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Commissioner's File: CU/255/1984

C A O File: AO 3548/UB/83

Region: Northern

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name:

Appeal Tribunal: Newcastle upon Tyne

Case No: 69/1

[ORAL HEARING]

1. Our decision is as follows:-

(a) The decisions of the insurance officer awarding unemployment benefit to the claimant for the inclusive periods from 28 April 1983 to 30 April 1983; 5 May 1983 to 7 May 1983; 12 May 1983 to 14 May 1983; 19 May 1983 to 21 May 1983; 26 May 1983 to 28 May 1983; 2 June 1983 to 4 June 1983; 9 June 1983 to 11 June 1983; 16 June 1983 to 18 June 1983; and 23 June 1983 were not reviewable as no ground for review has been shown: Social Security Act 1975, section 104(1);

(b) Unemployment benefit is payable to the claimant for the inclusive periods set out in sub paragraph (a) above, and for the inclusive periods from 24 June to 25 June 1983; 28 June 1983 to 2 July 1983; 7 July 1983 to 9 July 1983 and 14 July 1983 to 15 July 1983 as those were the days of unemployment in his case: Social Security Act 1975, section 17(2)(a) and the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [SI 1975 No 564] regulation 7(1)(e) and (2).

(c) Unemployment benefit is not payable to the claimant for the inclusive periods from 25 April 1983 to 27 April 1983; 2 May 1983 to 4 May 1983; 9 May 1983 to 11 May 1983; 16 May 1983 to 18 May 1983; 23 May 1983 to 25 May 1983; 30 May 1983 to 1 June 1983; 6 June 1983 to 8 June 1983; 13 June 1983 to 15 June 1983; 20 June 1983 to 22 June 1983; 27 June 1983; 4 July 1983 to 6 July 1983; 11 July 1983 to 13 July 1983 because the claimant was employed on these days: Social Security Act 1975, section 14(1)(a);

2. This appeal by the claimant (a man now aged 55) is from the majority decision of a national insurance local tribunal dated 13 September 1983 and was the subject of an oral hearing before a Tribunal of Commissioners on 24 January 1985. At that hearing the claimant was present and was represented by Mr G Brown, a Senior Advice and Information Worker, and the Adjudication Officer was represented by Mr E O F Stocker. We are indebted to Mr Brown and to Mr Stocker for their assistance to us.

3. This appeal concerns the claimant's entitlement to unemployment benefit for the overall period from 25 April 1983 to 15 July 1983. The insurance officer's

decision of 13 July 1983 had the practical effect (i) that for Mondays, Tuesdays and Wednesdays during that period the claimant was held not to be entitled to unemployment benefit because he was actually working on those days for an employer, the "Community Task Force"; and (ii) that for Thursdays, Fridays and Saturdays during that period the claimant was not entitled to unemployment benefit because of the operation of the "full extent normal" rule contained in regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, [SI 1975 No 564 - see below, paragraph 5 - now repeated in identical terms in regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 - SI 1983 No 1598]. The insurance officer's decision was the subject of an appeal by the claimant to the local tribunal who, in their decision dated 13 September 1983, by a majority dismissed the claimant's appeal. So far as Mondays, Tuesdays and Wednesdays are concerned, there can of course be no entitlement to benefit because the claimant was working on these days. Moreover, for a considerable part of the period in question the claimant had in fact been paid unemployment benefit in respect of Thursdays, Fridays and Saturdays, resulting in an overpayment (if the "full extent normal" rule applied) of £104.17 unemployment benefit for those days during that period. The local insurance officer did not require repayment of that sum, having decided that the claimant had exercised due care and diligence, in the obtaining and receipt of benefit, to avoid overpayment (Social Security Act 1975, section 119(1) and (2)). However, the adjudication officer now concerned in a written submission dated 18 July 1984 (paragraphs 7 and 8) submits that there was in fact no ground for review under section 104(1) of the Social Security Act 1975. We are satisfied, having examined the facts of the case and the circumstances in which the original awards and "review" took place, that there was in fact no ground for review and we therefore accept the adjudication officer's submission on this point.

