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Commissioner's File: CSSB/189/1985
C A O File: AO 2075/85
Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name:
Social Security Appeal Tribunal: Glasgow West
Case No: 2/20

[ORAL HEARING]

1. Our decision is that the decision of the social security appeal tribunal dated 8 May 1985 is erroneous in point of law, and accordingly we set it aside. We direct that the matter be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is the claimant's appeal on a point of law, the necessary leave having been granted, against the majority decision of the social security appeal tribunal dated 8 May 1985 confirming the adjudication officer's decision issued on 21 February 1985 to the effect that the claimant was required to be available for employment as a condition of receiving a supplementary allowance. The present appeal like that in the case on file CSSB/232/1985 raises questions as to the application of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No. 1526], as amended, ("the Conditions of Entitlement Regulations"), with particular reference to the interpretation of regulation 6(u). The appeals of the present claimant and the other claimant were heard together at an oral hearing held before us, at which the claimants were represented by Mr C Orr, a Welfare Rights Officer from the Strathclyde Regional Council. The adjudication officer was represented by Miss R Kearns of the Solicitors' Office of the Department of Health and Social Security. We are indebted to them both for their able submissions. As the facts and circumstances relating to each appeal contain certain differences, we propose to give separate decisions.

3. At the material time the claimant was aged 53 and single and he lived alone. He was in receipt of a supplementary allowance and had no capital. On 17 January 1985 a letter was received from his representative, which stated that the claimant "has been unemployed for 6 years and given his age and lack of experience, he is unlikely to be offered further employment". The letter contained a request that the requirement to register for employment as a condition of entitlement should be waived, and that this should take effect from a date two years earlier. The letter was treated as an application for the review of earlier awards of a supplementary allowance, which had been credited to the claimant at the "short term" lower rate. The claimant sought "back-dating" of the review because he would have been entitled to be credited at the higher "long-term" rate after he had been in receipt of an allowance without being required to be available for employment for 52 weeks prior to the date of application for review (see regulation 7(2)(b) of the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399] and regulation 87 of the Social Security

(Adjudication) Regulations 1984 [SI 1984 No. 451] ("the Adjudication Regulations"). As a result an officer of the Department visited the claimant and ascertained that he was in good health and not disabled in any way.

4. At the tribunal hearing of the appeal on 8 May 1985, the claimant attended and was represented by Mr Orr. In the event, the tribunal dismissed the appeal by a majority decision. The Chairman's note of evidence reads:-

> "The Tribunal accepted the interpretation of analogous to as meaning similar to, but the majority decision remains"

The tribunal's findings on questions of fact material to decision read;-

> "The appellant is 53 years old and has been unemployed for 6 years. He admits to no physical nor mental disability. He had various jobs until redundancy 6 years ago. His trade as a core maker no longer exists".

The reasons for decision read:-

> "The majority of the Tribunal accepted that he suffered from neither mental or physical disability and Regulation 6(e) Conditions of Entitlement did not apply. They did not accept his representative's view that his age and lack of experience constituted a physical disability analogous to (e) and therefore agreed that 6(u) was (not) relevant. The majority likewise did not accept that part of 6(f) was relevant. They agreed that (f) had to be taken in its entirety and as he was not within 10 years of retiring age was not acceptable".

The minority decision reads:-

> "Under 6(u) Conditions of Entitlement the circumstances were analogous in the present economic circumstances by reason of his age. He has no further prospect of employment. He also lacks the training and previous work experience to be able to re-enter employment".

5. Section 5(1) of the Supplementary Benefits Act 1976 provides as follows:-

> "5.-(1) The right of any person to a supplementary allowance is subject
>
> (a) except in prescribed cases, to the condition that he is available for employment; and
>
> (b) in prescribed cases only, to the further condition that he is registered in the prescribed manner for employment

We need say no more about the condition of registration in section 5(1)(b) because there has been no regulation imposing such a requirement on any person of the claimant's age. And in any case this appeal is concerned with the possibility of exception from the requirement of availability for employment.

