VGHH/LS

Commissioner's File: CU/263/1983

C A O File: AO 4228/UB/85

Region: Yorkshire & Humberside

SOCIAL SECURITY ACTS 1975 TO 1985

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Paul Sewell

Appeal Tribunal: Huddersfield

Case No: 70/3

[ORAL HEARING]

1. My decision is

(1) Unemployment benefit is not payable for 4 July 1983 (a Monday), 5 July 1983 (a Tuesday) and 9 July 1983 (a Saturday) because under the provisions of regulation 7(1)(e) and 7(2) of the Social Security (Unemployment Sickness and Invalidity Benefit) Regulations 1975 [SI 1975 No. 564] ("the 1975 Regulations") none of those days is to be treated as a day of unemployment.

(2) the forward disallowance imposed by the decision of an insurance officer dated 20 July 1983 and affirmed by a local tribunal in a decision dated 28 September 1983 in respect of any further claim made for a Monday, Tuesday or Saturday falling in the period 11 July 1983 to 11 July 1984 under regulation 12(5) of the Social Security (Claims and Payments) Regulations 1979 [SI 1979 No 628] ("the 1979 Regulations") is confirmed in respect of the period 11 July 1983 to 18 March 1984 inclusive and is discharged as regards the period 19 March 1984 to 11 July 1984.

Representation

2. I held an oral hearing of this appeal. The claimant, who appeared and gave evidence, was represented by Mr Richard Drabble of counsel, instructed by the Child Poverty Action Group. The adjudication officer was represented by Mr G. Berry, of the Solicitor's Office, Department of Health and Social Security.

Nature of the appeal

3. This appeal relates to a claim for unemployment benefit by a man employed part-time under the Community Programme in respect of those days of the week for which the claim was made on which he did not work.

4. Unemployment benefit is payable, by virtue of section 14(1)(a) of the Social Security Act 1975, to a person who satisfies certain conditions, in respect of any "day of unemployment" which arises in a "period of interruption of employment

Section 17(2) of that Act provides for the making of regulations as to what are, and are not, to be treated as "days of unemployment" for this purpose.

5. (1) Regulations 7(1)(e) and (2) of the 1975 Regulations, which were made under section 17(2), contain provisions under which, in certain circumstances, where a part-time worker is in the week in question employed to the "full extent normal" in his case, the days on which he does not work are not to be treated as "days of unemployment". These provisions, which are generally known as "the full extent normal" rule have, where they apply, the effect of disentitling a part-time wor from obtaining unemployment benefit for those days of the week on which he does no work.

(2) Section 17(1)(b) of the Act itself contains provisions, generally known as the "normal idle day" rule, which operate to disentitle a person from obtaining unemployment benefit, in certain circumstances in respect of "a day on which in the normal course that person would not work". Mr Berry did not rely on this rule and, in the light of my decision on the full extent normal rule, I need not consid it further.

6. The real issue in this case is whether, on the facts, the claimant was, in the week for which benefit was claimed, a person "employed to the full extent normal in his case", in terms of regulations 7(1)(e) and 7(2) of the 1975 Regulations.

The regulations

7. Regulations 7(1)(e) and 7(2) of the 1975 Regulations are set out in the Fi Appendix to this decision.

The facts

8. The claimant gave evidence before me and I accept his evidence. He is a single man and was born on 16 July 1953. He was thus just under the age of 30 years at the time of his claim for unemployment benefit, which he made on 5 July 1983. His personal history, so far as relevant, is as follows. After obtaining 3 "A" levels at school, he went to College (Kingston Polytechnic) follow a B.Sc. (Hons) course in geology. He left after about two months. In about 1973 he obtained a full-time job as a driver's mate in Huddersfield. This job lasted for two years. He then worked full time, for a further year, as a labourer with a local builder working sometimes 5 and sometimes 6 days a week. By then he had qualified for a grant to go back to College. He did this for a short time, leaving after 2 terms because of personal problems. He then to another full-time job and stayed in this from 1977 until January 1979 when he obtained a full-time technician's job at Huddersfield Polytechnic. He joined the Army in November 1979 but was injured in an accident during basic training. He discharged himself from the Army in March 1980 and claimed sickness benefit for about six weeks and then unemployment benefit. In February 1981 he was knocked down by a car and broke both legs and his pelvis and was in hospital for 3 months. Thereafter he was in receipt of sickness benefit or invalidity benefit until January 1982 when he was told to see the Disablement Resettlement Officer. He went to a Rehabilitation Centre for a six weeks assessment course in about March 1982. He continued unemployed.

