

**SUPPLEMENTARY BENEFIT****Resources—treatment of final earnings on termination of full-time work.**

The claimant ceased full-time work on 13 May 1983 and received one week's wages on that day. On 20 May 1983 he received a week's wages in respect of a "week in hand", plus 4 weeks' pay in lieu of notice, plus payment for 23 days of holiday pay, plus a lump-sum redundancy payment. He claimed supplementary benefit on 17 June 1983. The supplementary benefit officer and, on appeal, the tribunal determined that by virtue of regulation 9(1)(b) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 he was to be treated as engaged in remunerative full-time work up to and including 26 July 1983 and was therefore excluded from entitlement to benefit under section 6(1) of the Supplementary Benefits Act 1976 up to and including that date. The claimant appealed to a Social Security Commissioner.

*Held that:*

1. before earnings and other income can be attributed to a period under regulation 9 of the Supplementary Benefit (Resources) Regulations it is necessary to establish the claimant's benefit week in accordance with regulation 7 of the Supplementary Benefit (Determination of Questions) Regulations (paragraph 4(2));
2. a lump-sum redundancy payment constitutes a capital resource and is therefore not earnings within regulation 10 of the Resources Regulations (paragraph 10(2));
3. for the purposes of regulation 9(1) of the Conditions of Entitlement Regulations only earnings of a positive amount after the application of regulations 10, 11 and 12 of the Resources Regulations are relevant, though the actual amount is immaterial (paragraph 11(1));
4. in deciding the period to which earnings are to be attributed in accordance with regulation 9 of the Resources Regulations:
  - (a) the payable date of a payment is the date on which it first becomes due to be paid, which is not necessarily the date it was received although the two dates may coincide (paragraph 16(1));
  - (b) remuneration of a weekly-paid employee becomes payable on his normal weekly pay day (paragraph 16(3));
  - (c) pay withheld by an employer under a "week in hand" arrangement becomes payable upon termination of the employment, i.e. in the present case on 13 May 1983 (paragraph 16(3));

(d) where employment is terminated without due notice being given but with payment in lieu of notice that payment becomes payable upon termination of the employment (paragraph 16(3));

(e) an entitlement to holiday pay becomes payable upon termination of the employment (paragraph 16(3));

5. A composite payment of earnings payable on the termination of employment, i.e. in the present case the payments in respect of the "week in hand" and holiday pay and in lieu of notice, must be attributed to an aggregate period of weeks running consecutively from the payable date (paragraph 18(2));

6. The effect of the judgment in *Chief Supplementary Benefit Officer v. Cunningham* (see R(SB) 23/84) was that the final payment of "normal" earnings, i.e. in the present case the payment on 13 May 1983, should be attributed separately from the terminal payments to a period which could run concurrently with and overlap the period attributed to the terminal payments.

The appeal was allowed.

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1. (1) This is a claimant's appeal against the decision dated 4 October 1983 of a supplementary benefit appeal tribunal ("the tribunal") brought by my leave. The tribunal upheld a benefit officer's decision dated 22 June 1983 to the effect that "supplementary allowance is not payable until 27 July 1983 as final earnings are deemed to meet requirements until 26 July 1983". The appeal is brought upon the contention that the tribunal's decision was given in error of law. The adjudication officer now concerned concedes that the tribunal fell into certain errors of law by reason of which the tribunal's decision ought to be set aside. Perhaps even more importantly, there has been a recent decision of the Court of Appeal which throws new light upon a question of law involved.
- (2) The appeal achieves entire technical success. Whether it will lead to any practical advantage to the claimant is a question which will fall to be answered outside the scope of the present appeal. I set aside the tribunal's decision as given in error of law as later below indicated and direct that the claimant's appeal from the benefit officer's decision be re-heard by a social security appeal tribunal constituted entirely differently from the tribunal. I do not consider it expedient in the circumstances of the case to seek to give myself the decision which the tribunal should have given, as in my view a proper determination will require the finding of facts additional to those found by the tribunal.

