According to custom certain share fisherman voluntarily assisted a harbour master to place a boom across a tidal harbour to protect the vessels in the harbour. It was held that was not work as a share fisherman. See regulation 8(7) of the Regulations. R(U) 9/53

v A share fisherman's boat had been engaged in fishing with a 'neighbour boat', but when the engine of the neighbour boat broke down it was impossible to carry on fishing and it was accordingly, decided to return to port, but owing to bad weather the return to port was delayed. It was held that unemployment benefit was not payable to the claimant because, in returning to his home port, for whatever the reason might be, the claimant was performing work as a share fisherman. R(U) 10/56

vi The claimant, after 68 hours continuous employment as a share fisherman, finished work at about 8 a.m. on a Saturday. It was held that unemployment benefit was not payable to him for the Saturday since he had worked as a share fisherman on that day. See paragraph 7 and (what is now) regulation 9 of the Regulations. See also R(U) 18/56. R(U) 1/81

vii The meaning of 'performs no work as a share fisherman' in regulation 8(5) must be consistent with regulation 8(6)(a) so that where a fishing boat of which the claimant was master had to leave its mooring at the head of a loch and travel 3 miles to the open sea to determine if it was reasonable on account of the state of the weather to put to sea with a view to fishing, the claimant was held not to have performed work when the weather was found unsuitable for fishing.

R(U) 1/51

3 Neglect of a reasonable opportunity of employment as a fisherman

Regulation 8(5) and (8) of the Regulations.

i The part-owner of a 2-man fishing boat did no work as a share fisherman on

R(U) 24/52 2 separate days because, in his opinion, fishing was not profitable. He maintained that, with his local knowledge, he was better able to judge than anyone else whether there was such a scarcity of fish as to give reasonable cause for not fishing. It was held that he had neglected to avail himself of a reasonable opportunity of employment as a share fisherman and that there was nothing to distinguish the 2 days in question from the days before and after those days on which the claimant thought it worthwhile to go fishing. See also *infra* 1.16.6 i.

R(U) 9/72 ii The claimant's fishing boat was engaged in ring-net fishing, in which vessels worked in pairs. The claimant's usual 'neighbour boat' was not available, but the claimant did not try to get another 'neighbour boat' because his engine needed overhauling and because a former 'neighbour boat' had broken a long-standing partnership with his vessel on the ground that the latter was too small. It was held that the claimant had not proved that he had not neglected a reasonable opportunity of employment as a share fisherman. See also R(U) 28/53.

iii A share fisherman arranged with his employer to bring his holiday forward because his wife was ill. The holiday lasted for 2 weeks. As a result he missed an 8-week-long fishing trip. It was held: (a) in missing the trip he neglected to avail himself of a reasonable opportunity of employment as a share fisherman; (b) the word 'reasonable' in (what is now) regulation 8(5) of the Regulations relates to the word 'opportunity' and is used in its ordinary meaning; (c) personal, domestic and family considerations and affairs were not relevant to whether an opportunity of employment is a reasonable one. See paragraph 10.

R(U) 15/57

4 Could not reasonably put to sea with a view to fishing on account of weather

Regulation 8(6)(a) of the Regulations.

R(U) 30/58 i A share fisherman made a claim for unemployment benefit on the ground that the state of the weather prevented his boat putting to sea. Other vessels from the same port had, however, put to sea and there was an alternative route to the fishing ground which was sheltered, although it was a longer route. It was held that as the alternative route was practicable it could not be said that the weather had prevented the claimant's boat putting to sea. It was further submitted on behalf of the claimant that, as the crew must abide by the skipper's decision when the skipper in his discretion decided that there was to be no fishing, the members of the crew should be regarded as having good cause necessitating abstention from fishing within the meaning of (what is now) regulation 8(6)(d) of the Regulations. See *infra* 1.16.7, but that submission was rejected.

