TOC/1/LM/JM Commissioner's File: CU/142/89

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Appeal Tribunal:

Case No:

1. We allow the adjudication officer's appeal against the decision of the social security appeal tribunal and as that decision is erroneous in law we set it aside. We give the decision which the tribunal should have given namely, that unemployment benefit is not payable to the claimant from 2 January 1989 to 10 January 1989 (both dates included) because she had attained the age of 55 years and was in receipt of occupational pension which in the aggregate exceeded the prescribed amount of £35.00 per week by at least £70.00, consequently her entitlement must be reduced to nil by virtue of the provisions of section 5 of the Social Security (No. 2) Act 1980 as amended. If any further claim for unemployment benefit is made in respect of a day falling in the period 11 January 1989 to 11 January 1990 (both dates included) and on that day the grounds of this decision have not ceased to exist, this decision is to be treated as a disallowance of that claim.

2. The Chief Commissioner directed that this appeal be heard by a Tribunal of Commissioners and it was the subject of an oral hearing before us on 8 March 1990. Mr M. R. Parke of the Solicitor's Office of the Departments of Health and Social Security represented the adjudication officer and Mr Richard Drabble of Counsel, instructed by Sinclair Taylor and Martin Solicitors, appeared for the claimant.

3. This is an adjudication officer's appeal against the decision of the Norwich social security appeal tribunal given on 2 October 1989 which decided that the claimant was not disentitled to unemployment benefit from 2 January 1989 by reason of receipt of an occupational pension. In doing so the tribunal reversed a decision of the adjudication officer issued on 11 January 1989 which disallowed unemployment benefit from 2 January 1989 to 10 January 1989 (both dates included) on the grounds that the claimant had attained the age of 55 years and was in receipt of payment by way of occupational pension which in the aggregate exceeded the prescribed amount of £35.00 per week by at least £70.00. The adjudication officer had, also, made a forward disallowance covering the inclusive period 11 January 1989 to 11 January 1990.

4. The claimant, a retired teacher, became entitled from and including 1 September 1988 to two occupational pensions payable monthly. These pensions were payable at the monthly rate of £322.10 and £133.20. She claimed unemployment benefit from 7 November 1988 and at that date she was aged 56 years. The days 7 November 1988, 8 November 1988 and 9 November 1988 were treated as waiting days pursuant to section 14(3) of the Social Security Act 1975 and unemployment benefit was paid at the weekly rate of £32.75 from 10 November 1988 to 31 December 1988. On 11 January 1989 the adjudication officer made the decision to which we have referred earlier. The particulars of the claim, upon which the adjudication officer's decision was founded, were not before the tribunal; nor were they informed whether the decision was a review decision or not. In response to a direction evidence was put before us which shows that the claim was made on 10 January 1989. It claimed unemployment benefit in the period from 28 December 1988 to 10 January 1989. Again in response to the direction evidence was put before us that the decision of the adjudication officer given on 11 January 1989 was an initial decision and not a decision on review. These are the facts and there is no dispute about them.

5. Neither is it in dispute that the claimant's occupational pensions are occupational pensions within section 5(3) of the Social Security (No. 2) Act 1980. It is also not in dispute that if these occupational pension payments fall to be taken into account for the purpose of abatement, with effect from 1 January 1989, the amount of such pensions is sufficiently large to extinguish any entitlement to unemployment benefit. The issue which falls for decision by us is whether the amendment to section 5 of the Social Security (No. 2) Act 1980, made by section 7 of the Social Security Act 1988, which came into operation on 1 January 1989 and which lowered the age at which the occupational pension provisions were to apply from 60 years to 55 years, affected the claimant's entitlement to unemployment benefit. The issue turns on whether or not the provisions of section 16(1)(c) of the Interpretation Act 1978 protects the claimant. The tribunal below decided that it did.

6. It is necessary to read section 16(1)(c) of the Interpretation Act 1978 which, in so far as relevant, we set out below:

> "16(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears, -
>
> (a) .....
>
> (b) .....
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;"

The sub section is a virtual repetition of section 38(2) of the

Interpretation Act 1889 and the decisions of the courts on that section are of use.

7. In order to answer the question whether a right had been acquired by or had accrued to the claimant it is necessary to look at the statutory provisions relating to unemployment benefit and these we have set out in an appendix to this decision.