6. Regulation 6 of the Conditions of Entitlement Regulations made pursuant to section 5(1)(a) of the Act lists the cases in which a person is not required to be available for employment as a condition of title to a supplementary allowance. Paragraphs (a) to (u) (including interpolations by amendment) contain well over twenty exceptions from the requirement of availability. Some of these provide for essentially short-term exceptions; but the exceptions with which this appeal is concerned are not short-term. We do not think it necessary to set out every paragraph, but only those to which we refer in this decision. It will be noted that several of the paragraphs contain sub-paragraphs, and that sometimes (as

with paragraph (c)) the sub-paragraphs contain alternative conditions and that more times (as with paragraphs (e) and (f)) the sub-paragraphs contain cumulative conditions. Regulation 6 (as amended) so far as material provides as follows:

"6. A claimant shall not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs apply and regulation 8 does not apply to him:-

.....

(c) he is a person -

(i) to whom regulation 9(2)(b) applies, or

(ii) who, by reason of some disease or mental disablement, is incapable of work, or

(iii) who is engaged in work for the number of hours a week (being, in the case of a person to whom regulation 9(1)(a)(i) applies, less than 35 hours or, in any other case, less than 30 hours) which, having regard to some such disease or disablement suffered by him, he is usually capable of working;

(d) he is so blind as to be unable to perform any work for which eyesight is essential and he has been unused to working outside his home in the 12 months immediately preceding the claim;

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has -

(i) on average worked for less than 4 hours a week,

(ii) been available for employment under section 5 for not less than 39 weeks,

(iii) made reasonable efforts to find employment and not refused any suitable employment;

(f) he has no prospect of future employment and lacks the training or experience to be able to enter or re-enter employment and -

(i) he is within 10 years of attaining pensionable age,

(ii) he has not been in employment in the previous 10 years,

(iii) during that period the requirement to be available for employment pursuant to section 5 has not applied and would not have applied to him had a claim been made for an allowance by or in respect of him;

.....

(p) he is a person aged not less than 60

.....

(u) the preceding paragraphs do not apply to him, but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

7. The tribunal concluded (on the evidence rightly in our view), that none of paragraphs (a) to (t) of regulation 6 of the Conditions of Entitlement Regulations applied to the claimant. They had special regard to paragraphs (e) to (f). Accordingly the question arose whether the claimant could avail himself of regulation 6(u) in that the circumstances were "analogous to any circumstances mentioned in one or more of those paragraphs..". We agree with Mr Orr and Miss Kearns that this means "the circumstances" referable to the particular claimant. However among the difficult questions raised by paragraph 6(u) are (1) that of the meaning to be given to the word "analogous", and (2) that of the degree of analogy required before the opinion of the adjudication officer on the question whether it is reasonable to require the claimant to be available for employment becomes relevant. In an appeal to an appeal tribunal, the opinion of the tribunal falls to be substituted for the opinion of the adjudication officer.

8. As to the meaning of the word "analogous", this is defined in the Shorter Oxford Dictionary as meaning among other things "similar in attributes". With the caveat that the attributes must be attributes relevant to the question whether it is or is not reasonable to expect a claimant to be available for employment we would broadly accept this as the meaning to be applied to the word "analogous" as used in regulation 6(a).
Paragraphs (a) to (t) list a large variety of different and specific sets of circumstances, which entitle claimants to be relieved of the necessity of proving availability for work, whether on a temporary or permanent basis. But no list, however comprehensive, can provide for all the circumstances envisaged as fairly entitling a claimant to be relieved of the requirement to make himself available for employment before being entitled to a supplementary allowance. In our view the draftsman of the regulation inserted paragraph (u) to include those circumstances similar in attributes to those qualifying under earlier paragraphs which ought to be covered, but which he had not expressly mentioned. Circumstances falling outside the scope of paragraphs (a) to (t) may be said to fall into two classes (i) those which are expressly or by necessary implication excluded by one or other of those paragraphs and (ii) those which are not so excluded. We do not consider that the first class of such circumstances was ever intended to be included by analogy. Thus for instance, paragraph (p) exempts a person from the requirement of being available if:

"he is a person aged not less than 60".

We do not consider that it is open to the determining authorities to conclude that 59 is analogous to 60 in face of the clear implication that this was not intended. Similarly we do not consider the provision in paragraph (f)(i) relating to pensionable age to be open to analogy.

