

**SOCIAL SECURITY ACTS 1975 TO 1985
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Lisa Claire Bates

Appeal Tribunal: Lincoln

Case No: 25/5

[ORAL HEARING]

1. My decision is that payment of unemployment benefit to the claimant for 26, 30, 31 December 1983 and subsequent Mondays, Fridays and Saturdays from 2 January to 1 August 1984 (both dates included) is not precluded under the provisions of regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983.
2. I held an oral hearing of the claimant's appeal. The claimant was represented by Mr Jones, a solicitor with the Nottingham Citizens Advice Bureau and the adjudication officer was represented by Mr Butt of the Solicitor's Office, Department of Health and Social Security.
3. This is an appeal by the claimant against the decision of the Lincoln social security appeal tribunal given on 3 July 1984 confirming the decision of an adjudication officer that unemployment benefit is not payable for 26, 30 and 31 December 1983 (a Monday, Friday and Saturday) with a forward disallowance of claim in respect of Mondays, Fridays and Saturdays in the period from 2 January 1984 to 25 December 1984 (both dates included). The decision was issued on 19 January 1984.
4. The issue in this appeal is whether, on the facts, unemployment benefit is precluded under the provisions of regulation 7(1)(e) and 7(2) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 and it turns on, what has been referred to by Commissioners in earlier cases, as the full extent normal rule. I find it convenient at this stage of my decision to set out the material part of the regulation:
 - "7. (1) For the purpose 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;"

"(2) 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."

5. I now turn to the facts. The claimant did not give evidence at the hearing of this appeal but a statement made by her, which has been accepted by Mr Butt as proof, was put before me and this supplements the evidence which was before the tribunal. The claimant is now aged 22 years. She left school in July 1980 and attended a secretarial course for one year, this finished about July 1981. While she was awaiting the results of her examinations she managed to obtain employment as a machinist in a hosiery factory and worked there until May 1982, a period of approximately nine months. She then went on a YOPS scheme, as a secretarial assistant for a firm of architects, until November 1982 when the scheme ended. Those who participated in the scheme were not employees but trainees. After the completion of her secretarial course she had applied for various jobs, where her training would be of use, but she failed to obtain employment because of lack of suitable experience. She was unemployed from November 1982 until 7 June 1983, a period of approximately seven months, when she obtained employment under the community programme as a part-time newspaper index worker with the Nottinghamshire County Council and she remained there for a period of one year until 6 June, working 22 hours a week, on Tuesdays, Wednesdays and Thursdays. On 1 August 1984 she was formally offered an appointment as an unestablished government telephonist in the Department of Trade and Industry. She was to work a 42 hour week over five days. Her letter of appointment speaks of her being on probation for a period of one year, at the end of which time she would be assigned permanently to that appointment in an established capacity or her appointment would be terminated. On the date of the hearing of the appeal, namely 21 July 1986, she was still employed in the Department of Trade and Industry and I am prepared to accept that by then she was permanently appointed to a grade in an established capacity. Her interview for the vacancy in the Ministry of Trade and Industry took place in June 1984.

6. When she was employed by the Nottinghamshire County Council under the community programme scheme, she was not told that it would lead to full employment with them, but she was told that she would be informed of any similar vacancies in the library service in Nottinghamshire. She considered that the work there would provide good experience, such as would impress a prospective employer, she was aware of this when she took up such employment. She was charged with making up a local history collection of Newark and its surrounds and with dealing with enquiries from members of the public who wish to find out about the history of the locality. During her time with the County Council, the claimant searched for full-time work and her account of this is supported by various letters from potential employers, eight in number. It is true to say that such letters are dated from 1 March 1984 onwards, but of course she must have applied for the positions to which they relate at an earlier time. She attended a number of interviews. After the claimant had been with the Northamptonshire County Council for a period of six months the adjudication officer decided that unemployment benefit was not payable for 26, 30 and 31 December because she regularly worked for the same number of days in a week for the same employer and she was employed to the full extent normal in her case in the week in which those dates fell, and he made a consequential forward disallowance in respect of Mondays, Fridays and Saturdays in the period from 2 January to 25 December 1984. She appealed to the tribunal who confirmed the adjudication officer's decision and gave as their reason that the full extent normal rule applied to the claimant, despite the fact that she had worked under a community programme scheme during the preceding year, because she worked regularly for

the same number of days in a week for the same employer and was employed to the full extent normal in her case in the week the dates fell. It is right to say that the claimant's later work history was not before the tribunal.

7. On behalf of the claimant Mr Jones submitted that on the facts of the case it should be held that the claimant qualified for unemployment benefit. He argued that when a claimant falls within the description specified in regulation 7(1)(e), it is first necessary for a tribunal to look into the future to decide how permanent or transitory the part-time pattern of work is likely to be. It could not be said in the instant case that the part-time employment, which was for a short and limited duration, came within the meaning of normal as used in the regulation and he relied on the fact that the community programme was of its nature designed to improve the prospects of full-time work, and that full-time work was in fact obtained by the claimant shortly after the end of the part-time work. He relied upon the decision of the Court of Appeal in Riley v Adjudication Officer, 25 July 1985, unreported but a transcript of which is before me, and on the approach taken by the Chief Commissioner in CU/255/1984.

