

## CHAPTER 8

## Industrial Injuries: accidents

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## CHAPTER 8

## Industrial injuries: accidents

## Part 1: Personal injury caused by accident

*Sections 50 and 52-55 of the Social Security Act 1975*

### 1 What constitutes “personal injury”

- i “Personal injury” means injury to the living body of a human being and, although damage to some artificial appendage of the body, such as spectacles, false teeth, a wig or an artificial limb, may well cause incapacity for work, such damage cannot constitute “personal injury”. Thus a coalminer who broke the foot of his artificial leg in an accident at work was held not to have suffered personal injury caused by accident arising out of and in the course of his employment. Questions relating to prosthesis in general are discussed in R(I) 8/81. See also R(I) 1/82. R(I) 7/56
- ii A clerk felt a pain in his leg whilst stooping to take files out of a cabinet drawer and after he sat down the pain suddenly became severe. He was later found to be suffering from a prolapsed disc. Medical evidence showed that the complete prolapse was of an already partially prolapsed disc and was brought about by some slight and insignificant movement while the clerk was sitting in his chair and not by the stooping. The Commissioner held that the clerk had not suffered injury by accident. Principles of R(I) 20/56 explained. R(I) 35/59
- iii A “strain” does not amount to “injury” unless there be some significant physiological change for the worse which lasts for an appreciable time. A miner who strained himself while lifting a derailed coach hutch at work suffered a coronary occlusion over 24 hours later. It was held that he had failed to establish that the coronary occlusion was brought on by the strain at work and that he had, therefore, failed to establish that he had suffered personal injury. R(I) 19/60
- iv An increase of pain, or an aggravation of pain, does not constitute injury unless it is shown that a physiological change for the worse in the claimant’s condition has resulted. Any aggravation must be material, that is, of some substance. See para. 7 and also see 8.1.2 v. R(I) 1/76
- v Where a prosthesis is so intimately linked with the body of a person as to have become part of that body, damage to the prosthesis may constitute a personal injury to that person. A claimant who damaged an artificial hip joint in a fall was held to be entitled to industrial injury benefit. R(I) 7/56 discussed. See also R(I) 1/82. R(I) 8/81
- vi A sheet metal worker in the course of his work was struck on his spectacles by a steel plate. The lens of his spectacles was scratched leaving a scuff mark. He himself received no injury at all. On the question whether the claimant was entitled to a declaration under s. 107 of the SS Act 1975 that the accident was an industrial accident, the Commissioner held that the fact that, as the result of an incident at work, the claimant was deprived of the use of his spectacles as a means to improve his defective eyesight did not constitute personal injury (para. 7): R(I) 7/56 followed. R(I) 8/81 distinguished (*for full summary of case see 8.9.1 i*). R(I) 1/82

## 8.1.2

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**2 What is an “accident”**

- CI 5/49 i “Injury by accident” does not necessarily involve the idea of violent or exceptional exertion, but includes any physiological injury brought about by an undesigned and untoward event happening in the course of the employment and as a result of it. A man who had ruptured his biceps muscle strained the same arm over twelve years later when shovelling wet sand over a partition and was held to have suffered personal injury caused by accident. See also CSI 1/48 as to the effect of an attack of asthma and CS 4/49 as to effect of pre-existing neurosis.
- CI 27/49 ii Something going wrong within the human frame, such as the straining of a muscle or the breaking of a blood vessel, may well be properly described as an accident. The question is whether there was physiological change for the worse in the workman’s condition on the particular occasion when he was at work and, if so, and if that change was induced or contributed to in any material degree by the work upon which the man was then employed, it may well constitute an injury by accident. A dock labourer engaged in pushing a loaded hand truck “felt something go inside” and was found to be incapable of work by reason of heart trouble. It was held that he had suffered personal injury by accident. See also at 8.6.1i and R(I) 52/51.
- R(I) 52/51 iii An “accident” is not confined to external incidents such as mishaps with machinery or to special strains or exertion, but may include the case of a certain physiological injury such as an internal lesion occurring without any unusual exertion or incident. There must, however, have been a particular moment at which the injury (be it an initial injury or an aggravation of an existing condition) occurred although it is not essential to prove exactly when that moment was so long as it can be inferred from the evidence that there must have been such a moment. A labourer who had had an unhealed tubercular hip since childhood was incapacitated by reason of his hip having become painful and a large swelling having appeared in his groin. It was held that, although his incapacity was caused by the work he was doing, which was too heavy for him, there was no evidence of “accident”. See also R(I) 20/56.
- R(I) 12/58 iv A laundry worker who handled blankets which were suspected to have been in contact with a patient who had smallpox was vaccinated and became incapable of work by reason of “vaccination reaction”. It was held not to be injury by accident. See as to the distinction between an “effective cause” *causa causans* and merely a “condition” *causa sine qua non*, at para. 5 of the decision. See also R(I) 15/61.
- R(I) 1/76 v An increase of pain, or an aggravation of pain, does not constitute injury unless it is shown that a physiological change for the worse in the claimant’s condition has resulted, and any aggravation must be material, that is to say of substance. Thus when a factory worker who suffered from a prolapsed intervertebral disc on two occasions experienced pain in his back when lifting strips of metal it was held that neither of the incidents was an event identifiable as an accident. Compare 8.1.3 i-iv.
- R(I) 6/91 vi An office worker had, in the course of her employment, to inhale tobacco smoke emitted from fellow workers’ cigarettes on several identifiable occasions. Although the claimant’s lungs were particularly sensitive to cigarette smoke or the chemicals contained in the smoke, the sudden inhalations of considerable quantities of cigarette smoke nevertheless constituted an undesigned or unlooked for event. In the circumstances of the case the claimant suffered personal injury by accident on each occasion she was obliged to inhale smoke. The fact that the claimant had a pre-existing constitutional condition and was unduly sensitive to cigarette smoke did not alter the conclusion. The ordinary case of alleged injury caused by having to work with fellow workers who smoke would not normally be regarded as an accident.
- R(I) 1/00 vii A fireman claimed benefit on the basis that his attendance at many fatal incidents during the course of his employment had caused him to develop post traumatic stress disorder. In considering whether the injury was due to accident or process the Commissioner stated that the less that incidents are out of the normal and the more they are closely related in time the more difficult it is to determine this question. The

incidents the claimant had to attend were not part of his everyday duties but were exceptional incidents separated by some months if not longer. Because they were exceptional happenings within the claimant's routine a much longer time span may be looked at to see whether a series of incidents was involved as against a process. The Commissioner considered the claimant was entitled to an accident declaration. The AO appealed to the Court of Session who dismissed the appeal holding that it was unnecessary to identify a distinct event separate from the injury and preceding it in point of time. The AO then appealed to the House of Lords who reviewed earlier judgments of the courts dealing with similar legislation and considered that some of them may have been expressed too widely. In cases of psychological injury, as with cases of physical injury, it is necessary to identify a causative event that is separate from the injury. The Court of Session had erred in holding otherwise. The factual basis for the Commissioner's decision was unclear and the true state of the claimant's case remained obscure. The appeal was therefore allowed and the case remitted to the Commissioner for further investigation. [For a report of the House of Lord's decision see R(I) 1/00. For a summary of that decision see 18.7. i].

### 3 “Accident” distinguished from “process”

- i At para. 9 a tribunal of Commissioners referred to the speech of Lord Porter in *Roberts v. Dorothea Slate Quarries Ltd.* 41 BWCC where he referred to two types of case. In one there is found a single accident followed by a resultant injury or a series of specific and ascertainable accidents followed by an injury which may be the consequence of any or all of them, and in either case it is immaterial that the time at which the accident happened cannot be located. In the other type of case there is a continuous process going on substantially from day to day, though not necessarily from minute to minute or even from hour to hour, which gradually and over a period of years produces incapacity. There must come a time when the indefinite number of so-called accidents and the length of time over which they occur take away the element of accident and substitute that of process. A man developed “Raynaud’s phenomenon” after operating a grinding machine for five years and it was held that his incapacity did not result from personal injury caused by accident. See also CSI 21/49, CSI 25/49 and 8.7.1 i. CI 257/49 (T)
- ii A doctor who for two years was engaged in attending persons suffering from tuberculosis was found to have contracted the disease himself and became incapable of work. It was held that the claimant had not proved that his incapacity was the result of injury by accident. At para. 8 it was said that the question whether series of incidents should be regarded as falling within the category of accident or within that of process depended upon the continuity of the incidents constituting the series rather than on the duration of the whole series. See also 8.7.1 ii. CI 83/50 (T)
- iii The work of a married woman included cutting fine wire with scissors and slitting through the tough synthetic rubber outer covering the cable. After being so employed for less than three days she felt a sudden sharp pain in her right thumb and it was diagnosed that she was suffering from digital neuritis. It was held that she had suffered personal injury by accident and at para. 9 reference was made to what Lord Porter said in the *Dorothea* case: viz. that a very much longer period than two or three days must have been contemplated before the indefinite number of so-called accidents occur and take away the element of accident and substitute that of process. R(I) 43/61
- iv It has long been accepted that some significant value must be given to the words “by accident” and that they must be interpreted in accordance with the ordinary popular meaning of the word. Not every physiological change (or “injury”) occurring in the course of employment and attributable (at least to some degree) to that employment is sustained by way of “accident”. “Accident” normally excludes the idea of the growth of incapacity by a continuous process extending over a long period and accordingly incapacitating conditions brought about gradually and insidiously by conditions of employment over a long period do not as a rule constitute “injury caused by accident”. An electric welder became incapable of work by reason of ganglion of the hand and it was held that the injury, even on the view that it developed over some days rather than on ascertainable day, was caused by accident. R(I) 4/62

### 8.1.3

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R(I) 4/65 v A woman aged 28 was employed as the operator of a ten ton gantry crane which was operated from a cabin some 20 to 25 feet above the ground level. On the front of the cabin there was a control box on which were three levers by means of which the operator raised or lowered the lifting mechanism and directed the load into place. There was also a foot pedal which operated a brake to stop the load in mid-air if necessary. The claimant had constantly to lean over the control box in order to ensure the safety of workers on the ground. One day when leaning over the control box she felt a sudden pain at the bottom of her back and on straightening up the pain subsided into an ache, but three days later she became incapable of work and a diagnosis of prolapsed intervertebral disc was made. It was held that the weight of the medical evidence was against the conclusion that the single movement she had made would be likely to have caused a physiological change for the worse to have occurred and that, as her employment had not contributed in any material degree to her condition, she had not met with an industrial accident. This decision was subsequently upheld by the Court of Appeal, *sub nom, R. v. Deputy Industrial Inquiries Commissioner, ex parte Moore*, see 18.1.1 ii.

R(I) 11/74 vi The work of a coal face ripper involved using a heavy electrical boring machine for between two and three hours every day for a period of about five months. The machine jarred his hands and arms and he developed a condition of the left elbow which was at first accepted as being prescribed disease No. 33 and injury benefit was awarded for 2½ weeks. The condition was later diagnosed as being due to ulnar nerve compression syndrome and on a claim for disablement benefit a medical board decided the diagnosis question adversely to the claimant. He then made a claim for benefit based on an alleged accident on an unspecified date, and added “injury caused over period of time due to occupation”. It was found on appeal that the claimant’s evidence was unsatisfactory and that, as there was no evidence that ulnar nerve compression syndrome was capable of developing as the result of a single accidental occurrence, it was held that the condition, which must have developed over a period of not less than five months, had developed by process and not by a series of small accidents. See also at 8.7.1 xi and 18.1.1 xi.

## Part 2: Accidents arising out of and in the course of employment

### 1 General considerations

i The proper test for determining whether an employment risk was a cause of the accident must be decided by looking at all the circumstances of the case in a broad, common-sense manner and if an employment risk was not a cause of the accident the accident does not arise out of the employment; if it was the accident does arise out of the employment unless an act done by the claimant for his own purposes has added or created a risk different from the employment risk and that different risk is the real cause of the accident. The question whether a risk is an employment risk, and the question what caused the accident, are primarily questions of fact. See also para 23 and R(I) 16/62, R(I) 3/63 and R(I) 4/64.

R(I) 2/63  
(T)

### 2 Accident on employer's premises

*Compare 8.3.1 below.*

i A dock labourer was injured when riding a bicycle while going to his work on a steamship which was in the dock. The accident occurred about 100 yards from the ship on a part of the dock which was not open to the public and it was held that it arose out of and in the course of the claimant's employment.

CI 7/50

ii An employee fainted at work in the course of her employment and cut her head. It was held that she had met with an industrial accident. Under the SS Act 1975 see s.50(3).

CI 127/50

iii The claimant, who was employed as a resident cook, slipped on a mat in her bedroom in her employer's house. She had finished her work for the day but was required to sleep on the premises and was still subject to her employer's orders. It was held that it was an industrial accident. See also CI 83/49 and compare R(I) 9/59.

R(I) 49/51

iv While going from one part of the premises on which he was employed to another for a purpose connected with his employment a bus conductor had to cross a gully about one foot wide and 6 inches deep. He suffered from a pathological condition which rendered his bones liable to spontaneous fracture and, when crossing the gully,

R(I) 12/52

8.2.2

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he fractured his leg. It was held that the injury arose out of and in the course of his employment.

v A boy of 17 injured his wrist when unloading a van at his employer's premises and, in spite of there being no corroborative evidence, he was held to have met with an industrial accident.  
R(I) 59/52

vi A factory worker felt ill during the course of his employment and attended the ambulance room at the factory where he was employed. The treatment he was given caused an injury which it was held arose out of and in the course of his employment.  
R(I) 3/54

vii A coal-miner was in the habit of going to the colliery canteen after finishing his shift in order to avoid the rush for the first buses. When walking along a road on the colliery premises to catch a later bus he slipped on an icy patch, with the result that he became incapable of work, and it was held that, in view of his age, the delay before he started to leave the premises was reasonable and did not put an end to the course of his employment. Compare R(I) 11/54. And see also 8.4.1 *below*.  
R(I) 22/56

viii A bus conductress who was required to report for duty 10 minutes before her bus was due to leave the depot remained in the rest-room at the depot between two spells of duty. While going from the rest-room to the office to collect her way bill and tickets shortly before her bus was due to leave the depot she slipped down some stairs and injured her back. It was held that she had re-entered the sphere of her employment and that the accident was an industrial accident.  
R(I) 20/58

ix A garage mechanic was doing something in the course of his employment which caused the sleeve of his overall to become soaked with petrol. Shortly after finishing his job he was taking instructions from his employer as to what he should do next when the employer offered him a cigarette. The claimant struck a match to light his own and his employer's cigarette and his overalls caught fire, with the result that his arm was burned. It was held that the accident arose out of and in the course of the claimant's employment. See also R(I) 2/63.  
R(I) 21/60

x It was the normal and authorised practice of a stenographer to leave her place of work on her bicycle and to go to have her midday meal by way of the stationery store to deposit a stencil. While bicycling along her employer's private road to the store she was blown from her bicycle by a freak gust of wind and injured. It was held that she was travelling on duty when the accident occurred and that, as the proximate cause of the accident was her fall from her bicycle, she had met with an industrial accident.  
R(I) 27/60

xi It was the practice of a woman civil servant aged 64 to arrive at her office at or about 7 a.m., although she was not due to commence work until 8.30 a.m., in order to avoid the rush-hour travel. Her work involved standing and it was her custom on her arrival at her place of employment to open the windows in her room and then to sit down until it was time to start work. Her employers were aware of her early arrival and raised no objection to it. On opening a window she injured herself and it was held that her early arrival at her place of employment was incidental to her employment and that she was in the course of her employment when she was accidentally injured. The accident was held to have arisen out of her employment. See R(I) 22/56 *above*.  
R(I) 3/62

xii Where an employee was injured by glass in food provided by a trolley service arranged by her employers at her place of work, a Tribunal of Commissioners held that since the toast was supplied to the claimant at her place of work under a system arranged by her employers for supplying refreshment to employees, there was sufficient causal connection between the employment and the accident to warrant the finding that the accident arose out of the claimant's employment.  
R(I) 3/63 (T)

xiii A machine operator acted as a collecting agent at his place of employment for a firm of football-pool promoters. While he was working at his machine a fellow-employee handed him a sum of money in payment of a pools subscription, but some of the money fell on the floor. Both men bent to pick it up and in doing so one or other of them accidentally dislodged a heavy spanner, which fell on the claimant's hand, with the result that he suffered person injury. It was held that the accident arose out of and in the course of his employment. See also under 8.2.6 *below*. R(I) 4/73

xiv An employee at a factory fell while at work though the reason for the fall was not clear. Held, following *Wilson v. Chatterton*, that the accident arose both out of his employment as well as in the course of his employment. Where a person is injured by coming in contact with part of the premises at which he works, this is sufficient to associate the accident with the employment. CI 68/49 and R(I) 12/51 were not followed and their correctness was doubted. See also R(I) 6/82. R(I) 11/80