9. The claimant's unemployment benefit expired in March 1982 and from then on until he obtained a job under the Community Programme, he was in receipt of supplementary benefit.

10. On 14 March 1983 Kirklees Metropolitan Council offered the claimant, by letter, a job within the Community Programme. The letter is headed

"Community Programme-Appointment of labourer/gardener (part-time)"

It contains an offer of this appointment in the following terms:

> "Further to your interview I am pleased to offer you a position within the Programme. This job is temporary, up to a maximum of 52 weeks from your date of commencement.
>
> The post is subject to a satisfactory medical report and confirmation of your eligibility under the rules of the scheme. The job is available from 23rd March 1983, subject to Manpower Services Commission regulations. I draw your attention to the provision that all newly appointed staff are subject to a probationary period of six months.
>
> Your working week will be one of 23½ hours at a rate of £1.8487 per hour, giving a weekly wage of £43.44. Your work area may vary but will initially be at Tunnel End, Marsden.
>
> Enclosed you will find a medical questionnaire, which should be returned in the special envelope provided, and two copies of a Statement of Particulars. Please sign them and bring them with you to the site along with your P.45 and your National Insurance number. You start by reporting to the site at 7.45 a.m. on Wednesday 23rd March 1983.
>
> You keep one copy of the Statement of Particulars. A Union Membership Agreement is in operation and so it will be necessary for you to join an appropriate trade union. You will note that a copy of the Council's Disciplinary procedure is also enclosed."

11. The claimant accepted the offer and duly started work on 23 March 1983. It is not in dispute that he worked on the Community Programme for the full 52 weeks from 23 March 1983 and that he worked on Wednesdays from 7.45 a.m. to 4.15 p.m. on Thursdays from 7.45 a.m. to 4.15 p.m. and on Fridays from 7.45 a.m. to 3 p.m. The claimant's evidence which, as already stated, I accept, was that he was never told by his employer that the part-time job would become a full-time job. He was told that there would be no problem in his attending job interviews if invited to any. He had wanted a full-time job when he got the Community job. He took the first thing available. After leaving the Community job in March 1983 he remained unemployed until he obtained a part-time job, 26 hours a week with the Social Services, in June 1984. This job lasted throughout July and August until, in August 1984, he obtained a full-time job at a Joinery working on a chemical process for wood. At the date of the hearing before me (16 January 1986) the claimant was still so employed.

12. The nature of the Community Programme is explained in "The Agents' and Sponsors Handbook". Paragraphs 1, 2, 3(a) to (i), 15 and 27 of the Handbook are set out in the Second Appendix to this decision.

The insurance officer's decision

13. The claimant requalified for unemployment benefit by working for 13 weeks in the Community Programme (section 18 of the Social Security Act 1975). He claimed unemployment benefit on 5 July 1983 from 4 July 1983. On 20 July 1983, an

insurance officer gave two decisions on this claim. First, he decided that unemployment benefit was not payable from 6 July 1983 (a Wednesday) to 8 July 1983 (a Friday) both dates included because the claimant was engaged in employment from which his earnings were more than £2 a day under the 1975 Regulations, regulation 7(1)(h)(i). He imposed a forward disallowance for Wednesdays, Thursdays and Fridays falling within the period 9 July 1983 to 9 July 1984 under regulation 12(5) of the 1979 Regulations. There has been no appeal against that decision. Secondly, he decided under regulation 7(1)(e) and (2) of the 1975 Regulations that unemployment benefit was not payable for 4 July 1983 (a Monday), 5 July 1983 (a Tuesday) and 9 July 1983 (a Saturday) because the claimant regularly worked for the same number of days in a week for the same employer or group of employers and he was employed to the full extent normal in his case in the week in which these dates fell. He imposed a forward disallowance, under regulation 12(5) of the 1979 regulations, for Mondays, Tuesdays and Saturdays falling within the period 11 July 1983 to 11 July 1984 (both dates included).

14. The claimant appealed against this decision to a local (now social security appeal) tribunal. His grounds of appeal were:

> "I do not consider that my 3 days employment per week is the full extent of my normal working week. My employer still considers me available for full-time work. I am seeking full-time employment and at present have applied for 4 full-time jobs and am awaiting replies. My previous employment was in H.M. Army as an ammunition technician which ceased in March 1980. This was full-time employment. I have been signing on as unemployed for the three days on which I do not work".

