good eye would not mean total blindness and he was held not to be incapable of following his regular occupation by reason of the relevant loss of faculty, namely a partial loss of sight in his other eye as a result of an industrial accident. On the other hand, in the case that gave rise to Decision R(I) 66/52 an underground miner whose vision in one eye had been lost through an industrial accident and who would not resume his regular occupation because of the risk of injury to his sound eye, was held by the majority of a tribunal of Commissioners to be entitled to a payment under section 14, as amended, although his incapacity to follow his regular occupation was not the physical consequence of the relevant loss of faculty. It was, however, expressly said in the course of the majority decision that the decision was not necessarily applicable to other reasons than that of total blindness while in the course of Decision R(I) 8/56 referred to above the Commissioner said that the principle of the earlier decision should not lightly be extended to cases other than those involving the risk of complete loss of sight.

14. In the present case there is, as it seems to me, no question of the claimant being rendered totally blind even assuming he were to lose the sight of his left eye completely. The prescribed degree of disablement for the loss of vision of one eye without complications or disfigurement of the eyeball, the other eye being normal, is 30 per cent. See the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948 [S.I. 1948 No. 1372]. In the case of the claimant, however, the degree of disablement was assessed at only 20 per cent and it seems to me that in principle this case is indistinguishable from that dealt with in Decision R(I) 8/56 referred to above.

15. In my opinion there is substance in the contention of the insurance officer that binocular vision is not essential for following the occupation of a plasterer and I hold that the claimant has not proved that by reason of the relevant loss of faculty he is incapable and likely to remain permanently incapable of following his regular occupation. He cannot therefore be entitled to an increase in the weekly rate of his disablement benefit under section 14 of the National Insurance (Industrial Injuries) Act, 1946, as amended.

16. I must dismiss the claimant's appeal.

20.11.58 **INDUSTRIAL INJURY BENEFIT** **R(I) 7/59**

Arising out of employment—act only incidental to that which was incident to the employment

A coal miner injured himself when he caught his foot in an iron grid at the entrance to the colliery canteen, half an hour before his shift was due to commence. He intended to buy a cake of soap from the canteen to use in the pit-head bath at the end of his shift.

Held that the accident did not arise out of and in the course of the claimant's employment. His act was only incidental to that which was itself incidental to his employment, and was not something incidental to the performance of what he was employed to do. Decision R(I) 72/54 distinguished, and R(I) 11/54 followed.

1. My decision is that the personal injury suffered by the claimant on the 14th April 1958 was not caused by accident arising out of and in the

course of his employment and that accordingly injury benefit is not payable to him.

2. This is an appeal by the claimant's association against the decision of the local appeal tribunal that the accident which befell the claimant on the 14th April 1958 was not an industrial accident. The facts are not in dispute and the sole question at issue is whether the accident arose out of and in the course of the claimant's employment.

3. The claimant was employed as an underground worker in a colliery and at or about 8 a.m. on the day in question (that is approximately half-an-hour before his shift was due to start work) when going to the colliery canteen he caught his foot in an iron grid at the entrance to the canteen and was injured. He sprained his ankle and was incapable of work for four weeks.

4. It was the claimant's practice to go to the canteen before starting his morning shift but on the 14th April 1958 his purpose for doing so was to purchase a cake of soap for use in the pit-head bath at the end of his shift. Soap was not supplied in the bath and customarily the claimant brought soap with him from home but on this particular day he had forgotten to do so. There is no evidence that the claimant's sole reason for going to the canteen on the morning in question was to obtain soap but I am prepared to assume in his favour that it was and in the circumstances the colliery canteen was, no doubt, the only place where he could have purchased a cake of soap.

5. The claimant's association base the case for the claimant on two main contentions. First it is said that the use of the pit-head bath is part of a miner's normal daily work in that accidents occurring there are treated as having arisen out of and in the course of a miner's employment and, in the submission of the association, it follows that " a workman going to a place on his employers' premises to obtain equipment for use in the baths is in the same position as one who goes to the appropriate place . . . to obtain . . . some necessary tool for use in the ordinary course of his work ". In the present case, it is submitted, soap was necessary " equipment " for the claimant for use in the bath.

6. Secondly the claimant's association rely on Decision R(I) 72/54 the principle of which it is contended is applicable in the present case.

7. It is well settled that an accident that happens to a miner when taking a bath in the pit-head bath at the end of his shift is an accident arising out of and in the course of his employment: see Decision C.I. 23/49 (reported). But that is not to say, as the claimant's association contend, that it is part of a miner's " normal daily work " to have a bath. The *ratio decidendi* of the decision to which I have referred (and of later decision following it) is that for a miner to take a bath and thus fit himself to mix with the outside public is part of the process of his " disentanglement " from his employment and that consequently an accident in the bath, or in the approaches thereto, is an industrial accident. See Decision R(I) 52/52. In other words, while taking a bath before leaving the colliery a miner is still in the course of his employment notwithstanding he has ceased to do that which he was expressly employed to do. In the course of Decision C.I. 23/49 referred to above the Commissioner said, " In the course of employment means ' in the course of the work which the man is employed to do, and what is incident to it '. . . . In taking [a bath, the

claimant] was doing something incidental to his employment and when leaving the baths was still doing something incidental to it. . . . He had not . . . 'disentangled himself from his employment'."