R(U) 2/62 ii A share fisherman made a claim for unemployment benefit when bad weather prevented his vessel from leaving harbour at the normal early morning departure

time. Conditions improved, however, sufficiently to allow vessels to sail about 11 a.m. and return on the tide at 2.30 p.m., but in fact no vessels left the harbour. It was held that in those circumstances the fishing vessels left the harbour. It was held that in those circumstances the fishing vessel could not reasonable have put to sea with a view to fishing. See paragraphs 5-6 where it was said, inter alia, that (what is now) regulation 8(4)(a) of the Regulations should be construed as relating to all normal and reasonable times for putting to sea on the day and in the locality in question.

iii The claimant was a member of the crew of a fishing vessel who assembled at 3a.m., but the weather was not favourable and at 8 a.m. the skipper decided that fishing would not be possible that day. The crew were, accordingly, dismissed without putting to sea. It would not have been easy to reassemble the crew and, although most of the fleet did so and fished successfully. It was held that unemployment benefit was not payable to the claimant for he had not proved that on account of the state of the weather the fishing vessel could not reasonable have put to sea with a view to fishing. It was pointed out (see paragraph 5) that the question whether the skipper had acted reasonably in dispersing the crew because he thought the vessel would be unable to put to sea with a view to fishing was not a relevant consideration. R(U) 1/81

iv A share fisherman whose boat was based on a loch 3 miles from the open sea was held entitled to travel 3 miles to the open sea in order to ascertain for the purposes of regulation 8(6)(a) if the weather was suitable for fishing (see also 1.16.2 vii).

C.S.U.88/49

R(U) 5/56

5 Repairs or maintenance within the meaning of regulation 8(6)(b) of the Regulations

R(U) 21/58

i An overhaul and the scraping and painting of the boat is 'maintenance' work which is likely to become necessary for the reasonable efficiency of the vessel in the near future.

ii The claimant was master and part-owner of a fishing vessel which was billed for sale, and, in accordance with the custom, was laid up for a week before the date of sale for prospective buyers to examine it. It was held that the claimant was not entitled to unemployment benefit during that week since the vessel was not undergoing repairs or maintenance. See paragraphs 5-6. R(U) 10/60

iii A share fisherman made a claim for unemployment benefit while his boat, which had been damaged, was undergoing repairs. The boat builders who were doing the repairs did not allow any person other than their own craftsmen to touch it and there was, moreover, no work on the boat which the crew might have been expected to do. It was held that the claimant had proved that there was no work on or in connection with the vessel available to him and that he was entitled to unemployment benefit during the period in question. See and compare R(U) 15/

Unemployment benefit: share fishermen
52, *supra* 1.16.2 iii.

1.16.6-7

iv A share fisherman claimed unemployment benefit for a day on which his vessel was being prepared for a season of line fishing. In that locality the work in question was normally done by the owners and crews of fishing vessels, but on the occasion in question the work on the claimant's vessel was done entirely by the owner. The claimant was not asked to take part in the work and no other work was available for him. It was held that unemployment benefit was not payable to the claimant for, although he had proved that there was no work on or in connection with the fishing vessel available for him, he had not proved that the repairs and maintenance were not those to which (what is now) regulation 8(7) of the Regulations related. The work in question was by custom the duty of the claimant, had he been asked to take part in it, and the fact that he was not asked to do so did not assist him. See paragraphs 10-12.

R(U) 1/51

6 Absence of fish

R(U) 11/58

Regulation 8(6)(c) of the Regulations.

i A part-owner of a 2-man crabbing boat did not work as a share fisherman on 2 days because, in his opinion, fishing was not profitable. He contended that, with his local knowledge, he was better able to judge than anyone else whether there was such a scarcity of fish as to give reasonable cause for not fishing. At paragraph 5 the Commissioner said that there was nothing to distinguish the 2 days in question from the days before and after those days and that when from the same port some men do go fishing, and others do not, it is difficult for those who do not go to prove that they have not neglected a reasonable opportunity to fish and that there was an absence of fish from the waters in which they could reasonably be expected to operate.