The local tribunal's decision

15. On 28 September 1983, the local tribunal unanimously affirmed the decision of the insurance officer. Their recorded findings of "fact" were:

> "Arguments of Miss Stansfield [she was the claimant's representative] were largely based on "normal idle days" aspect. Tribunal noted these but felt bound to accept the only evidence of present employment namely the letter to claimant from Kirklees and cannot consider as merely temporary a contract for part-time work for 52 weeks".

Their recorded grounds of decision were:

> "Claimant regularly works for the same number of days in a week for the same employer or group of employers and was employed to the full extent normal in his case and in the week in which those dates fell".

The application for leave to appeal to the Commissioner

16. An oral request for leave to appeal to the Commissioner was refused by the local tribunal, and this is recorded in their decision. The claimant then applied to the Commissioner for leave to appeal. Leave was refused by a Commissioner (other than myself) on 18 November 1983. On 24 January 1985, Mr Justice Woolf quashed the refusal of 18 November 1983, and ordered that the matter be remitted to another Commissioner with directions to grant leave to appeal and that the appeal should come before a Commissioner other than the one who made the decision of 18 November 1983, the judge indicating that the

determination of the appeal by the Commissioner should await the determination of a certain other appeal pending before the said Commissioners in which the same or a similar point arises as that in [the present claimant's] case.

17. The procedure adopted by Mr Justice Woolf (as he then was) in connection with the application to quash the decision of 18 November 1983 whereby he invited the Commissioner to give his reasons for refusing leave was held to be wrong by the Court of Appeal in Regina v Social Security Commissioner ex parte Connolly Times Law Report January 3 1986. I have read the transcript of their judgment, and there is nothing in the Court of Appeal's decision that contains any indication as to the merits of the present appeal. Mr Justice Woolf, in his judgment, also expressed no view on the merits. He considered the case to be important for the following reasons:

> "There are many schemes at the present time very similar to that upon which Mr Sewell was engaged. They are schemes designed to cater for the unhappy situation with regard to unemployment at the present time. It appeared to me important that there should be an authoritative decision which, apparently, there was not at the time as to whether a person, if he was employed part-time on one of the employment programmes, thereby deprived himself of unemployment pay on the days on which he was admittedly doing no work."

18. The "certain other appeal pending before the Commissioners" has now been decided. The reference to that decision (which is of a Tribunal of Commissioners) on Commissioner's file is CU/255/1984. That decision has itself been the subject of detailed consideration by the Court of Appeal in Riley v Adjudication Officer (25 July 1985) a transcript of which is in the case papers. There is no doubt that the claimant's advisers are fully cognisant of these proceedings and their result and indeed Mr Drabble, who appears for the claimant, appeared for the Adjudication officer in Riley's case. There is accordingly no obstacle to my deciding the present appeal.

19. I granted leave to appeal on 6 March 1985.

20. Neither the adjudication officer nor the claimant has suggested that the decision of the tribunal was in breach of the regulations and, hey were, in view of the remarks of Mr Justice Woolf and the course the proceedings have taken, it is in any event a case which, in the exercise of the discretion that I would then have (see decision R(U) 3/63, which is that of a Tribunal of Commissioners), I should clearly decide on its merits, and not on procedural grounds. This I now do.

The arguments on appeal

21. (1) On behalf of the claimant, Mr Drabble made three submissions:

> First, Mr Drabble submitted that the particular facts of the case were such that it should be held that the claimant qualified for unemployment benefit. The case was distinguishable from CU 255/1984 and from Riley's case, the crucial fact being that the claimant had been unemployed for a relatively lengthy period following a serious car accident. He had until then worked full-time more or less all the time since leaving school but for short periods at college. He was in need of rehabilitation and the Community Programme is specifically designed to help one back into permanent and full-time employment. In determining whether he was working

to the full extent normal in his case one must look at the cause and at his previous particular job. The purpose of his part-time Community job was to get the claimant back to full-time work. It was part of his rehabilitation. He was not working to the full extent normal in his case. But for the accident the claimant would be a full-time worker.

(2) Secondly, Mr Drabble submitted that the statement of principle of the majority of the Commissioners in paragraph 9 of decision CU/255/1984 which had been specifically approved by the Court of Appeal in Riley's case, should be applied and followed. That statement is in these terms:

> "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."