2. The question arising in the case can be stated simply enough, but involves due consideration of facts of some (but not acute) complexity in conjunction with provisions of law collectively of considerable complexity. I have every sympathy with the tribunal in grappling with the latter as they stood in the light of the case-law authorities operative at the date of their hearing. The case-law has however been, intermediately between their decision and my own, the subject of a decision of the Court of Appeal, namely that in *Chief Supplementary Benefit Officer v Cunningham*, 19 July 1984 (C.A.)—(reported as R(SB) 23/84)—"the *Cunningham case*". The point at issue is how are properly to be treated, in the context of a claim for supplementary benefit instituted by the claimant on 17 June 1983, certain payments which became payable to the claimant and were received by him on or shortly after the termination of his employment at 13 May 1983.

3. Whilst it will be for the tribunal re-hearing the appeal from the benefit officer's decision to take into consideration and make findings in respect of all material questions of fact, it was common ground at the tribunal that the claimant had down to 13 May 1983 been in full-time remunerative employment at all material times; that his employment terminated as at that date; that he received on that date (which was his normal weekly pay day) one week's wages; and that on 20 May 1983 he received payment of one week's wages antecedently held on a "week in hand" basis, plus 4 weeks' pay in lieu of notice, plus payment for 23 days of holiday pay, plus a lump sum redundancy payment. It was also common ground that the claimant had claimed supplementary benefit on 17 June 1983, and that whilst the other payments he received as above mentioned fell to be considered in relation to the provisions of law with which the case was concerned, the lump sum redundancy payment was a payment which did not fall within the thrust of the material legislation.

4. (1) Both the benefit officer who gave the decision from which the claimant appealed to the tribunal and the tribunal themselves correctly appreciated that there fell to be considered in relation to the claimant's claim for supplementary benefit so made the provisions of regulation 9(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 ("the Conditions of Entitlement Regulations"), which—in conjunction with provisions of section 6(1) of the Supplementary Benefit Act 1976 as amended ("the Act") which concern the exclusion from supplementary benefit of certain employed persons—provide as to certain circumstances in which although not in fact engaged in remunerative full-time work in a particular benefit week a claimant is to be "treated" as so engaged, and, by the force of section 6(1) of the Act, if so to be treated is excluded from supplementary benefit in respect of that week.
- (2) "Week" for this purpose may include part only of a particular benefit week, and "benefit week" is materially defined for the purposes of the Supplementary Benefit (Resources) Regulations 1981 as amended ("the Resources Regulations") as having the meaning assigned to it in regulation 7 of the Supplementary Benefit (Determination of Questions) Regulations 1980 as amended ("the DQ Regulations"), and as so defined means a period of 7 days the commencement of which varies according to the relevant circumstances of the particular claimant, as prescribed in regulation 7 of the DQ Regulations, and in particular means in relation to a person in receipt of unemployment benefit a period of 7 days commencing with the day of the calendar week on which his unemployment benefit is payable, and in the case of a claimant who is not in receipt of unemployment benefit but is a person whose eligibility for supplementary benefit is conditional upon a condition of registration for employment (imposed pursuant to section 5 of the Act) means the day of the week upon which payment of unemployment benefit would be made to him, if—contrary to the fact—unemployment benefit was payable to him.

5. The tribunal made no findings either as to whether or not, and if so when, the claimant was at the date of his claim for supplementary benefit receiving unemployment benefit, or as to whether if not he was subject to a condition of registration for employment, by reason of which his "benefit week" fell to be treated as a period of 7 days starting with the day upon which unemployment benefit would if payable have been paid.

6. Regulation 9(1) of the Conditions of Entitlement Regulations materially provides as follows:—

“9.—(1) For the purposes of section 6(1) (exclusion from supplementary benefit of certain employed persons) a claimant shall be treated as engaged in remunerative full-time work only where:—

(a) subject to paragraph (2), he is engaged in work for which payment is made, or which is done in expectation of payment, on average for not less than—

(i) in the case of a claimant who is mentally or physically disabled and whose earning capacity is by reason of that disablement reduced to 75 per cent. or less of what he would, but for that disablement, be reasonably expected to earn, 35 hours a week,

(ii) in any other case, 30 hours a week,

or he is absent from such work without good cause or by reason of a recognised or customary holiday;