### 3 Accidents during meal breaks

*Compare 8.3.2 below*

i A man who was employed as a stove erector and was sent to various towns by his employers was injured while going to have a meal in the town where he had gone to erect a stove. It was held that taking the meal on his way to do that which he was employed to do did not break the continuity of his employment and that he had met with an industrial accident. CI 148/49

ii A man on night duty was injured during a meal break while walking to a nearby station (also on his employer's premises) to collect his meal and it was held that the accident had arisen out of and in the course of his employment. CSI 6/49

iii The bus of which the claimant was a conductress reached the end of its journey and stopped at an omnibus stand before commencing the return journey. The driver was not allowed to leave the bus during the stop, but it was part of the duty of the conductress to brew tea for herself and the driver for consumption on the bus. She was allowed to do so in a watchman's hut nearby and while walking from the omnibus to the hut she fell and injured herself. It was held that the accident rose out of an in the course of her employment. R(I) 21/53

iv A bus driver who took a party of passengers to a speedway was required by his employer either to remain with his bus or in the speedway grounds so that he might be available for duty if needed. Whilst waiting he went to get tea in the speedway grounds and slipped down a bank, injuring himself. It was held that the accident arose out of and in the course of the claimant's employment because there was a restriction on his movements imposed by his employers and he had not left the sphere of his employment. Compare R(U) 32/51 and R(I) 10/52. See also under 8.2.6 *below*. R(I) 11/55

v R(I) 20/61 A bus driver was not allowed a specific interval in his duty, but was permitted to leave his bus to have tea at a cafe which overlooked the bus-stop during a short halt at a terminus. He was under a duty to keep watch on the bus while in the cafe and after leaving it to go back to his bus he slipped on the pavement and was injured. It was held that the accident arose out of and in the course of his employment. Compare R(I) 74/52, R(I) 11/55 and R(I) 38/59. See also 8.2.6 *below*.

vi R(I) 4/67 (T) A bus driver was injured while having a cup of tea in a cafe a short distance from where his bus was left during an 11-minute break between journeys. It was held by a Tribunal of Commissioners that in taking advantage of a permitted short break and using it for the purposes for which it was intended (i.e. to take refreshment in the nearest available cafe and to make use of toilet facilities) the claimant had not disentangled himself from his employment and that the accident arose in the course of his employment. R(I) 45/53 not followed.

vii R(I) 7/80 *R. v. National Insurance Commissioner, Ex parte Terence John Reed*. A police station sergeant was entitled while on duty in charge of his station, to take his meal break at home. He remained on call while doing so. He was injured in a road accident returning to the station after such a break. The Divisional Court held that he had been injured in the course of his employment and granted an application for an Order of Certiorari to quash the Commissioner's decision to the contrary. *R. v. National Insurance Commissioner, Ex parte Michael* and R(I) 74/52 distinguished.

#### **4 Accidents in, or in the vicinity of, canteens provided by employers**

*Compare 8.3.3 below*

i R(I) 11/53 A woman slipped while carrying two cups of tea in the canteen which she was using with the permission of her employers and which was not open to the public. It was held that the accident arose out of and in the course of her employment. See also CI 34/50.

ii R(I) 96/53 While trying to get to the canteen on his employer's premises a man was knocked down and injured by an onrush of fellow-workmen also going to the canteen. It was held that it was a risk peculiar to his employment that he should encounter a crowd of people wishing to get to the canteen with all possible speed and that the accident arose out of and in the course of the claimant's employment. See also CI 334/50.

iii R(I) 60/54 A engine man in a colliery was walking to the colliery canteen for a cup of tea before going home at the end of his shift. The route he was taking was the normal permitted route out of the colliery premises but he had not reached the point at which he would have deviated to go to the canteen when he slipped on icy ground and was injured. He would thus have been at the spot where he fell if he had been going straight home and it was held that the accident arose out of and in the course of his employment.

iv R(I) 72/54 A colliery worker arrived at the colliery before his shift was due to begin and while changing in to his working clothes broke a bootlace. He went to the canteen to get a new bootlace and on the way fell down some steps and was injured. It was held the accident arose out of and in the course of his employment since it was reasonably necessary for him to procure a new bootlace in order to equip himself properly for the work he was employed to do.

v The conditions of service of a canteen assistant included the provision of a free meal at the end of her tour of duty. She slipped when she was leaving the canteen premises and injured her wrist, and it was held that the accident arose out of and in the course of her employment since the employment extended to cover the taking of the meal which was a normal incident of her employment and was provided under her contract of service. See also R(I) 25/55.

R(I) 15/55

## **5 Accidents at pithead baths**

i A colliery worker slipped on the wet floor of a pithead bath while bathing at the end of his night's work. The baths were not within the colliery premises and did not form part of the employment's premises, but it was nevertheless held that the claimant had met with an industrial accident, the use of the pithead baths being incidental to his employment. See paras 3-5 and also see CI 23/49.

CI 22/49

ii While changing into his working clothes in the pithead baths preparatory to commencing work a pair of boots fell on the claimant's head, causing him injury, and it was held that it was an accident arising out of and in the course of his employment. See also CI 24/49.

CI 26/49

iii A miner who was injured when he fell while passing through the pithead baths on his way to work was held to have met with an industrial accident. See para 5.

CI 34/49

## **6 Accidents when doing something reasonably incidental to, and within the scope of, employment**

*Compare 8.3.5*

i A lorry driver who stopped his lorry to assist a fellow road user who seemed to be difficulties was knocked down when returning to his lorry after giving assistance

R(I) 11/51

and it was held that his action in helping the other person was reasonably incidental to his employment and that he had met with an industrial accident. See paras 6-7 and compare CI 326/50.

R(I) 62/51      ii      A man employed as a watchman by a private company to guard certain premises at night was asked by a policeman to help investigate a light in some other premises nearby, and while doing so met with an accident. It was held that he was doing something reasonably incidental to his employment as watchman and that he had met with an industrial accident.

R(I) 64/51      iii      A woman kept a general store and sub-post office and was the sub-postmistress. At about 10 p.m. one evening, while attending to her books in her own living-room, she suffered from cramp and, on getting up from the table where she had been working, fell and fractured her femur. It was held that the accident arose out of and in the course of her employment since her living-room was a reasonable place in which to do the work of accounting which it was necessary for her to do.

R(I) 62/52      iv      A school teacher attended a school Christmas party at the school at which she was employed and, while taking part in a game, one of the pupils collided with her, causing her to fall and fracture her wrist. Her attendance at the party was a normal incident of her duty as a class teacher and it was held that she met with an industrial accident. See also R(I) 80/52.

R(I) 32/53      v      While attempting to retrieve a tobacco tin which had dropped down a funnel over which he had been leaning for the purposes of his work a labourer had his hand badly injured when it was caught in some machinery, and it was held that the accident arose out of and in the course of his employment. It was a natural and not unreasonable act for him to seek to retrieve his tobacco tin and it was therefore incidental to his employment to do so. See paragraph 5 where reference is made to other relevant decisions and compare R(I) 78/52.

R(I) 46/53      vi      During a lull in his work a trainee miner left his place of work to chat with another boy a short distance away, and while doing so was injured. It was found that the lulls were necessarily incidental to and formed part of the claimant's employment and in going to chat with another boy he was doing something which was a normal incident of his employment. Compare R(I) 69/51, at 8.3.1 iv and R(I) 71/52.

R(I) 9/54      vii      A man was employed as an assembler by a firm of scientific instrument makers. A boy working near him struck a match and when it began to burn his fingers threw it away, but it dropped into a bowl of benzine which was used for the purpose of washing ball-bearings and its presence at the place where the claimant and the boy were working was for the purpose of the work being carried out. The benzine became alight and in attempting to move the bowl to the floor the boy spilt some of the benzine over the workman's overalls, which caught fire, with the result that he suffered injury. It was held that the accident was not the direct result of skylarking but was due to the remedial action taken to limit the consequences of the skylarking, such action being incidental to the boy's employment, with the result that the claimant's injury was by accident arising out of and in the course of his employment. See para 8 where R(I) 24/51 was distinguished.

R(I) 4/55      viii      A woman was employed as an accounts clerk in a large shop. A mobile X-ray unit visited the town in which she was employed and, in common with other employees at the shop, she was given a sort leave of absence from her work to attend the unit. When going downstairs on her employer's premises in order to go out and attend the unit she slipped and injured her foot and it was held that, although attendance at the unit was completely voluntary, from her employer's premises, whether at the end of the day or for a permitted interval, was a necessary incident of the employment and formed part of it. Her claim to have suffered personal injury by accident arising out of and in the course of her employment was accordingly allowed.

- ix A lorry driver who was delivering bricks to a building site was required to assist the builder's men in unloading the lorry. In helping to remove a concrete mixer from a place where the bricks were to be stacked he dropped a tow bar on his toe, which was injured. It was held that removing the concrete mixer was something incidental to the claimant's employment and that he had met with an industrial accident. R(I) 11/56
- x The claimant, who was an assistant mistress at a grammar school, took a party of pupils from the school to Switzerland for a holiday and while supervising the skiing she noticed that one of the pupils was approaching a dangerous area. In going to the pupil's rescue the claimant her foot in a rut and suffered an injury to her left ankle and knee. She had agreed, on appointment, to undertake extra mural activities and it was held that the accident which befell her was an industrial accident. R(I) 39/56
- xi A man whose duty lay at and about a tank containing scalding liquid sat on the edge of the tank, which was an act prohibited but in fact indulged by the employees, and fell asleep. He fell into the scalding liquid, which resulted in fatal injuries. It was held that, although it was not an unnatural act and the act of falling asleep was probably involuntary the accident arose out of as well as in the course of his employment. R(I) 36/59
- xii An applicant for evening employment attended an interview at her employer's office during the morning and, after she had been engaged to start work that same evening, she injured her leg while signing a form. It was held that when the accident occurred the claimant's contract of service had commenced and that she was doing something reasonably incidental to her employment. Applying the principles of R(I) 53/54 and R(I) 48/56 the claimant's claim to have suffered an industrial accident was allowed. R(I) 14/60
- xiii An employee in a linoleum factory availed himself of an optional chiropody service provided by his employers for their employees. In the course of treatment during normal working hours his skin near a toenail was accidentally nicked, causing blood to flow, and it was held that he had met with an industrial accident. See para 7. R(I) 16/62
- xiv A man was held to have suffered personal injury caused by accident arising out of and in the course of his employment as a result of an explosion which occurred when, while in the course of his employment in a factory were (unknown to him) gas was escaping from an unlit blow pipe, he attempted to light his cigarette. See also at 8.2.1i *above*. R(I) 2/63 (T)
- xv A married woman who was employed as a potato picker was injured while handling a sweet to a boy seated on a potato digger. It was held that the claimant's act of moving forward to hand the boy a sweet was a natural act in the circumstances (and was not objected to by the employer), did not to any significant degree interfere with the performance of her duty and was not, accordingly, an act such as to interrupt the course of her employment. The accident also arose 'out of' the claimant's employment since the risk of slipping on the wet and slippery ground was a risk of the employment. R(I) 17/63
- xvi An employee in a butcher's shop whose duties included a small amount of cutting up meat for sale was permitted to make a weekly retail purchase of meat at wholesale prices for himself. While separating some chops for his own purpose he cut his hand and it was held that it was an industrial injury, for it was part of his duties to do that which caused the injury and he was acting partly for his employer's purposes in separating the chops for sale. R(I) 20/63

- xvii R(I) 24/63 A woman employed in a Royal Ordnance Depot availed herself of the opportunity afforded by her employers to visit a mobile X-ray unit which was temporarily stationed in the depot outside the medical centre. She fell and injured herself in the waiting room in the medical centre at the depot and it was held that, although the employers did not require employers to attend the X-ray unit, they facilitated, encouraged and had a real interest in the attendance of employees. The attendance of the claimant was, therefore, an incident of her employment and the accident arose out of and in the course of it. See para 5 and R(I) 4/55.
- xviii R(I) 2/68 An apprentice motor mechanic attended a day-release class in motor mechanics at a local technical college. Attendance at the course was voluntary, but he was permitted by his employers to attend it during working hours and was expected to report for work at his employers' garage if he did not attend the class. While at the class he accidentally wrenched his back and was held to have met with an industrial accident. See and compare the decisions referred to in para 2 *et seq.*
- xix R(I) 1/77 A civil servant was standing on a chair putting up Christmas decorations during her hours of work in the premises she was employed and, although no instructions were given for that to be done, it was an act that was common practice in all offices and was tacitly accepted by the employers. It was held that the accident arose out of and in the course of the claimant's employment. R(I) 36/55 not followed and see R(I) 4/73.
- xx R(I) 3/81 Where a police cadet was injured while travelling as a passenger in a police transport vehicle returning from a swimming championship to a police training school, the accident was held to arise out of and in the course of her employment since she was obliged to attend the championship as part of her training. R(I) 5/75 - *R. v. National Insurance Commissioners, Ex parte Michael* [1977] 1 WLR 109 discussed and distinguished.

**7 Accidents during attendance at meetings***Compare 8.3.6 below*

- i An apprentice turner was injured while attending a trade union meeting which was being held in his workshop during the lunch-hour by permission of the employers. The meeting related to the terms of employment in the workshop and the audience was limited to the persons employed there. It was held that the accident was an industrial accident. Compare R(I) 36/54, 8.3.6i *below*. R(I) 63/51
- ii A shop steward was injured during working hours while returning a union card to a fellow-employee. He was encouraged by his employers to undertake union activities and his action concerned workmen in his particular works and arose out of a matter in which employers and employees had a common interest. It was held that he had met with an industrial accident. R(I) 9/57

**8 Accidents happening in an actual or supposed emergency***Section 54 of the SS Act 1975*

- i A woman was injured while helping a workman employed by a firm of building contractors to hold up a window frame in the room where she was working and it was held that she was acting in an 'emergency' and that she was injured as a result of an industrial accident. See paras 4-5. CI280/49
- ii A platelayer employed a steel company to maintain the railway track in the steel works in good condition was liable to be called out in an emergency should occasion arise. He normally finished work at 4.30 p.m., but one night he was summoned at 9.30 p.m. by an emergency call requiring him to go to the steel works to do some repairs to the railway track. While bicycling to the work in answer to the emergency call he was injured in a road traffic accident and it was held that the accident arose out of and in the course of his employment. See also R(I) 62/51. R(I) 21/51
- iii A van driver normally garaged his employer's van in a garage in the yard of an hotel. He did no work at weekends but while in the hotel bar on a Sunday the garages caught fire and the claimant, with other persons, rescued the van from the burning garage and in so doing received burns. It was held that he had re-entered the sphere of his employment and that the accident arose out of and in the course of his employment. R(I) 63/54 (T)
- iv The claimant was employed as a police constable in the Admiralty Constabulary and was on traffic-control duty at a dockyard gate. While on duty he saw a pushchair with a child about 2 years old in it moving down a slope unattended. He ran and stopped it, but in doing so fell over and it was later found that he had torn ligaments in his left shoulder. The road in question was used by the public, but was Admiralty R(I) 46/60

property. It was held that the Claimant's act in stopping the pushchair was something reasonable and sensible for him to do and that he was discharging, in the emergency, a duty imposed upon him as a police constable to help members of the public. The case fell within s.10 of the NI (Industrial Injuries) Act 1946 and was an industrial accident. (Under the SS Act 1975, sec s.54.) Compare R(I) 52/54.

R(I) 6/63 v In the course of his employment as a milk roundsman the claimant was delivering milk at houses in a road from a van parked in the road and, after picking up some bottles from the van, he started towards a bungalow on the opposite side of the road to deliver milk. He saw that the bungalow, in which there were children, was on fire and he immediately ran to the back of the bungalow and unsuccessfully tried to rescue the children. He then returned to the side of the bungalow where there was an explosion and he was injured by flying glass. It was held that he was injured by an accident which was deemed under s.10 of the NI (Industrial Injuries) Act 1946 (under the SS Act 1975, sec s.54) to arise out of and in the course of his employment and that he was 'in or about' the bungalow premises when he put down the milk bottles, was on those premises - at which there was manifestly an emergency - when the accident happened, and that in the circumstances he was for the time being employed for the purposes of his employer's trade or business 'at' those premises. See paras 10-16. Compare R(I) 5/54.

