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Test case. Vessels on which claimants normally went to sea remained in port under an agreement to abstain from fishing because claimants' Association were unable to obtain the prices which they demanded.

*Held* that this did not constitute good cause which necessitated abstention from fishing.

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1. My decision is that for the period in question the claimant was not entitled to receive unemployment benefit in respect that the additional conditions prescribed by Regulation 14B of the National Insurance (Mariners) Regulations, 1948 [S.I. 1948 No. 1467] as amended by the National Insurance (Mariners) Amendment Regulations, 1949 [S.I. 1949 No. 301] were not satisfied.

2. The claimant's case has been appealed as a test case, the decision being applicable to his claim and the claims of 21 other share fishermen fishing from the port of P. There are before me, however, appeals in a very considerable number of other cases relating to claims by share fishermen for unemployment benefit for the same period—the claims in most cases having been disallowed by the Local Tribunals but in some cases allowed. In all the cases under appeal the vessels on which the claimants under normal conditions would have been at sea remained in the local harbours under an agreement to abstain from fishing in accordance with a decision to that effect by all the masters of the local vessels or their representatives. It is maintained by or on behalf of the claimants that the abstention from fishing so arranged was "necessitated" in the sense of Regulation 14B(2)(d) of the regulations above-mentioned by what were described as the "uneconomic" conditions under which share fishermen would have had to engage in fishing and that accordingly "good cause" within the meaning of sub-paragraph (d) of Regulation 14B(2) had been shown for the abstention. So far as the claims before me are based on that ground alone, they all fall to be disallowed in accordance with my decision in the present case but in some of the cases additional grounds of appeal were submitted and it is convenient to refer to those specialities now.

3. In quite a number of cases an additional argument was submitted for a claimant as a member of the crew of a fishing vessel to the effect that he was "prepared to go to sea" during the period in question but was prevented by the decision that none of the fishing vessels should engage in fishing. But the point is not effective to support the claims referred to. For all the claimants in all cases covered by the appeals before me were masters or members of the crews of fishing vessels "of which either the master or a member of the crew is owner or part owner" and accordingly *all* the claimants who were members of any of the crews require to satisfy the condition prescribed by Regulation 14B(2) that "there was no work on or in connection with the fishing vessel available for them on the days in question *for one or other of the reasons stated* in sub-paragraphs (a), (b), (c) and (d). The only sub-paragraph relied on is sub-paragraph (d) and proof of *willingness* on the part of individual members of the crew to go to sea would not show, what is clearly required by the terms of sub-paragraph (d), *that the vessel had not been engaged in fishing for a reason that constituted "good cause"*.

4. Another additional and special ground of appeal was submitted on behalf of claimants who are described as members of "the black squad", that

is men who although members of crews are engaged in a special capacity—engineman, fireman or cook. It is maintained on their behalf that they are not share fishermen as they do not receive a share of profits like ordinary members of the crew. But information obtained at my request and now before me shows that as members of the crew they are “remunerated in part by a share in . . . the gross earnings of the fishing vessel”, and accordingly they are covered by the definition of “share fisherman” in the regulations.

5. The only other special ground of appeal is one applicable only to claimants who were masters or members of the crew of two vessels the “G.R.” and the “C”. In the earlier stages of the cases those claimants had relied only on the general ground of claim, but in the present appeals it is submitted on their behalf that, as regards the period during which the agreement not to fish was in operation, or at any rate part of it, the condition stated in sub-paragraph (b) prevailed, as the vessels were undergoing repairs and there was no work available for them. This ground of appeal—which is supported as regards the claimants to whom it relates by the Insurance Officer concerned with the appeals—will be more conveniently dealt with in dealing with the appeals in which it is submitted.