(b) he was engaged in remunerative full-time work within the meaning of sub-paragraph (a), but not as a self-employed person, and—

(i) ... his employment has terminated..., and

(ii) he has received in respect of the employment in which he was so engaged earnings calculated in accordance with Part III of the Resources Regulations (calculation of income resources) which, by virtue of regulation 9(2) of those regulations as modified by paragraph (3) of this regulation, fall to be taken into account for a period subsequent to the termination of the employment or, as the case may be, during which he is a person affected by a trade dispute;

and in a case to which this sub-paragraph applies the claimant shall be treated as engaged in remunerative full-time work for the period in respect of which those earnings fall to be taken into account pursuant to the said regulation 9(2) as modified by paragraph (3) of this regulation;”

7. In considering the application of regulation 9(1) of the Conditions of Entitlement Regulations it will be necessary for the tribunal re-hearing the appeal to take account also of regulation 9(3) of those Regulations, but as the facts material to determining whether or not that has any practical effect in the circumstances of the present case are not before me, and its application or otherwise to the circumstances of the particular case can be determined only after the answer to whether or not the provision of the Resources Regulations identified in regulation 9(1)(b) of the Conditions of Entitlement Regulations applies has itself been obtained, I will not burden my own decision further than to indicate that the tribunal must take due account of this additional consideration.

8. (1) To take stock thus far, a claimant for supplementary benefit will be wholly barred from eligibility for that benefit in respect of a week or part of a week constituting his “benefit week” if, having antecedently been an employed earner, not self-employed, and engaged in full-time remunerative work, there fall to be attributed to him, in respect of the material date or dates and upon a due application of regulation 9(2) of the Resources

Regulations as modified by paragraph (3) of regulation 9 of the Conditions of Entitlement Regulations, “earnings” received in respect of his antecedent employment.

- (2) The benefit officer’s decision, and that of the tribunal, reflected their respective conclusions that the claimant fell within the thrust of regulation 9(1)(b) of the Conditions of Entitlement Regulations for all material dates down to and including 26 July 1983. And, with that in mind, it is now convenient to turn to the material provisions of the Resources Regulations.

9. (1) Regulation 9(1) of the Resources Regulations provides as follows:—

“9.—(1) Except in so far as regulations 10, 11 and 12 provide that certain payments shall be deducted and that certain payments shall be disregarded, the amount of a claimant’s income resources to be taken into account shall be—

- (a) the whole of his earnings and the earnings of any partner of his, the earnings of any dependant being disregarded, calculated in accordance with regulation 10;
- (b) the whole of any other income of the assessment unit, calculated in accordance with regulations 11, 12 and 13.”

(2) As in force at the times material to this appeal (it has been amended with later effect, but not materially to the points with which this appeal is concerned) regulation 10(1) of the Resources Regulations materially provided:—

“10.—(1) Subject to the following paragraphs, for the purposes of these regulations a person’s earnings shall consist of all remuneration or profit derived from any employment and shall include—

- (a) .... ;
- (b) any bonus or commission;
- (c) .... ;
- (d) any payment in lieu of notice or of remuneration;
- (e) any holiday pay other than any received more than 4 weeks after termination of employment;
- (f) .... ;
- (g) .... ”

10. (1) Having regard to regulation 10(1) of the Resources Regulations I am in no doubt that the “earnings” upon which (unless excepted by the operation of regulations 10, 11 or 12) regulation 9(1)(a) will bear are the whole of a claimant’s “earnings” in the amplified meaning of that word indicated by regulation 10(1).

(2) It is convenient to indicate at this point that whilst at large a “redundancy payment”, statutory or otherwise, might be thought to fall within the formula in regulation 10(1) as a “profit derived from any employment”, the concession in the present case that it did not so fall was in my judgment rightly made, for there is no difficulty in regarding a lump sum payment so received as constituting a *capital* resource in the hands of the recipient claimant, whilst the provision by regulation 11(2)(i) as to there being treated as income and taken into account in full “any periodic sum paid to a person on account of the termination of his employment by reason of his redundancy”—

which would be unnecessary were such a periodic sum to fall within the prescription in regulation 10(1) as to “any profit derived from any employment” constituting “earnings”—is in my view corroborative of the conclusion that a lump sum redundancy payment does not fall within “earnings”.