Lord Justice Slade stated that this was the crucial point which the Commissioner had failed to take into account in Riley's case. In Mr Drabble's submission, it was the ratio decidendi of the Court of Appeal. That Court's approval of the approach of the Chief Commissioner (who was in the minority) in that case was Mr Drabble said obiter and should not be followed. Decision R(U) 13/60 was distinguishable on its facts. In Mr Drabble's submission, one must look at the intention of the claimant when he works only part-time for only a small amount of the week. It is when he is working for nearly the full working week that his intention becomes irrelevant. In the present case, the claimant was not so working and his intention is one of the facts to be taken into account. Paragraph 10 of decision CU/255/84, notwithstanding that the Court of Appeal (obiter) did not accept it, was correct. The relevance of a claimant's intention was not argued before the Court of Appeal and their acceptance, obiter, of the general approach of the Chief Commissioner did not form part of the reason for referring the Riley case to another Commissioner. In paragraph 10 the majority did count a claimant's intention as one of the facts. They wrote:

> "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".

(3) Thirdly, one should, Mr Drabble submitted, look at paragraphs 13 and 14 of the Chief Commissioner's minority reasons in decision CU/255/1984, where the origin of the original regulation was stated to lie in

decisions of the Umpire in relation to the pre-war Unemployment Insurance Acts. The Chief Commissioner quoted from a decision of a Tribunal of Commissioners, R(U) 33/53 paragraph 15, where 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 had indicated their view that the principles of the Umpire so referred to had in effect been applied by the original regulation (6(1)(e)). The Chief Commissioner thought this was right. The first principle stated by the Umpire in Decision UD 4149/38 was "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". Mr Drabble submitted that it was inconceivable that an Umpire before 1948 would hold that someone had disqualified himself for benefit by taking a job for one day per week. In Mr Drabble's submission, the question in the present case is "what happens if the claimant has no normal working week?". He is one of the long term unemployed. What is normal cannot be established by looking at a period of total unemployment. Here, in his submission, it is a question of degree as to whether the rule applies. It is only when it resembles a full normal working week from which one can earn a livelihood that the rule applies. Working on one or two days ought not to be caught by the provisions or regulation 7(1)(e) at all. The claimant was working only part-time. His intention was to obtain other employment. Applying this test (i.e. that it is a question of degree) the claimant's appeal should succeed.

22. (1) Mr Berry, on behalf of the adjudication officer, submitted that the remarks of the Court of Appeal in CU/255/84, approving the minority judgment of the Chief Commissioner, although obiter must be regarded as highly persuasive.

(2) In his submission, it was clearly established by the evidence that the claimant's regular working week was one of three days, Wednesdays, Thursdays and Fridays. It followed that by virtue of regulation 7(2) of the 1975 Regulations, regulation 7(1)(e) applied to him.

(3) The claimant was appealing on the ground that he did not consider that part-time work was his "normal working week". The tests to apply in answering this question are set out in Riley's case.

(4) In Mr Berry's submission, the claimant's appeal should be dismissed. His desire to obtain full employment could not assist him. For the question whether the claimant's pattern of work in the relevant week was the normal pattern for him at that time had to be answered objectively according to the facts as they were, not as the claimant would wish them to be: compare paragraph 3 of Decision R(U) 36/51. Mr Berry also called attention to R(U) 13/60, in support of the same proposition.

23. In reply, Mr Drabble submitted that the 3 years of the claimant's life before he took the Community job was a temporary period when he was struggling to recover from the effects of injury. Where a claimant takes a rehabilitation job

it is a pointer to its not being normal. The approach to long term employment should start with the position that the Act does not comtemplate a person normally having no work. The regulation could not apply in such a case.

Conclusions

24. If the matter were res integra, i.e. untrammelled by authority, it would be strongly arguable that regulation 7(1)(e) did not affect the claimant. On the facts, he regularly worked on Wednesdays, Thursdays and Fridays for the same employer. Accordingly, under regulation 7(2), regulation 7(1)(e) must be considered. But in answering the question whether, "in the week in which the said day occurs," the claimant was "employed to the full extent normal in his case", my conclusion would have been that part-time employment under the Community Programme on express terms that that employment is to be temporary and that it cannot last for more than 52 weeks in any event (the usual terms of employment under the Community Programme) could not determine what was normal for him. By its very nature, and express terms, it is temporary. Looking in to the past, it is essential to bear in mind that in the case of a man over 25, employment under the Community Programme is only available if the man has been unemployed for at least a year. In other words, he is one of the long term unemployed. What is normal for such a person is not to work at all. The regulation is designed to cope with persons who do have a normal pattern of work, not with those who have none. It can have no application to a person for whom normality is unemployment.