R(U) 20/58

ii A share fisherman who normally fished by lien did not put to sea because the fish were not taking bait and he was unable to change to net fishing, which could have been prosecuted successfully. To put to sea to do line fishing would have been unprofitable and he claimed that he had good cause necessitating abstention from fishing on the ground that there was an absence of fish. It was held that there was no absence of fish and that good cause necessitating abstention from fishing was not established. The relevant statutory provisions purport to insure against loss of employment, not loss of profit. See paragraph 5 and see also below 1.16.7 viii.

iii A share fisherman did not fish because fishing had become uneconomic in the area he normally fished at that time of the year. Other vessels had, however, left the area to fish elsewhere.

C.S.U.94/50

7 Any other good cause necessitating abstention from fishing; good cause not established

R(U) 10/51

R(U) 7/55

Regulation 8(6)(d) of the Regulations.

i The skipper and members of the crew of a fishing vessel operated under a

R(U) 17/55 Herring Industry Scheme and were directed to land their catch at mainland port. Instead they landed the catch at their home port and by doing so incurred a period of suspension under the Scheme. It was held not to be a 'good cause which necessitated abstention from fishing'.

ii The vessels on which 22 share fisherman normally went to sea remained in port under an agreement to abstain from fishing because the claimant's association were unable to get the prices they demanded. Held, there was not good cause. See also R(U) 16/53.

R(U) 6/56

iii A share fisherman was held not to have good cause for abstaining from fishing when the vessel of which he was a member of the crew did not put to sea because the master and mate absented themselves in order to attend a funeral. See paragraphs 6-8 and compare R(U) 3/57.

R(U) 16/57

iv At a meeting of a local fisherman's association it was agreed that, because of a restricted market for white fish, only a part of the local fishing fleet would engage in fishing, according to a rota. The claimant claimed unemployment benefit for a day on which his vessel did not put to sea, but it was held that the decision taken by the fisherman voluntarily to abstain from fishing to a limited extent was an attempt to insure against loss of profit and did not amount to good cause necessitating abstention from fishing.

R(U) 6/58

R(U) 22/59 v Due to bad weather the claimant's boat did not put to sea on a Friday. The weather cleared after midnight but not, the claimant alleged, soon enough to enable him to reach his usual fishing ground and to return for the local market on Saturday morning. Held, good cause for necessitating abstention from fishing was not established.

R(U) 19/64

vi A share fisherman had run out of bait for his usual method of fishing and an alternative method would not have been successful because of previous bad weather. Good cause was held not to have been established since the state of the weather did not prevent the boat putting to sea; nor was the claimant's running out of bait good cause for necessitating abstention from fishing.

vii The vessel of which the claimant was part-owner did not put to sea because of the absence of a member of the crew. Held, no good cause for necessitating abstention from fishing.

viii 'Unprofitability of fishing does not constitute good cause necessitating abstention from fishing.' See also *above* 1.16.6 ii.

R(U) 3/57 ix A share fisherman was paid off when skippers at the port decided to abstain from fishing on the ground that there was no economic market for the catch. The abstention lasted for 6 weeks, at the end of which the claimant resumed his employment with the same vessel. It was held that he did not cease to be a member of the crew while temporarily absent and that the abstention from fishing was not necessitated by any good cause.

R(U) 3/64

R(U) 3/65

8 Good cause for abstaining from fishing established

i A member of the claimant's crew reported at 2 a.m. that his wife was suddenly

taken ill and that he would be unable to go with the boat. No replacement was available at such short notice, so that the boat could not go out that day. Held, there was good cause for abstention from fishing.

ii A vessel was unable to begin a fishing trip on the day arranged because of the illness of the skipper, and it was held that in the circumstances there was good cause for abstention from fishing.

iii A share fisherman whose vessel was undergoing repairs decided to take a week's holiday away from home. He completed the appropriate form stating that he would be available for work during the holiday and that he would return immediately if necessary. It was held that, although good cause for abstention from fishing may exist, it is also necessary to satisfy the ordinary conditions for the receipt of unemployment benefit; in particular, proof of availability for employment. It was accepted that in the circumstances the claimant had discharged that onus. See paragraphs 9-11.