6. In explaining the circumstances, relating to what may be called the general ground of claims, which led to the agreement to abstain from fishing for the period in question, I feel that I need do no more than state that the share fishermen were dissatisfied with the price conditions prevailing and that as they failed to obtain from the responsible authorities price conditions which, as they maintained, were necessary to make their fishing “economic” in the sense that they would give a return for their work that could be regarded as reasonable, the decision to stop fishing already mentioned was come to. The question for consideration under the general ground of claim is whether the maintenance of those price conditions—described as “uneconomic”—in view of the evidence before me of the resulting yield to the masters and crews of the vessels constituted good cause for abstention from fishing within the meaning of sub-paragraph (d) for the period in question.

7. In relation to all the cases before me against disallowance of benefit the appeals are taken by the Scottish Herring Producers Association, and their solicitors have submitted two financial statements for the “G.R.” which I have been informed may be regarded as “typical” for all. One statement relates to a period of 14 weeks and the other to one of six months, but in relation to the grounds of my decision it will suffice to take the effect of the figures for the shorter period as summarised in the statement of grounds of appeal by the claimant’s Association. It is there stated that “this means that each member of the crew received rather less in all than £3 a week” for the period covered by the statement, but the meaning and scope of sub-paragraph (d) of the regulations, in my judgment, make a difference between average earnings for a member of a crew of £3 a week for the period of abstention and (say) £6 or £8 an irrelevant consideration in relation to the appeals before me. I do not assume that “market conditions” would never constitute “other good cause necessitating abstention from fishing” or that to prove it claimants would require to show that if their vessel had brought in fish the fish *could not have been sold*. But, making the opposite assumption, I find it impossible to interpret the terms of sub-paragraph (d) as entitling me to allow unemployment benefit on proof that on a particular day or for a period a vessel or a number of vessels remaining in port could not by putting to sea have obtained a catch or catches that on market prices would

have yielded a weekly wage exceeding (say) £2 a week for each member of a crew (after allowing for expenses). I express that opinion of course without any reference to the question whether conditions giving such a result would be fair, but simply on the view that on consideration of Regulation 14B as a whole and the terms of sub-paragraph (d) I think that it is clear that it was not intended or contemplated that the statutory authorities should entertain and dispose of claims based on such a ground—even if it could be regarded as practicable for them to do so. (Some of the practical difficulties were indicated in the course of Commissioner's decision C.S.U. 1/50 (unreported) and that aspect of the matter need not be elaborated.) The opposite view of the scope of sub-paragraph (d) would contemplate the somewhat embarrassing situation of the Statutory Authorities under the National Insurance Act, 1946 disapproving in effect of the price conditions fixed for share fishermen—by a body with special qualifications and holding special authority to do so—as conditions calculated to ensure for them a fair return for their labour. Apart, however, from such considerations such an interpretation of sub-paragraph (d) would give it a meaning and effect in violent contrast to the meaning and effect of the other sub-paragraphs (a), (b) and (c) of Regulation 14B(2). For those provisions plainly contemplate and provide that there will be days and that there may be periods when unemployment benefit *will not be payable* although, after a vessel has put to sea (and whether it has engaged in fishing or not) or during a period in which the vessel has not put to sea because of repairs, the master and crew earn nothing—or their earnings are small or negligible. Again although it would not be reasonable to confine the application of sub-paragraph (d) to circumstances which made abstention from fishing legally or from a practical standpoint compulsory—for example (in some circumstances) in respect of prohibition by an order of the Government or in respect of a case of smallpox amongst the crew—the use of the word “necessitated” is, I feel, of some significance in relation to the contention that the sub-paragraph was intended to cover or could reasonably be read as covering abstention by agreement of the crew of a vessel, or—as in the cases before me—the crews of a number of vessels, on the ground that they regarded the price conditions prevailing, whether under free market conditions or under conditions wholly or partly controlled, as so discouraging as to justify abstention from fishing. In that connection it must of course be kept in view, as I have already indicated, that the question for my decision is not whether the price conditions were fair, but whether the decision of the Association to abstain because of their inability to obtain the prices which they demanded constituted “good cause” which “necessitated abstention from fishing” within the meaning of Regulation 14B(2)(d). On any reasonable interpretation of the terms and scope of the sub-paragraph I am satisfied that it did not.

8. Accordingly I disallow the appeal of the claimant's Association.

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