9. By contrast paragraph (d) exempts a person if:

"he is so blind as to be unable to perform any work for which eyesight is essential and he has been unused to working outside his home in the 12 months immediately preceding the claim".

On this Miss Kearns readily, and rightly in our view, conceded that some analogy might be drawn between conditions of blindness and deafness. In our view, if an analogy is possible as not being expressly or impliedly excluded, it is a question of fact for the tribunal whether any particular circumstances are analogous. This necessarily follows from the scheme or underlying purpose of paragraph (u) conferring power on the benefit officer to bring a claimant within the exemption of regulation 6 in factual circumstances which could not be predicated by the draftsman, but which are nevertheless adjudged to fall within the scope of the exemption as exemplified in paragraphs (a) to (t). Each case must necessarily depend upon its particular facts.

10. The second and equally difficult question is the degree of analogy that is required before paragraph (u) can be invoked. Mr Orr initially submitted (and the Commissioner in the recent decision on file CSSB/177/1985 felt constrained to agree) that the words "the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs" should be interpreted literally, with the result that all that was necessary for the first part of paragraph (u) to be applicable was that there should be an analogy with any single circumstance mentioned in any of the preceding paragraphs. In the alternative, it was possible in Mr Orr's submission to pick out analogies to different circumstances in different paragraphs and "build" a case which fell within the terms of paragraph (u). Mr Orr stressed that the crucial word which supported this interpretation was the word "any" and not "the" in the phrase "any circumstances mentioned [his emphasis] in one or more of those paragraphs". In our view this interpretation would make nonsense of the requirements of paragaphs (a) to (t), in that it would lead to the startling result that a claimant would be potentially better off with an analogy to a single feature of one of those paragraphs than he could be with direct conformity with it, as in the latter instance a claimant is required to satisfy all the other qualifying elements in the paragraph. This would have the effect of redrafting and diluting the qualifying provisions of the regulation and we do not consider the words so intractable as to demand such an interpretation. Mr Orr seemed to sense that such a literal interpretation would result in this difficulty when he later qualified his submission by limiting the potentiality of analogy to the primary circumstances mentioned in one or more of the preceding paragraphs. This qualification, besides raising the question what are the primary circumstances, had the weakness from Mr Orr's point of view of abandoning the literal construction of the words used by the draftsman without producing a less anomalous result. Accordingly we reject these submissions.

11. Miss Kearns submitted that paragraphs (a) to (t) set the boundaries within which paragraph (u) could operate. It followed from her submission that each paragraph had to be considered in its entirety and it was not possible to have an analogy to a part of a paragraph with a total disregard for the other conditions mentioned in that paragraph. In our view the key to the interpretation of the paragraph lies in the opening words "the preceding paragraphs do not apply to him but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs". We take the underlined passage to indicate that what the draftsman intended was that a claimant who did not satisfy all the qualifying conditions of one or more of the paragraphs might nevertheless be able to make good those that he did not satisfy by establishing circumstances analogous to those of the conditions in that paragraph not satisfied by him. The paragraph thus comes into play only if the claimant can satisfy either by direct conformity or by analogy all the qualifying conditions of a previous paragraph. He may in this way be able to establish the necessary degree of combined conformity and analogy in relation to more than one paragraph. This will no doubt be a relevant factor in deciding whether it is reasonable that the claimant should or should not be required to be available for employment which is the second factor for determination in applying paragraph (u). In so far as the Decision on file CSSB/177/1985 holds that an analogy with any single circumstance mentioned in one or more of the previous paragraphs is sufficient, subject to the test of reasonableness, for the purposes of paragraph (u) that decision should not now be followed.

12. We next have to apply these principles in determining whether the majority of the

tribunal erred in law in rejecting Mr Orr's submission that the claimant's circumstances were analogous to those set out in paragraphs (e) and or (f) of regulation 6, so that subject to the test of reasonableness he could invoke paragraph (u) and be relieved of the necessity of proving availability for employment, which would then enable him in due course to satisfy the conditions of entitlement to supplementary benefit at the higher rate.

