

SICKNESS BENEFIT

Days on which person departs from and returns to Great Britain—not days on which he is disqualified for receiving benefit under Section 49(1)(a) National Insurance Act 1965

On 21st July the claimant, who was not then incapable of work, left Great Britain by air for a holiday in Canada. On 30th July, while in Canada, she was taken ill and underwent treatment. She left Canada by air on 20th August, arriving back in Great Britain on the same day. It was not in issue that the claimant was incapable of work from 30th July until a date subsequent to her return to Great Britain, the only question being whether she was disqualified for receiving sickness benefit under Section 49(1)(a) of the National Insurance Act 1965 which, so far as is material, provides that, except where regulations otherwise provide, a person shall be disqualified for receiving any benefit for any period during which that person is absent from Great Britain.

Held:

- (i) As respects the period from and including 30th July to 19th August the claimant was disqualified for receiving sickness benefit under Section 49(1)(a) because the exception to that provision contained in regulation 7(1) of the National Insurance (Residence and Persons Abroad) Regulations 1948 (as amended) did not apply in the circumstances of this case and there was no Reciprocal Agreement which assisted the claimant.
- (ii) As respects 20th August the claimant was not disqualified, because the word "period" in section 49(1)(a) refers to a period of calendar days and the word "during" in that section means "throughout": accordingly the day on which a person departs from or returns to Great Britain is not a day during which he is absent from Great Britain.

Various decisions of the Courts and earlier Commissioners' decisions referred to.
DECISION C.U. 54/48 NOT FOLLOWED

1. My decision is that the claimant is disqualified for receiving sickness benefit for the period from the 30th July to the 19th August 1965 (both days included) but not for the 20th August 1965.

2. On the 21st July 1965 the claimant left Great Britain by air for Canada upon a four weeks holiday and to visit her son whom she had not seen for some years. When she left Great Britain she was not incapable of work nor suffering from any disease or bodily or mental disablement. Unfortunately on the 30th July whilst she was in Canada she was taken ill and had to undergo expensive medical and surgical treatment there. On the 20th August 1965 she left Canada by air and arrived back in Great Britain on the same day.

3. It is not disputed that she was incapable of work within the meaning of the National Insurance Acts from the 30th July to a date after the 21st August 1965 from which date onwards she has been paid sickness benefit. *Prima facie* therefore she was entitled to sickness benefit for the days from the 30th July to the 20th August also. The first question in the case however is whether she is nevertheless disqualified for receiving that benefit for the period of her absence abroad by reason of section 29(1)(a) of the National Insurance Act, 1946, now replaced by section 49(1)(a) of the National Insurance Act 1965. (From now onwards I shall refer only to the provisions of the 1965 Act.) Section 49(1)(a) lays down the general rule that, except where regulations otherwise provide, a person shall be disqualified for receiving "any benefit . . . , for any period during which that person—

(a) is absent from Great Britain ;"

The only regulation requiring consideration in this case is regulation 7(1) of the National Insurance (Residence and Persons Abroad) Regulations, 1948 [S.I. 1948 No. 1275] as amended. This provides, so far as relevant to this

case, that a person shall not be disqualified for receiving sickness benefit by reason of being temporarily absent from Great Britain for the specific purpose of being treated for incapacity which commenced before he or she left Great Britain.

4. In my judgment this regulation cannot help the claimant to escape disqualification, since manifestly the incapacity for which she was being treated in Canada had not commenced before she left Great Britain. Since therefore it cannot be suggested that she is helped by any other regulation or by the Reciprocal Agreement between the two countries the local tribunal were clearly right in disqualifying her.

5. The insurance officer has however raised in the claimant's interest the question whether she should not be disqualified for receiving benefit for the 20th August 1965, on which day she was in Canada in the morning and in Great Britain in the evening.

6. This matter has been the subject of conflicting decisions. In Decision C.U. 54/48 (reported) a deputy Commissioner held that a person must be disqualified under section 29(1) of the 1946 Act for the day on which he returned to Great Britain, observing that the law normally does not pay regard to fractions of a day and that it was convenient to assume that the state of things which at first occurred on a day persisted throughout that day.

7. On the other hand in Decisions C.S. 6/65 and C.S. 1/66 (not reported) another deputy Commissioner gave his reasons for not following Decision C.U. 54/48; he decided that the claimants in those two cases were not disqualified on the days of return to Great Britain, each claimant having on that day been absent from Great Britain for part of the day and present in Great Britain for another part of it.

8. In the present case the insurance officer refers to *Wilkie v. Inland Revenue Commissioners* [1952] Ch. 153, mentioned in Decision C.S. 6/65, Halsbury's Laws of England 3rd Edition, volume 15, page 283 and *The Queen v. The Inhabitants of Anderson* (1846) 9 Q.B. 663, 115 E.R. 1428, and to the fact that Decision C.U. 54/48 has been consistently followed and applied in numerous subsequent decisions, including Decisions C.S. 131/49 (reported), R(S) 7/59 and R(F) 1/60.