8. It may well be, as the claimant's association suggest, that it would be in the course of a workman's employment to obtain some tool or piece of equipment from, for example, the store on his employers' premises before commencing the work he was employed to do (and no doubt he would still be in the course of his employment when returning the article to the store when his work was over) because to fetch (or return) something necessary for the carrying out of the work he was employed to do would be incidental to his employment. It does not, however, seem to me that the course of employment can be extended to cover the doing of something which is itself merely incidental to that which is incident to the workman's employment. Thus, in my opinion, there is no analogy between the obtaining of a cake of soap from a canteen and the obtaining of a tool or other piece of equipment without which the workman could not perform the work he was employed to do. The former is incidental to having a bath (which the workman is not employed to do) whereas the latter is directly incidental to his employment. I cannot, therefore, give effect to the first contention put forward on behalf of the claimant which is, as it seems to me, based on a misunderstanding of the true effect of Decision C.I. 23/49 (reported) and the decisions which followed.

9. In my opinion the second contention of the claimant's association fails for the same reason. In the case dealt with in Decision R(I) 72/54, a colliery worker, while changing into working clothes before his shift was due to commence, broke a bootlace and was injured when going to the canteen to obtain a new one. It was held that he had suffered injury by accident arising out of and in the course of his employment because it was reasonably necessary for him to procure a new bootlace in order to equip himself properly for his work. In the course of his decision the Commissioner said, "on the day in question . . . [the claimant] would have had to obtain a bootlace, unless he went to work with his boot unlaced or managed to knot his lace successfully. It seems to me that it was reasonably necessary for him in the circumstances to obtain a new bootlace in order to equip himself properly for his work. In going to the canteen to buy one, the only place where he could obtain it in the circumstances, it seems to me that *he was doing an act incidental to the performance of that which he was employed to do.*"

10. The claimant's association rely strongly on the passage I have quoted and submit that if for the words "a new bootlace" there be substituted the words "a piece of soap" it is exactly applicable to the present case. But the fallacy in that argument lies in the fact that the claimant in this case was not employed to have a bath and in going to the canteen to buy soap he was not doing an act "incidental to the performance of that which he was employed to do." He was doing an act incidental to the process of "disentangling himself from his employment". Accordingly, in my view, the case to which Decision R(I) 72/54 gave rise is distinguishable from that now under review.

11. On the other hand there seems to me to be no distinction in principle between the present case and that to which Decision R(I) 11/54 relates. In the case there dealt with, a colliery worker was injured when buying sandwiches in the colliery canteen for consumption during his shift and was held not to have suffered an industrial accident because "the procuring

of his food is not one of the purposes which a coal miner is employed to fulfil, either directly or incidentally."

12. In the result I hold that the accident which occurred to the claimant on the 14th April 1958 was not an accident arising out of and in the course of his employment and that injury benefit is not payable in respect of it.

13. I dismiss the appeal of the claimant's association.

19.11.58 INDUSTRIAL DEATH BENEFIT R(I) 8/59

Course of employment—railwayman killed whilst taking unauthorised route from locomotive shed to station

A locomotive driver intended to return by a particular train to his home depot where he was due to sign off on completion of his shift. He was late reaching the locomotive sheds, and, to try and get to the station in time, took an unauthorised short cut along the railway tracks. He was killed by a passing locomotive.

Held that under Section 8 the accident could be deemed to have arisen out of and in the course of the deceased's employment. The journey from the shed to the station lay within the scope of his employment and was made in pursuance of his employers' business. Decision R(I) 25/55 compared.

1. My decision is that the death of the claimant's late husband on the 14th December 1957 resulted from personal injury caused by accident arising out of and in the course of his employment, within the meaning of section 7 of the National Insurance (Industrial Injuries) Act, 1946, and that industrial death benefit is payable to the claimant.

2. The claimant's late husband, to whom I refer as the deceased, was employed as a locomotive driver by British Railways. He was unhappily killed on the 14th December 1957 when he was walking along the railway track and was struck by a passing locomotive.

3. On that day he would have been on duty until 11.10 p.m. at which time he was required to book off duty at his depot at D.M. station. In the normal course of events on that day he would have brought his locomotive to the shed at F. and then walked from the shed to F. station (a 12-minute walk) where he would have caught a train at 9.1 p.m. and travelled as a passenger to D.M. station in time to book off duty at the depot at 11.10 p.m.

4. His return to the shed at F was, however, delayed. He did not arrive there until 8.55 p.m. and this would scarcely have allowed him time to catch the 9.1 p.m. train if he had walked by the authorised route, which took 12 minutes. The foreman at F., seeing that the deceased was running late, stopped the deceased's locomotive just inside the shed signal and took him off the locomotive so as to enable him to catch the train at 9.1 p.m. It was while he was hurrying along the track to F. station that the deceased was killed. It was a dark and windy night.