13. We take first paragraph (e), under which a claimant may be excepted from the condition of availability if by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has satisfied three conditions (set out in sub-paragraphs (i), (ii) and (iii), which quite possibly the present claimant satisfied). His difficulty was that he did not suffer from any physical or mental disablement and thus had necessarily to fall back on paragraph (u) relying on some analogy with physical or mental disablement. For this he relied on his age. On the question whether age could be or was analogous to "physical or mental disablement", Mr Orr in his written submission pointed to the close similarity between the phraseology in regulation 6(c)(ii) and in section 17(1)(a) of the Social Security Act 1975 relating to incapacity for work for purposes of sickness and invalidity benefit. He submitted that the relevant words should be given the same interpretation. He argued that numerous Commissioners' decisions had approved paragraph 5 Decision R(S) 11/51 which confirmed that in determining a claimant's incapacity for work as a result of "some specific disease or mental or physical disablement" regard had to be given to "his age, education, experience, state of health and other personal factors". Accordingly it was his submission that the effect of a person's age was closely analogous to the effect of his state of health; that the close parallel between the wording of paragraph (e) on the one hand and section 17(1)(a)(ii) of the Social Security Act 1975 was not the less significant for the point that the former bears on their effect on a person's prospects of employment while the latter bears on their effect on his capacity for work. He supported his submission that age was analogous to "physical or mental disablement" by referring to the Department's 'S' Manual which contains advice for dealing with those to be selected for quarterly, as opposed to fortnightly, signing as available for employment. Paragraph S 15459(1) reads that a claimant must be handicapped by:-
(a) physical or mental disorder which greatly limits his choice of work.....or (b) age itself i.e. 50 or over for men and women in an area where it is known that job opportunities for people of that age are very limited..". He argued that if the Department found the analogy reasonable when considering who should sign quarterly as opposed to fortnightly, it was untenable to hold it unreasonable when considering who should be relieved of the necessity to sign at all.

14. On this issue Miss Kearns accepted (indeed submitted) that the relevant circumstances were a question of fact for the tribunal; but she submitted that there was no question of applying either paragraph (e) or paragraph (f) by analogy under paragraph (u), and that age though a disadvantage was never analogous to disablement, relying on the Decision on file CSSB/177/1985. She suggested that a person only just over 50 would take exception to the suggestion that his or her age was analogous to disablement. As we understood her argument she was submitted that as a matter of law age cannot be treated in the context of paragraphs (e) and (f) as a circumstance analogous to disablement for much the same reason as 59 cannot be treated as analogous to 60. We do not find anything in paragraph (e) or indeed elsewhere in regulation 6 that either expressly or impliedly excludes the possibility of age being treated either alone or in conjunction with other circumstances as analogous with disablement. In particular the fact that paragraph (p) unreservedly excepts claimants from the condition of availability at the age of 60 does not import that no person can in the more restricted circumstances of one of the other paragraphs rely on the analogy of age to any of the circumstances mentioned in the paragraph. It appears to us that age or advancing years can (either alone or taken in conjection with other matters) have attributes relevant to the question of prospects of further employment similar to the attributes of disablement. Indeed age by itself is a disqualification for some occupations (e.g. model or professional footballer) and especially in the case of a person whose

regular occupation has ceased to exist may disadvantage him both because an old person is less readily trained for new skills, and because the remaining years of his working life may be too few to justify the time and expense of retraining. We accept Mr Orr's contention that it is a question of fact. No one, we think, would consider the age of 30 by itself to be analogous with disablement; but greater ages especially if there are other circumstances can be held to be analogous to disablement. On this point we disagree with paragraph 8 of the Decision on file CSSB/177/1985.

15. In our view the reasons given by the tribunal for their conclusion that the claimant's age was not analogous to disablement are not sufficiently stated to enable it to be judged whether they adopted a view broadly in line with Miss Kearns' submission (which we have rejected) that age of itself is never analogous to disablement, or whether they have treated the matter as a question of fact depending on all the circumstances, without specifying those on which they rely. This in our judgment is not a proper compliance with regulation 19(2)(b) of the Adjudication Regulations as to the inclusion in the record of the findings as to material facts and the reasons for the decision and we find the decision on that ground to have been erroneous in point of law. We do not consider that this is a case in which it is practicable to give the decision which the tribunal should have given and we remit the appeal to another tribunal; and we draw attention to the directions in paragraphs 17 to 22.

