

FEN - Sunday only worker - see CU/64/88

RAS/15/LM

Commissioner's File: CU/30/1988

Region: London North

SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George William Bennington

Appeal Tribunal: Whittington House Central

Case No: 18/710

[ORAL HEARING]

1. This is the other case I heard at the same time as CU/64/88. The facts are, except in one respect, indistinguishable from those in that case. I hope the claimant in this case will not mind that, to save repetition, I am deciding his case with reference to the reasons I gave in the other one - a copy of my decision in that case is attached to this decision.

2. The only difference - though an important one - between the facts of this case and those of CU/64/88 is that this claimant's Sunday only working had gone on for over one year before the full extent normal rule was applied against him. So, although the original adjudication officer apparently came to his decision on the basis of the fifty per cent test - presumably over a longer period than one year - this would seem to be a case where the starting point might well be the one year test. On either basis and of course using the tests not as inviolable rules but as guidelines it seems to me to be improbable (having regard to the principles to which I referred and the reasons I gave in CU/64/88) that this claimant can escape the application of regulation 7(1)(e). Nevertheless it is the fact that the tribunal did not, as it seems, consider as Riley and Brunt require the future employment prospects. And though as I suspect there may have been no realistic prospects so as to make any difference to the outcome the tribunal were technically wrong not to have considered the possibility and I allow the claimant's appeal. The case must go to another and differently constituted tribunal.

3. The new tribunal must deal with the case in accordance with the principles to which I have referred in CU/64/88 as summarised in paragraph 6 of that decision. I should add only that I see nothing in Mr Rowland's point that if the one year test is to be applied it should run from the end of the dispute between the claimant and News International. That is too narrow an approach. It is the claimant's employment record that has to be considered and I would see no reason why the fact that another tribunal decided on 26 November 1986 that regulation 7(1)(e) did not apply in respect of an earlier period should affect the question of whether it applied as from 17 February 1987.

(Signed) R A Sanders
Commissioner

Date: 18 April 1989