### **9 Accidents when an employed earner is acting in contravention of statutory or other regulations, etc.**

*See section 52 of the SS Act 1975.*

- CI210/50 i A colliery worker was injured when riding on an underground tram in contravention of the Coal Mines Act 1911 and it was held that under s.8 of the NI (Industrial Injuries) Act 1946 the accident fell to be deemed as having arisen out of and in the course of the claimant's employment. See para 10 and see also CI11/49.
- R(I) 6/55 ii Contrary to the orders given to him by his employer a kitchen porter hung his wet apron in a recess near the ovens to dry and after doing so slipped into a shallow pit and was injured. It was held that the act of hanging up the apron to dry was for the purposes of and in connection with his employment and that the accident was deemed to have arisen out of and in the course of his employment.
- R(I) 28/55 (T) iii A railway goods checker was injured while going by a prohibited route from the passenger station to the goods yard where he had to sign on for work. It was held that he had not entered upon the course of his employment and that s.8 of the NI (Industrial Injuries) Act 1946 (under the SS Act 1975, see s.82) did not assist him. At paragraph 20 reference was made to what Lord Maugham said in the course of his speech in *Noble v. S. R. Company* [1940] A. C. at pages 591-1; viz. that in considering the application of the section the following questions had to be answered:

- (1) Looking at the facts proved as a whole, including any regulations or orders affecting the workman, was the accident one which arose out of and in the course of the employment?
- (2) If the first question is answered in the negative, is the negative answer due to the fact that when the accident happened the workman was acting in contravention of some regulation or order?
- (3) If the second question is answered in the affirmative, was the act which the workman was engaged in performing done by the workman for the purposes of and in connection with his employer's trade or business?

See also at 8.5.1x below and see *R(I) 12/61* and *R. v. Deputy National Insurance Commissioner, Ex parte Jaine, 18.1.1v* below.

iv A locomotive driver was killed by a passing locomotive when he took an unauthorised short cut along the railway tracks. The accident was deemed to have arisen out of and in the course of his employment. R(I) 8/59

v A dock labourer was employed in the loading of a ship and, while driving an electric truck to fetch two slings necessary for the loading operation, met with an accident. He was not authorised to permitted to drive the truck, which was not owned by his employers, but by the Port of London Authority. It was held that the accident was deemed under s.7 of the NI (Industrial Injuries) Act 1965 to have arisen out of and in the course of the claimant's employment. He had not acted in contravention of regulations in taking and driving the truck; the act of going to and from the gear store for the purpose of obtaining the slings necessary for the work his gang were doing was within the scope of his employment and he was acting in the course of his employment, albeit he went about it in a prohibited manner. (Under the SS Act 1975, see s.52.) See and compare *R(I) 12/61*. R(I) 1/70

## 10 Accidents while playing games and during periods of recreation

Compare 8.3.7.

i An apprentice was injured while engaged in a vaulting exercise during a period of compulsory physical training which formed part of a day class at a technical college. He was required to attend the college under the terms of his deed of apprenticeship and it was held that the accident was an industrial accident. CI 228/50 (T)

ii A man employed at a steel works was a member of the works fire brigade and was injured while engaged in a works fire brigade competition outside normal working hours. The accident rose out of the operation of running out the fire hose, which was an operation the claimant was employed to perform (if need arose) at an actual fire, and was required to perform it during his minimum hours of training. It was held that the accident arose out of and in the course of the claimant's employment. CWI 27/50

iii A 16-year-old girl who was employed by a co-operative society met with an accident during a performance of physical training at a day continuation school.

Attendance at the school was a term of her contract of service and of the two alternatives for training at the school she chose physical training in preference to cookery. It was held that the accident was an industrial accident. See also CI 314/50.

R(I) 4/51

iv A male nurse at a mental hospital was injured while playing football with some of the patients in the hospital grounds. His claim to have met with an industrial accident was allowed on the ground that he was performing his duty as an employee in charge of the recreation of patients able to play football. See paras 7-8.

R(I) 13/51

v A member of a fire brigade was injured while playing volley ball during a compulsory fitness training period. If he had refused to play he would have been liable to disciplinary action, and it was held that the accident arose out of and in the course of his employment. Also see R(I) 72/52 and R(I) 80/52.

R(I) 68/51

vi A boy aged 16 who was employed in the steel industry received training while on production work, and to supplement that training his employers, with trade union co-operation, encouraged attendance at a technical college and paid his wages for the periods of his attendance. The young employees who attended the college also received a bonus payment. The boy was injured during an organised game in the college gymnasium and it was held that the accident arose out of and in the course of his employment. See also R(I) 66/53.

R(I) 31/53

vii A male nurse at a mental hospital was injured while on duty when he was playing cricket as a member of the hospital team and it was held that he had met with an industrial accident. The chief purpose of the game was to entertain the patients and to help with their recovery.

R(I) 3/57

viii It is not necessary, in order to establish that an accident occurred in the course of employment, to prove that the employee at the time was carrying out specific instructions or was doing something expressly stipulated by his contract of employment. A fireman employed at the Royal Radar Establishment was injured while playing volleyball during a recreational period. The fireman were required to be, and remain, physically fit and were encouraged, but not compelled, to play volley ball among themselves during recreational periods in the daily timetable. It was held, following *R v. Industrial Injuries Commissioner, Ex parte Amalgamated Engineering Union* (No. 2), at 18.1.1vii *below* that the accident arose out of and in the course of the claimant's employment. CI 17/50 and CI 145/50 were not followed. See also R(I) 4/81.

R(I) 13/66

ix Where a police cadet was injured while travelling as a passenger in a police transport vehicle returning from a swimming championship to a police training school, the accident was held to arise out of and in the course of her employment since she was obliged to attend the championship as part of her training. R(I) 5/75 - *R v. National Insurance Commissioners, Ex parte Michael* [1977] 1 WLR 109 discussed and distinguished.

R(I) 3/81

## 11 Skylarking

See section 55 of the SS Act 1975 and compare 8.3.8 below.

i A lad was struck on the head by a piece of metal thrown by another boy when assisting in the loading of scrap metal. The claim that the claimant had met with an

industrial accident was allowed on the ground that the weight of evidence supported the claimant's contention that he was not skylarking. see para 11.

CI 97/49

ii It was a long-established custom at the claimant's place of employment that on Shrove Tuesday the apprentices ran out while the older men teased them, and apparently the ritual included what was known as 'blacking'. In an endeavour to evade being 'blacked' the claimant fell and injured his finger, and it was held that he had met with an industrial accident.

CI 334/50

iii A moulder in a foundry was injured when a fellow-workman, for a joke, placed a piece of sodium, which was used for making castings, in a can of water near the claimant. It exploded, and as a result the claimant was burnt. It was held that there was a special risk of such conduct in the claimant's place of employment and that the accident arose on of his employment.

R(I) 55/52

iv A girl of 19 who was employed in an engineering factory was injured by a steel nut which was fired at her in play by a fellow-employee. It was fired from a 'blowgun', which was an essential tool used in the factory, and it was found that the risk of skylarking was created by the employment in that the equipment used both suggested the notion of propelling missiles by compressed air and provided the means of doing so. It was held that the claimant had met with an industrial accident.

R(I) 63/52

v A factory worker was allowed by his chargehand to leave his machine in order to have a smoke, and while smoking in a corridor where it was permitted he was hit by a snowball thrown by a young fellow employee. The claimant chased the young man to remonstrate with him, but the latter slammed the cloakroom door, with the result that the claimant's hand was injured. It was held that the claimant did not take himself out of the course of his employment by taking a couple of steps to the cloakroom door to remonstrate with the young man, nor did he contribute to the accident by doing so. Applying section 10 of the National Insurance (Industrial Injuries) Act 1965 it was held that the accident was an industrial accident. Reference was also made to *R v. Industrial Injuries Commissioner, Ex parte Amalgamated Engineering Union (No. 2)*, 18.1.1 vii below. See also 8.6.3ix below.

R(I) 3/67

## **12 Accidents caused by, or resulting from, the presence of animals, insects, etc., and climatic conditions**

*See section 55 of the SS Act 1975 and compare 8.3.9. below.*

i A canteen assistant who was bitten by a cat which had just had kittens was held to have met with an industrial accident.

CI 3/49

ii It was held that the death of a ship's steward who died as the result of a malaria due to mosquito bites while his ship was at a West African port was the result of personal injury caused by accident arising out of and in the course of his employment.

CWI 6/49

- iii     While driving along a public road a lorry driver was struck in the face by what seemed to be a lump of clay which was thrown at him either by children or by the wheels of another vehicle. It was held that the possibility of such injury was a 'risk of the road' to which lorry drivers were exposed by their employment and that he was injured as the result of an industrial accident. Compare CI 88/50.
- R(I) 71/53
- iv     While driving a bus in the course of his employment a bus driver was stung by a wasp. It was held that, because of the need to concentrate on driving, he had no reasonable means of avoiding the wasp's attack and that he had suffered person injury caused by accident arising out of and in the course of his employment.
- R(I) 5/56
- v     A postman who had not entered, and was not going to enter, premises where a dog lived, was nevertheless bitten by the dog, and it was held that he had met with an industrial accident. Since his employment required him to travel along the streets that put him in the same position as a man working on his employer's premises. See paras 7-17.
- R(I) 10/57
- vi     An insurance agent whose work consisted largely of walking from house to house through streets canvassing and transacting his employer's business was struck and injured by a running dog. It was held that if an employee, in the course of his employer's business, has to pass along the public street, whether on foot, on a bicycle or in a vehicle, and meets with an accident by reason of the risks incidental to the streets, the accident arises out of and in the course of his employment.
- R(I) 13/60

## Part 3: Accidents not arising out of and in the course of employment

### 1 Accidents on employer's premises

*Compare 8.2.2 above*

- i The claimant, with four other girls, went into a hoist gear chamber of the factory where they worked during the luncheon interval. They had no business to be there and it was held that an injury suffered by the claimant when she caught her fingers in a pulley wheel was not an accident arising out of and in the course of her employment. CI 28/49
- ii A man who suffered from epilepsy was employed by a steam ship company and was found injured at the foot of some stairs near a parcel which he was employed to handle. It was held that it had not been proved that the injuries he suffered were caused by accident arising out of and in the course of his employment. This decision is doubted in R(I) 11/80. CI 68/49
- iii The claimant, who was employed as a cleaner and general handyman at a garage, was sent to fetch a jack which had been borrowed by somebody who rented a garage on the employer's premises. When the claimant went to fetch it the man was using the jack and asked the claimant to assist him, which he did, but was injured when the jack slipped. It was held that the injury did not arise out of and in the course of the claimant's employment since he was not, at the time, doing something reasonably incidental to his employment but was, in fact, doing somebody else's job. CI 326/50
- iv A mechanic went into a machine shop shortly before his time for ceasing work to make out his time-sheet, as he was entitled to do. While there he climbed over some car body parts to make a personal enquiry of another employee and after a conversation with the other employee restarted his machine. The rag which he was swinging was caught in the machine and he was injured. It was held that it was not his employment which had brought him to the place of danger, that he had voluntarily run a needless risk and that the accident did not arise out of and in the course of his employment. R(I) 69/51
- v An engine driver was knocked down and killed by an engine when he was walking along a railway line on his way from his home to his place of work. When the accident happened he was half a mile from the depot at which he had to report for duty and it was held that, although he was on railway property, he was not on or near the premises at which he had to report, so that his employment could not be said to have begun. The accident did not, accordingly, arise out of and in the course of his employment. See also R(I) 27/53 and R(I) 30/53. R(I) 22/53
- vi A bus conductor left his vehicle during an off-duty period proposing to take a meal at the staff canteen. Conductors were advised to leave their ticket machines, while they were not allowed to take into the canteen, at the transport office, and were also required to do so at the completion of their tour of duty. While crossing the road on the way to the transport office to deposit his machine the claimant was knocked down and injured, but it was held that as he had not reached the end of his duty for the day he was not obliged to hand in his machine, nor was he obliged to visit the canteen. Accordingly he had interrupted the course of his employment when he left the bus, and his journey to deposit the machine was made for his own purposes and not primarily for those of his employers. He did not, therefore, suffer personal injury caused by accident arising out of and in the course of his employment. R(I) 38/59

- vii The claimant operated a 10 ton gantry crane and had constantly to lean over the control box in order to ensure the safety of workers on the ground. One day when leaning over the control box she felt a sudden pain at the bottom of her back and on straightening up the pain subsided into an ache, but 3 days later she became incapable of work and a diagnosis of prolapsed intervertebral disc was made. The claimant claimed that she had suffered personal injury caused by accident arising out of and in the course of her employment, but it was held that the weight of the medical evidence was against the conclusion that the single movement she had made would be likely to have caused a physiological change for the worse to have occurred and that, as her employment had not contributed in any material degree of her condition, she had not met with an industrial accident. An application for an order of certiorari to quash the Commissioner's decision was refused by the Court of Appeal. See *R. v. Deputy Industrial Injuries Commissioner, Ex parte Moore*, 18.1.1iii below.
- R(I) 4/65
- viii A dock labourer met with a fatal accident while driving a fork-lift truck. He was employed as a 'hooker-on' and was neither authorised or permitted by his employers to drive the truck. It was held that he was not within the scope of his employment while driving the fork-lift truck and that s.8 of the National Insurance (Industrial Injuries) Act 1946 did not extend the scope of employment, so that the accident did not arise out of and in the course of the deceased's employment. See *R. v. Deputy Industrial Injuries Commissioner, Ex parte Bresnahan*, 18.1.1iv below. (Under the SS Act 1975, see s.52.)
- R(I) 1/66
- ix A man who was employed as a fitter's mate was injured while waiting outside a smoking booth in the factory where he was employed. Smoking was not permitted anywhere in the factory except in the smoking booths and the accident happened 5 minutes after the permitted time for the break. It was held that the accident did not arise out of and in the course of his employment since there was something definitely more than a mere trifling or inadvertent delay which could be disregarded and the claimant's action in remaining where he was at the time of the accident created an interruption in the course of his employment. See *R. v. Industrial Injuries Commissioner, Ex parte Amalgamated Engineering Union (No. 2)*, 18.1.1vii below.
- R(I) 4/66
- x A printer's assistant on night duty was instructed over the tannoy system at his place of work to leave the building because of a bomb scare and return after one hour. He spent the hour in the nearby railway station and on walking back to the employer's building injured his foot in the street. It was held that the course of his employment was interrupted and was not resumed until he returned to the building so that the accident did not arise out of and in the course of his employment. See also R(I) 44/57.
- R(I) 6/67
- xi Claimant while walking behind a milling machine to fetch some nuts and bolts in the course of his work 'went over' on his ankle and fractured a bone. No site reason for the injury was apparent or established. It was held that, although the injury arose during the course of his employment, it did not arise out of it (and so there was no industrial accident). R(I) 11/80 distinguished.
- R(I) 6/82

## 2 Accidents during meal breaks

*Compare 8.2.3 above.*

- i A canteen assistant was injured during her lunch hour while in the work's recreation-room with the intention of dancing. Another assistant grabbed hold of her and they both fell to the ground. It was held that, even though there was no clear evidence of skylarking, dancing was not incidental to the claimant's employment and the accident did not arise out of and in the course of the claimant's employment.
- R(I) 25/51

