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NATIONAL INSURANCE ACTS 1965 TO 1969

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE COMMISSIONER

Name:

Local Tribunal: Blackpool

Case No.: 45/1

1. My decision is that the claimant was not entitled to unemployment benefit from Monday 23rd to Saturday 28th September 1968, both days included, but that he is not required to repay to the National Insurance Fund any sum overpaid to him for that benefit pursuant to the local tribunal's decision.

2. At that time, and indeed during the large majority of weeks in the preceding year, the claimant was employed only during the night of Saturday/Sunday in connection with the production of a Sunday paper. His shift was such that the insurance officer admits in his favour that he is to be regarded as working on Sunday only and not Saturday by virtue of the regulation known as the nightworkers' regulation (regulation 5 (as amended) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 [S.I.1967 No.330]). The question for decision is whether he is disentitled to benefit for all the days in the week concerned under a regulation which provides that "..... 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.....) but who is, in the week in which the said day occurs, employed to the full extent normal in his case,....." (regulation 7(1)(f) of the same regulations). This is subject to another paragraph and to a qualification at the end of sub-paragraph (f), but no one has suggested that they apply to this case.

3. The local tribunal by a majority (the chairman dissenting) found in favour of the claimant on the following ground: "The Tribunal consider that as the claimant only works on a Sunday which is normally outside the accepted working week is available for and willing to accept suitable employment during the six days of the normal working week he was not from the 23rd to 28th September 1968 employed to the full extent normal."

4. There can be no doubt that at the relevant time the claimant was a person who did not ordinarily work on every day in a week. Ordinarily he did not work from Monday to Friday inclusive nor (by virtue of the nightworkers' regulation) on Saturday.

5. The insurance officer in a careful written submission drew the attention of the local tribunal to Commissioner's decisions, including Decision R(U)33/53 of a Tribunal of Commissioners, which explains in paragraph 9 the meaning of the word "week" in the phrase "in the week in which the said day occurs". It was decided that it includes Sunday and therefore means the week running from first thing on Sunday morning to last thing on Saturday night. I can well understand the argument that the word "week" should be given the same meaning, excluding Sunday, in both places in the sub-paragraph. The Tribunal of Commissioners however decided otherwise. That decision has been followed in subsequent cases. These regulations have been amended on a number of occasions since, and the regulation-making authority has not thought it right to alter this one, so as to make the word "week" where it appears the second time exclude Sundays. In my judgment, in the circumstances, it was not right for the local tribunal and it would not be right for me to construe "week" in any way different from that in which it was construed by the Tribunal of Commissioners.

6. In my judgment that is precisely what the local tribunal did. They were treating "week" as meaning the period from 23rd to 28th September, that is to say Monday to Saturday excluding Sunday. They were saying in effect that, since from Monday to Saturday he had not been employed at all, and that was the week in which the relevant days occurred, it could not be said that he had been employed to the full extent normal in his case because he had not been employed at all.

7. In my judgment this was based on a construction of the regulation inconsistent with that laid down by the Tribunal of Commissioners and resulted in taking the wrong week. The true position was that the days occurred in the week running from Sunday 22nd to Saturday 28th September 1968 inclusive, and in that week the claimant had been employed to the full extent normal in his case, namely on the Sunday.

8. For these reasons the insurance officer's appeal must be allowed.

(Signed) R. G. Micklethwait
Chief Commissioner

Date: 13th June 1969

Commissioner's File: C.U.122/69
C.I.O. File: I.O.199/U/69
Regional File: N.W. M520/1968