R(U) 4/67

Part 17: Earnings related supplement

Section 14(7) of the Act.

1 When payable

i A riveter regularly worked for a number of different employers, mainly in the ship-repair industry, in the dock area of the Port of London. Employment on a temporary basis for employees in the industry was obtained by reporting to a hut at the Royal Albert Dock where, pursuant to an arrangement between the trade union concerned and the employers in the industry, men were allocated to employers requiring temporary employees under a system whereby neither the would-be employer nor the would-be employee had any claim to, or preference for, a particular employee or employer. The claimant made a claim for earnings related supplement in respect of various days and short periods of unemployment which fell between spells of work for one or other of the employers in the industry and the question arose whether, for the purposes of section 20(1)(b) of the National Insurance Act 1965, as substituted by section 3(1) of the National Insurance Act 1966 (see now section 14(7) of the Act), his employment with the various employers in the industry had been terminated or suspended by the employer. It was held that the evidence showed that the claimant could not be regarded as employed by any clearly defined group of employers in the industry and that no employer or employee in the industry had any claim to, or preference for, a particular employee or employer. Held further that the claimant's employment had been terminated by his employer prior to each of the various days and short periods in respect of which earnings related supplement of unemployment benefit had been claimed and that, the other conditions for receipt of the supplement being satisfied, it was payable. See as the meaning of 'terminated' paragraphs 7 *et seq.* see also R(U) 7/68.

R(U) 4/68

ii Under the relevant provisions of the National Insurance Act 1966 earnings related supplement to unemployment benefit was not payable if the claimant's earnings in 'the relevant tax year' exceeded a stipulated amount. (See now Part 1

1.18.1-2

R(U) 11/80

R(U) 1/78

of Schedule 6 to the Act.) A claimant's period of interruption of employment began on 27th March 1967 and ended on 30th August 1967. His reckonable earnings for the income-tax year which ended on 5th April 1966 were less than the stipulated amount, but for the tax year which ended on 5th April 1967 they exceeded that amount. Thus the question arose whether his right to the supplement for all the days of unemployment in the period of interruption of employment depended on his earnings in the year which ended on 5th April 1966 or whether his right in relation to the days from May 1967 onwards depended on his earnings during the year ending 5th April 1967. It was held that, although the claimant's earnings in the tax year which ended on 5th April 1966 were less than the stipulated amount, that was the last income-tax year before the beginning of the earnings related benefit year in May 1966 and that, since the period of interruption of employment began in that benefit year, the claimant was not entitled to earnings related benefit even for part of the period of interruption of employment which fell in or after May 1967. What mattered was which was the last complete income-tax year before the beginning of the earnings related benefit year in which the period of interruption of employment began and the question involved was not in which earnings related benefit year the days themselves fell.

Part 18: Forward Disallowance

R(U) 1/86

1 Open-ended disallowance

i In disallowing a claim for unemployment benefit, the insurance officer purported to make a forward disallowance in respect of future claims under regulation 12(5) Social Security (Claims and Payments) Regulations 1975, without specifying the period of disallowance. Held the disallowance was a nullity since open-ended disallowances were not authorised by the regulation. See also below 13.7.1 ii.

2 Termination and revival of forward disallowance

i A forward disallowance of unemployment benefit was imposed on a claimant in respect of non-working days. The Commissioner held that a forward disallowance imposed under regulation 12(4) of the Social Security (Claims and Payments) Regulations 1975 terminated as soon as the grounds of the original disallowance had ceased to exist. He gave examples of when such a disallowance might be appropriate.