4. The only substantive issue therefore remaining for consideration by this Tribunal is whether in truth the "full extent normal" rule applies to Thursdays, Fridays and Saturdays during the inclusive period from 28 April 1983 to 15 July 1983, during which time the claimant was working 20 hours a week on Mondays, Tuesdays and Wednesdays for the "Community Task Force" under the auspices of the Manpower Services Commission as a part-time painter's labourer. The claimant had taken on employment with the Community Task Force after a spell of unemployment from 8 November 1980, having then been made redundant after 25 years' work as a machine operator in an engineering factory, that work being full-time throughout. Between 8 November 1980 and the commencement date of his work with the Community Task Force on 25 April 1983 (at which date he was aged 53 years) the claimant had been unemployed throughout, with the exception only of a short period as a part-time labourer working 20 hours per week from 5 May 1982 to 28 July 1982 at a petrol filling station. On starting work with the Community Task Force, the claimant was informed by his superior there that the part-time employment was likely to lead to full-time employment with the Community Task Force, which in the event happened on 22 August 1983. That fact was not known to the insurance officer when he gave his decision of 13 July 1983, but it was known to the local tribunal when they gave their decision on 13 September 1983. A written statement of contract of employment dated 28 June 1983 given by the Community Task Force to the claimant provides for his part-time work for 20 hours per week at a weekly wage of £40.40 per week. In fact that work was on Mondays, Tuesdays and Wednesdays in each week. The contract also states that the employment was temporary and was to end on 15 July 1983 - hence the ending on that date of the period to which the insurance officer's decision related, although the part-time employment in fact

continued until the claimant became full-time on 22 August 1983. It was on those facts that the local tribunal gave their decision on 13 September 1983, affirming the application of the "full extent normal" rule to Thursdays, Fridays and Saturdays, when the claimant did not work for the Community Task Force (there is a small variation in June 1983 to take account of the claimant's weekly holiday at that time).

5. The "full extent normal" rule is to be found in regulation 7(1)(e) and 7(2) of the above-cited Unemployment, Sickness and Invalidity Benefit Regulations 1975 which, so far as is material, reads as follows:-

> "Days not to be treated as days of unemployment . . .
>
> 7(1) For the purposes of unemployment . . . benefit -
>
> (e) subject to paragraph (2), a day shall not be treated as a day of unemployment if on that day a person does no work and is a person who does not ordinarily work on every day in a week (exclusive of Sunday or the day substituted for it by regulation 4) but who is, in the week in which the said day occurs, employed to the full extent normal in his case, and in the application of this sub-paragraph to any person no account shall be taken, in determining either the number of days in a week in which he ordinarily works or the full extent of employment in a week which is normal in his case, of any period of short-time working due to adverse industrial conditions.
>
> (2) Paragraph (1)(e) shall not apply to a person unless -
>
> (a) there is a recognised or customary working week in connection with his employment; or
>
> (b) he regularly works for the same number of days in a week for the same employer or group of employers."

6. Regulation 7(1)(e) and 7(2) is made under section 17(2)(a) of the Social Security Act 1975 which, so far is material, provides as follows:-

> "17(2) Regulations may -
>
> (a) make provision (subject to sub-section (1) above) as to the days which are or are not to be treated for the purposes of unemployment benefit . . . as days of unemployment . . ."

There does not appear to us to be much assistance to be derived from section 17(2)(a) in the construction of regulation 7(1)(e) and (2). That empowering provision is perfectly general in its terms, though of course any regulation must be read in the overall context of sections 14 and 17 of the Social Security Act 1975 which provide for the payment of unemployment benefit "in respect of any day of unemployment" (section 14(1)(a)). It should also be noted that regulation 7(1)(e) in substantially its present form (except the proviso as to "adverse industrial conditions" which was introduced by SI 1959 No 1278 (regulation 2) as from 31 July 1959) appeared originally as regulation 6(1)(e)(ii) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1948 [SI 1448 No 1277]. The equivalent of regulation 7(2) of the 1975 Regulations (which from its opening words was clearly intended to restrict the disentitlement to benefit imposed by regulation 7(1)(e)) was not introduced until 1966 by SI 1966 No 1049 (regulation 13) as from 6 October 1966.

