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Railway clerk assumed that she would receive her wages in full and, accordingly, delayed her claim for sickness benefit. "Good cause" defined and distinguished from a good excuse. Claim disallowed.

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1. My decision is that the claim for sickness benefit is disallowed.
2. The claimant is employed as a clerk by British Railways. On 6th December last she was certified by her doctor on form Med. 1 to be incapable of work. She did not, however, give notice of incapacity or make a claim for sickness benefit until the 29th December, on which day she posted forms Med. 1 and 2B to the local office of the Ministry of National Insurance. On the latter form she was certified to have remained incapable of work up to and including the 13th December.
3. With the forms the claimant sent a covering letter to the effect that she realised that the forms should have been forwarded within three days, but she thought that her employers would not deduct sickness benefit from her wages, but that when her first pay day arrived she found the employers did make this deduction and told her to apply to the Ministry of National Insurance for sickness benefit and that she then had to wait until the employers returned her certificates before she could apply to the Ministry of National Insurance. The Insurance Officer disallowed the claim on the ground that the claimant had failed to give notice of incapacity within the time prescribed. The Local Tribunal by a majority allowed the appeal. They recorded evidence by the claimant that she had been paid by her employers when ill before and that her employers never previously returned her certificates and never notified her that she would not be paid and that consequently a claim for sickness benefit would be necessary. The majority of the Local Tribunal found that the claimant showed good cause in so far as she acted reasonably and followed the procedure adopted by a Government Department.
4. The chairman reluctantly dissented in view of Decisions C.S. 99/49 (K.L.) and 35/48 (K.L.).
5. The Claimant cannot be required to refund the benefit which has been paid in accordance with the decision of the majority of the Local Tribunal. The Chief Insurance Officer has, however, appealed, in order to obtain guidance in future cases.
6. The claimant's statement that she was never notified by British Railways that they proposed to change their practice and to deduct sickness benefit from her pay presumably means that she was not given a separate personal notification; it seems highly improbable that British Railways would introduce so drastic a change in the remuneration of their employees without at any rate giving notice to their employees generally. If such general notice was given it would be necessary for the claimant to prove that her failure to see the notice was not due to negligence on her part if she sought to establish that the previous practice of her employers to pay wages without deducting benefit was good cause for her omission to give notice of incapacity.
7. In my opinion, however, even if it were shown that through no fault of her own the claimant received no intimation that her employers intended

to vary their previous practice and consequently believed that sickness benefit would not be deducted from her wages; this belief would not constitute good cause for her failure to give notice of incapacity in due time. The burden of proving good cause is on the claimant. It will be observed that the expression used is "good cause", not "a good excuse". "Good cause" means, in my opinion, some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did. The claimant did not state why her expectation that no deduction would be made from her wages led her to decide to make no claim for benefit. It may be that she thought that she was not legally entitled to receive sickness benefit as well as wages; if so, she was making an assumption as to the provisions of the Act without making any inquiry into the matter. Her omission would thus have been due to ignorance, which would not itself constitute good cause. It seems more likely that she never considered whether she was entitled to sickness benefit as well as full wages because she was content to receive the latter alone. Even so her omission to give notice of incapacity would have been due to ignorance of her rights, for if she had known that she was entitled to benefit as well as full wages there is no reason to suppose she would not have claimed it. It is true that on this hypothesis her failure to inquire into her rights under the Act would have been due to her belief that her employers would pay her wages in full, but the fact that a claimant wrongly believes that he will receive full wages from his employer and is therefore indifferent to his right to benefit under the Act cannot in itself constitute good cause for omitting to comply with the duties correlative to that right. Different considerations would arise in a case in which an employer had given inaccurate or misleading information to a claimant. In my opinion, therefore, the claimant failed to establish good cause for omission to give notice of incapacity and the Chairman's dissentient conclusion was correct. His reluctance to arrive at this conclusion is intelligible, but the Statutory Authorities are bound to impose disqualification in accordance with the regulations even though that penalty may seem to them unduly severe in the particular case.

8.8.49

SICKNESS BENEFIT

C.S. 420/49 (K.L.)

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Claimant was paid (without prejudice) weekly sums equal to workmen's compensation by the employer's insurers, pending a decision on his action at common law. Held that his right to sickness benefit was not extinguished since he was not a person who "is or has been entitled" to a weekly payment under the Workmen's Compensation Acts.

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1. My decision is that sickness benefit is payable to the claimant from 5th July, 1948, to 3rd November, 1948, both days inclusive.

2. The claimant was injured, and rendered incapable of work, by accident arising out of and in the course of his employment on 4th May, 1948, in circumstances in which it appears that a weekly payment under the Workmen's Compensation Acts would have been payable to him, if he had