- ii A clerk typist in a retail store was entitled to a tea break which, if she wished, she could spend in her employer's canteen in a separate building from her place of work. She was injured when passing a public road while returning from the canteen to her place of work and it was held that it was not an industrial accident. Compare R(I) 20/61, and *R. v. National Insurance Commissioner, Ex parte Reed* (R(I) 7/80). R(I) 74/52
- iii A 15-year-old boy was employed by a laundry as a van boy. His duties were to travel on the van and assist in collecting and delivering parcels of laundry, but he had a lunch break of half an hour the time of which varied according to the round worked and was fixed at the discretion of the van driver. The boy went to a cafe for lunch while the driver went elsewhere to have his meal and later brought the van to the side of the road opposite the cafe where the boy had gone. The driver sounded his horn as a signal to the boy to return to the van and, while crossing the road from the cafe, he was injured, but it was held that the accident did not arise out of and in the course of his employment. R(I) 84/52
- iv A bus conductress as in the habit of obtaining a can of tea from the cafe near the bus terminus as the bus on which she was employed passed it, and returning the can on the return journey. She was injured when stepping off the bus to return the can and it was held that the risk that she ran arose exclusively from an enterprise of her own undertaking for her own and not for her employer's purposes and that she had not met with an industrial accident. See also CI 456/50. R(I) 6/53
- v An apprentice who attended a technical school during working hours was injured bicycling to a cafe for lunch before proceeding to the school. It was held that the accident did not arise out of and in the course of his employment since from the time he left work until he was due to reach the school he was his own master. R(I) 24/53
- vi A woman suffered burns during a lunch-time break when an oil stove burst into flames as she was moving it from one position in the workroom to a more convenient position. It was held that the accident was due to the claimant's desire to eat her lunch in greater comfort and was not incidental to the work she was employed to do or to any duty that she owed to her employer. It was not, therefore, an industrial accident. R(I) 80/53
- vii A bus driver left his bus at the roadside at the beginning of a refreshment break. He had no further duties in relation to the bus which was to be collected by a relief driver. While crossing the road to go to a canteen provided by his employers some 30 yards away he was knocked down and injured. He contended, amongst other things, that he was by law obliged to take the meal break; that if he had failed to do so, he could have lost his licence and that accordingly the accident arose out of and in the course of his employment. It was held that the claimant owed no duty to his employers to preserve his licence or to take rest and refreshment - they were duties he owed to himself, and even if he had a duty to his employers to take rest and refreshment he had no obligation to do so in any particular place. After reviewing the authorities the Chief Commissioner also held that accidents on the public highway do not arise in the course of employment where what the claimant was doing at the time was not actual work he was employed to do. Accordingly the accident was not an industrial accident. Compare R(I) 10/81. R(I) 4/79
- viii *R. v. National Insurance Commissioner, Ex parte Terence John Reed*. A police station sergeant was entitled while on duty in charge of his station, to take his meal break at home. He remained on call while doing so. He was injured in a road accident returning to the station after such a break. The Divisional Court held that he had been injured in the course of his employment and granted an application for an order of certiorari to quash the Commissioner's decision to the contrary. *R. v. National Insurance Commissioner, Ex parte Michael and R(I) 74/52* distinguished. Decision distinguished in R(I) 5/81. R(I) 7/80

### 3 Accidents in, or in the vicinity of, canteens provided by employers

*Compare 8.2.4*

CI 120/49 i Although taking a meal in a canteen on the employer's premises has been held to be incidental to the employment when the meal is taken during a break in the course of a shift because an employee cannot continue with work without proper food, a meal after the day's work, though it is a necessity of life, is not a necessity of the employment, to which it is no more incidental than the subsequent night's rest which must also be taken before work is resumed. Thus a man who met with an accident in the canteen adjacent to pithead baths after using the baths was held not to have met with an industrial accident. See also R(I) 52/52.

R(I) 11/54 ii A colliery worker called at the colliery canteen to buy sandwiches to eat during his shift, but slipped down the canteen steps when leaving. It was held that the accident did not arise out of and in the course of the claimant's employment and that there was no valid distinction between a visit before or after work. See also R(I) 7/59.

R(I) 14/61 iii A woman was employed as a part-time clerk at a warehouse, her hours of work being from 8.45 a.m. to 1 p.m. After completing her day's work at 1 p.m. she went to her employer's canteen and had lunch, but after the meal, and while leaving the canteen by the stairs which she would have used had she left her employment on completing her work, she fell and was injured. It was held that if the claimant had left her employer's premises on completing her work the course of her employment would have been extended to cover the journey to the street, but in going to the canteen to take a meal, the provision of which was not in her case part of her contract of employment, she brought the course of her employment to an end, with the result that the accident was not an industrial accident.

R(I) 16/75 iv A packer in a biscuit factory who worked part-time from 12 noon followed her usual practice of arriving at her employer's factory more than half an hour early to enable her to go to a changing room, put on her overall and cap, which she was required to wear while packing biscuits, and then going to the canteen for refreshment before 'clocking on'. While in the canteen she slipped and injured her back and it was held that she had not met with an industrial accident, but the decision was subsequently quashed by the Divisional Court. See 18.1.2*v below*.

### 4 Employed earner doing something for his own purposes

CI282/49 i A painter who was employed in painting a house which was too far from his employer's yard for them to supply him with tea during the morning break was held not to have met with an industrial accident when he was injured crossing the road to go to a cafe. See also CI 456/50.

R(I) 34/52 ii A man was injured when returning from a post-office where had cashed a money order representing his wages and it was held that he was on his own business so that the accident did not arise out of and in the course of his employment.

R(I) 71/52 iii A girl who was employed in a laundry, having finished folding up a pile of articles on a table, walked some 4 or 5 paces away from the table to show a photograph to another girl who was working a shirt-pressing machine nearby. She was injured by the machine when standing in a gangway which she was entitled to use for the purposes of her work, but it was held that the accident did not arise out of and in the course of her employment since at the time and place of the injury she was not doing anything she was employed or authorised to do, but was engaged purely on her own affairs.

- iv A chambermaid in an hotel, having finished her work for the morning and having taken her lunch into the staff room, saw another chambermaid go into an adjoining room to clean it. Some slate slabs which were part of a billiard table were stacked upright in the room and the claimant had some time before dropped a coin which had rolled behind the slabs. She asked the other girl to help her to move them to look for the coin and in the course of doing so the claimant was injured. It was held that what she was doing was solely for her own purposes and that the accident did not arise out of and in the course of her employment. R(I) 78/52
- v A railway guard was killed while walking along a railway line during a break in his duties when he had been to buy tobacco at a nearby shop. It was held that he had been on a journey solely for his own purposes and had not returned to the sphere of his employment when the accident happened, so that it had not arisen out of and in the course of his employment. R(I) 27/53
- vi Before 'clocking in' a laundry worker went to deposit her own personal washing in the sorting-room of the laundry where she was employed, which was something she was permitted, although not obliged to do, and as she reached the desk to deposit her laundry she tripped over a carpet and suffered personal injury. Her presence at the scene of the accident was held to have been for her own purpose and convenience and the accident was not, accordingly, an industrial accident. R(I) 45/55
- vii While changing at the pithead baths before commencing work a colliery worker complained of a headache and was offered a bottle of smelling salts by a friend. Some of the liquid in the bottle splashed out and injured the claimant's eye, but it was held that the injury was not caused by accident arising out of and in the course of his employment. See also R(I) 1/59. R(I) 43/57
- viii A man had been sent with other workmen to newly acquired premises to dispose of crates and bottles and during a lull in his work he and fellow-workmen wandered off, without permission, to explore the building. The claimant opened a door in a dark corridor and fell some 16 feet, with the result that he suffered serious injury. It was held that the accident had not arisen out of and in the course of his employment. R(I) 45/59
- ix A man climbed a ladder at his place of employment to retrieve his socks from an overhead steam pipe, where he had put them to dry. The foot of the ladder slipped on the wet surface of a freshly washed floor and the claimant fell from a height of some 12 feet and suffered injuries. It was held that it was reasonable for the claimant to wash and dry his socks at his place of work, but in placing them in an inaccessible place when ample drying space at a reasonable level was available he was doing something which was not within the scope of his employment at all, so that the accident was not an industrial accident. R(I) 16/60
- x A man came to an arrangement with a friend who owned a garage whereby the claimant greased his own car, using his friend's equipment. The claimant used his own car for the purpose of collecting instalments due to his employers from their customers, but it was not part of his employment that he should grease his own car and it was held that an injury he sustained when going so had not arisen out of and in the course of his employment. R(I) 31/60
- xi A merchant seaman employed on a Channel ferry went ashore during a work break to buy lemonade from the dockside shop. Permission to do so was not needed. He was injured in a fall while returning to his ship. Though the ship's articles governed his employment both on the ship and in the dockyard his injury did not arise out of and in the course of his employment. R(I) 4/79 compared. *R. v. National Insurance Commissioner, Ex parte Michael, St Helen's Colliery Co Ltd. Hewitson* referred to.

**5 Employer earner doing something not incidental to his employment**

*Compare 8.2.6.*

R(I) 10/81

i A man held not to have met with an industrial accident when he fell while doing remedial exercises at a hospital for his back, which had previously been injured in an industrial accident.

R(I) 59/51

R(I) 18/52

ii A cotton worker who was a member of the mill's welfare committee fell while on her way to the warehouse to fetch tickets for a raffle which the committee were promoting in aid of the children's party. It was held that the accident had not arisen out of and in the course of her employment.

R(I) 24/52

iii A steel erector who was employed at a Royal Air Force site dismantling a water tank engaged in a joint enterprise with his foreman and fellow-workmen to provide sleeping accommodation in an authorised manner, his employers having made no arrangements for lodging their employees. In the course of erecting a door on the hut in which they elected to sleep the claimant was injured, but it was held that he had not met with an industrial accident.

R(I) 48/52

iv After finishing work an electrical engineer who was employed by a company to service sound-reproducing equipment in cinemas went with a supervising electrical engineer of the company to an hotel where they had some drinks and discussed the following day's work. The claimant then went home by car, taking his tools with him, but on the way he was involved in a road accident. It was held that the accident had not arisen out of and in the course of his employment.

R(I) 36/54

v A man who was employed as a bookbinder attended a joint industrial council meeting as a trade union representative. The meeting was not at his place of employment but his employers gave him leave to attend though they did not pay him his wages during the period of his absence. He was injured while at the meeting, but it was held that his attendance at the meeting was part of his trade union duties and the fact that something might be discussed which affected his employers' interests was not material. His claim to have suffered personal injury caused by accident arising out of and in the course of his employment was dismissed. See also 8.3.6i below.

R(I) 32/55

vi A factory storekeeper who stood on a chair to investigate a draught at his place of work, then caught his hand in the blades of an electrical fan which was part of the heating system, was held not to have met with an industrial accident. The factory had a specialised maintenance staff to make regular inspections and to regulate temperatures, and it was the practice to report any complaints about the temperature to the maintenance staff.

R(I) 6/56

vii A sub-postmaster who was also self-employed as a grocer was fatally injured while transacting business from a delivery van and it was held that the accident did not arise out of and in the course of his employment as a sub-postmaster.

R(I) 41/56

viii During a lull in her work a machine assistant handed a sweet to a fellow-worker who was not working at the time. In doing so she had to reach across a circular-saw table and suffered an injury to her hand. It was held that the injury had not arisen out of her employment since handing a sweet to a fellow-worker had in no way been incidental to the work the claimant had been employed to do and the fact that she and her colleague had been temporarily unoccupied made no difference.

R(I) 53/56

ix It was the practice at the claimant's place of employment to make collections for the purpose of purchasing fruit or flowers for fellow-employees who were away sick, and while going to telephone, with the permission of her employers, to enquire about the non-delivery of some fruit and flowers for a sick fellow-employee the claimant slipped and injured her foot. It was held that the purpose of the telephone call was not incidental to the claimant's employment and that she had not met with an industrial

accident.

x A factory worker who had insufficient work to do left her place of employment without permission to accompany a fellow-worker who had been authorised to draw a new overall from the store. While returning from the store the claimant slipped and injured her leg, but it was held that she was not engaged on anything incidental to her employment and that the accident was not an industrial accident. R(I) 1/58

xi A general labourer was held not to have met with an industrial accident when he was injured during working hours while attempting to remove a brush which had become stuck in a chimney of his foreman's private house. The claimant's employers, while they knew of and had not objected to the men working under this foreman doing small jobs for him during working hours, had never expressly authorised the practice. It was held that the claimant was not within the scope of his contract of service at the time of the accident. R(I) 8/61

## **6 Accidents while attending meetings**

*Compare 8.2.7 above.*

i A man employed as a bookbinder was injured while attending a joint industrial council meeting as a trade union representative. The meeting was not at his place of employment but he had permission from his employers to attend it, although they did not pay his wages for the period of his absence. It was held that the accident did not arise out of and in the course of his employment since his attendance at the meeting was part of his trade union duties and the fact that something might be discussed which affected his employers' interests was not material. See also 8.3.5vii above. R(I) 36/54

ii The town clerk of an urban district council suffered a small rupture when making a speech at a supper which he attended in his official capacity. Some weeks later an extensive rupture of an aneurism occurred, causing his death. It was held that his attendance at the supper and his making a speech were not acts arising in the course of his employment as town clerk. R(I) 1/56

iii An executive officer in the Civil Service attended a meeting of a sub-branch of a staff association of which he was the secretary. The meeting was held outside office hours but, with the consent of the office manager, on the premises where the claimant was employed, and members employed at other offices also attended since the meeting was concerned with matters of general interest to executive officers. The claimant had been entrusted with the keys of the office and had been made responsible for switching off the lights and locking up. While doing so he tripped and was injured, but it was held that in switching off the lights and locking up the office the claimant was acting in his incapacity as secretary of the sub-branch and not in his capacity as an executive officer and that the accident did not arise out of and in the course of his employment. R(I) 46/59

iv A school cleaner who was granted paid leave of absence to attend a course of instruction for shop stewards organised by her Union slipped and fell as she was entering the premises where the course was being held and injured her hand. It was held that her attendance was related to her contract of employment rather than to the work of the employer and the accident did not arise in the course of her employment. See R(I) 10/80

also CI 229/50.

## **7 Accidents while playing games and during periods of recreation**

*Compare 8.2.10.*

- CI 79/49 i A male nurse at a mental hospital was injured while taking part in a football match as a member of the hospital team and the match was played in the hospital grounds. The claimant's hours of duty included the time during which he was playing football and, although he was not compelled to play matches, he was encouraged to do so. It was held that the injury which the claimant suffered was not caused by accident arising out of and in the course of his employment.
- CI 229/50 (T) ii A 15-year-old girl clerk was employed by a firm of biscuit manufacturers and permitted and encouraged by her employers to attend a course of instruction at a day college one day a week, but her attendance was voluntary. She was injured while engaged in physical training which was part of the course and it was held by a Tribunal of Commissioners that she had not met with an industrial accident. See also R(I) 10/80.
- R(I) 57/51 iii A young police constable was concussed while playing in a football match during duty hours. It was a representative match, all the players on both sides were policemen and the time spent on the game was regarded by Chief Constable as time spent on duty and was recorded as such by the players, who were paid for it accordingly. It was held that the claimant's injury was not as a result of an industrial accident.
- R(I) 102/53 iv A railway goods guard in the employment of British Rail was injured while taking part in an ambulance competition organised by his employers and for which he had been granted leave of absence on pay. First-aid training was encouraged but was not essential to his terms of service and membership of the ambulance team was voluntary. It was held that his injury was not the result of an industrial accident.
- R(I) 41/54 v A man who was employed by the London Fire Brigade as a station officer was injured at a fire station other than his own, to which he had gone during a day's leave in order to watch his own crew competing in a pump competition. He was not given extra wages for attendance at the competition and was under no legal obligation to attend it. His employers would not have been inconvenienced in any respect if he had not attended the competition and it was held that his injury had not arisen out of an industrial accident. R(I) 62/52 and R(I) 72/52 distinguished on the 'inconvenience' point.
- R(I) 2/69 vi A man who was employed as a laboratory technician at a hospital was playing football in the hospital grounds during the luncheon hour when he was struck in the face by the football and sustained an injury to his right eye. Playing football in the hospital grounds during the luncheon break was not only permitted by the hospital authorities, but actively encouraged by them. It was held that it did not necessarily follow that because the claimant was under no compulsion to play football during the lunch break his accident did not arise out of and in the course of his employment, but the crux of the case was whether he was doing something for his own purposes which was reasonably incidental to his employment as a laboratory technician. It was held that there was a temporary cessation or interruption of the claimant's employment while he was playing football and that the accident was not an industrial accident.
- R(I) 5/75 vii A police constable aged 30 represented his force at football and was selected to play for his country constabulary in a match against another country constabulary in a national competition. The match was played on the claimant's rest-day and it was held that no distinction should be made between playing football on a rest-day and in duty time, nor between national or international events and events between forces or within forces; that considerations of morale, physical fitness, etc. (see para. 21), were not sufficient to constitute an activity as necessary or reasonably incidental to an employment; that the playing of football or any other game was a recreational activity and was not something done in the course of a police officer's employment and therefore could not be held to be reasonably incidental to that employment; and that the injury suffered by the claimant was not caused by

accident arising out of and in the course of his employment. An application for an order of *certiorari* to quash this decision was refused in *R v. National Insurance Commissioners, Ex parte Michael* [1977] 1 WLR 109. Decision distinguished in R(I) 3/81.