25. But the above approach is simply not open to a Commissioner. There is no suggestion anywhere in decision C(U) 255/1984, that the regulation is inapplicable to the long term unemployed who obtain employment on a Community Programme. Nor is there anything in the decision of the Court of Appeal to support this suggestion.

26. In my judgment, I must apply the tests, and ask myself the questions posed, by Lord Justice Slade, whose judgment, as already indicated, had the agreement of the other two Lords Justice. Many of his remarks may be (strictly) obiter. But the Court of Appeal was expressly setting out to offer guidance, in that case, to the interpretation of regulation 7(1)(e) and I do not consider that I should disregard it. The Court of Appeal was unanimous. Its interpretation of the law was based on a series of Commissioner's decisions stretching back over a period of more than 35 years. The Court considered, in detail, decision CU 255/1984, which involved a long-term unemployed man who had obtained work with the Community Task Force, which is the direct predecessor of the Community Programme, and except for one crucial fact bears marked similarities to the present case. In these circumstances, I must accept Mr Berry's submission and reject that of Mr Drabble.

27. (1) The fact that for much of the time when he was unemployed the claimant could not have worked owing to injury does not assist the claimant. Sickness forms no exception to the operation of the rule: see Umpire's decision UD 1698/39. In determining his pattern of work in connection with the rule, days when a claimant is unemployed or sick are not counted: see Commissioner's decision R(U) 45/59 at paragraph 16, in a passage which was specifically approved in this respect in decision R(U) 14/60 at paragraph 10, which is that of a Tribunal of Commissioners. Both cases were cited with approval by the Court of Appeal in Riley's case.

(2) The suggestion that I should follow the views of the majority of the Commissioners on other points, where an unanimous Court of Appeal has indicated in clear terms that they preferred the views of

the minority member (the Chief Commissioner) is one that I cannot accept and apply.

(3) Finally, I must reject the suggestion that where the claimant is one of the long term unemployed and takes a temporary job for 52 weeks on the Community Programme he has no normal working week and the regulation does not apply to him, for the reasons set out in paragraphs 25 and 26.

28. The initial question, that arises in any case where regulation 7(1)(e) of the 1975 Regulations (or their 1983 replacement) is in question, is to determine whether the claimant is excluded by regulation 7(2) from the application of that provision because there is neither (a) a recognised or customary working week in connection with his employment or (b) does the claimant regularly work for the same number of days in a week for the same employer or group of employers.

29. If the claimant does not escape under regulation 7(2), the process of determining whether regulation 7(1)(e) disentitles the claimant from unemployment benefit for any particular day, on the ground that that day is not to be treated as "a day of unemployment" involves three stages.

30. First, the adjudicating authority must ask itself the relevant questions. Lord Justice Slade, in Riley's case, was concerned with five relevant days, on which the claimant had done no work. He introduced the problem in these terms:

> "Thus effectively the crucial question for the Commissioner and this court was and is: on each of the five relevant days, did the appellant fall within the descriptions (a) '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)' and (b) a person "who is in the week in which the said day occurs employed to the full extent normal in his case"?

Later, in his judgment, after considering the arguments on these points, he stated the essential question in these terms:

> "I can see no difference between the concepts or ordinariness and normality embodied in Regulation 7(1)(e). When it is reduced to its essentials, the question posed by that Regulation is, in my opinion: Was the claimant's pattern of work in the relevant week the normal pattern for him at that time? This question has to be answered objectively according to the facts as they are, not as the claimant would wish them to be..."

The first stage, therefore, is to ascertain the actual facts relevant to answering that question.

31. Secondly, the adjudicating authority must look in to the future to see whether the claimant's present pattern of work is likely to be permanent or transitory:

> "If, as in Decision CU/255/1984, there is some fairly clear evidence about what is likely in the future, this may well be conclusive..."