11. (1) Having regard to the terms in which regulation 9(1) of the Conditions of Entitlement Regulations are framed it is in my judgment clear that it bears only where there are to be attributed to the claimant in respect of a material date “reckonable” earnings in a positive amount as determined with due regard to the provisions of regulations 10, 11 and 12 of the Resources Regulations as to deductions and disregards; but also that if any positive sum is so arrived at the amount of that sum is immaterial.
  - (2) Regulation 10(4) of the Resources Regulations, which provides as to deductions, is not very happily expressed—it commences “in calculating the amount of a person’s earnings, there shall be deducted from the earnings which he derives from any employment”—which is a “circuitous” formulation. However, in applying regulation 9(1)(b) of the Conditions of Entitlement Regulations, and in that context paragraph (2) of those Regulations as modified by paragraph (3) of regulation 9 of the Conditions of Entitlement Regulations, it is incumbent upon the adjudicating authorities, in my judgment, to take due account of the “work-out” of regulations 10, 11 and 12 of the Resources Regulations, and to treat as “triggering” the application of regulation 9(1)(b) of the Conditions of Entitlement Regulations only such (if any) earnings for a material date as are “reckonable” in the sense I have above indicated. And, having made that clear, it is time to move on to regulation 9(2) of the Resources Regulations.
12. (1) Regulation 9(2) of the Resources Regulations is directed to determining, for the purposes of an assessment of a claimant’s resources in connection with his claim for supplementary benefit, how and when in point of time “reckonable” earnings, and other income, are to be attributed as an income resource of the claimant.
  - (2) Disregarding, for the reasons I have already indicated, the lump sum redundancy payment which also he received, there was evidence before the tribunal of several payments to the claimant of possible relevance as “reckonable” earnings. The tribunal’s stated findings of fact materially record:—
    - “2. All parties accepted employers advice with regard final earnings.
      - 13 5 83 rec’d 1 weeks wage
      - 20 5 83 rec’d 1 week in hand
      - 20 5 83 rec’d 4 weeks in lieu
      - 20 5 83 rec’d 23 days holiday pay
      - 20 5 83 rec’d redundancy pay.
    3. Redundancy not included in assessment.  
Normal payday Friday.”
13. (1) The benefit officer’s decision had proceeded on a statement by the employer that the claimant had received earnings as follows:—

- 13 5 83 One week's wage
- 20 5 83 Week in hand wage, 4 weeks wages in lieu of notice, 23 days holiday pay and a lump sum of £513.60 redundancy pay.
- (2) Whilst the benefit officer's decision reflected a determination that upon a due application of regulation 9(1) of the Conditions of Entitlement Regulations, "the claimant should be treated as being in remunerative full-time work until 26 July 1983 when his earnings—earnings to include holiday pay and wages in lieu of notice—are deemed to be exhausted", and cited that regulation 9(1) and also regulations 9(2) and 10 of the Resources Regulations as leading to that result, it does not appear that the basis upon which the benefit officer had arrived at that result was explained to the tribunal in any greater detail. It is, however, a reasonable inference that it proceeded by aggregating the week's wage received on 13 5 83, the "week in hand" wage, the 4 weeks' wages in lieu of notice, and the 23 days' holiday pay received on 20 5 83 as constituting 9 weeks and 2 days of remunerative full-time work, and taking that aggregated period as having commenced to run from 23 May 1983; and thus as expiring on 26 July 1983.
- (3) Now, *Monday* is, under the provisions of regulation 7(2) of the Determination of Questions Regulations, the date of commencement of a claimant's "benefit week" under a residual provision of that regulation 7(2) contained in its sub-paragraph (c); but (c) is operative only where no antecedent sub-paragraph applies; and it does not appear that either the benefit officer or the tribunal directed their minds to the propriety of attributing such a commencement date, although—as will be shortly apparent—what constituted the claimant's "benefit week" was a matter closely relevant to a proper application of regulation 9(2) of the Resources Regulations.
- (4) As the tribunal made no finding as to what was the claimant's benefit week, and gave no reason for decision truly explanatory of the grounds upon which they accepted the benefit officer's submission as to there being a period, or his computation as to for what period, for which, subsequent to the termination of his actual employment, the claimant fell to be treated as engaged in full-time remunerative work their decision is in my judgment clearly given in error of law as to such omissions.
- (5) However, the tribunal re-hearing the appeal will need to give close consideration to, amongst other points, the proper commencement date of any such period, and will need in this behalf to determine what is the correct "benefit week" to attribute to the claimant, having due regard to regulation 7(2) of the DQ Regulations in general, and to its provisions as to persons to whom Section 5 of the Act applies in particular. This is, shortly stated, because the provisions of regulation 9(2) of the Resources Regulations are so framed as to require for their proper application a due attribution as to what constitutes the particular claimant's "benefit week".
- (6) I will shortly come to that regulation 9(2), but will first interpose that, separately from the attribution of a correct commencement date, if—as I am disposed to infer, but need not specifically hold—the tribunal proceeded upon the footing that a period of 9 weeks and 2 days was that proper to continue to treat the