viii A fireman attending a residential training course was injured while playing football in a match which was organised by the students and which took place in the evening after the instructional sessions for the day had ended. The college staff took no part in organising the game save in arranging a pitch and providing equipment. It was held that to determine the start and finish of a fireman's daily duty while on the course the normal rule was that the duration of the daily syllabus (in this case 8.30 a.m. to 5.30 p.m.) should be equated to the hours of daily duty at a fire station. There was no justification for concluding that the claimant, who had finished his work for the day and at 8.10 p.m. was playing a game for his own pleasure and recreation, was playing football in the course of his employment. It was accordingly held that the accident had not arisen out of and in the course of his employment. R(I) 2/80

ix Where an airline stewardess was injured playing tennis during a stop-over between flights despite the fact she remained on call she was held not to have been injured in the course of her employment even though she was required to keep herself physically fit as a condition of employment. R(I) 13/66 distinguished. *R v. National Insurance Commissioner, Ex parte Michael* and R(I) 12/74 and R(I) 5/75 referred to. R(I) 4/81

x A Detective Sergeant broke his ankle while playing football for a police team in a local league match. Officers were encouraged to take part in such activities. An internal memorandum contained an instruction to divisional commanders to ensure officers were made aware of fixture dates especially those who may be on leave or courses. Moreover it was maintained that failure to turn up to play might affect promotion prospects. The Commissioner held that the tribunal had confused the claimant's moral duty to the police force in general and his team mates in particular to take part in football matches from the duty a police officer is under when "on duty". There was no evidence that the claimant was required to play football as an incident of his employment. The accident did not therefore arise in the course of the claimant's employment and the appeal was dismissed. On 18 March 1994 the Court of Appeal upheld the Commissioner's decision. *R v. National Insurance Commissioners, Ex Parte Michael* [1977] 1 WLR 109 considered. [For a report of the Court of Appeal decision see R(I) 8/94. For a synopsis of that decision 18.6.2 xxi]. R(I) 8/94

## 8 Skylarking

*Compare 8.2.11*

*Under the SS Act 1975, see s. 55.*

i A blacksmith's striker was struck by a snowball thrown by a fellow-workman while walking across the yard of the colliery at which he was employed and attending properly to his duties. It was held that he had not suffered personal injury caused by accident arising out of and in the course of his employment. CI 170/49

ii It was held that one of the three boys who were injured by putting his hand through a glass panel during a skylarking episode had not met with an industrial accident. See para. 5. R(I) 31/51

iii In the course of his employment a man was bending down when a firework which had been placed under the seat on which he was sitting exploded and caused him personal injury. It was held that he had not met with an industrial accident. R(I) 35/53

iv A woman employed as a brass worker was crossing the works yard to the shop where she worked when she was accidentally kicked on the leg by one of several persons who were playing football in the yard. It was held that the accident had not arisen out of and in the course of her employment. R(I) 76/53

8.3.8-10

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R(I) 12/54 v A coach fitter who was hit by a piece of wood thrown by another workman at a boy who had been irritating him was held not to have met with an industrial accident.

**9 Accident resulting from the presence of animals, insects, etc., and climatic conditions**

*Compare 8.2.12.*

CI 244/50 i A bus driver became incapable of work by reason of conjunctivitis alleged to have been caught by a draught entering the driver's cab through the ventilator. It was held that his incapacity was not the result of injury caused by accident arising out of his employment.

R(I) 89/52 ii In the course of his duties a hospital porter was preparing a patient for an operation when he was stung by a gad-fly and thereby suffered personal injury. There was no evidence that the hospital had offered any special attraction for the flies and it was held that the accident had not arisen out of the claimant's employment. See also and compare CWI 6/49.

R(I) 7/60 iii While crossing a field in the course of his employment an agricultural worker was struck by lightning and killed. But it was held that the accident did not arise out of and in the course of his employment because his employment did not expose him to a greater risk of being struck by lightning than any other person within the area of the storm. See also R(I) 12/56 and R(I) 11/58 (also injury by lightning).

**10 Miscellaneous accidents held not to be industrial accidents**

CSI 3/49 i During the course of a long journey when about his employer's business a lorry driver's lorry broke down and he was instructed by his employers to take the lorry for repairs to the Leyland Motor Works, whose officials found him lodgings for the night. When leaving the lodgings the next day to collect his lorry and continue his journey he fell going down the stairs and was injured. It was held that he had been under no obligation to stay in those lodgings and the accident had not arisen out of and in the course of his employment. Compare CI 374/50.

CI 47/49 ii A young man employed by electrical engineers in the erection of a sub-station was injured after climbing over a fence marked "Danger" and walking along a wall. It was held that he was not in the course of his employment and accordingly the accident could not on any view be treated as an industrial accident. Under the SS Act 1975 see s. 52.

R(I) 70/51 iii A man was held not to have met with an industrial accident when, by agreement with his employers, he had extended his holiday to Paris by one day in order to visit his firm's factory there. He returned to England by air and was injured when the plane crashed.

R(I) 10/52 iv A coach driver took a party of cricketers to a match and, after the match, went with some members of the team for a meal. A lorry ran into them as they were returning to the coach after the meal and the driver received fatal injuries. It was held that he was not in the course of his employment at the time (for similar case see R(I) 32/51).

R(I) 2/53 v An employee of a firm of travel agents had been with an organised party on an educational visit to the Continent. The party arrived back by ship and dispersed at the port of arrival, and while waiting to catch a train to his home the employee went to a hotel for a meal, during which he felt very sick, retired hurriedly to the lavatory and while there slipped and dislocated his shoulder. It was held that the accident had not arisen out of and in the course of his employment.

R(I) 22/54 vi While attending a conference of the organisation by which he was employed a man occupied accommodation which had been booked for him in a guest-house. He had no duties to perform in the guest-house and was not obliged to accept that accommodation. An accident which happened when he was about to leave the guest-house was held not to be an industrial accident.

- vii On arrival at the factory at which they were employed some workmen found that it had not been opened by the person responsible, and when climbing a drain-pipe to gain admittance through a first-floor window the claimant, who was one of the workmen, was injured. It was held that his action was not an 'emergency action' and that the accident was not an industrial accident. R(I) 32/54
- viii A man who was employed as a hospital stoker was found lying on the floor of the mess-room adjoining the builder house with his head on a rolled-up coat, and gas was escaping from a gas-ring the tap of which was loose. He had commenced his night shift at 10 p.m. and it was held that in going to sleep on duty he had removed himself from the scope of his employment. R(I) 68/54
- ix A boy of 16 was acting as attendant to the operator of a semi-automatic machine and in trying to stop the descending arm of the machine suffered an injury to his finger. It was no part of his work to touch the machine and his action in doing so was prompted solely by curiosity. It was held that the accident had not arisen out of and in the course of his employment. R(I) 77/54
- x A post-office technician had been asked by his immediate superior officer to put up Christmas decorations, but the request was not made on behalf of the employers and the superior officer had no authority to make such a request. When putting up the decorations the claimant was injured, but it was held that the accident was not an industrial accident. But see and compare R(I) 1/77. R(I) 36/55
- xi A woman was employed by British Rail as a level-crossing keeper. She lived with her husband and had her home in a gatehouse which was the property of her employers and her duties comprised shutting the gates for traffic, keeping the lamps lit at night, etc. When walking down the garden path to fetch milk for her household she fell and injured her wrist. It was held that the accident was incidental to the running of her home and had not arisen out of and in the course of her employment. Compare R(I) 49/51. R(I) 9/59
- xii A man who was predisposed to 'blackouts', due to an idiopathic disease had a 'blackout' while wheeling an empty barrow along a concrete path, with the result that he fell and injured one of his fingers. It was held that the accident had not arisen out of the claimant's employment because, on the evidence, the idiopathic disease had been the sole cause of the injury by accident. See paras 8-15. R(I) 5/63
- xiii A fire officer, who was on call for a 24 hour period was killed in a road accident while travelling home from work. It was held that having no duties to perform, he was not in the course of his employment and the accident was not therefore an industrial accident. R(I) 28/53 followed; R(I) 7/80 distinguished. R(I) 5/81

#### Part 4: Accidents on public highway: held to be

## industrial accidents

### 1 Travelling to and from work

*Compare 8.5.1 below*

*(For construction and application of the 'out of and in the course of his employment' test see Nancollas v. Insurance Officer [1985] 1 ALL ER 833 CA, summarised at 18.6.2 iv below.)*

i A wagon examiner employed by a railway executive signed off duty at the appropriate time but remained in the recording office for another 20 minutes. While walking up the opposite platform slope to catch his train home he was injured and it was held that the accident arose out of and in the course of his employment. See para. 5.

CI 220/49

ii A man who owned a motor-bicycle agreed with his employers to carry a fellow-workman as a pillion passenger daily to the place at which they were employed, for which he was paid 4d. a mile. One morning there was a road accident and a Tribunal of Commissioners held that the claimant was performing a duty to his employers under the terms of his contract with them and that the accident arose out of and in the course of his employment.

R(I) 8/51

iii A man was bicycling along a private road leading from the main road to the entrance to the colliery at which he was employed when he met with an accident. It occurred on the part of the road not used by the public to any substantial extent although no restrictions were placed on the public except that of closing the road once a year. The accident was held to have arisen out of and in the course of his employment.

R(I) 43/51

iv A worker in the building trade was instructed by his employer to wait on the pavement each morning to be picked up by the employer to be taken in the latter's care to his place of employment. Whilst so waiting the claimant was injured by a motor-bicycle and it was held that the accident arose out of and in the course of his employment.

R(I) 27/54

v A blacksmith on the maintenance staff of a chemical works was asked to report for duty on a Sunday afternoon because the plant had broken down. His attendance was voluntary but payments at overtime rate were made. While going to the works he fell and was injured, and it was held that since he had agreed to report for work and was proceeding by the shortest practicable route to the works the accident arose out of and in the course of his employment.

R(I) 27/56

vi A farm labourer was fatally injured when he fell from his employer's tractor on which he was going home to dinner from the part of the farm on which he had been working. It was held that his death was the result of an industrial accident.

vii A dock worker who was in the reserve pool of dock workers was injured on the public highway while travelling, as he was required by the dock workers' scheme to do, from an employer's office to the dock labour board office. It was held that he had met with an industrial accident.

R(I) 42/56

viii A civil servant was injured while travelling to work on a motor-bicycle along a private roadway on Crown property. The accident happened some 150 yards inside

*Industrial injuries: 'highway' industrial accidents*

8.4.1-2

the main gate of the premises and the roadway on which it happened was maintained by the Ministry of Works and was used, not only by the staff employed on the site, but also by such members of the public as required to visit the government offices on business, but there was no thoroughfare through the site. It was held that the claimant had entered upon his employment and that the accident arose out of and in the course of his employment.

R(I) 11/57

R(I) 41/57

ix A man was required to work at a depot 10 miles from his normal place of work and while walking to meet his employer's lorry, which was late in arriving to take him back to his normal place of work, where he was required to report at the end of the day, he was injured on the public highway. It was held that, although acting without instructions in leaving the depot before the arrival of the expected transport, the claimant acted of the purposes of and in connection with his employer's trade and business and was travelling on duty.

R(I) 4/59

x A railway lengthman employed by British Rail injured his hand when boarding a regular passenger train by which he had been instructed to travel and which was to make a special stop at the site of his work. It was held that he had met with an industrial accident.

xi A railway shunter was injured while walking to work along a beaten path which flanked the railway line between the station which was regarded as his headquarters and the sidings where he actually worked. There was no public road or right of way leading to the sidings and the route the claimant took was the only practicable one and was used to the knowledge and with the consent of the employers. It was held the accident arose out of and in the course of his employment.

R(I) 34/59

R(I) 5/67

xii A factory worker was injured while bicycling to work along a road owned by his employers at a point just outside the factory gates. The road provided vehicle access to the works only a pedestrian right of way to the public, and there was no evidence that the public used the road. At the point where the accident occurred the claimant was exposed to a risk of his employment different from a risk to which the general public was exposed and was held to have met with an industrial accident.

R(I) 1/68

xiii A British Telecom technician was involved in a road traffic accident while driving home in a BT vehicle from his place of employment. He normally travelled to work by train but had been provided with a BT vehicle to enable him to work weekend overtime. He was due to return home, using the vehicle, on the Sunday evening. However the work was not completed until 3 a.m. on the Monday. The claimant was given permission to use the vehicle to travel home on the Monday evening, subject to strict rules. It was held that having regard to all the facts, in particular that the journey was a direct result of the claimant being detained by his employment, was in a BT vehicle using BT petrol and was subject to a number of constraints, the accident arose out of and in the course of employment.

R(I) 1/88

## **2 Travelling as a passenger in a vehicle operated by or on behalf of an employer**

### *Section 53 of the SS Act 1975 and compare 8.5.2.*

i A man was employed as a labourer at a Royal Naval store and was injured while alighting from a slowly-moving bus which was taking him home. The bus was operated by a person by whom it was provided in pursuance of arrangements made with the claimant's employers and was not being operated in the ordinary course on a public transport service. It was held that, applying s.9 of the NI (Industrial Injuries) Act 1946 the accident was an industrial accident. (Under the SS Act 1975, sec s.53.)

CI182/49

ii A man who was employed by a civil engineering firm was carried to work each day by one of his employer's lorries, there being no other practical means of his reaching

- his place of work. He was killed while crossing the road from the lorry to the gates to a private road leading to the site on which he was required to work and it was held that the accident arose out of and in the course of his employment. It was part of the terms of his employment that he should travel by the lorry and when the accident happened his employers had assumed control over him and he was crossing the road in pursuance of their implied instructions. Compare R(I) 1/53.
- R(I) 65/51
- iii An electrician who worked on an isolated site fell from a lorry provided by his employers which was taking him to work. It was held the lorry was provided in pursuance of arrangements made with his employer and that the accident was deemed to have risen out of the claimant's employment.
- R(I) 49/53
- iv A man was employed as a fitter at a Royal Ordnance Factory at a distance of some 8 miles from where he lived. He travelled to and from work by a bus operated by a limited company and was injured as the result of the bus being involved in a road accident. It was held that, applying section 9 of the National Insurance (Industrial Injuries) Act 1946 (under the SS Act 1975, sec s.53) the accident was an industrial accident so far as the claimant was concerned. See paras 9-11.
- R(I) 15/57
- v A miner was injured while travelling to work on a bus run by a public transport undertaking, but which was run specially for the miners although the public travelled on a certain section of the return journey. It was held that the accident was an industrial accident.
- R(I) 3/59
- vi A bus conductress who was going on duty at a particular bus station and was intending to travel to work by an ordinary public transport bus was given a lift in an empty corporation bus being driven by a mechanic who knew her. The mechanic was not the regular bus driver but was merely fetching the bus back to the depot for reasons which do not matter. As the bus swung into the yard of the depot which was her destination she was thrown off the platform and suffered injuries. It was held that the accident should be deemed to have risen out of and in the course of the claimant's employment under s.9 of the National Insurance (Industrial Injuries) Act 1946 (under the SS Act 1975 see s.53).
- R(I) 8/62

### **3 Road accidents held to have been industrial accidents**

*Compare 8.5.3. below.*

i A lorry driver driving on a public highway was asked for assistance by the owner of a stationary motor-car towing a caravan which was drawn across the road and apparently creating an obstruction. The lorry driver complied with that request, but on returning to his lorry was knocked down and injured. It was held that what he did was reasonably incidental to his employment and that he had met with an industrial accident. See also 8.2.6i *above*.

ii A boy aged 19 who was employed as an electrician used to act as a messenger, but was killed in a road accident while travelling to work and carrying a small sheet

*Industrial injuries: 'highway' industrial accidents*

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8.4.3-4

of metal on his motor-bicycle. He was not obliged to travel to work in that way but he was carrying the metal in accordance with instructions from his employers and it was held that his death was the result of an industrial accident.

R(I) 11/51

iii The chief fire officer of a county was injured when the care in which he was travelling from his home to the annual dinner of the local fire brigade was in collision with another car. It was part of his duty to attend the dinner and it was held that he was travelling 'on' work and that the accident arose in the course of his employment.