8. Mr Butt submitted that the essential question of fact was what was the normal employment in the relevant week and he argued that the claimant was only in full-time employment for nine months and before joining the community programme. He posed the question of whether that was a sufficient pattern of work in full-time employment. While it was true that the claimant had obtained work after she left the programme, she never had a promise of full-time work from the County Council and that might be fatal to her case. He contended that the employment in this case could not be regarded as being stop-gap employment.

9. The application of the full extent normal rule has given rise to considerable difficulty in the past but guidance on the test to be applied and the questions relevant to such tests was given by the Court of Appeal in the recent case of Riley v The Adjudication Officer. Lord Justice Slade, with whom the other members of the court agreed, said that the crucial question was: on each of the five relevant days did the claimant fall within the description (a) "a person who does not ordinarily work on everyday 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". While these questions were questions of fact, they gave rise to certain questions of principle upon which guidance was given. He referred to a submission made on behalf of the adjudication officer that a claimant's working history is only relevant in so far as it sheds light on what is normal for him in the relevant week by facilitating the prediction of what may happen in his case in the near future, and that the stop-gap test was of assistance only in so far as it may help to identify the ordinary working pattern as at the relevant week. He then went on to say

"I for my part would accept the broad correctness of that submission,. I can see no difference between the concepts of 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:"

Later, on the next page of the transcript, he said

"Answering the essential question posed by Regulation 7(1)(e), in my judgment, requires that the officer or tribunal concerned should try to look into the future in order to decide how permanent or transitory the present pattern of work is likely to be. 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. But often such evidence 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."

Later he approved of the following statement principle by the majority of Commissioners in decision CU/255/1984:-

"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."

10. Since the decision in Riley's case there have been two unreported decisions of Commissioners both dealing with the effect of Riley's case as it applies to claims for unemployment benefit by part-time workers under the community programme. In CU/263/1983 the Commissioner restated the guidance given in Riley and analysed it in relation to claims to unemployment benefit by part-time workers under the community programme. CSU/51/84 was also a community programme case which suggested that there remains a somewhat greater range of cases where unemployment benefit would not be precluded by participation in the community programme scheme than suggested in CU/263/1983. I have read both decisions and obtained assistance therefrom.

11. The first question I have to answer is whether regulation 7(2) is of any assistance to the claimant in the instant case. I am satisfied it is not. She regularly worked the Tuesday, Wednesday and Thursday of each week for the Nottinghamshire County Council as is evidenced by the work record (page 6 of the case record).

12. I now consider her claim in relation to regulation 7(1)(e). The relevant week was the week commencing 25 December 1983. It was Christmas week and a year upon which Christmas Day fell on a Sunday, as a result of this the following Tuesday was a public holiday. No point was taken on this and I don't think that anything turns upon it. The claimant's contract provides that she was to be entitled to statutory holidays. The test in regulation 7(1)(e) is whether the claimant in the relevant week is employed to the full extent normal in his case, not whether the claimant worked to the full extent normal in his case. I now have to ask myself whether the claimant's pattern of employment in that week was the normal pattern for her at that time. In the instant case I have clear evidence of what happened in the future; shortly after leaving the community programme the claimant obtained work with the Department of Trade and Industry. This work was full-time employment, she has continued in it ever since and is now an established civil servant. It seems to me that such is strong evidence indeed that her pattern of work in the relevant week was likely to be transitory and that her normal pattern of work was to be employed for a five day week. However I am in duty bound to pay attention also to her past history of work and unemployment. I think the starting point in the case of a young person is the time when he or she ceases full-time education, it would be different of course in the case a person who commences work and then returns to education. In the instant case the claimant completed her secretarial course in 1981. She was then in full-time employment for approximately nine months in a factory and thereafter with an architect as a trainee for a period of approximately six months. She was then unemployed for a period of six months. At the time she joined the community programme she was 19 years of age and she had worked full-time for 9 months. Unlike the claimant in CU/263/1985 this claimant was not out of employment for a considerable period and I would not attach much significance to it when assessing her normal pattern of work. This is not a case where the full-time work was succeeded by a long period of unemployment and in my view her previous work history carries some weight in support of her claim, may be not great weight but some. Bearing in mind the prior full-time employment and in particular the length and permanence of the

future employment; it would be beyond reason to hold that the pattern of her work while with the County Council was other than of a transitory nature. I have to ascertain the claimant's ordinary regime of employment in the week commencing 25 December 1983 but in this case one is able to predict what might happen in the future, because it did happen, and it can be predicted that the employment pattern during the relevant week was such that the claimant was not employed to the full extent normal in her case.

13. Apart from the work history there is evidence relating to the actual employment with the County Council itself which supports the claimant's case. When the claimant joined the community programme with the County Council, she was made no promise that this would lead to full-time employment with such body. So her case differs from that of the claimant in decision CU/255/1984. However she was told that she would be informed of any vacancies suitable for persons with her qualifications, which arose in the employer's library service throughout Nottinghamshire, so it must have been envisaged by the employer and the claimant that she would be considered, at least, for permanent employment as it arose in the library service from time to time. The claimant's evidence was that she took up the employment with the County Council as a means of gaining experience in the hope that that experience might lead to full-time employment with either the County Council or some other employer. She applied for at least eight positions and obtained full-time employment as a result of an application which she made in June 1984. I think this evidence shows that the claimant took up the position with the County Council as a temporary expedient while looking for full-time employment, and that both she and the County Council regarded her pattern of work under their employment as transitory, as indeed it proved to be.

(Signed) J J Skinner
Commissioner

Date; 5th September 1986

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