claimant, after his employment had actually terminated, as in full-time remunerative work, they were in my judgment in additional error of law in taking so long a period—see paras 18 to 20 below.

14. (1) Regulation 9(2) of the Resources Regulations starts off simply enough by providing that, with certain exceptions (of which the tribunal re-hearing the appeal will need to take account, but which do not appear to me to have borne in the circumstances of the case as in evidence before the tribunal), “earnings and other income shall be calculated on a weekly basis and ... payments shall be attributable as follows—
- (a) subject to the following sub-paragraphs a payment of income shall be taken into account—
    - (i) where it is payable in respect of a period, for a period equal to the length of that period,  
and
    - (ii) in any other case for the period to which it is fairly attributable.”
  - (2) Whilst this will be a matter for the tribunal re-hearing the appeal to rule upon, on the evidence as it stood before the tribunal I see no difficulty in concluding that the week’s wage the claimant received on 13 May 1983, the week in hand he received a week later, the 4 weeks’ pay in lieu of notice he also received on the later date, and the 23 days’ holiday pay he similarly received, were all payments of income falling within regulation 9(2)(i). And, so regarded, the aggregate period so constituted would, as a matter of simple arithmetic, amount to 9 weeks and 2 days.

15. Having indicated the period for which a payment of income is to be taken into account, regulation 9(2) then goes on—in more complex tenor—to prescribe, in the context of the assessment of a claimant’s income resources in connection with his claim for supplementary benefit, the point or points in time to which the attribution is to be made of that income as a resource of the claimant. As in force at the times material to this appeal (and, though amended with later effect, the amendments would not have affected the application of regulation 9(2) upon the facts as in evidence before the tribunal) regulation 9(2) continued with the following attributions:—

- “(b) a payment of income shall be treated as paid on—
  - (i) in the case of a payment which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable,
  - (ii) in any other case the first day of the benefit week in which it is payable or the earliest succeeding benefit week in which, having regard to the method by which pension or allowance is payable in the particular case, it would be practicable to take it into account;
- (c) where a payment of income is payable in respect of a period which exceeds one week, it shall be attributable at a weekly rate, calculated in the case of a monthly payment in accordance with sub-paragraph (e), beginning with the appropriate date ascertained in accordance with sub-paragraph (b);
- (d) where the amount of a person’s earnings fluctuate or a person’s regular pattern of work is such that he does not work every week,