R(I) 17/51

iv A labourer who was employed by an Electricity Board was travelling in a van owned by the board and driven by his chargehand. An accident occurred after the van had left a direct route between the two sub-stations of the Board to enable the chargehand to visit his doctor, and while on that route there was a road accident as a result of which the claimant received fatal injuries. It was held that he was not affected by the driver's action in deviating for purposes of his own and by staying in the van was intending to carry on with his employment as expeditiously as possible and that his death was the result of an industrial accident.

R(I) 64/54

R(I) 40/56

**4 Commercial travellers, home helps and other special categories of employees**

*Compare 8.5.4*

i The area of a commercial traveller covered Kent and Sussex. He used a car for his work and was allowed expenses for its wear and tear. After having lunch at home one day he went to his garage for the purpose of taking out his car to proceed on his afternoon duties, but slipped on the garage floor and was injured. It was held that the accident arose out of and in the course of his employment.

R(I) 22/51

ii A sales representative of a well-known company of motor manufacturers entertained a business associate to dinner after leaving an agricultural show which he had been required to attend in the course of his employment. When driving home after dinner he was taken to a police station because he was allegedly under the influence of drink. He was subsequently released and continued his drive home, but was fatally injured in a car accident on that journey. It was held that the accident arose out of and in the course of his employment.

R(I) 38/53

iii The general manager of a firm of contractors had no fixed hours of work and his business involved visits outside his office. He had been engaged on outside duties and, after driving a colleague who had been working with him to his (the colleague's) home, he proceeded to drive home in the car which was provided for him by his employers. On the journey he met with a fatal accident, but it was held that he continued to be in the course of his employment until he reached his home and that the accident had arisen out of and in the course of his employment.

R(I) 50/53

iv It was the duty of a newspaper representative to call on newsagents and bookstalls for the purpose of promoting the sale of newspapers and generally ensuring

R(I) 55/53 there was an adequate supply. He was provided by his employers with a telephone at his home in the company's name as he might be called upon at any time to deal with a situation where extra newspapers were required. He was also provided by his employers with a car, but injured his back when about to drive his car to its garage after he had been visiting his employer's headquarters. It was held that the accident arose out of and in the course of his employment. In returning the car directly to the garage he was doing something he was implicitly required to do.

R(I) 5/55 v A brewery cellar inspector whose duties involved travelling from town to town inspecting public houses was knocked down by a passing motorist when he was on his way to get a meal before proceeding on a further journey. He had no fixed hours for meals, but took them when convenient and at his discretion. It was held that it was incidental to the performance of his duty to take a meal on the way and that he had not left the sphere of his employment. The accident was accordingly an industrial accident.

R(I) 18/55 vi An agricultural advisory officer employed by the Minister of Agriculture and Fisheries was injured when he was driving his motor-car from his home direct to a place at which he had an appointment with a farmer. He normally worked from his office, but when visiting a farm at the beginning of his day he was expected to drive there directly from his home. It was held that the journey was part of what he was employed to do, that he was within the sphere of his employment at the time of the accident and that, accordingly, it arose out of and in the course of his employment.

R(I) 15/60 vii A part-time relief insurance agent was injured when travelling direct from her home to her collecting area. She made up her cash at home, was paid travelling expenses from her home, had no fixed hours of work and had either to carry the money she collected to her home or deliver it at the end of the day to her employers or to the agent for whom she was collecting. It was held that, having regarded to all those factors, while travelling direct from her home for the purposes of her work she was in the course of her employment and the accident was an industrial accident.

R(I) 38/61 viii A foreman employed by a firm of lorry drivers travelled in his employer's van to the house of an acquaintance for the purposes of obtaining some spare parts for the lorries under his supervision. He was not tied to any fixed hours or place of work and he prolonged the visit by several hours, but while going home, which was his business base, by the most expeditious route he had an accident. The only purpose of his visit to his friend had been to obtain spare parts and it was held that the accident was an industrial accident.

R(I) 4/70 ix The duties of a civil servant entailed working both in his office and in visiting persons in their home. He had a discretion as to which of the duties imposed upon him by the employment he should perform and as to the order in which he should perform them. He was injured in a street accident within his defined visiting sub-area when travelling from his home to his first visit of the day and it was held that the accident arose out of and in the course of his employment.

R(I) 3/72 x A home help, having carried out her last duty for the day in a top flat in a tenement building, was injured while going down the common stairway to reach the street. It was held that the injury was caused by an accident arising out of and in the course of her employment since the stairway was part of private premises and its only legitimate use by the public was for access to, or egress from, the flats in the building.

## Part 5: Accidents on public highway: held not to be industrial accidents

## **1 Travelling to and from work**

*Compare 8.4.1 above.*

*(For construction and application of the 'out of and in the course of his employment' test see Nancollas v. Insurance Officer [1985] 1 ALL ER 833 CA, summarised at 18.6.2 iv below.)*

i A miner on his way to pithead baths on the opposite side of a main road from his pit was run over and killed while crossing the road. It was held that the accident was not an industrial accident.

ii It was a term of the contract of service of a roadman employed by a country council that he should have a bicycle and keep it in proper condition. After working overtime he left his place of work and was bicycling home when, after going some distance, his foot slipped of the pedal of his bicycle and he fell off and sprained his ankle. It was held not to be an industrial accident. See also R(I) 61/51, R(I) 24/53, and R(I) 89/53.

CI 65/49

iii A heavy goods motor driver who was injured while travelling to work by passenger train was held not to have met with an industrial accident.

CI 33/50

iv A miner who twisted his ankle while walking to work along a pit road which was open to the public was held not to have suffered personal injury caused by accident arising out of and in the course of his employment.

v A labourer on his way to work fell while walking down a public road which was a cul-de-sac leading to the gates of a park. It was part of the labourer's duties to sweep the road, if so instructed, and look after the flower-beds on the side of it, but it was held that the accident had not arisen out of and in the course of his employment. At the time of the accident he was in the same position as any other person going to work and still on the public highway. R(I) 61/51 followed.

CI 35/50

CI 39/50

vi A man was told to travel to and from the site on which he was employed on his motor-bicycle, for which expenses were paid, because the bus provided by the employers was full. In fact the motor-bicycle was his only practical means of transport to work and without its use he would have been unable to work all the overtime required. He was injured while driving home on his motor-cycle after his day's work but it was held that, although the employers desired and encouraged him to use his own motor-bicycle to travel to and from work, they did not require him to do so. His employment ended when he left the site and the accident was not an industrial accident. See also R(I) 7/52.

R(I) 72/51

R(I) 6/52

vii Section 9 of the National Insurance (Industrial Injuries) Act 1946 (under the SS Act 1975, see s.53) did not cover the process of approaching transport provided by or on behalf of employers and accordingly a railway goods guard who was injured while on his way to catch a train reserved for railway staff which would have taken him to the station at which he had to report for duty was held not to have met with an industrial accident. See paras 12-14. See also R(I) 22/53, R(I) 27/53 and R(I) 30/53.

viii A roadman was bicycling home after work when one of the tools he was carrying (and which he required for use the next day) became displaced and caused him to fall from his bicycle and injure his knee. It was held that the fact that he was carrying tools did not make the journey a part of his employment, which had already ended for that day, and the accident was not an industrial accident.

R(I) 67/52

- ix While walking down a cul-de-sac which provided access to the mill at which he was employed a mill worker fell and injured his head. The path he was on was partly owned by his employers and provided access not only to the mill, but also to premises belonging to other firms and to some cottages and was used by the public. It was held that the accident had not arisen out of and in the course of his employment.  
R(I) 78/53
- x A man employed by British Rail was injured when going by a prohibited route from the passenger station to his place of employment at the goods station, where he had to sign on for work. It was held that he had not entered the course of his employment and that, for the reasons given in paras 17 *et seq.* s.8 of the National Insurance (Industrial Injuries) Act 1946 did not assist him. Under the SS Act 1975, see s.52, and see also CI 210/50.  
R(I) 23/55
- xi A miner who had left his work early without permission was injured while walking from his place of work underground to the surface. It was held that it had not been established that trade usage (which to be valid must be notorious) permitted his action of leaving work without permission because he was wet and accordingly the accident which befell him was not an industrial accident. See also R(I) 17/61.  
R(I) 28/55  
(T)
- xii A kiln worker at a gypsum mine was going to work when he slipped and fell on a footpath belonging to his employers. This was the only reasonable and practical way to the mine. The path was also open to the general public. The Commissioner held that the accident was not an industrial accident; the claimant was subject to no greater risk than that to which the general public was subject (paras 9 to 19).  
R(I) 7/57
- xiii A district relief signalman was injured while travelling to take over duties at a signal box. His employers considered him to be on duty while travelling and he was entitled to travelling allowance for the journey. The Commissioner held that this was not an industrial accident; this case was not an exception to the general rule enunciated in R(I) 9/51 that employment began at place of work; the route taken by the claimant was not one prescribed by his conditions of employment (paras 4 and 6 to 8).  
R(I) 20/57
- xiv A labourer who was obeying an order to arrive an hour earlier than usual at his place of employment was injured while travelling to work by motor-bicycle, but was held not to have met with an industrial accident.  
R(I) 34/57
- xv A man who was employed as a slater and tiler by a firm of builders was instructed not to return the next morning to work at the place where he was employed that day, but to go to another address direct from his home on do an urgent job. While going from his home to the new site on his bicycle the next morning he had a street accident and was injured. It was held that the injury was not the result of an accident arising out of and in the course of the man's employment. See para 5 *et seq.*  
R(I) 36/57
- xvi It was the practice of a male nurse at a hospital to arrive early at his place of employment in order to have a game of billiards and some refreshment before his work began at a little after 7 p.m., although his contract of service did not require him to arrive early at his place of employment. While bicycling to work he was injured when his bicycle skidded on a frosty road in the hospital grounds and it was held that, although the accident occurred on his employer's premises, the claimant's early arrival was incidental to his desire to enjoy himself before work began and was not incidental to his employment. The accident did not, accordingly, arise out of and in the course of his employment.  
R(I) 16/58  
R(I) 1/59
- xvii A man was employed as a carpenter by one of several companies of contractors engaged in building a large power station. Having missed the bus provided by his employers to take him and other employees to their place of work, he got a lift in a lorry, but belonging to another of the contractors, and after alighting at the corner of the main approach road in the site some 200 or 300 yards short of his time office he slipped and

fell under a lorry. The road was new but not fenced off, and was used freely by the public. It was held that he was not in the course of his employment when the accident happened.

xviii A man employed as a steel erector was travelling to work in a car driven by his foreman who charged him 6s. a day for taking him to and from his place of employment. The foreman was not using his own car on that particular day, but one which he had borrowed from a director of his employing firm. On the journey to work the car was involved in a collision as a result of which the claimant and another passenger were killed. It was held that the accident did not arise out of and in the course of the claimant's employment and that he was not assisted by either s.8 or s.9 of the National Insurance (Industrial Injuries) Act 1946 for the reasons given in paras 7-10. (Under the SS Act 1975, see s.52.) R(I) 21/59  
R(I) 5/60

xix It was held that the sphere of a dock worker's employment was on a particular wharf and not the dock's area as a whole and accordingly that an accident which befell him while waiting to see a ganger on another wharf had not arisen out of and in the course of his employment. See also R(I) 6/64.

xx After a 5 day compulsory residential course a police constable was told that he could go straight home without first reporting to his police station although on that day he was rostered for duty until some 2 hours later and was regarded by the police authority as being on duty until the end of his rostered hours. On the direct route to his home, which was also the direct route to his police station, the constable while riding his motor cycle was involved in a traffic accident and suffered personal injury. The accident occurred during his rostered hours of duty. A Tribunal of Commissioners held that an accident occurring to an employee while returning home from work while riding in his own transport could not be regarded as occurring 'in the course of' the employment unless there were special circumstances: in this case the constable was travelling *from* duty, not while he had been *on* duty: there were no special circumstances; the accident did not arise in the course of employment and was not an industrial accident (paras 6, 7 and 9). R(I) 45/52(T); R(I) 3/71, R(I) 9/74 and R(I) 12/74 followed. CSI 1/80; CSI 3/80 and R(I) 3/81 distinguished. R(I) 5/81 and R(I) 14/81 considered. CI 23/66 not followed. R(I) 8/60  
R(I) 1/83 (T)

xxi A warehouseman working at a detached duty station was involved in a road traffic accident on his way home from work. It was held that the flat-rate travelling allowance paid to him by his employers to compensate for the extra travel between his home and the detached duty station did not constitute wages. The accident did not therefore arise in the course of his employment. *Smith v Stages* (H.L. (E)) [1989] 2 WLR 529 considered.

## **2 Travelling as a passenger in a vehicle operated by or on behalf of employers**

*Compare 8.4.2.*

i The claimant and a number of other men were injured when a lorry which was taking them to a farm to work overturned. The lorry was provided by the County

- R(I) 1/91 Agricultural Executive Committee and it was held that the accident was not an industrial accident and that s.9 of the National Insurance (Industrial Injuries) Act 1946 did not extend to cover the accident since the farmer who was to employ the claimant was not a party to the arrangements for the provision of transport. (Under the SS Act 1975, see s.53.)
- CI 101/49 ii A miner was injured while alighting from a train which conveyed workmen to and from the colliery. The train was run by the Railway Executive for the convenience of miners in consultation with the employers and miners' representatives, but it was held that the accident did not arise out of and in the course of the claimant's employment. See paras 9-10 as to observations on the meaning of the word 'arrangements' in s.9 of the National Insurance (Industrial Injuries) Act 1946. (Under the SS Act 1975, see s.53.)
- R(I) 67/51 iii A canteen assistant who was travelling home from her place of employment was injured while walking from one bus to another. Both buses were provided by her employer, but it was held that the accident had not arisen out of and in the course of her employment. See paras 4-5.
- R(I) 48/54 iv An Electricity Board had contracted with a local bus firm to operate a subsidised bus service for the Board's employees to and from its power station. On one occasion, instead of completing the homeward journey entirely by bus the driver, for his own convenience, completed the last part of it in his private car, into which he had put the 3 remaining passengers. The car was involved in an accident and one of the passengers was injured. The question in issue was whether this was an industrial accident. The Commissioner held that the accident could not be deemed to arise out of and in the course of the claimant's employment under s.53(1) of the SS Act 1975 because - (a) the language of s.53(1) indicated that the express or implied permission of the employer there mentioned had to be prior permission, but if in some circumstances retrospective permission sufficed to satisfy the provision then it had to be express. The employer had given no express permission either before or after the event and in the circumstances no permission could be implied, and (b) the owner of the bus had not authorised the arrangement of carrying passengers in the bus driver's car and thus in truth the vehicle had not been provided by the bus firm at all. There had been no arrangement between the employer and the bus firm other than the contract. Accordingly the accident was not an industrial accident.
- R(I) 5/80

### **3 Road accidents held not to be industrial accidents**

*Compare 8.4.3 above*

- i A civil servant was held not to have met with an industrial accident when she was injured while driving her own motor-car from her home to a place where she had to attend a course of instruction. See also CI 316/50.
- ii A bus driver on 'spread-over duties' was injured while walking to work during a free period between morning and afternoon spells of duty. At the time of the accident he was at a point a mile from the direct line between the place where he was relieved in the morning and the place where he had to resume duty in the evening. It was held that the accident was not an industrial accident.
- CI310/50

- iii A tubular scaffolder who had to work at a number of different sites in the course of the day agreed to but by and use a motor-bicycle, the employers paying him travelling time and petrol. He was fatally injured in a road accident but it was held by the majority of a Tribunal of Commissioners that the accident did not arise in the course of his employment. His only relevant obligations under his contract of service were to present himself with his motor-bicycle at the first site and to ride it as ordered to and from other sites. He could start from home at any time, travel by any route and break the journey as often as he wished and for any purpose, so long as he arrived at the site with his motor-bicycle at the appointed time. See para. 9. CI 331/50  
R(I) 9/51 (T)
- iv A factory worker left her employment at 6 o'clock one evening but was knocked down while crossing the road to board a special bus provided by arrangement with her employers to take factory workers home. It was not part of the terms of her employment that she should make use of the bus and when she left the factory and was on the road she took the same risks as those incurred by any other member of the public. Accordingly it was held that the accident had not arisen out of and in the course of her employment. R(I) 79/51
- v It was held that a man who was killed during the midday break while using a public road outside his employer's works in order to board a bus provided by the employer to take employees to a canteen some distance away had not met with an industrial accident.
- vi A senior civil servant who had no fixed hours of duty was walking home one evening when he decided to make an official visit to a colleague whose office was just off his homeward route. While crossing the road to go to the office he was injured and it was held that the accident did not arise out of and in the course of his employment, his employment having been interrupted. See paras 6-7. R(I) 1/53
- vii A man who was a member of a furniture removal team had travelled with a removal van from the employer's depot to carry out two removals. The second removal was completed during the evening and it was then the duty of the team to return by the most direct route to the depot. Instead of doing so, however, they deviated from the direct route to visit a public house, where they stayed for about an hour and then made a further deviation of the purpose of dropping the claimant at a point near his home. Shortly before reaching the place at which the claimant intended to leave the van it was involved in a road accident and he was fatally injured. It was held that he was doing nothing incidental to the performance of his duty to his employers and that the accident was not an industrial accident. R(I) 39/53  
R(I) 40/55
- xiii A woman machinist who had been elected as a delegate by her fellow-employees was summoned to a meeting with representatives of the employers in another factory of the same firm. While on her way to the factory after finishing her day's work at the factory where she was employed she was injured when her bicycle skidded on a public road. The accident was held not to have arisen out of and in the course of her employment. She was under a duty to attend the meeting to those who had elected her; it was not a duty she owed to her employers. R(I) 10/56
- ix A surface worker at a colliery was injured while crossing a main road on his way to the pithead baths after he had finished his shift. It was held that the accident had not arisen out of and in the course of his employment. See paras 5-8.

x R(I) 16/63 A civil servant was injured as the result of an accident while travelling in his own car on the public highway from a temporary place of employment to his home. He was not under an obligation to his employers to use his own car but they paid him a mileage allowance and for the time spent in travelling. It was held that, because he was not required by the terms of his employment to travel in his own car, the accident had not arisen in the course of his employment. See paras 10-16.