R(U) 5/82

ii Following R(U) 1/78 (1.18.2 i above) the Commissioner held that once the grounds of a forward disallowance had ceased to exist, and the disallowance had therefore terminated, the disallowance did not revive if the grounds came into existence again. For another synopsis of this decision see 1.11.3 xii above.

Part 19: Abatement for Occupational Pension

Section 5 of the Social Security (No 2) Act 1980, and regulation 3 of the Social Security (Unemployment Benefit) (Abatement for Occupational Pension Payments) Regulations 1981 in this Part called 'The No 2 Act 1980' and 'The Abatement Regs respectively'

R(U) 3/94

1 Occupational Pension, as opposed to redundancy payment

i A claimant for unemployment benefit accepted premature retirement in April 1980 at the age of 59. He received from his former employer a sum described as a continuing annual payment of £4551.58 payable in 12 equal monthly instalments until his 65th birthday, when he would become entitled to a pension from his former employer. These payments were funded by his former employer and provided for under a scheme entitled 'the Principal Non-industrial Superannuation Scheme' which, amongst other things, provided for superannuation of employees on normal retirement. In January 1981 the claimant claimed and was paid unemployment benefit. In July 1981 the insurance officer decided that, by virtue of section 5 of the No 2 Act 1980, and regulation 3 of the Abatement Regulations 1981, both of which came into operation on 6 April 1981, the claimant was not entitled to unemployment benefit from that date. The question at issue was whether the monthly payments were 'under the rules of an occupational pension scheme' within the meaning of regulation 3(1)(b) *ibid*. The Commissioner held that they were (paragraphs 12 and 14). See also R(U) 5/85 *below*.

R(U) 8/83

ii The claimant accepted voluntary redundancy from his employer. Under the employer's pension scheme, a member who had 5 years' qualifying service was entitled to receive a pension on his retirement on or after the normal retiring age of 60 years. The scheme was modified in the case of redundancy to allow for an enhanced pension, payable immediately, if the employee was aged 50 or above. The claimant contended that the enhanced pension benefit paid to him was not an occupational pension within section 30 of the Social Security Contributions and Benefits Act 1992 because the scheme under which it was paid was nothing more than a redundancy scheme. The Commissioner held that the arrangements which operated when there was a redundancy was only a variation of the pension scheme, and had no separate existence. The pension which was payable to the claimant was an occupational pension within the definition contained in section 122(1) of the Social Security Contributions and Benefits Act 1992. The Commissioner also held that the payments to the claimant could not be disregarded under regulation 25(1) of the Social Security (Unemployment, Sickness and Invalidity) Benefit Regulations 1983 because the scheme under which the payments

R(U) 2/84

1.19.3 were made came within the definition of an occupational pension scheme in regulation 25(2) by including retirement benefits payable at the normal retiring age. See also R(U)5/82 *above*.

2 Occupational Pensions payments - meaning

R(U) 4/85 i The payments by way of occupational pension referred to in section 5(1) of the Social Security (No. 2) Act 1980 are in the gross payments before reduction of income tax.

3 Occupational Pensions payments constituting (or not constituting) such a pension

R(U) 5/85 i A claimant for unemployment benefit had formerly been a squadron leader in the Royal Air Force and he was in receipt of retired pay in respect of his service in that force. The question arose whether the retired pay was an occupational pension for the purposes of section 5 of the Social Security (No. 2) Act 1980 (in which case the amount of that payment would have extinguished his right to a payment of unemployment benefit). The Commissioner held that, while serving in the Royal Air Force, the claimant was the holder of an office with emoluments and was therefore in employment within the terms of section 5(3) (paragraph 9); the payments to him were in connection with the coming to an end of an employment of his and were made out of money provided under an instrument having the force of law in any part of the United Kingdom or elsewhere; accordingly the payments constituted an occupational pension within the meaning of section 5 (paragraphs 6 and 7). (The Commissioner also called attention to sections 127 and 128 of the SS Act 1975, which had the effect of treating members of the Armed Forces as employed earners (paragraph 11).)