- the preceding sub-paragraphs may be modified so that his earnings are averaged over such period as the benefit officer considers reasonable in the circumstances of the case;
- (e) a monthly payment shall be treated as a payment—
- (i) in respect of a calendar month,
  - (ii) at a weekly rate determined by multiplying the payment by 12 and dividing the result by 52.”
16. (1) When a particular payment of income is “payable” is not the same question as when payment of it is *received*. The two dates may coincide, but may well be different. The date of receipt is the date on which the payment comes to the hand of the recipient payee. The date when a payment is “payable” is the date upon which it first becomes due to be paid: see the decision on Commissioner’s file C.S.B.342/1982, with which I respectfully concur and which the adjudication officer now concerned accepts as correctly indicating the difference.
- (2) As that adjudication officer further concedes, the tribunal have made no findings as to when any of the payments received by the claimant which they regarded as material became “payable”; and have, in failing to make such findings, and in failing to apply regulation 9(2) of the Resources Regulations with due regard to the dates upon which became *payable* the sums they have regarded as relevant, fallen into further error of law.
- (3) It is further submitted by such adjudication officer (and I accept the submission) that where—as was here not in dispute before the tribunal—a claimant’s employment is terminated at a particular date *without* due notice of termination but *with* agreement upon a payment in lieu of notice, that payment becomes “payable” forthwith upon the termination of the employment. And, in my judgment, so also the remuneration of a weekly paid employee becomes payable on his normal weekly payday; an entitlement to deferred holiday pay crystallizes and becomes payable upon the termination of employment; and so also any pay withheld by the employer under “week in hand” arrangement becomes payable upon the termination of employment.
- (4) It follows, in my judgment, that in correct contemplation of law, and upon the evidence before the tribunal, they should have held that the claimant had earnings which became payable on 13 May 1983 (which, it was common ground, was the date of termination of the employment) comprising his wages due that Friday; his withheld “week in hand” wages; his 4 weeks pay in lieu of notice; and his 23 days of holiday pay.
- (5) Assuming that the tribunal were, upon the “arithmetic” and in the particular contexts of regulations 10, 11 and 12, satisfied that all those were “reckonable” earnings—and as to this the tribunal re-hearing the appeal will have to determine afresh what sums became payable and when, and how far if at all they constituted “reckonable” earnings—the tribunal needed to direct their attention next to regulation 9(2)(b) of the Resources Regulations.
17. (1) The provisions of that sub-paragraph are particularly directed to when a payment of income is to be treated as paid; but, as the opening words of 9(2)(b)(i) indicate, the practical need to do so arises only “in the case of a payment which falls to be taken into account”. But on the footing that all the sums payable on 13 May 1983 (omitting from consideration the redundancy payment)

gave rise to “reckonable” earnings, the tribunal would have been correct in regarding them as falling “to be taken into account”. But—apart from the further relevance of the *Cunningham case*, a decision of which the tribunal could not have known, since they were dealing with the present case before that decision became available—the tribunal needed to take into contemplation what was the first benefit week pursuant to the claim, since a sufficient identification of that also is needed in applying regulation 9(2). There is no indication that the tribunal gave any consideration to this aspect of the case; though had they done so, and upon the evidence before them, it might well have sufficed for their purposes that if upon consideration of the claim made by the claimant on 17 June 1983 it was found to be a claim for benefit only from the latter date it must follow that payments payable on 13 May 1983 fell to be treated as paid on that date.

- (2) It will, however, be the duty of the tribunal re-hearing the appeal to take due account of all the provisions of regulation 9(2) in arriving at their decision.
18. (1) *The Cunningham case* was concerned with a not dissimilar basic situation and the main issue for determination in it was whether, where there were what I will neutrally describe as “terminal payments” of more than one kind, each falling upon a due application of regulation 9(2) to be regarded as a resource for a period of one week or more, and with a common “payable date”, one aggregated those weeks to constitute a single consecutive period or whether instead one should attribute each as separately attributable for its own length of time measured from the common starting date. However, the case also involved a secondary issue, namely whether, in the circumstances that the claimant’s employment had been terminated at 12 November 1982 and he was a monthly-paid employee who was paid monthly in arrear and duly paid on 30 October 1982, any part of that fell to be brought into account, and if so, how.
- (2) What the Court of Appeal decided on the main issue was that in so far as the material payments properly fell to be considered payments arising out of one event, namely the dismissal of the claimant, they constituted (although paid out by distinct components) a composite single payment made on termination of the contract and properly gave rise to the attribution of a single aggregate period of weeks running consecutively.
  - (3) On the secondary issue, however, the Court of Appeal held it proper to exclude in computing the length of such aggregate period any attribution of the month’s pay which had been received on 30 October, on the ground that the nexus common to the other components—namely their having been directly related to the dismissal—did not extend to the payment on 30 October, which was not related to the dismissal at all. Any attribution of that month’s pay fell to be made separately, and, so far as overlapping the single consecutive period referable to payments received in connection with the dismissal, concurrently.
19. (1) Applying what I regard as the principles established in the *Cunningham case* to the facts of the present case as they stood before the tribunal, the proper course of the tribunal was to discard from aggregation in a consecutive period constituted by payments referable to the dismissal the week’s pay received by

the claimant on 13 May 1983 and to treat that as “free standing”, for attribution (so far as “reckonable”) for a single week to be determined in accordance with the Resources Regulations, but capable of running concurrently with and “overlapping” other proper attributions.