8. The tribunal decided that the claimant had established a right to unemployment benefit because she had been receiving unemployment benefit for nearly two months when the amendment to section 5(3) of the Social Security (No. 2) Act 1980, made by section 7 of the Social Security Act 1988, came into force. It was therefore, in their view, a right which was already acquired for the purposes of section 16(1)(c) of the Interpretation Act 1978. The tribunal also held that no contrary intention appeared in the amending enactment. They found that section 16 of the Interpretation Act applied to the claimant and that she was not deprived of unemployment benefit by virtue of the amending Act of 1988.

9. Mr Parke argues that unemployment benefit is a daily benefit which accrues on a daily basis and must be claimed on a continuing daily basis. He says that a right only arises - assuming a claim is made - once there has come into existence a day which properly may be treated as a day of unemployment. Anticipating Mr Drabble's argument, he says that a claimant does not claim for 312 days. He contends that the statutory provisions place an emphasis on daily benefit and that the 312 days specified in section 18 of the Social Security Act 1975 relates back to the past and not forward. He contends that the Act is not drafted on the basis of a right which will continue for 312 days, but on the basis of a daily benefit. In support of his argument he has taken us through the provisions of section 14(1)(a), section 14(8), section 17(1)(a)(i), section 17(2) and section 18 of the Social Security Act 1975. He emphasises that regulation 19 of the Social Security (Claims and Payments) Regulations 1987, read in conjunction with Schedule 4, provides that unemployment benefit is to be claimed on the day in respect of which the claim is made; and he submits the fact that in practice a claimant is given a specified day or days of the week in which to call and claim his benefit does not alter the day to day nature of the benefit. He says that entitlement to unemployment benefit is a matter which is to be determined in respect of each day of unemployment; and he points to it being possible for a claimant, who is unemployed, to satisfy the conditions of payment of unemployment benefit in respect of some days in a period of interruption of employment and not in others. He emphasises that there are no provisions in the legislation for the forward allowance or the forward determination of a claim for unemployment benefit. A claim may be treated as made for a period after the date of claim in the circumstances described in regulation 17 of the Social Security (Claims and Payments) Regulations; but in respect of each day of such claim, entitlement is determined on a day to day basis. In support of his argument Mr Parke cited to us the number of

Commissioners decisions; R(U) 6/75, CSU/8/88, CSU/1/88. Mr Parke referred us to section 165A of the 1975 Act and regulation 19(1) of the Claims and Payments Regulations. He submitted that unemployment benefit is a daily benefit which accrues on a daily basis and must be claimed on a continuing daily basis. He says the right only arises - assuming a claim is made - once there has come into existence a day which properly may be treated as a day of unemployment. The right only arises when the day arrives. He points to the claim in the instant case having been made on 10 January 1989 and the amending legislation coming into operation on 1 January 1989. He maintains that during the intervening period of 9 days it could not be said any right accrued to the claimant. He argues that section 16(1)(c) of the Interpretation Act provides no protection to the claimant because of the continuing necessity to make a claim in the prescribed manner and within the prescribed time; a right to unemployment benefit would not accrue until the claim was made. He sought to distinguish the present case from R(G) 2/89. In that case the Commissioner held that the claimant had an accrued right to widow's benefit. Mr Parke maintains that the principle in that case is not applicable to the facts in the instant case. Section 165A of the Social Security Act did not apply there because the claim was made before it was added to the legislation. He also points to widow's benefit not being a daily benefit and that the claimant in R (G) 2/89 only needed to claim once. In the case of unemployment benefit there is a continuing condition to make a claim. He submits that the claimant in the present case had no accrued right. She had no more right than any ordinary member of the public to make a claim.

10. Mr Drabble argues that the claimant had a right to unemployment benefit for the remaining balance of the 312 days but he accepts that such right was contingent on her making claims for benefit. He emphasises that this right had accrued to her prior to the coming into force of section 7 of the Social Security Act 1988. He maintains that the starting point is section 14(1) of the Social Security Act 1975 and that the concept there is one of entitlement to benefit for days of unemployment throughout a period of interruption of employment. He poses the questions as follows: Does the day in question form part of an interruption of employment and he says that the answer to that must be in the affirmative. The event is the commencement of the period of interruption of employment. People who pay contributions have "a hope or expectation" of being able to claim unemployment benefit. On the happening of the event - the period of interruption of employment - that hope crystallises into something more definite. Mr Drabble invites our attention to paragraph 1 of Schedule 3 of the Social Security Act 1975 and says that once an initial claim is allowed in "the relevant benefit year", then paragraph 1 of Schedule 3 is applied and there is a decision that the contribution conditions for entitlement to benefit for 312 days exist. He argues that in the present case, after the initial claim, it was accepted by an adjudicating authority that the claimant satisfied the contribution conditions - section 14(2)(a) - and no issue would rise again as to whether or not she satisfied those conditions.