R(U) 10/88 (T) ii A claimant for unemployment benefit retired early and in return his occupational pension was augmented by a compensation element under the Local Government (Compensation for Premature Retirement) Regs 1982. These were introduced with the express purpose of inducing local government officers to retire early and their effect was to secure such pension rights as would have been earned had the officers worked to normal retirement age. The Commissioner held that, notwithstanding that the compensation element was recompense for not working until normal retirement age, such payments fell within the definition of 'payments by way of occupational pension' in s.5(3) of the SS (No. 2) Act 1980 (para 16).

R(U) 1/89 iii On 31.3.83 a man, aged 63, voluntarily accepted early retirement and under the terms of his occupational pension scheme became entitled to various payments, including a continuing annual payment of £4,846.26, payable monthly in arrears for the period from 31.3.83 to 10.2.85, when he attained the age of 65 and his reserved pension became payable. However, under another provision of the scheme the whole of this continuing annual payment he elected from the outset to commute into a lump sum of £8,577.86. The question in issue was whether the single lump sum payment constituted 'payments by way of occupational pension' within the meaning of s.5(3) of the SS (No.2) Act 1980, regulations under s.5(2)(c) of the Act expressly treating such sums in that way not having been made, but it being argued that the single lump sum payment did not lose the characteristics of 'payments by way of occupational pension', because the sum was calculated by reference to a specific period - in other words the mode of payment was irrelevant, if in reality the payment was in lieu of a series of payments of pension. The Commissioner rejected this argument, because the commuted lump sum already paid was not subject to abatement or partial repayment in the event of the claimant's death during the relevant period and in the Commissioner's judgement could not be held to fall due in respect of that period or any part of it. He held that the term 'periodical' in the phrase 'periodical payments' in s.5(3) of the above Act fell to be given its normal everyday meaning of 'recurring at regular periods or intervals' and that a single lump sum payment could not fall within this definition. He accordingly held that such a payment was not caught by s.5(1) of the Act. (Paras 8 and 9.) See R(U) 5/82 *above*.

iv The claimant became entitled to an occupational pension from 1.9.85 at which time he was aged 63. He claimed unemployment benefit on 2.9.85 but the

adjudication officer decided that unemployment benefit was not payable because the amount of occupational pension exceeded the amount prescribed under s.5 of the SS (No. 2) Act 1980 by such amount as reduced his entitlement to unemployment benefit to nil. This decision was upheld by the social security appeal tribunal. On appeal to the Commissioner the claimant contended that the abatement rule was discriminatory both in respect of age and sex and was therefore contrary to Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security. The Commissioner held that such indirect discrimination as there was fell outside the scope of the Directive. For another synopsis of this decision see 19.2.5 vi *below*.

1.20.1-3

R(U) 2/89

v A former civil servant claimed unemployment benefit and maintained that his pension was not an occupational pension. He contended that because his salary had been set at a reduced level he had in effect funded the whole of the amount of the pension, while his employer had contributed nothing. In dismissing the appeal the Commissioner held that, on the balance of probability, the employer had discharged at least some of the total cost. This brought the payments within the first definition of what constitutes "payments by way of occupational pension" within section 5(3) of the Social Security (No. 2) Act 1980. The Commissioner also held that the civil service scheme is clearly brought into existence under arrangements made by the employer thus satisfying the second definition in section 5(3). Finally, the Commissioner held that the payments are caught by the third definition contained in section 5(3), ie that the payments fell to be made out of money provided under an enactment or instrument having the force of law in any part of the UK or elsewhere.