- (2) I should add that, by parity of reasoning, I conclude that the accelerated receipt of the “week in hand” pay made the attribution for that aggregable with other payments due on 13 May by reason of the termination, so that the “aggregated” period correctly attributable to the dismissal was, on the evidence before the tribunal, one of 8 weeks and 2 days, and not 9 weeks and 2 days.

20. However, by the force of regulation 9(2) of the Resources Regulations, and in accordance with the principle that a receipt of income is, subject to the operation of that regulation as to the duration of the period for which it is brought into computation, to have effect in the assessment of a claimant’s resources on a “forward” basis ascertained by a due application of regulation 9(2)(b) of the Resources Regulations, what the tribunal should have decided (looked at with hindsight and in the light of the *Cunningham case*) upon the evidence before them, was that:—

- (i) the week’s pay attributable to the week ending 13 May 1983 was entirely irrelevant to the assessment of the claimant’s resources for the purposes of his claim instituted on 17 June 1983 because it fell to be regarded as a resource of the claimant only for a period of one week commencing 13 May 1983;
- (ii) the period of 8 weeks and 2 days also commenced at 13 May 1983 and ran from that date as a single period; and
- (iii) thus the claimant fell to be precluded from award of supplementary allowance for all dates to which his claim instituted on 17 June 1983 related which fell within the unexpired portion of a period of 8 weeks and 2 days commenced from 13 May 1983.

21. The adjudication officer now concerned has demonstrated by his submissions on the present appeal a much closer grasp of the true thrust and method of operation of regulation 9(1) and its inter relation with regulation 9(2) of the Resources Regulations, and I have by my decision accepted much of what he has there indicated. I am, however unable to accept his invitation to give myself the decision which the tribunal should have given, as in my view the precise “work out” of that operation requires knowledge of the correct commencement date of the claimant’s claim, in conjunction with information not before me as to what properly was his “benefit week”.

22. The tribunal re-hearing the appeal are to be furnished with a copy of my present decision as some assistance to them in pitfalls to be avoided. They are to bear closely in mind that all questions of fact will be again at large before them. They are to regard as binding on them the principles for which the *Cunningham case* stands as authority, and which I have identified, and they are to regard what I have myself indicated in paragraphs 10(2), 11, 16(1) and (3) and 19(2) above as correctly representing the law unless by the time for their decision my observations have been displaced by higher authority. They are to express findings of fact in all respects proper to support the conclusions at which they arrive as to the dates, if any, which pursuant to regulation 9(1) of the Conditions of Entitlement Regulations and in the context of the claimant’s claim for supplementary allowance instituted on 17 June 1983 fall to be treated as dates upon which he was in full-time remunerative employment and are to express both findings and reasons for decision which sufficiently explain,

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with particular reference to regulation 9(2) of the Resources Regulations, the steps and conclusions by which they have arrived at their findings last mentioned, and they are to give reasons for decision from which the adjudication officer and the claimant respectively can ascertain upon what grounds their respective contentions upon the re-hearing have prevailed or been rejected.

23. My decision is as indicated in paragraph 1 (2) above.

(Signed) I. Edwards-Jones  
Commissioner

**Note added with the authority of the Chief Commissioner**

The Supplementary Benefit (Conditions of Entitlement) Amendment Regulations 1984 [SI 1984 No 518] amended regulation 9 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [SI 1981 No 1526] with effect from 10 April 1984 to provide that where a claimant receives earnings in respect of wholly or partly overlapping periods, he is to be treated as engaged in remunerative full-time employment for the aggregate of those periods.

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