
**Full normal extent—effect of guarantee
agreement during short-time working**

A laundry worker normally worked on five days a week but was working only four days a week, Monday to Thursday. She claimed unemployment benefit for Friday and Saturday. She was employed under an agreement by which she was guaranteed a weekly wage. In return she was required, in any week, to place her services at her employer's disposal throughout the period of her ordinary employment.

Held that the period of her ordinary employment was for five days a week and that she was not unemployed on Friday. Therefore, having been employed in that week to her full normal extent, Saturday was not a day of unemployment.

1. My decision is that unemployment benefit was not payable to the claimant for Friday the 7th December 1956 or Saturday the 8th December 1956.

2. This is an appeal affecting the claimant and fourteen fellow workers of hers who are employed in a laundry in a holiday resort in North Wales. Their employment is governed by the Laundry Wages Council (Great Britain) Wages Regulation Order, 1956 [S.I. 1956 No. 132], regulation 14 of which is in the following terms:—

“Guaranteed Weekly Remuneration.

14.—(1) Subject to the provisions of this paragraph, a worker who ordinarily works for the employer at least 40 hours weekly (or 35 hours weekly in a case where the proviso to the next following subparagraph applies) on work to which this Schedule applies shall be paid, in respect of any week in which he works for less than 40 hours (or 35 hours where the said proviso applies) on such work, not less than the guaranteed weekly remuneration.

(2) The guaranteed weekly remuneration is 40 hours' pay calculated at the hourly general minimum time rate ordinarily applicable to the worker under the provisions of Part II or Part III of this Schedule:

Provided that where the business of a laundry is subject in the course of the year to fluctuation by reason of changes in

population of a seasonal nature and in consequence in any twelve months ending on the 31st day of March there is, as between a period of not less than ten consecutive weeks and any other such period, a reduction of at least twenty per cent in the average of the weekly hours of all the workers, working at or from the laundry, in relation to which the Council operates, the guaranteed weekly remuneration shall, in respect of the next ensuing period of twelve months, be 35 hours' pay calculated as aforesaid.

(3) The guaranteed weekly remuneration in any week shall be reduced by the amount of any holiday remuneration paid, or payable, by the employer to the worker in respect of any holiday allowed to, and taken by, the worker in that week under the provisions of the Wages Councils Act, 1945.

(4) In calculating the number of hours worked in any week for the purposes of this paragraph, a worker shall be treated as though he had worked on any holiday allowed to, and taken by, him in that week under the provisions of the Wages Councils Act, 1945, the number of hours ordinarily worked by him on that day of the week, provided that a worker shall not be treated as having worked in any week throughout which he is on holiday.

(5) Payment of the guaranteed weekly remuneration in any week is subject to the condition that the worker, throughout the period of his ordinary employment in that week, excluding any day allowed him as a holiday, is:—

- (a) capable of and available for work; and
- (b) willing to perform such duties outside his normal occupation as the employer may reasonably require, if his normal work is not available to him in the establishment in which he is employed.

(6) The guaranteed weekly remuneration shall not be payable to a worker (a) in any week in which work is not available to him by reason of a strike or lock-out or circumstances outside the employer's control, if he has given the worker not less than four days' notice of his inability to provide such employment and the notice has expired; or (b) in respect of any week if the worker's employment is terminated before the end of that week.

(7) The guaranteed weekly remuneration applicable to a piece worker or a worker regularly remunerated on a system of payment by results, not being a piece worker, shall be the sum to which he would be entitled if he were a time worker."

3. The claimant normally works a five-day week of 45 hours, Monday to Friday, in the laundry in question. The business is subject to seasonal fluctuations and for some weeks in the autumn of 1956 the working week was reduced to one of four days, but the employer continued to pay wages for a 45 hour week. However, for the pay week beginning Thursday the 6th December 1956 the employer gave notice that employees were to be on a four-day week of 35 hours, Monday to Thursday. The employer has stated that none of the workers affected by this appeal was liable to be called to work except on those four days and that the steam boiler was put out on Thursday night. The claimant made a claim for unemployment benefit for Friday the 7th December and Saturday the 8th December

1956, the latter being a normal idle day. The insurance officer decided that benefit was not payable for either of those days on the ground that the claimant was not unemployed on either of those days. The local tribunal, on appeal by the claimant, allowed her appeal. The insurance officer now appeals to the Commissioner.

4. Section 11 of the National Insurance Act, 1946, enacts that "a person shall be entitled to unemployment benefit in respect of any day of unemployment which forms part of a period of interruption of employment", but whether a day is a day of unemployment is a question not always easy to decide. In cases such as the present where an employee is guaranteed a weekly wage, the crucial question is—what does the employee undertake to do in return for the employer's guarantee? does she undertake to place her services at the employer's disposal for all the days of the working week, which in the present case is a five-day week, or only for the four days Monday to Thursday? That question has to be determined on the mutual legal obligations of the parties, as contained in the Regulation, and not upon the extent to which a particular employer may choose to assert or refrain from asserting his rights. See Decision R(U)21/56.

5. In the present case, the employee is bound by paragraph (5) of Regulation 14, in return for the guaranteed weekly remuneration, to be willing to perform "throughout the period of her ordinary employment in that week" such duties as the employer may reasonably require. The local tribunal took the view that the period of the claimant's ordinary employment in the week in question was four days and that, since the claimant was not liable to be called to do laundry work for the remaining two days of the week, she was unemployed on those two days.

6. With respect, I do not myself take that view. The claimant's ordinary employment in any week cannot properly be determined by looking at that week in isolation. It may, for instance, be certain that in a particular week a worker will work on only three days, but if his ordinary employment in a week is for six days, he would be regarded as ordinarily a six-day worker even in the week when he works for only three days. There can be no doubt in the present case that the claimant's ordinary employment is for five days a week. That period was temporarily reduced to four days only because of a seasonal reduction in business, but in my view "the period of her ordinary employment" remained at five days a week, and it follows that she was under a legal obligation to place her services at the employer's disposal on every day from Monday to Friday. Her formal legal obligation to render services on every day from Monday to Friday remains in existence notwithstanding that the employer may choose not to avail himself of her services on Fridays. A clause in the same form of words as those used in Regulation 14(5) had to be construed in Decision C.U.42/56 (not reported) and it was there held that a worker who was "stood off" on a particular Friday owing to shortage of work was not unemployed on that Friday.

7. The Regulation makes it plain that the guaranteed remuneration is a *weekly* remuneration, and that it is to be paid in respect of any *week* in which the worker works for less than the specified number of hours. That is to say the remuneration covers the whole of the working week of five days and is paid in respect of the whole of the working week, and not in respect of any particular days. An employer may release a worker from her duty to render services on any ordinary working day, and the worker

may thereby be set free to seek employment elsewhere on that day, but if she does not obtain it she does not thereby become 'unemployed' for the purposes of section 11 of the National Insurance Act, 1946, because she still remains formally bound by the obligation to her employer. The employer cannot, by waiving his rights, confer a title to unemployment benefit which would otherwise not exist.

8. In my view, therefore, the claimant was not 'unemployed' on Friday the 7th December, and accordingly, in the week in which Saturday the 8th December 1956 occurred, the claimant had been employed to the full extent normal in her case, and Saturday was not a day of unemployment either. It was her normal idle day.

9. The insurance officer's appeal is allowed.