R(U) 2/89

Part 20: Day substituted for Sunday

1 Lay off/short time

i The Commissioner held, in dealing with an appeal from a claimant who was laid off from his employment, that the phrase "short time working" in regulation 4(2) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations did not include a period of lay off. It is an essential feature of the expression "short time working" in regulation 4(2) that the employee does some work during the relevant period. Also regulation 4(2) is only for the purpose of

R(U) 2/89

determining whether in any week, in the normal course, a person would work as an employed earner on not more than 6 days, including Sunday. See also 1.20.2 i, 1.20.3 i *below*.

2 Unemployed on Sunday

i The Commissioner held that in considering the requirement in regulation 4(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations that a claimant is "unemployed" on the Sunday in question, you look as a matter of fact to see whether someone is unemployed. That is you look to the state of reality rather than to any conclusion of law. For example, the claimant may be disallowed under regulation 7(1)(k) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 for receiving a guaranteed payment on a Sunday but he would still be unemployed for the purposes of Reg 4(1) on that Sunday. See also 1.20.1 i *above* and 1.20.3 i *below*.

3 Claim made for Sunday

i A claim has been made for the purposes of regulation 4(1)(b) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations as long as it had been made in the manner and time prescribed in the Social Security (Claims and Payments) Regulations. It does not matter that the claim is ultimately disallowed. R(U) 2/79 and R(U) 7/83 considered. See also 1.20.1 i, 1.20.2 i *above*, R(U) 2/79, 13.7.1 i *below* and R(U) 7/83, 13.7.1 iii, 17.4.2 ix *below*.

The decisions listed below are not included in Chapter 1

A *Decisions which are no longer of authority; having been given under statutory provisions which are not now in force*

CU 29/48 Refusal of leave to appeal to the Commissioner
CU 72/48 The '12-day rule' and termination of employment
CSU 72/48 Benefit not payable while on holiday in the Isle of Man
CWU 6/48 Decision given under Transitional Regulations
CU 25/49 No power to renew approval of training scheme under the
CU 112/49 Unemployment Insurance Act 1935
CU 162/49 Decisions given under Transitional Regulations
CU 168/49
CU 277/49 Decision under old Classification Regulations
CU 544/50 Calculation of 'family fund'

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- R(U) 39/52 No longer of authority. See R(U) 10/56
 R(U) 7/53 Whether claimant acted in good faith in the obtaining and receipt of benefit
 R(U) 37/53 Payment on termination of employment. Regulations no longer in force
 R(U) 17/54 No longer of authority. See R(U) 8/74
 R(U) 29/55
 R(U) 31/55 Payment on termination of employment. Regulations no longer in force
 R(U) 4/56
 R(U) 9/57
 R(U) 26/57
 R(U) 29/57
 R(U) 30/57
 R(U) 31/57 The '12-day rule' and trade disputes. Now of doubtful authority
 R(U) 3/58
 R(U) 8/58
 R(U) 9/58
 R(U) 10/58
 R(U) 8/63 Payment on termination of employment. Regulations no longer in force
 R(U) 10/64

B Decisions which relate to questions of fact and/or to special circumstances

- CU 3/48 Unjustified refusal of employment
 CU 62/48 School meals assistant not unemployed during holidays
 CU 80/48 Relevance of Court Order to maintenance of wife
 CU 96/48 Voluntarily left employment
 CU 102/48 Relevance of Court Order to maintenance
 CU 28/49 Increase of unemployment benefit to wife in U.S.A.
 CU 128/49 Relates to pre-5th July 1948 claim
 CU 151/49 Claim for unemployment benefit by night watchman
 CU 235/49 Entitlement to unemployment benefit
 CU 401/49
 CU 532/49 Appropriation of holiday pay. Now of doubtful authority
 CWU 18/49 Duration of stoppage of work in a case of trade dispute
 CU 201/50 Whether an alleged dependant is 'living with' claimant
 CU 236/50 Waitress in her mother's boarding-house not unemployed during the 'off-season'
 CU 257/50 Whether an increase of unemployment benefit is payable
 CU 286/50 Entitlement of blind person to unemployment benefit
 CU 544/50 Maintenance payments to wife
 R(U) 11/51 Availability of landworker for employment
- R(U) 15/51 Availability of married woman for employment
 R(U) 19/51 Special facts relating to a trade dispute
 R(U) 24/51 Woman found to be incapable of work and not entitled to unemployment benefit
 R(U) 28/51 Earning in excess of permitted amount
 R(U) 31/51 Entitlement to unemployment benefit on Saturday
 R(U) 35/51 Claimant held to be not unemployed
 R(U) 2/52 On the facts a married woman held not to be entitled to unemployment benefit
 R(U) 11/51 On the facts claimant held not to be entitled to unemployment benefit during a stoppage of work
 R(U) 29/52 Payment for loss of employment
 R(U) 30/52 Increase for wife
 R(U) 31/52 Woman carrying on subsidiary occupation held not to be unemployed
 R(U) 40/52 Not unemployed while on holiday
 R(U) 4/53 Miner not available for employment on Saturday