7. Manifestly, the present claimant during the period in question came within regulation 7(2) of the 1975 Regulations in that at the material time he "regularly worked for the same number of days in a week for the same employer" (reg. 7(2)). Regulation 7(1)(e) therefore applies and the question is whether it prevents Thursdays, Fridays and Saturdays (the days on which the claimant did not in fact work for the Community Task Force) from being days of unemployment. Could it be said that they were days on which the claimant "does no work and is a person who does not ordinarily work on every day in a week" (reg. 7(1)(e)) and that the claimant was a person "who is, in the week in which the said day occurs, employed to the full extent normal in his case" (reg. 7(1)(e))? Before we answer that question, we should say that we do not consider that the 'proviso' to regulation 7(1)(e) referring to "adverse industrial conditions" applies to the claimant's work with the Community Task Force and we adopt what was said with reference to that proviso by the learned Commissioner in a decision on Commissioner's File CSU/51/1983 at paragraph 14,

> "That relieving provision was, I think, introduced to avoid distortions occurring for that reason in what would otherwise have been a pattern of normal employment and was not introduced to cope with part-time working expedients introduced in order to give some employment during a lengthy period of high unemployment. Even giving the broadest possible meaning to the expression 'period of short-time working due to adverse industrial conditions' I doubt whether that provision could reasonably be held applicable to the restricted working week imposed in the present case. Still less does it appear to me to be apt to cover the case of persons whose employment under some job creation scheme is solely for a part-time working week . . ."

Paragraphs 8, 9, 10 and 11 are the judgment of Mr Rice and Mr Goodman.

8. It is clear from the question posed in the previous paragraph that, if the disentitling provisions of regulation 7(1)(e) are to apply, a claimant has to fall within the ambit of two conditions, namely

(1) that he does not ordinarily work on every day in the week (excluding Sunday) and

(2) that in the week in which the relevant day falls he is employed to the full extent normal in his case.

As regard the first condition, in most cases no difficulty presents itself. For many years now, very few firms have worked 6 days a week. Accordingly, most people in employed earner's employment will come within the first requirement of regulation 7(1)(e). In the present instance, unfortunately no evidence was directed to the issue whether in the light of the claimant's employment history he could be regarded as ordinarily employed 6 days a week. Probably, like most others, he could not be so regarded, but in any event nothing turns on the point. For if he was ordinarily employed 6 days a week, then he fails to come within the first condition of regulation 7(1)(e) and he escapes the disentitlement imposed by that provision. If, however, he was not ordinarily employed every day of the week (except Sunday), then although he will come within the first condition, he will nevertheless, for the reasons hereinafter appearing, still escape the disentitling effect of regulation 7(1)(e) by virtue of his not falling within the 'full extent normal' principle. In passing, we make no comment on the possible application in other cases of the "normal idle day" rule contained in section 17(2) of the Social Security Act 1975. In the present case, we have had neither evidence nor argument on the point.

9. Accordingly, the real question at issue is - was the claimant a person "who is, in the week in which the said day occurs, employed to the full extent normal in his case" (regulation 7(1)(e))? It is clear in our view that the words "in his case" draw attention to the particular claimant and what is normal for him and do not confine the inquiry simply to what is normal for the particular employment he holds during the week in which the day in question occurs. This is the view which seems to have been universally accepted in Commissioners' decisions since the statutory provision was originally enacted in 1948, and any reinterpretation of the provision some 37 years later (particularly as the relevant words have on various occasions been re-enacted by Parliament in the context of Commissioners' decisions) would clearly be wholly unacceptable.

10. In our judgment it must be asked of the claimant, looking objectively at his past employment history, his own working abilities and skills, and the nature of his present employment (its duration, terms and conditions) whether it would be reasonable to say of <u>him</u> that he was "employed to the full extent normal in his case". This approach is, in our view, consistent with the "stop-gap" test enunciated in some of the reported Commissioners' Decisions. Under that test if, when the circumstances are looked at objectively, it is clear that the relevant employment is taken up as a stop-gap, pending return to a fuller or full-time employment, then for a while at least such employment, conveniently termed "stop-gap employment", will not bring a claimant within regulation 7(1)(e). However, a statement by the claimant himself that he regards the employment as being only a stop-gap exercise is not necessarily of any relevance. But, the duration of the part-time employment is relevant, and normally on the expiry of one year such employment will, in any event, lose its stop-gap nature. But the period may be much less. Indeed, it is possible that in certain cases part-time employment can, after a very short period, or even immediately, bring a claimant within regulation 7(1)(e). If and when it is clear in the case of the claimant that the relevant part-time employment is "to the full extent normal", because in the light of his disposition and his employment history the employment is manifestly not intended in any sense to be temporary or a stop-gap, then the full rigours of the "full extent normal" rule will apply. And in this connection, where employment is undertaken, the characteristics of which are that work will be restricted to some days only in the week, albeit the number of hours worked on those day may be increased correspondingly, eg. as in the case of oil riggers working in the North Sea two weeks on, two weeks off - see paragraph 15 of Decision R(U) 2/83 - such work will not be regarded as "stop-gap". The financial rewards of this kind of work, and the physical demands it imposes on those who undertake it, serve to equate it with full-time employment, ie. the ultimate destination as distinct from an intermediary stage in the claimant's trek in search of satisfactory employment. But, subject to the principles enunciated above, what constitutes stop-gap work will always depend upon the circumstances of each individual case. However, regard must be had to contemporary economic and social conditions. In times like the present where there is a high degree of unemployment, one may more readily accept that part-time work is undertaken as a stop-gap exercise. In the present case we are satisfied that the claimant only took up the work he did as such a stop-gap.