16. Our conclusion makes it strictly unnecessary to consider the appeal tribunal's conclusion on paragraph (f), but as that paragraph could be debated before the new tribunal, either alone or in conjunction with paragraph (u) we think that we should say something about it. The appeal tribunal considered that paragraph (f) had to be taken in its entirety; and that as the claimant did not satisfy sub-paragraph (i) it did not help him. In our judgment the conditions inherent in the opening words of the paragraph "he has no prospect of future employment and lacks the training and experience to be able to enter or re-enter employment" and the conditions contained in sub-paragraphs (i), (ii) and (iii) have all to be satisfied either directly or by analogy if the paragraph is to be relied on alone or in conjunction with paragraph(u). And the tribunal were right in thinking that if sub-paragraph (i) was not satisfied they need not consider the paragraph further. Mr Orr's argument to us relied heavily on its being accepted that a claimant could when relying on paragraph (u) select one or more of the circumstances in the earlier paragraphs in isolation. We think that he appreciated the difficulties in the way of the claimant's satisfying the whole of the conditions in paragraph (f) even by analogy. We would caution the new tribunal against exclusive reliance on failure to satisfy sub-paragraph(i), as it differs in its effect in relation to men and women to the detriment of this claimant. On the facts found by the last tribunal we find difficult to envisage that the claimant will be able to satisfy the conditions of either sub-paragraph (ii) or (iii) directly or by analogy. And we think it unnecessary to include in our directions anything more about sub-paragraph (f).

17. If the new tribunal, applying the foregoing conclude by reference to paragraph (e) that in the claimant's case there are circumstances analogous to disablement they will have to go on to consider the following:

(a) whether in terms of paragraph (e) the claimant had at the material time no further prospect of employment;

(b) if so, whether that was by reason of the analogous condition of age with or without other circumstances;

(c) if so, whether in the preceding 12 months all the conditions in sub-paragraphs (i), (ii) and (iii) were satisfied;

(d) if so, whether it is unreasonable to require the claimant to be available for employment.

Only if all these points are decided in the claimant's favour (either actually or, if that be possible, by analogy) can the claimant succeed. We will take these in turn.

18. As to (a) it was submitted to us on the one hand that a person could not be said to have no prospects of employment if he had any prospect at all however remote; on the other hand it was suggested that it was sufficient that the prospects of employment were poor. We consider that each of these is too extreme. Under paragraph (e) the claimant has to have no further prospect of employment, under (f) no prospect of future employment. The determining authorities have to consider a person's entire future. It can hardly be said of anyone that there is not a remote chance of a person ever securing even temporary employment. On the other hand we are clearly of opinion that poor prospects are not sufficient to satisfy the paragraph. We consider that the claimant has to show that there are no realistic prospects of his securing employment again.

19. As to (b) the question is whether the absence of prospects is by reason of the circumstances analogous to physical or mental disablement. We do not accept Miss Kearns' submission that these must be the sole cause of the claimant's having no prospect of employment. But they must be a significant cause. Indeed the conditions must together fall short of physical or mental disablement for it to be necessary to resort to analogy at all. And it seems to us to be hardly conceivable that they should be the sole cause. But they may be a contributory cause taken in conjunction with, say, the state of the labour market in the relevant area. The evidence adduced by Mr Orr of the analysis of unemployment figures will be relevant. It is even possible that from the claimant's point of view such evidence may prove too much and establish that the state of the labour market is the sole cause of the claimant's lack of prospects of employment.

20. As to (c) it is necessary to consider whether the claimant in the immediately preceding 12 months satisfied the conditions in sub-paragraphs (i), (ii) and (iii). We heard no argument on these and we venture to think that the claimant may (having regard to the tribunal's findings) be able to satisfy them. For the avoidance of doubt we hold that a person who has not worked at all in the period should be regarded as satisfying the conditions (in sub-paragraph (i)) of having on average worked for less than 4 hours a week.