Unemployment benefit: abatement for occupational pension

R(U) 12/53	Accrued holiday pay treated as wages
R(U) 3/54	Payment of 5s. a week held to be financial assistance for wife in receipt of husband's war disability pension
R(U) 4/54	Unemployment benefit held to be payable when again employed after a spell of self-employment
R(U) 6/54	Whether 'residing with' husband
R(U) 9/54	Whether employed to full extent normal
R(U) 3/55	Loss of employment due to trade dispute
R(U) 18/55	Availability for employment
R(U) 16/56	Subsidiary occupation 'different in nature' from full-time employment
R(U) 18/56	Night Workers' Regulations applies to employment which begins beforemidnight on one day and ends some time the following day
R(U) 27/56	Dismissal of claimant was 'step in a trade dispute'
R(U) 29/56	Saturday not a day of unemployment when normal week is 5 days
R(U) 37/56	What is normal working week for a night watchman
R(U) 12/58	When the interval between spells of employment is being calculated, Sundays are included
R(U) 14/58	Meaning of 'residing with' in the National Insurance Act 1946
R(U) 16/48	Employed to the full extent normal under guarantee agreement
R(U) 22/58	What is a 'normal idle day'
R(U) 32/58	Attribution of holiday pay when holiday not taken
R(U) 25/59	Increase of unemployment benefit for children under National Insurance Act 1957
R(U) 33/59	Meaning of '6 consecutive days' in relation to a period of interruption of employment
R(U) 4/60	Claimant's wife was on short-time working but was held to be in a gainful occupation
R(U) 8/60	
R(U) 18/60	Unemployment benefit not payable during a voyage to Australia
R(U) 1/61	Normal course of working for man on day and night shifts in alternate weeks
R(U) 12/61	Claimant suspended from employment because of short-time working held not to have lost employment by reason of stoppage of work due to a trade dispute
R(U) 9/62	Normal idle day and short-time working due to adverse industrial conditions
R(U) 1/63	Normal course of working: unemployment benefit not payable for Sunday
R(U) 4/71	On the facts a day was held not to be a day of interruption of employment
R(U) 14/71	Direct interest in a trade dispute
R(U) 3/75	Earning related supplement and linking of periods of interruption of employment

C *Decisions relating to late claims, good cause for delay in claiming, etc.*

CU 78/49	R(U) 1/54	R(U) 3/60	R(U) 6/75
R(U) 34/51	R(U) 20/56	R(U) 9/60	
R(U) 5/52	R(U) 35/56	R(U) 2/70	
R(U) 6/52	R(U) 33/58	R(U) 9/74	

D *Decisions relating to increase of benefit*

R(U) 15/54	R(U) 16/62	R(U) 3/66	R(U) 11/71
R(U) 11/62	R(U) 15/64	R(U) 1/68	
R(U) 14/62	R(U) 2/65	R(U) 6/70	

E *Decision relating to repayment*

R(U) 7/64

F *Decision relating to extinguishment of benefit*