R(I) 3/71

xi R(I) 9/74 A manager of a petrol-filling station whose duties entailed acting as relief manager at various petrol stations was injured in a motor accident while travelling to spend the night at his home, which was in the direct route between the petrol station where he had just completed his duties and the one where he had been assigned to take up relief duties. It was held that the journey during the course of which he was injured was merely preparatory to the performance of his duty to his employers and not incidental to the performance of it; and was one which incidentally enabled him to have a night at home before resuming that which he was employed to do. It was not accordingly an industrial accident. The decision was subsequently upheld by the Divisional Court. See 18.1.1ix *below*.

xii R(I) 12/74 A police inspector who was assigned to a particular sub-division was injured in a road accident within the boundaries of that sub-division when going to a local police station in his own car for the purpose of attending a section officer's conference. Although, in general, his duties were related to his sub-division, on the day of the accident he had no duties other than attendance at the conference. It was held that arrangement between the employers and employees were not conclusive of whether or not an accident arises in the course of employment, that the decision must depend upon all the circumstances at the time when the question arises, and that on the day of the accident the claimant was in no different position from any other worker driving his own car on a public highway from his home on his way to work. The claimant was on his way to duty preparatory to performing it and was not on duty, and the accident was not, there, an industrial accident.

xiii A fire officer, who was on call for a 24 hour period was killed in a road accident while travelling home from work. It was held that, having no duties to perform, he was not in the course of his employment and the accident was not therefore an industrial accident. R(I) 28/53 followed; R(I) 7/80 distinguished.

xiv R(I) 5/81 After a 5 day compulsory residential course a police constable was told that he could go straight home without first reporting to his police station although on that day he was rostered for duty until some 2 hours later and was regarded by the police authority as being on duty until the end of his rostered hours. On the direct route to his home, which was also the direct route to his police station, the constable while riding his motor cycle was involved in a traffic accident and suffered personal injury. The accident occurred during his rostered hours of duty. A Tribunal of Commissioners held that an accident occurring to an employee while returning home from work while riding in his own transport could not be regarded as occurring 'in the course of' the employment unless there were special circumstances: in this case the constable

R(I) 1/83 (T)

was travelling from duty, not while he had been on duty: there were no special circumstances; the accident had not arisen in the course of employment and was not an industrial accident (paras 6, 7 and 9). R(I) 45/52; R(I) 3/71; R(I) 9/74 and R(I) 12/74 followed. CSI 1/80, CSI 3/80 and R(I) 3/81 distinguished. R(I) 5/81 and R(I) 14/81 considered. CI 23/66 not followed.

xv A police officer on a journey to a sailing centre was involved in a road traffic

*Industrial injuries: 'highway' accidents not industrial*

8.5.3-4

and suffered injury. He normally worked as a finger print officer in Wakefield, but on the day of the accident was to have undertaken duties as a sailing instructor at a location 40 miles away. Before setting out he telephoned the police station, as he was required to do, to confirm that no finger-printing duties had arisen and from that time his employer recognised that his employment had started. The Court of Appeal, *sub nom. Ball v. The Insurance Officer* [1985] 1 ALL ER 833 CA; R(I) 7/85, Appendix, reversing the decision of the Commissioner, held that at the time of the accident, the claimant was in the course of his employment. (NB. The Court of Appeal issued a single judgement relating to this case and to another similar case, namely the decision of a Tribunal of Commissioners in R(I) 14/81, *sub nom Nancollas v. Insurance Officer* - for summary of that judgement see 18.6.2 iv below and note that decision R(I) 14/81 should no longer be followed.)

R(I) 7/85

**4 Commercial travellers, salesmen and other special categories of employees**

*Compare 8.4.4.*

i A salesman was injured in a road accident while driving a car direct from his home to call on a customer. The car was provided by his employers; this use of the car from his home was permitted by his employers; at the time of the accident the car was on a recognised route from the employers' point of view and they regarded the salesman's employment by them on the day of the accident as having begun when he left home. However, the Commissioner held that the accident was not an industrial accident. (Cf. *Nancollas v. Insurance Officer* [1985] 1 ALL ER 833 CA, summarised at 18.6.2 iv below.)

ii An insurance agent employed by a Benefit Society interviewed a prospective member of the Society at a club and then drove him home on the pillion of a motor-bicycle, but during the course of the journey he was injured in a road accident. It was held that acts done by an agent to obtain business only arise out of his employment if reasonably necessary or proper to be done and that the accident did not arise out of and in the course of the claimant's employment.

R(I) 51/51

iii A meter-collector kept his books and equipment at home but had to visit his employer's office daily for instructions, although each morning he went direct from his home to the first house he chose to visit. While making such a visit he was injured and it was held that the injury was not caused by accident arising out of and in the course

R(I) 8/52

of employment. The office, not his home, was his base and his employment did not commence until he reached the first house he visited. See paras 12 *et seq.*

R(I) 19/57 iv A home help employed by a county council was injured when she slipped and fell while walking on an icy footpath in a public road on her way to the duty point to which she had been assigned for the day. She was paid for the time spent on her journey from her home to her first duty point and similarly for the journey from her last duty point to her home and it was understood that in each case she would travel by a reasonable route. It was held by a Tribunal of Commissioners that the accident which befell the claimant was not an industrial accident. See paras 14-15. See also 17.10.1

R(I) 12/75 iii and 30.3.1 *xiv below.*

(T)

v A home help employed by a local authority slipped and injured her wrist when going out of a shop. Her hours of work as a home help were from 7.20 a.m. to 12.05 p.m., and in addition to doing housework in the homes to which she went she made small purchases at local shops for the housewives she helped. She was not, however, authorised to do so at shops other than local shops without her employer's permission. On the day in question the women in the first house at which the claimant worked from 7.20 a.m. to 8.20 a.m. wanted something which was unavailable at the local shops, which, in any case, were not open at that time in the morning, but as the claimant had to attend a meeting of home helps in the afternoon she went to a shop in the town near the place where the meeting was to be held. On leaving the shop she slipped and fell. It was held that the accident had not arisen out of and in the course of her employment. See paras 12-13.

R(I) 5/77

## Part 6: Personal injury held to be result of industrial accident

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## 1 Miscellaneous causes of injury

*Compare 8.7.1 below.*

- i A labourer engaged in pushing a loaded hand truck 'felt something to inside' and was found to be incapable of work by reason of heart trouble. It was held that injury by accident may arise in the absence of abnormal or unusual strains. See also 8.1.2 ii *above*.
- ii A crane driver was driving his crane over a furnace, so that the steel floor of the cab became very hot. He reported that his right foot was painful and it was found to be in a calloused condition. It was held that a physiological change had occurred caused by excessive sweating accompanied by thickening of the outer layers of skin which caused a wart to become infected. It was held that he had suffered injury caused by accident arising out of and in the course of his employment. CI 27/49
- ii A woman was incapable of work by reason of oedema on the leg and claimed that the injury was the result of an accident arising out of and in the course of her employment. She had been operating a cutting machine and, owing to an urgent special job, she had worked the machine throughout the day of 8 hours. It was held that her incapacity was the result of an industrial accident. See also CI 56/49. CI 45/49
- iv A man who was subject to fits was working in a garage on the repair of buses and feeling a fit coming on, he made for the door. He remembered nothing more, however, and was later found lying on the floor of the boiler house unconscious with bleeding from his head and burns to his left arm. It was held that the claimant had met with an industrial accident. CI 52/49
- v A team leader in charge of a nursing team in a travelling blood-collection unit was injured while staying at an hotel where accommodation had been booked for the team. She was not free to go to other accommodation and it was held that the accident arose out of and in the course of her employment. Compare CSI 3/49 and see also R(I) 20/57. CI 118/49
- vi A man had been issued with Wellington boots to wear at work. These rubbed the skin of his ankle, where he had an old wound. As a result he became incapacitated by an ulcer on his leg. It was held that he had suffered injury as a result of an industrial accident. CI 374/50
- vii A miner kneeling in a low seam wore knee pads, the buckle of which pressed upon his external palpitate nerve. He felt nothing for some two months, but then, during a meal break, he experienced a numbness of the right leg. However, although the condition worsened he continued to work for another two weeks until he became incapable of work. It was held that his incapacity resulted from personal injury caused by accident arising out of and in the course of his employment. R(I) 71/51
- viii The work of a man employed in the tinning trade involved holding an article to be tinned in a pair of tongs which had become hot and he got burns from molten metal on his hands and forearms. He suffered from multiple cystic swellings of the hands and it was held that he had suffered personal injury by accident arising out of and in the course of his employment. R(I) 18/54
- ix A man was certified to be incapable of work by reason of neurosis, dermatitis and nervous debility. He had worked in a machine shop in the vicinity of a machine which repeatedly produced explosive reports, any one of which might have presaged a more serious explosion. These explosive reports occurred 3 or 4 times a week. The basic

R(I) 43/55 question in issue was whether the man's condition resulted from injury by accident or from a continuous process. It was held that his injury was the psychoneurotic condition from which he was suffering; that the affection of his skin by reason of that condition was the cumulative result of all the explosions and that the claimant's incapacity was the result of injury by accident.

x While attempting to do the work of another labourer in addition to his own a bricklayer's labourer had an attack of coronary thrombosis and collapsed. It was accepted that the carrying of loads required to supply two bricklayers single-handed must have involved very great effort which was also for the claimant most unaccustomed and that he had suffered injury caused by accident arising out of and in the course of his employment.

R(I) 31/56 xi A man who was employed by British Rail booked off duty at 1.30 a.m. at a town away from his home and elected to stay the night at a hostel provided by his employers. The following morning he slipped and injured himself and it was held that he had met with an industrial accident since there was an implied obligation upon him to go to the hostel for rest which was essential for his work. See also CI 374/50, and compare CSI 3/49.

R(I) 30/57 xii A married woman was employed in the process of making coils for television sets. She had to burn loose ends of wire in a burner, clean them with sandpaper and trim them with a pair of scissors. She was also given a change of work which involved slitting through the tough synthetic rubber outer covering of a cable, for which purpose she also used a pair of scissors. After being so employed for 3 days she felt a sudden sharp pain in her thumb which was diagnosed as being due to digital neuritis and it was held that she had suffered personal injury caused by accident arising out of and in the course of her employment. See paras 9-10 and see also 8.1.3iii *above*.

xiii An electric welder who was employed on hand welding with an apparatus which caused intense heat and powerful ultra-violet radiation became incapable of work due to ganglion of the hand and it was held his incapacity was the result of an injury caused by accident arising out of and in the course of his employment. See also 8.1.3 *iv above*.

R(I) 4/62

## **2 Injury as the result of special risks of particular employments**

*Compare 8.7.2 below.*

i A farm labourer who was engaged in pulling sugar beet was held to have suffered personal injury caused by accident arising out of and in the course of his employment when his hand became frost bitten in consequence of pulling the sugar beet on a frosty day.

ii It was held that the incapacity of a police constable who was obliged to ride a motor-bicycle and into whose eye a piece of grit entered while riding his motor-bicycle when on patrol duty was the result of an accident arising out of and in the course of his employment. The riding of his motor-bicycle exposed him to a greater risk of eye injury

than other persons in general.

CI 123/49

iii When trying to get to the canteen at his place of employment a man was knocked down and injured by an onrush of fellow-workmen and it was held that the accident arose out of and in the course of his employment on the ground that it was a risk peculiar to his employment that he should encounter a crowd of people wishing to go to the canteen with all possible speed.

R(I) 67/53

iv A man was employed as a labourer in a cement works and in his course of his employment he was standing close to a conveyor belt so as properly to perform his duties in connection with packing the belt. A passing fellow-workman came up behind him and sharply pushed his knees forward so as to cause the claimant to strike his right knee on a projecting cross piece of iron on the conveyor. As a result he sustained a fractured patella and it was held that the injury arose out of the claimant's employment which involved a special risk of falling forward or otherwise striking himself against some part of the machinery near which he was required to be.

R(I) 96/53

R(I) 8/54

v A woman clerk in a bakery business was working at a desk near a window when she was injured as the result of the window being broken by fellow-employees playing football in the yard outside. It was held that, having to sit near the window whilst football was being played in the yard outside, she incurred a special risk of injury and that she had met with an industrial accident.

vi While taking shelter under a tall ash tree in the field where he had been working an agricultural worker was struck by lightning and died instantly. It was held that it was incidental to his employment that he should seek shelter, that his employment therefore took him to a place which, in a thunderstorm, would be abnormally dangerous and involve a greater risk of being struck by lightning and that his death was the result of an industrial accident.

R(I) 46/54

vii A man who was employed as a maker of cricket balls, and who was allowed to smoke at his work, was burnt by a thread flicking hot ash from a cigarette into his eye, and it was held that the risk of that happening was an employment risk and that the accident arose out of and in the course of his employment. See also R(I) 2/63, 8.2.6*xiv* above.

R(I) 23/58

R(I) 4/64

### **3 Personal injury resulting from assaults and disputes**

*Compare 8.7.3 below.*

i There was an argument between an engineer's labourer and a stores controller in the canteen at their place of employment which ended by the former suffering a broken finger. It was held that the injury was the result of an industrial accident.

ii A woman driver of a motor van whose duty it was to report at her employer's home each morning to drive him to his factory was more than an hour late in arriving one morning because of a puncture. This annoyed the employer's daughter-in-law who was not on good terms with the claimant. The daughter-in-law became angry and threw the contents of a utensil she was holding, which scalded the claimant. It was held that the accident arose out of and in the course of the claimant's employment.

CI 3/48

iii An insurance agent was attacked on the highway while returning home at night and robbed of the premiums he had collected. It was held that the accident arose out of and in the course of his employment.

CI 51/49

iv A chargehand on night shift was assaulted during a meal-break by an insubordinate workman whom he had previously reported. It was held that the injury he suffered was the result of an accident arising out of and in the course of his employment.

CSI 63/49

v The correct approach to claims based on assault is that the claimant must show that the injury resulted from an accident arising out of and in the course of his employment; that is to say, he must show that the employment was an efficient cause (*causa causans*) of the accident. It is not enough to show that the assault occurred while the claimant was at work or otherwise in the course of his employment; such proof would only show that the employment was a condition (*causa sine qua non*) of the accident. There are at least two ways in which the claimant can prove that the employment was an efficient cause of the accident: (1) by showing that the assault arose out of some incident occurring in the course of the employment, for example a dispute over work; or (2) by showing that, although the risk of assault is in its nature general, the employment by its circumstances involved a special risk of assault not incurred by persons not so employed or not so employed under the same circumstances. (See para. 5). A woman director and secretary of a tea company who was attacked by two youths while travelling by train on business was held not to have met with an industrial accident.

CI248/50

R(I)41/51  
(T)

vi Members of a ship's crew overstayed their shore leave and the ship's carpenter, having been asked by an officer to do so, assisted in preparing the ship for sea. The seamen who had gone ashore were punished and threatened the carpenter. 3 weeks later he was assaulted by the seamen. It was held that the assault occurred as a direct result of the zealous performance of his duty and that the accident arose out of his employment.