Section 18 of the Act provides a limit to the entitlement conditions and speaks of a person who "exhausted his right". Mr Drabble emphasises that the whole concept of the unemployment scheme provided for in the Act is of a person who satisfies the conditions in section 14 but whose continuing right is contingent on the other conditions being met; as, he says, indeed, widow's benefit is contingent on the widow not remarrying. He says that the continuation of unemployment is no different from a widow continuing as a widow.

11. The issue before us is whether immediately prior to 1 January 1989 the claimant had acquired a right to unemployment benefit without any abatement on account of payment of her occupational pension. We have to consider what right she had at that date and its duration. It is necessary to look to the Social Security Act 1975 and its subordinate legislation in order to ascertain what right was conferred on the claimant at that time. It, of course, must be a right accrued or acquired in the sense in which those terms are used in the Interpretation Act. A valuable discussion of the nature of such a right is to be found in the speech of Lord Herschell when giving the judgment of the Board in the Privy Council case of Abbott v The Minister for Lands (1895) AC 425 at 431. He said:

> "It has been very common in the case of repealing statutes to save all rights accrued. If it were held that the effect of this was to leave it open to anyone who could have taken advantage of any of the repealed enactments still to take advantage of them, the result will be very far reaching.
>
> It may be, as Windeyer J observes, that the power to take advantage of an enactment may without impropriety be termed a 'right'. But the question is whether it is a 'right accrued' within the meaning of the enactment which has to be construed.
>
> Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred or imposed". They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment."

The question was again considered in Hamilton Gell v White (1922) 2 KB 422, a case relied upon by Mr Drabble. The facts there were that September 1920, a landlord of an agricultural holding being desireous of selling it, gave his tenant notice to quit. By the Agricultural Holdings Act 1914 when the tenancy of a holding was determined by a notice to quit given in view of the sale of the holding the notice to quit is treated as an unreasonable disturbance within section 11 of the Agricultural Holdings Act 1908 and the tenant is entitled to compensation upon the terms and subject to the conditions of that section. One of the

conditions of the tenant's rights to compensation was that he should within 2 months after the receipt of the notice to quit give the landlord notice of his intention to claim compensation, and another condition was that he should make his claim for compensation within 3 months after quitting the holding. The tenant duly gave notice of his intention to claim compensation within the time so limited; but before the tenancy had expired, and therefore before he could satisfy the second condition, section 11 of the 1908 Act was repealed. It was held that he had acquired a right to compensation which was not lost by the repeal of the Act before an award of compensation had been made and that he was entitled to continue the proceedings necessary for its recovery. As soon as the landlord, in view of intended the sale of the property, gave the tenant notice to quit the tenant "acquired a right" to compensation and disturbance under section 11 subject to his satisfying the conditions of that section. The case for the tenant was that his right to compensation was not acquired by his giving notice of intention to claim it; what gave him the right was the fact of the landlord having given a notice to quit in view of a sale. Atkin LJ said at page 432:

> "As far as the claim under the Act of 1920 is concerned I think it is untenable for the reasons that have already been given and which I need not repeat. As far as the claim under the Act of 1908 is concerned that depends on the proper construction of s. 38 of the Interpretation Act, 1889, which provides that where an Act is repealed "the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed." It is obvious that that provision was not intended to preserve the abstract rights conferred by the repealed Act, such for instance as the right of compensation for disturbance conferred upon tenants generally under the Act of 1908, for if it were the repealing Act would be altogether inoperative. It only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statute. Here the necessary event has happened, because the landlord has, in view of a sale of the property, given the tenant notice to quit. Under those circumstances the tenant has "acquired a right", which would "accrue" when he has quitted his holding, to receive compensation. A case was cited in support of the landlord's contention: Abbot v. Minister for Lands (1), where the question was whether a man who had purchased certain land was entitled to exercise a right to make additional purchases of adjoining land under the powers conferred by a repealed Act, the repealing Act containing the usual saving clause. The Privy Council held that he was not. They said (1) that "the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a 'right accrued' within the meaning of the enactment." I think that bears out the proposition that I have stated

above. The result is that the tenant in this case has acquired a right to claim compensation under the Act of 1908 on his quitting his holding, and therefore the second question asked by the arbitrator should be answered in the affirmative."