11. Consequently, for the period with which we are concerned, namely from 25 April 1983 to 15 July 1983 (subject to any holiday variation) we hold that those Thursdays, Fridays and Saturdays on which the claimant did no work, were days of unemployment in his case and were not caught by the "full extent normal" rule in regulation 7(1)(e). Although it is not directly before us, we would have thought that the period from 15 July onwards until the claimant became a

full-time employee of the Community Task Force, ie. on 22 August 1983, was also a period covered by the "stop-gap" concept and that the claimant would therefore be able to claim in those weeks also unemployment benefit for Thursdays, Fridays and Saturdays.

The remaining paragraphs are the judgment of the Chief Commissioner.

12. I concur in the result with my fellow Commissioners but I have the misfortune to differ from them in the approach to the conclusion. I of course wholly accept that what has to be ascertained is what is normal for the particular claimant and that the matter has to be approached objectively. Further, I do not differ in being clear that regulation 7(2) is satisfied in relation to the claimant and that the disregard in regulation 7(1)(e) of any period of short-term working due to adverse industrial conditions does not apply in the circumstances of this case. I set out my reasoning in the following paragraphs of this decision.

13. What is now regulation 7(1)(e) originated (without the disregard as to adverse industrial conditions to which I have referred and without regulation 7(2) to which it is now subject) in regulation 6(1)(e) of the 1948 Regulations as identified above. This regulation provided that:-

> ". . . for the purposes of unemployment . . . benefit - (e) a day shall not be treated as a day of unemployment if on that day a person does no work, and -
>
> (i) is on holiday; or
>
> (ii) is a person who does not ordinarily work on every day in a week (exclusive of Sunday or the day substituted therefor by paragraph (1) of regulation 4) but who has, in the week in which the said day occurs, been employed to the full extent normal in his case."

The tense of the "full extent normal" part of the regulation was subsequently changed from the past tense to the present tense but I discern no significance in that.

14. The origin of the original regulation 6(1)(e) lay in decisions of the Umpire in relation to the pre-war Unemployment Insurance Acts - in a decision of a Tribunal of Commissioners R(U) 33/53 paragraph 15, the Tribunal said this:-

> "It appears to us that these decisions of the Umpire were based upon general principles derived from the Unemployment Insurance Acts as they were then in force in the absence of any specific provisions dealing with persons whose normal working week did not cover every day of the week."

The Commissioners then indicated their view that the principles of the Umpire so referred to had in effect been applied by regulation 6(1)(e). With respect I think this is right.

15. The principles were stated by the Umpire in Decision UD 4149/38 in the following words:-

"The first principle is that a claimant who has worked his full normal working week is not entitled to benefit for any day which is a normal non-working day in that week.

The second principle is that if a claimant owing to circumstances beyond his control has not worked his full normal working week he is entitled to benefit for all the days of that week upon which he is not at work.

The third principle is that a recognised holiday is a normal incident of the employment so that its presence reduces the number of days in the normal working week by the number of the days comprised in the holiday."

16. In relation to "circumstances beyond his control" the Umpire in his Decision UD 1698/39 said this -

"The application of the sentence from Decision 23767/32, which is quoted in the grounds of appeal, has always been confined to cases in which a shift or a part thereof has been lost, or shifts have been lost, owing to industrial circumstances such as short-term working, breakdown of machinery, exceptional working and the like, whereby the claimant has been prevented from completing a full normal week's work."