21. As to (d) if the claimant is found to satisfy literally or (where that is possible) by analogy everything so far, the tribunal will still have to go on consider whether it is or was reasonable to require the claimant to be available for employment. This provision does not confer an unfettered discretion to refuse or allow the claim once the preliminary pre-conditions are satisfied. The tribunal is called upon to make a judgment whether it is or was reasonable to require the claimant to be available for employment. The tribunal may bear in mind that it was presumably the view of the draftsman that where the conditions of any one of the paragraphs were precisely fulfilled it was unreasonable to require the claimant to be available for employment. This can be a guide where the analogy is close. But we think it right to warn against a too ready assumption that just because there is an analogy it must be unreasonable to require the person concerned to be available for employment.

22. There are for instance cases where it is possible to read the mind of the draftsman. Paragraph (d) relates to a person who is so blind as to be unable to perform anywork for which eyesight is essential and has been unused to working outside his home in the 12 months preceding the claim. The latter requirement will be satisfied by anyone who has been unemployed for 12 months. Miss Kearns suggested deafness as a legitimate analogy to blindness; and by the same token one might suggest the loss or impairment of other senses or other forms of physical disablement. But it is easy to see that the draftsman had in mind that the loss or impairment of eyesight represents almost universal disqualification for work and renders it peculiarly difficult for a person so afflicted to work away from home after having become unaccustomed to doing so. These considerations which may make it unreasonable to expect a blind person to be available for work may not be relevant in cases

of other form of disablement. Then again, the application of analogy to one paragraph may enable a person to satisfy by analogy the same basic condition that he can satisfy directly under another paragraph, but shorn of the subsidiary conditions in the other paragraph. Thus a person who invokes under paragraph (d) the analogy to blindness of some other form of disablement would, if it were found to be unreasonable to require him to be available for employment, avoid having to satisfy the bulk of the conditions of paragraph (e).

23. We summarise our decision upon this appeal as follows:-

(a) An analogy may only be drawn under paragraph (u) if the circumstances which fall to be considered are not expressly or impliedly excluded from consideration by virtue of the construction of the particular preceding paragraph selected for assessment of qualification. That is an issue of law. (paragraphs 8 and 9).

(b) If analogous circumstances are founded on for purposes of paragraph (u), they must, if sustained, enable the claimant to satisfy either directly or by analogy all qualifying conditions necessary to satisfy one (or more) of the previous paragraphs. (paragraphs 10 and 11).

(c) Where it is open to draw an analogy, it is a question of fact for the tribunal to determine whether any particular circumstances are analogous and those circumstances are such that it would be unreasonable to require the claimant to be available for employment. The decision in each instance must necessarily depend upon the evidence received. (paragraphs 13 and 14).

(d) In particular it cannot be asserted as a matter of principle that age can never under any circumstances be analogous to "physical or mental disablement" for the purposes of regulation 6(e), as age may affect the claimant's ability to perform work, as opposed to employment opportunities not being available to him by reason of his age. The tribunal's reasons for holding that the claimant's age was not analogous with disablement are not sufficiently stated to make it clear that they treated it as a question of fact rather than law. They thus erred in law and their decision is set aside. (paragraph 15).

(e) in order to satisfy the opening words of paragraph (e) the claimant has to establish (1) that he has no realistic prospects (not merely poor prospects) of securing further employment in his working life; and (2) that disablement (or circumstances analogous thereto) is/are a significant cause of such lack of prospects; (paragraph 18).

(f) the claimant, not having been unemployed for as much as ten years cannot satisfy the requirements of paragraph (f)(ii) either directly or by analogy. (paragraph 19).

(g) if the claimant is found to satisfy any of the conditions only by invoking analogous circumstances the tribunal under paragraph (u) has to go on to consider whether it is reasonable to require him to be available for employment; this is not the same things as exercising a general discretion to allow or refuse the claim. (paragraphs 20 and 21).

(h) for the reason given at (d) above the appeal succeeds to the extent that the decision of the tribunal is set aside.

(Signed) J G Monroe
Commissioner

(Signed) J G Mitchell
Commissioner

(Signed) R F M Heggs
Commissioner

Date: 18th August 1986