12. The Director of Public Works v Ho Po Sang (1961) AC 901 was a case on a like provision to section 16(2) in the Hong Kong Interpretation Ordinance where the Privy Council held that while the provision preserved an investigation in respect of a right which accrued before the repeal of an ordinance, even if a process of quantification was necessary, it did not preserve an uncompleted investigation which was to decide whether some right should or should not be given. Lord Morris of Borth-y-Gest when giving the judgment of the board in that case said:

> "It may be ... that ... a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected or preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given."

In the later case of Freelanka Insurance Company Limited and A E Ranasinghe (1964) AC 541 Lord Evershed, when delivering the judgment of the Board on an appeal to the Privy Council from Ceylon, said that their Lordships were well content to accept and adopt that dictum of Lord Morris of Borth-y-Gest. The appeal in that case arose out of a road accident in Ceylon in March 1948. At the date of the accident there was in force the Motor Car Ordinance 1938 which related to insurance against third party risks. That ordinance was replaced by the Motor Traffic Act of 1951 which came into operation on 1 September 1951. There were no transitional provisions and the Act of 1951 was not retrospective. On 24 September 1951 the respondent was awarded damages against the owner of the other vehicle who was insured against third party risks at the appellant's insurance company. The respondent obtained leave to levy execution for his damages, but it was not known whether in fact he had recovered anything. Thereafter, on 17 September 1957, he began an action against the appellants and obtained judgment against them. It was section 133 of the 1938 Ordnance which imposed liability upon insurers direct to third parties. The issue was whether the appellant insurance company was made liable in the circumstances to a third party, the respondent obtained a judgment against the insured under the provisions of the Ordnance of 1938, but it was given after the coming into operation of the Act of 1951. The courts in Ceylon decided that the relevant provisions of the Ordnance of 1938 were kept in force by the provisions of section 6(3) of the Ceylon Interpretation Act 1900. It was contended before the Privy Council that at the date of the repeal of the Ordnance, the respondent had acquired no right against the appellants. He had a hope or expectation of acquiring rights against them in due course. It was conceded that he had a cause

of action, but he might never be able to prove negligence if, for example, his witnesses had died. It was submitted that until he obtained a decree he had nothing but the hope or expectation of acquiring a right - a cause of action - against the appellants by means of that decree. It was contended that the judgment of the Supreme Court was wrong in saying that:

> "the obtaining of a decree was, to adopt the language of Scrutton LJ in Hamilton Gell v White, a condition not of the acquisition of the right, but of its enforcement."

However the Board agreed with the Supreme Court in thinking that the respondent had, on 1 September 1951, "acquired a right" against the appellant within the meaning of the Interpretation Act. It was observed that the distinction between what is and what is not "a right" must often be one of great fineness. Their Lordships thought that the respondent had as against the appellant something more than a mere hope or expectation; he had in truth a right although that right might fairly be called inchoate or contingent.

13. Mr Drabble has submitted that the scheme of the 1975 legislation is to confer on persons paying contributions of the relevant class a "hope or expectation" of being able to claim unemployment benefit. He says that at the start of a period of interruption of employment, that hope or expectation crystallises into something more definite. A judgment is then made by an adjudication officer as to whether or not the claimant meets the relevant contribution conditions and, if she does, she then has a right to benefit based on those contributions for 312 days during the period of interruption of employment. He describes the right in such circumstances as something between title to unemployment benefit and a mere hope of unemployment benefit. Whether that submission is well founded we will consider in the course of the succeeding paragraph of this decision.

14. An examination of the Social Security Act 1975 and the regulations made thereunder shows that entitlement to unemployment benefit rests on two fundamental notions, namely that the person has satisfied the contribution conditions and second that he is unemployed on the day for which benefit is to be paid. It is to be emphasised that unemployment benefit is paid for days on which a person is unemployed. A person who pays his contributions, and who satisfies the contribution conditions, clearly has the hope of receiving benefit for a day when he is unemployed. But until that day arrives, it is a mere hope only; once the day has arrived and provided he is within a period of interruption of employment an event has happened which gives him a vested right to benefit, by the happening of that event he has acquired a right subject to his making a claim for "the day of unemployment". Let us suppose a person insures against accident and pays all the premiums under the policy, his entitlement to be indemnified does not come into being until the accident occurs. No doubt once he has paid his premiums, he has satisfied one of the conditions but his right to sue depends on the accident taking place. This seems to us to be a true analogy.