The words did not apply to incapacity to work through illness. In Decision CU 518/49 (KL) paragraph 11 it is stated -

"A claimant who has in fact worked only on some days of the week for a period of a year or more is 'a person who does not ordinarily work on every day in a week' unless there are some exceptional industrial circumstances relevant to his case."

17. In my judgment the references in the second principle of the Umpire, to "circumstances beyond his control" and to "some exceptional industrial circumstances relevant to his case" in paragraph 11 in Decision CU 518/49 (KL) should not be taken out of context. In both cases I think that they refer to exceptional circumstances which mitigate against the ordinariness or normalcy of the claimant's own work pattern. In R(U) 13/55 paragraph 10 in relation to the latter words it is said of a claimant who in fact had worked for some 3 years not more than 4 days a week -

"Those circumstances seem to have become normal in his case and there is no evidence to indicate that there were any circumstances relating to his work which were purely temporary and sporadic and brought about by some conditions unlikely to continue. In the result the claimant can at present derive no assistance from the industrial circumstances which prevailed at his place of employment."

Correctly in my view the citation identifies that unless the exceptional circumstances directly relate to the particular claimant's work then they are simply not relevant. The question I have posed is specific to the particular claimant, not general. The point was put thus in R(U) 28/58 paragraph 5 -

"'Exceptional industrial circumstances' means circumstances relating to a claimant's work which are purely temporary and sporadic and brought about by conditions unlikely to continue - see Decision R(U) 13/55 paragraph 10. To regard the circumstances which have brought about the claimant's under-employment as purely temporary and sporadic would be to proceed upon mere optimistic speculation at this stage."

18. It will be noted that the first two 'principles' which I have cited refer to the claimant's "full normal working week" and it is clear that a person may have a full normal working week even though he works for no more than part of a week - see CU 518/49 (KL),paragraph 16.

19. In my view the word "ordinarily" in relation to "a" week and the word "normal" effectively mean the same in the context in which they appear - see R(U) 14/60 at paragraphs 10 and 11, followed in R(U) 18/62,paragraph 6. The sense is that of a regime or pattern of work by reference to a week, in the sense of how much did the claimant usually work in a week then, the point of time being the day under consideration for disqualification.

20. The sense of regime or pattern not only follows from "ordinarily" used in relation to every day in a week but is well established in the decisions of Commissioners. Thus in R(U) 28/58,paragraph 4 it is said -

> " . . . but the question imposed by the regulation is directed to what his pattern of work in fact is, and not to what he would wish his pattern of work to be."

In R(U) 18/62,paragraph 7 the Commissioner said -

> " . . . I hold the rota in the present case as having set, from the date of its coming into operation, the ordinary or normal pattern of employment of those governed by it."

Again, in R(U) 1/72 paragraph 6 the Commissioner referred to the claimant's "pattern of employment".

21. It is also in my view important to keep in mind what is the relevant point of time at which it has to be seen whether the disqualification provided for by the regulation applies. The regulation directs attention to the particular day which may or may not be a day of unemployment for the purposes of unemployment benefit, and the wording is "if on that day a person does no work and . . . is a person who does not ordinarily work on every day of a week". The use of the present tense will be noted. The material point of time in my view is the relevant day.

22. In establishing whether there is a regime or pattern at the time of the day in question the past working pattern is not necessarily conclusive or the only method by which the existence or non-existence of a pattern or regime is to be determined. I adopt what was said by the Commissioner in R(U) 1/72 at paragraph 6 -

> "It is true that the Commissioner has frequently determined what was the full normal extent of a person's employment, at a particular time, by reference to what his pattern of employment in fact was over the previous 52 weeks (or other suitable period). But this is only one method of determining the matter. Strictly speaking evidence of what the claimant's pattern of employment was (say for July to December in one year) is evidence of the normal extent of his employment during that [italics in original] period. From that evidence it is generally legitimate to infer [italics in original] (in the absence of any indication to the contrary) that the person concerned would continue to have the same normal extent of employment in the period following - being the period directly relevant to the decision. But this is not a necessary inference. it may appear

that a change of circumstances has occurred; in which event it is no longer a necessary or legitimate inference that the normal extent of employment continues to be the same as it formerly was."