32. Thirdly, the adjudicating authority must look to the past, and consider the claimant's past history of both work and unemployment:

"often such evidence [as to what is likely in the future] will not be available. Whether or not it is available, I do not see how the Commissioner can properly fail to pay attention also to the claimant's past history of both work and unemployment. The effect of such evidence will, of course, differ from case to case. Evidence of past regular full-time work will, I think, never be wholly irrelevant. But if, as in Decision CU/255/1984, full time work is succeeded by a long period of unemployment, it may carry little weight. If, on the other hand, there is evidence of full-time employment over several years finishing only a short time before the part-time employment started, this may be strong evidence that the part-time employment has not yet become the normal pattern of work for the particular employee and is properly to be regarded as "stop gap" employment in his particular case.".

33. Applying these principles to the present case, the claimant cannot escape the rigours of regulation 7(1)(e) under the escape provisions of regulation 7(2). The week in question is the period of 7 days beginning with midnight between Saturday and Sunday 2nd and 3rd July 1983: see Schedule 20 of the Social Security Act 1975 and Lord Justice Slade's judgment in Riley's case. At that time where was no doubt that the claimant regularly worked for the same number of days in a week for the same employer. He worked on Wednesday, Thursday and Friday in each week for Kirklees Metropolitan Council on a Community Programme.

34. On the facts, which are set out in paragraphs 8 to 12 above, there was no clear evidence about what was likely in the future. Looking at the claimant's past history, from March 1980 to March 1983, a period of three years, the claimant was at all times either unemployed or sick. His previous full-time work record therefore carries little weight in determining what is his normal pattern of employment in the week for which benefit was claimed.

35. In these circumstances, I am constrained to come to the conclusion that in the week in question (midnight Saturday and Sunday 2nd/3rd July 1983 to midnight Saturday and Sunday 9th/10th July 1983), it was normal for the claimant to work on Wednesdays, Thursdays and Fridays in each week. He had done so since he took the job on 23 March 1983. His contract did not require him to work on any particular days of the week, simply stipulating the total number of hours to be worked, but his pattern was quite regular and, indeed, continued over the whole 52 weeks.

36. The facts of CU/255/1984 were, in my judgment, distinguishable from those in the present case in one material respect alone. The claimant (a man aged 53 years) in that case worked for 20 hours a week 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 at that time 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 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. However, 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 fact happened on 22 August 1983. On these facts, Lord Justice Slade, with whom Lord Justice Ackner (as he then was) and Lord Justice Glidewell agreed, said:

"But for the fact that the claimant in that case had taken up his new part-time employment in April 1983 on the basis that it was likely to lead to full-time employment with the same employers in the near future, I find it hard to see on the particular facts how he could properly have avoided the application of Regulation 7(1)(e)".

(The period for which entitlement to unemployment benefit was in issue was the overall period from 25 April 1983 to 15 July 1983).

37. The above remarks show, in my view, that the Court of Appeal took the view that, on the facts of CU/255/1984 the claimant would have been held to be working to the full extent normal from the inception of his employment by the Community Task Force, by working on Mondays, Tuesdays and Wednesdays. His previous full-time employment was so long ago that it carried "little weight". His period of unemployment did not determine what was normal. It was the work with the Task Force which was relevant and, unless there had been the fairly clear evidence that the job would become full-time and that his present pattern of employment (part-time namely working on Mondays Tuesdays and Wednesdays) was transitory, his claim would have failed.

On the basis of this clear guidance, my conclusion is that the claimant is not entitled to be paid unemployment benefit for Monday 4 July 1983, Tuesday 5 July 1983 and Saturday 9 July 1983. In the week in which those days fell he was working to the full extent normal (Wednesdays Thursdays and Fridays - a working week of 23½ hours) in his case and he was a person who did not ordinarily work on every day of the week exclusive of Sunday. His case differs from CU/255/1984 in the essential respect that in the latter case the claimant on taking up his new part-time employment was informed that it was likely to lead to full-time employment with the same employers in the near future. The claimant in this case has expressly confirmed that he was not so informed and that he was told that he could take time off to attend job interviews. His letter offering the appointment emphasises that the employment was temporary and so does the handbook setting out the Community Programme from which I have already quoted.

39. I confirm the forward disallowance for the period 11 July 1983 to 18 March 1984 (i.e. up to and including the day the claimant's contract ended, I discharge the forward disallowance for the period 19 March 1984 to 11 July 1984. The grounds of the original disallowance ceased to exist when the 52 weeks' temporary employment expired. The forward disallowance was imposed under regulation 12(5) of the Social Security (Claims and Payments) Regulations 1979 and, as explained in decision R(U) 1/78, when considering regulation 12(4) of the 1975 Regulations (which was in the same terms as the 1979 Regulations in this respect) a forward disallowance is appropriate only where the grounds of the original disallowance are of a continuing character and are likely to affect future claims for unemployment benefit.