R(I)41/53

vii The claimant was employed as a lighthouse keeper and during an off-watch period was in bed when he was attacked by the only other lighthouse keeper on duty in the lighthouse. He received injuries to his head and left arm and it was held that they were caused by accident arising out of and in the course of his employment.

R(I)30/58

viii A post-office engineer was repairing a fault in a telephone call-box when a young man opened the door to telephone. The engineer remembered nothing more until he arrived home in a van bleeding from a head wound. It was held that he had suffered personal injury caused by accident arising out of and in the course of his employment.

R(I)1/64

ix While smoking a cigarette in a corridor where smoking was permitted, a factory worker was hit by a snowball thrown by a young fellow-employee. He went after the young man to remonstrate with him, but the latter slammed a door in his face, with the result that the claimant's hand was injured. It was held that he had suffered personal injury caused by accident arising out of and in the course of his employment. It was incidental to his employment to leave his machine with his employer's permission to smoke and he did not take himself out of his employment by going into the corridor to smoke. Nor did he take himself out of his employment by taking a couple of steps to the door to remonstrate with the young fellow-worker. See paras 7 *et seq.* and see also *R. v. Industrial Injuries Commissioner, Ex parte Amalgamated Engineering Union (No. 2)*, 18.1.1 vii below.

R(I)3/67

## Part 7: Personal injury: not as a result of an industrial accident

**1 Miscellaneous causes of injury**

*Compare 8.6.1 above.*

i A man developed Raynaud's phenomenon after operating a grinding machine for 5 years and it was held that the expression 'by accident' be interpreted according to its popular meaning and that the claimant's incapacity did not result from personal injury caused by accident. See also 8.1.3 *above*.

ii A doctor who was engaged in attending persons suffering from tuberculosis was found himself to be suffering from the disease, but it was held that his incapacity was not the result of injury caused by accident. See also CI 196/50. But see now 9.2 *below*.

CI 257/49

iii A glazier developed 'Dupuytren's Contracture' due to continuously gripping a hacking-out knife and chisel. It was held that if the multiple small traumata contributed to the progress of the disease they must have occurred at such short intervals as to constitute a process and that his incapacity for work was not the result of personal injury caused by accident arising out of and in the course of his employment. See also under 8.1.3 *above*.

CI 83/50  
(T)

iv A man employed as a pug feeder in a brick works had to lift a great many blocks of marl every day, with the result that he suffered from strained chest muscles, but it was held that that was the result of process and not accident. See also under 8.1.3 *above* and see CI 29/49.

CI 125/50

v A labourer had an unhealed tubercula hip since childhood and within 3 weeks of starting work at an iron foundry became incapable of work. It was held that, although his incapacity was caused by the work he was employed to do, which was too heavy for him, there was no evidence of his having met with an accident.

R(I) 42/51

vi A fitter at a locomotive works complained of pains in his chest, left arm and two fingers while using a heavy hammer. Subsequently he felt tired from time to time when he walked too quickly or made any special exertion and he was certified to be incapable of work by reason of 'angina of effort'. It was held that injury by accident had not been established and that the claimant's symptoms appeared to be wholly consistent with an ordinary attack of angina pectoris. See paras 7-11. See also R(I) 1/55.

R(I) 52/51

vii A leather stitcher who transferred to hand stitching after a long period on machine work became incapable of work after three days through osteo-arthritis of the fingers. It was held that he had not suffered injury caused by accident. See para. 11 *et seq.*

R(I) 84/53

viii An agricultural worker was held not to have suffered personal injury caused by accident arising out of and in the course of his employment when he was incapable of work by reason of a prolapsed disc, having complained of pain when milking a cow. See also R(I) 35/59.

R(I) 19/56

ix A woman who was employed as a cleaner knocked her hand at work but continued to work for the next 2 months, when she had an operation for 'trigger finger' and became incapable of work. It was held that her incapacity was the result of a constitutional condition and not of injury caused by accident. See as to the condition known as 'trigger finger' paras 5-6.

R(I) 20/56

x A man who was employed as a district forest officer and for the purposes of his work used a motor car at various times over a year noticed a smell of fumes in the car. He began to feel unwell and 7 months after he started to use the car a blood test was taken which showed that he had inhaled carbon monoxide gas. The medical evidence showed that he was suffering from chronic, as opposed to acute, carbon monoxide poisoning,

R(I) 10/60

that the injury was caused insidiously by each breath taken and that there would have been innumerable such events which could not be regarded as separate incidents. It was accordingly held that he had not suffered personal injury caused by accident.

R(I) 32/60

xi The work of a coal-face ripper involved the use of a heavy electrical boring machine which jarred the hands and arms when it vibrated and he developed a condition of the left elbow which was subsequently diagnosed as ulnar nerve compression syndrome. It was held that there was no medical evidence that that condition was capable of developing as the result of a single occurrence and that it must have developed over a period of not less than 5 months. The claimant did not suffer personal injury caused by accident arising out of and in the course of his employment. An application for an order of certiorari to quash the decision was refused by the Divisional Court of the High Court. See 18.1.1 xi below.

R(I) 11/74

## **2 Accident resulting from various risks held not to be industrial accidents**

i A fitter was employed on overhauling motor vehicles which had been standing in an open field for a long time and were about to be sold. It was a very cold day and, although the lighting of fires was forbidden, there was in fact a fire burning some few yards from the lorry on which he was working. He poured some petrol on the fire, placed the tin on the ground near it, and when the fire blazed the petrol in the tin was set alight. Another workman who was standing nearby kicked the tin at the claimant, with the result that he suffered severe burns. It was held that he did not suffer personal injury caused by accident arising out of an in the course of his employment.

R(I) 24/51

ii A lorry driver felt something strike his eye while he was driving his lorry and was found to have corneal abrasion. There was no evidence that his employment exposed him to any particular risk over and above the general risk and, therefore, there was no casual connection between the accident and his work, with the result that he was held not to have had an accident arising out his employment. (Cf. R(I) 67/53.)

R(I) 62/53

iii A civil servant whose duties included visiting applicants for assistance in their homes was injured when he stopped a child's tricycle while was out of control coming down a hill. It was held that the accident did not arise out of his employment since there was no acceptable connection between the claimant's act and his work. See and compare R(I) 6/63.

R(I) 52/54

iv A gardener-labourer at a cemetery was employed in spraying weeds with a solution containing sodium chlorate. He was supplied with protective clothing but it was torn and, in spite of repair, was not adequate to prevent his trousers from being soaked with the solution. When he was at home a spark from a cigarette set alight to his trousers, with the result that he suffered burns. It was held that the injury was

caused by the setting alight of the claimant's trousers which was a separate accident not arising out of his employment.

R(I) 4/58

v An agricultural worker was walking across a field in the course of his employment when he was struck by lightning and killed. It was held that the accident did not arise

out of his employment because his employment did not expose him to a greater risk of being struck by lightning than any other person within the area of the storm. See paras. 7, 8 and 11 and compare R(I) 23/58.

### **3 Accidents resulting from assaults and disputes held not to be industrial accidents**

R(I) 7/60

*See s. 55 of the SS Act 1975 and compare 8.6.3.*

i A labourer loading scrap was assaulted by a fellow worker whom he had called a “lazy swine”. The workman so addressed knocked a number of the claimant's teeth out, but it was held that the accident did not arise out of and in the course of his employment.

ii A woman director and secretary of a tea company was attacked and robbed by two youths while travelling by train on business. It was held by a majority of a tribunal of Commissioners that she had not met with an industrial accident. See paras. 3 to 5, and see also 8.6.3 v.

CI 5/50

iii A maintenance fitter was using a preparation which was contained in a small can to clean part of a machine by hand when a workmate who was working with him was knocked or pushed by someone passing. The workmate flicked a piece of dirty rag at the man who had pushed him, soiling his shirt and collar, whereupon the man threw the contents of a can of the liquid at the claimant's workmate. He avoided it, but it hit the claimant in the face and caused him injury. It was held that the accident did not arise out of the claimant's employment.

R(I) 41/51  
(T)

iv A man who was employed as a cowman on a farm was severely wounded in the chest by a shotgun fired at him at point blank range by the head cowman, who immediately afterwards reloaded the gun and committed suicide. It was held that the accident had not arisen out of and in the course of the claimant's employment since there was nothing in the circumstances of the claimant's employment which gave rise to the shooting.

R(I) 75/54

v An insurance broker's agent died from wounding by stabbing which was inflicted by a man to whom he had given a lift in his car. The assailant pleaded guilty to murder and was executed. It was held that it had not been proved that death by accident arose out of the deceased's employment. He had become the victim solely because he was a stranger to the assailant, which was a risk he shared with all persons with whom the latter was not acquainted.

R(I) 76/54

vi A bus conductor was attacked by two youths who had jumped on to the platform of the bus, not with the intention of being passengers, but with malicious intent to injure anyone whom they might encounter. The conductor was held not to be exposed to the risk of assault by persons who were not passengers by reason of his employment and accordingly the injuries he sustained were not the result of an accident arising out of and in the course of his employment. The decision was upheld by the Divisional Court. See note attached to end of R(I) 21/58 and 18.1.1 ii.

R(I) 23/56

R(I) 21/58

vii A claimant was kicked by one of a gang with whom he was working, with the result that he suffered from a broken leg. The attack was unprovoked, but it was held that the accident did not arise out of the claimant's employment, which did not expose him to a special risk of assault.

viii A watchman was on duty in his hut about midnight when one of a gang of youths who had been fighting nearby ran into the hut to shelter from the others. Another youth followed and while trying to get out of their way the claimant was struck and knocked down, breaking his arm. It was held that the accident had not arisen out of his employment since the assault had not arisen out of some incident occurring in the

R(I) 5/59

8.7.3

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course of his employment and it could not properly be said that the employment as a night watchman at a site in the street involved a special risk of an assault of that kind.

R(I) 26/59

ix A civil servant employed by the BA was assaulted by a neighbour in the driveway of her house. She had previously reported the man for working while receiving benefit. At the time of the accident the claimant was sick and not doing any work for her employer. It was held on appeal to the Court of Appeal that the accident had not arisen in the course of the claimant's employment. *Nancollas v. Insurance Officer* [1985] 1 ALL ER 833, *Smith v. Stages* [1989] AC 928, *Faulkner v. CAO* [1994] PIQR 244 considered. A fuller synopsis of this decision is at 18.6.2 xviii. See also 18.6.2 vi.

R(I) 1/99

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## Part 8: Accidents to seamen

**1 General principles****2 Whether an accident was an industrial accident**

- i A ship's fireman fell into the hold of the ship while helping a seaman to put the hatches in place. He was off-duty at the time of the accident but went of his own accord to help the seaman, who was working single-handed. It was held that the accident could be deemed to have arisen out of and in the course of his employment by force of s.8 of the NI (Industrial Injuries) Act 1946, (under the SS Act 1975, see s. 52.) R(I) 76/51
- ii When returning from shore leave a seaman slipped and injured himself as he was about to step from a jetty into a boat provided by his employers to take him back to the ship. It was held that the accident was an industrial accident, But see and compare R(I) 75/53. R(I) 3/53
- iii When returning to his ship from shore leave a seaman was crossing the gangway leading to the pier where he had to board the boat provided by his employers to enable men on leave to return to duty. He slipped and injured his ankle and it was held that, as only a seaman about to board his ship was entitled to use the gangway, he had met with an industrial accident. See also R(I) 45/56. R(I) 21/54
- iv A seaman whose ship was moored in the harbour at Calais went ashore with others and on returning to their ship the party took a route along the quay to which the public had unrestricted access. While walking along the quay the claimant tripped, fell into the harbour and was drowned. It was held that he had not re-entered the sphere of his employment and that the accident was not an industrial accident. R(I) 61/54 (T)
- v A merchant seaman employed on a Channel ferry went ashore during a work break to buy lemonade from the dockside shop. Permission to do so was not needed. He was injured in a fall while returning to his ship. Though the ship's articles governed his employment both on the ship and in the dockyard his injury did not arise out of and in the course of his employment. R(I) 4/79 compared. R. v. *National Insurance Commissioner, Ex parte Michael, St Helen's Colliery Co Ltd v. Hewitson* referred to. R(I) 10/81

## Part 9: Declaration of industrial accident

### 1 Entitlement to a declaration

R(I) 1/82 i A sheet metal worker in the course of his work was struck on his spectacles by a steep plate. The lens of his spectacles leaving a scuff mark. He himself received no injury at all. On the question whether the claimant was entitled to a declaration under s. 107 of the SS Act 1975 that the accident was an industrial accident, the Commissioner held that the fact that, as the result of an incident at work, the claimant was deprived of the use of his spectacles as a means to improve his defective eyesight did not constitute personal injury (para 7). Under s. 107(3) of that Act the insurance officer, the local tribunal, or Commissioner, has a discretion to refuse to determine the question if it is likely to be necessary for the purposes of a claim for benefit (para. 4). There was no good reason for declaring that the incident in which the claimant's spectacles received a scratch or scuff mark without his having suffered any injury to his person was an industrial accident (para. 5). R(I) 7/56 followed. R(I) 8/81 distinguished.

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**Part 1: The decisions listed below are not included in  
chapter 8**

**A** Decisions which turned on special facts and are no longer relevant

CI 25/49  
 CI 56/49  
 R(I) 37/53

**B** Decisions given before tuberculosis was a prescribed disease

CI 196/50  
 CWI 43/50

**C** Decisions relating to adjudication

CI 20/49

**D** Decisions overruled

CI 21/50 } See R(I) 4/67  
 R(I) 45/53

R(I) 9/60 } See R(I) 2/63  
 R(I) 30/60

**Part 2: Decisions omitted from a part of this chapter for  
 reasons indicated against the relevant Group heading  
 shown below**

(the Part, or the case may be, the Part concerned  
 and the relevant Section of that Part shown in brackets  
 against the reference no. of the decision)

**Group 1.** *Decisions omitted because the points of principle involved are covered by other decisions in the same Part of the Chapter.*

CI 82/49 (Pt. 61)	Lavatory attendant, while opening door for customer, slipped, fell and injured himself - callipers had become loose - industrial accident
R(I) 32/51 (Pt. 3.10) of	Injury while, with other workman, attending funeral of fellow workman - see R(I) 10/52
R(I) 47/51 (Pt. 6.3)	Foreman, in course of his duty, assaulted by member of his gang - industrial accident
R(I) 61/51 (Pt 5.1)	Road accident to road man on way back from work - not industrial accident - see R(I) 75/52
R(I) 69/51 (Pt. 3.5)	Mechanic injured in engine shop doing something not incidental to his employment - see at 8.3.1 iv
R(I) 45/52 (Pt. 5.3)	Traffic accident - police constable on way home from duty - see R(I) 1/83(T)
R(I) 34/53 (Pt. 3.4)	Accident to claimant while going to make tea for himself at an unusual hour - see R(I) 27/53
R(I) 28/53 (Pt 3.10)	Fire officer required to be available at all times, injured while starting car at home - see R(I) 5/81
R(I) 30/54 (Pt. 3.5)	Accident while repairing own car at home; car required for claimant's work - not an industrial accident - see R(I) 31/60
R(I) 53/54 (Pt. 2.6)	Cotton mill worked injured on factory premises while

	going to deposit child in factory nursery before starting work
R(I) 41/55 (Pt. 2.6)	Dumper lorry accident - question in issue was whether claimant was permitted to drive lorry
R(I) 12/56 - (Pt. 3.9)	Injury caused by lightning - see R(I) 7/60
R(I) 11/58	
R(I) 24/56 (Pt 5.3)	Traffic accident while crossing road after buying fish and chips for claimant's self and workmates
R(I) 48/56 (Pt 2.6)	Injury sustained within factory premises while on sick leave but notifying date of return to work
R(I) 32/58 (Pt 4.1)	Injury of railway worker in railway yard - see R(I) 5/67
R(I) 2/63 (Pt. 2.2)	Explosion on employers' premises caused gas leak and lighted cigarette - smoking permitted - industrial accident - see 8.2.1 i
R(I) 2/67 (Pt. 5.4)	Home help injured on way to work - not industrial accident - see R(I) 12/75(T)
R(I) 14/81(T) (Pts 5.1, 5.3, 5.4)	Road accident to civil servant travelling from home 'to duty' but not 'on duty' - see R(I) 7/85