9. The insurance officer also draws attention to the fact that, although in this case the view taken in Decision C.S. 1/66 is favourable to the claimant, a similar view in relation to other sections or regulations, some of which are the subject of the decisions referred to at the end of the last paragraph, would be unfavourable to the claimant.

10. Section 49(1)(a) imposes a disqualification on a person otherwise entitled to benefit. The first question arising under it in this case is whether the 20th August 1965 was included in a "period during which" the claimant was absent from Great Britain. This involves considering the meaning of the words "period" and "during" in the context.

11. As was explained in Decision C.S. 6/65 the word "during" can mean either "throughout" or "on a particular occasion in". In *Inland Revenue Commissioners v. St. Luke Hostel Trustees, Registered* (1930) 36 T.L.R. 412 (reversed on other grounds) Rowlatt J. observed that, if one is describing a thing which occupies the whole of a period such as presence in a given place, "during" is an admirable word for it. In my judgment "during" in section 49(1) clearly must mean "throughout".

12. The next question concerns the meaning of the word "period" in section 49(1). One way of approaching the problem in this case would be to ask what was the period during which the claimant was absent from Great Britain. If a period can include parts of days the answer would be from some time in the middle of the 21st July to some time in the middle of the 20th August 1965. But can a "period" within the meaning of section 49 include part of a day?

13. The word "period" appears in many places in the Act. It is not defined in section 114. (Nor is "day" defined; it usually means a calendar day, such as Monday, Tuesday and so on.) In my judgment the word "period" in section 49(1) refers to a period of calendar days. Any other view seems to me contrary to the whole structure of the Act. Sickness benefit is payable for days of incapacity in periods of interruption of employment (section 20). (The case of a person who is incapable of work for only part of the day is dealt with specially by a regulation (regulation 3A of the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948 [S.I. 1948 No. 1277] as amended).) The Act provides for the payment of sickness benefit in certain circumstances for a single day (section 19(8)) for example if the day of incapacity is "linked" with a day of unemployment. And a person can be disqualified for receiving sickness benefit for a single day, for example if he claims just too late. But the Act makes no provision for either the payment of sickness benefit or disqualification for receiving it for part of a day, and in my judgment such ideas are foreign to the whole scheme and basic assumptions of the Act. Against this background, I am satisfied that the word "period" in section 49(1) means a period consisting of complete calendar days. If it were otherwise, disqualification for part of a day being impossible, there would be in almost every case of this type a logically insoluble conflict: the claimant was absent from Great Britain in the morning; therefore she must be disqualified for that day; but she was not absent in the evening; therefore she must not be disqualified for that same day. What decision can be given?

14. If it be accepted, as I hold, that the word "period" in section 49(1) means a period consisting only of complete calendar days any difficulty disappears. The claimant was not absent from Great Britain during (that is, throughout) the 20th August, and that day cannot therefore form part of such a period.

15. In my judgment this conclusion is not in any way invalidated by any of the considerations mentioned in paragraph 6 above. Even if for certain purposes in other branches of the law fractions of a day are disregarded, for other purposes they are not (see Halsbury's Laws of England, 3rd Edition, volume 37, pages 100-101 and *Wilkie's* case referred to above). It would of course have been possible for the Act to lay down in terms an artificial rule that the claimant should be treated as being absent from Great Britain throughout the day even though in fact during part of it she was not so absent. Since there is no such specific provision, in my judgment it cannot be held that any such general principle overrides the express provision of the statute for the sake of convenience or for any other reason. Moreover, although an assumption may assist where there is a lack of evidence of the facts, once it is established by evidence that the claimant on the evening of the 20th August 1965 was in Great Britain, there is no room for assuming that she was not.

16. For these reasons I have reached the conclusion stated at the head of this decision which coincides with that reached in Decisions C.S. 6/65 and C.S. 1/66. I must emphasise that it is based purely on a construction

of the particular section of the Act with which I am concerned and does not depend on whether the result is favourable to the claimant or not. Moreover it cannot be assumed that the same result would necessarily follow under some other differently worded section or regulation.

17. The practical result in my judgment is that a claimant is not disqualified under section 49(1)(a) in respect of a day of incapacity if during any part of that day (apart perhaps from a period so short as to be negligible) she was not absent from Great Britain. In respect of the 20th August 1965 the present claimant is not disqualified. She would also not have been disqualified in respect of the 21st July 1965, but of course no question of that arises since on that day she was not incapable of work and therefore was not in any event entitled to sickness benefit.

18. Subject to the variation in respect of one day the claimant's appeal must be dismissed.

(Signed) R. G. Micklethwait,
Commissioner.