40. (1) My decision is set out in paragraph 1. For the reasons set out in paragraph 24 above, I have reached my conclusion with regret. I do not consider that it was ever intended that the effect of regulation 7(1)(e) (and its predecessors) should be that one of the long term unemployed "if he was employed part time on one of the employment programmes, thereby deprived himself of unemployment pay on the days on which he was admittedly doing no work": see paragraph 17 above.

(2) In Decision CSU/56/84, which was brought to my attention after the oral hearing in this case, another Commissioner, possibly on similar facts reached a different conclusion. The decision is very shortly

expressed and contains no details of the facts. It may well be that there were distinguishing features which were decisive. There was no oral hearing in that case and the Commissioner concerned did not have the advantage of the detailed oral arguments that have been put forward in the present case. In the absence of any detailed findings of fact, I do not find it necessary to indicate my dissent from, or argreement with, that decision in any way.

(Signed): V G H Hallett
Commissioner

Date: 16 April 1986

THE FIRST APPENDIX

Regulations 7(1)(c) and 7(2) of the 1975 Regulations

Regulation 7(1) of the 1975 Regulations provides:

> "For the purposes of unemployment, sickness and invalidity 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 on 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."

Regulation 7(2) provides:

> "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."

By virtue of Schedule 20 to the Social Security Act 1975 "week", in the context of regulations 7(1)(e) and 7(2), means a period of 7 days beginning with midnight between Saturday and Sunday. Regulations 7(1)(e) and 7(2) have since been consolidated in a similarly numbered regulation in the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (S.I. 1983 No. 1598).

THE SECOND APPENDIX

THE AGENTS' AND SPONSORS' HANDBOOK

THE COMMUNITY PROGRAMME

INTRODUCTION

1. The Community Programme, which is the successor of the Community Enterprise Programme, is administered by the Manpower Services Commission (MSC) on behalf of the Secretary of State for Employment, to help long-term unemployed adults improve their prospects of obtaining permanent jobs by providing them with temporary employment, either full-time or part-time, on projects of benefit to the community. It is administered locally through the MSC's Employment Service Area Offices (later referred to as the Area Offices).

Agreements

2. i. The guidance and procedures set out in this Handbook should be read in connection with the formal Agreement of which the Handbook forms a part. No project may start before the Agreement has been been signed and all other necessary action completed.

ii. Supplements to the guidance given in this handbook may be issued from time to time and incorporated in later editions.

Main Community Programme Criteria

3. The main Community Programme criteria need to be satisfied throughout the life of a project. These are listed below.

a. The work done on projects must be of benefit to the community.

b. Projects must be designed to provide jobs which can be done by people who have been out of work for several months.

c. Existing businesses or jobs in normal employment must not be put at risk as a result of a project. Projects must therefore involve work which would not otherwise be done.

d. Projects should not substitute paid employment for work which would normally be carried out on a voluntary basis.

e. The appropriate local "rate for the job" should be paid to workers on projects.

f. If projects are likely to involve the interests of unions - in either the public or private sector - or existing employers, they should have the support of the relevant trade unions and employers' organisations.

g. Projects sponsored by employers in the private sector should be primarily designed to benefit the community. Indirect private gain to such sponsors is permissible, but must clearly be incidental and secondary to the benefit of the community.

h. Projects must be financially viable as regards any costs not met by MSC funds.

i. Individual employees may not be employed under the Programme for more than 52 weeks. In certain cases key employees, such as managers or supervisors, may be retained for a longer period if they are essential to a project and if there are no other suitable unemployed people. This is subject to the written approval of the Area Manager.

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15. Men and women selected for employment must be unemployed at the time of recruitment, and in the case of those aged 18 to 24 years, have been unemployed for over six months, and in the case of those aged 25 years or over, have been unemployed for twelve months or more.

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Length of Time on Programme

27. Individual employees may not be employed for more than a total of 52 weeks including holidays. However, with the prior approval of the Area Office, supervisors and others with skills essential to the continued successful operation of the scheme, and for whom no suitable qualified replacement is available from the unemployed register, may be retained for additional periods not exceeding 52 weeks. Applications for such extensions must be made in writing to the Area Office at least two weeks in advance of the date on which the minimum period of notice necessary to terminate the period of temporary employment is to be given.

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