23. The passage I have just cited was by reference to "full extent normal" but in my view the words are equally apposite to the "ordinarily does not work on every day in a week" limb of the regulation. Both limbs of the regulation are in my view fundamentally linked and they are asking whether on the relevant day a claimant has a regime or pattern of not working every day, and if so, has that regime or pattern been fulfilled in the week in which that day falls? (It is of course clear that if there is no such pattern or regime at all, then the regulation cannot apply - R(U) 32/51, paragraph 7 and R(U) 37/56 at paragraph 8).

24. It is clearly possible that by force of circumstances and against his will a person who had previously worked full-time may become one who did not ordinarily work more than a limited number of days in a week - see R(U) 36/51, paragraph 3.

25. There have been cases where a Commissioner considered that a lapse of time was necessary to allow the claimant to take stock of his changed employment position - R(U) 30/53 at paragraph 5, or the particular employment at the material time was regarded merely as a "stop-gap". There are in my view dangers in lifting general propositions or short-hand expressions out of context and in seeking to apply them as if they represent the language which Parliament has used. They do not, and each case must depend upon the application of the statutory language to its own facts. I am in particular not able to agree that because there is at present a high degree of unemployment then it may be more readily accepted that part-time work is "stop-gap". If anything, I would think the contrary but I especially hesitate as to the approach.

26. Regulation 7(1)(e) does not prescribe what is to be looked at to see whether on the given day or in the given week the questions posed by the regulations have been answered, and I dissent from any approach that requires as a generality the consideration of the whole of the claimant's working life, be he aged 20 or 60, whether he has had one job or 20, or been never or to a substantial extent unemployed. In my view the prima facie approach of adopting a "one year before basis" specified in the Commissioner's Decision CU 518/49 (KL) at paragraph 11, affords a practical - but certainly not inviolable - approach which ought not to be disturbed; a very large number of cases must have been decided on the basis of it in the 35 years since 1949 and the legislation has been under the scrutiny of Parliament on a considerable number of occasions since, without apparent disapproval. I would regard it as thoroughly undesirable at this stage to disturb so long-standing a rule of practice. This said, however, it is only in effect a rule of evidence and cannot supplant the Parliamentary language. There have been frequently cases where a claimant's record of work over longer periods has been considered - thus three years in R(U) 13/55 at paragraph 10. There have been cases on the other hand where the necessary findings of fact can be made on the basis of the immediate surrounding circumstances, including in particular the contract of employment and its nature, as in the oil rig worker case, R(U) 2/83.

27. I am not able on the facts of this case to regard the 25 year working history of the claimant, which ended about two years and five months before the claimant started work with the Community Task Force as relevant to the establishment of whether this claimant had a normal working week as at the particular days in April - July 1983 in question, and whether in the relevant

weeks his employment fell short of what was normally worked by him. The gap is large; there was an intervening period (about two years and two months) of total unemployment with a clearly temporary three month job the claimant was aged 53; and it would in my view by flying in the face of economic reality to rely on the previous working history itself as pointing to a likelihood of a return to the pattern of work established by his previous employment. There was certainly no evidence that this was likely or even possible. However, the part-time work with the Community Task Force was in terms on the basis that it would be likely to lead - as it did within a comparatively short period - to full-time employment with the Community Task Force, and I infer that the claimant was willing from the start to accept this full-time work when it was offered. That was the basis upon which the claimant worked with the Community Task Force and it is I think legitimate also to rely on the subsequently ascertained fact that the prospect initially held out was in fact achieved. In my view the claimant is to be treated as ordinarily working full-time for the Community Task Force.

28. The evidence does not disclose what the extent of such full-time work was. I entirely agree that both of the conditions identified in paragraph 8 above have to be satisfied before regulation 7(1)(e) disqualifies a day from being a day of unemployment. I concur in the result since regulation 7(1)(e) is a disqualifying provision and the evidence has not shown that the first condition (as to "does not ordinarily work on every day in a week (exclusive of Sunday . . .) . . ") has been satisfied. No doubt a five-day-week is to be expected but I do not think it right to speculate in the absence of evidence. For my part I would wish to hear argument on the alternative basis relied on in paragraph 8 that even if the claimant satisfied the first condition by working a normal week of five days then in those weeks in which he actually worked three days the application of 'full extent normal' excluded the disqualification of the remaining three days in the week.

29. By the route I have indicated I concur in the result.

(Signed) Leonard Bromley
Chief Commissioner

(Signed) D G Rice
Commissioner

(Signed) M J Goodman
Commissioner

Date: 20 March 1985