But the Social Security Act provides that unemployment benefit is not to be of unlimited duration. It is to be paid for a maximum of 312 days. Section 18(1) speaks of a person who has been entitled to unemployment benefit for 312 days. We cannot accept that a claimant acquires a right to unemployment benefit for 312 days. The structure of the Act is that unemployment benefit is not payable after 312 days of one period of interruption of employment. There is a cut-off. Unlike many other benefits, unemployment benefit is a daily benefit. It is settled law that it is a daily benefit which accrues on a daily basis and the right only arises where there has come into existence a day which properly may be treated as a day of unemployment. Such is amply illustrated by the cases cited to us in argument, namely R(U) 6/75, CSU/8/88 and CSU/1/88. We have considered the decision in R(G) 2/89, the case concerning widow's pension, where it was decided that the claimant was entitled to a widow's pension for the period allowed by and calculated in accordance with section 26 of the Social Security Act 1975 as if the amendments to that section, made by section 36 of the Social Security Act 1986, had not been made. We do not doubt the correctness of that decision, but it seems to us that there is an essential difference between it and the case before us. Widow's pension does not accrue on a daily basis and the claimant in that case only needed to claim once.

15. In our judgment the mere right, if it properly be described as a right, existing on 1 January 1989 whereby the claimant could take advantage of section 5 of the Social Security (No. 2) Act 1980 in the form in which it was immediately prior to that date, is not a right accrued. The claimant's right to unemployment benefit, in so far as the future was concerned, had not then arisen because she merely satisfied the contribution conditions. She might acquire a right in the future, but that right was conditional on her being then unemployed and she would have no right if she was engaged in any employment. The day of unemployment is the event and on 1 January 1989 it could only be a matter of speculation. When the event happened, as it did happen in the case of the claimant, the amending Act had provided for abatement. For the reasons which we have given this appeal fails.

16. Strictly it is unnecessary for us to enter upon consideration of the remaining ground of appeal. Mr Parke has taken the further point relating to the claim. He says that no right accrued to the claimant because her claim for the relevant period was not made until 10 January 1989. He relies on section 165A of the Social Security Act 1975 which provides that no person is to be entitled to any benefit unless he makes a claim for it. Section 165A was inserted into the Act as a result of an amendment made thereto by section 17 of the Social Security Act 1985. The amendment followed upon the decision of the House of Lords in Insurance Officer v McCaffrey (1985) 1 All E R 5, where it was held that a valid claim was not a precondition of entitlement, as opposed to the right to payment. It is now clear that it is a necessary condition for entitlement to benefit that a claim is made in the manner prescribed. It is

now a precondition of entitlement. The rules on time limits for claiming and the extension of those time limits are provided for in the Social Security (Claims and Payments) Regulations 1987; and in respect of unemployment benefit, the time prescribed is the day in respect of which the claim is made. Regulation 17 of the same Regulations allow certain claims for unemployment benefit to be treated as made for periods after the date of the claim. In so far as the present case is concerned, it is regulation 17(2)(a) which is applicable and that would allow a claim to be treated as made for up to 7 days after the date of the claim. In respect of the relevant period at issue before us no claim was made prior to the amending Act coming into operation. The words used in section 165A are clear and explicit; in order to be entitled to benefit a person must not alone satisfy the conditions relating to that benefit but he must also make a claim for it. The point was considered by the Commissioner in CU/35/88. In that case it was held that a claimant was not entitled in respect of her claim for unemployment benefit made on 13 April 1987 to unemployment benefit at less than the standard rate from 13 April 1987 onward under the provisions of section 33 of the Social Security Act 1975 and regulation 18 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983. That was because of the repeal on 1 November 1986 of section 33(1)(a) by the Social Security Act 1986 (sections 42 and 86 and Schedule 11). The Commissioner considered whether a right had been acquired under section 16 of the Interpretation Act and said, at paragraph 17, as follows:

> "17. At the second hearing the parties were therefore able to deal with this particular provision of the 1978 Act. Mr Thompson forcefully argued on behalf of the claimant that it precisely applied to the present situation in that by the end of the relevant year on 5 April 1986 the claimant had already acquired under section 33(1)(a) of the 1975 Act a "right", or "privilege", which had been "acquired" or had "accrued" (see section 16(1)(c) of the Interpretation Act 1978) and that therefore, unless there was a contrary intention appearing in the 1986 Act, it could not take away that "right" or "privilege". Nevertheless, I hold that the claimant had not by 5 April 1986 acquired any such "right" or privilege" nor had any such "accrued" to her. The question of her entitlement to unemployment benefit ought in my view to be determined as at the date of her claim, which was not until 13 April 1987, well after the repeal on 1 November 1986 by the 1986 Act of the provision for partial unemployment benefit. Until that claim was made the claimant had in my judgment no "right" or "privilege" within the meaning of the 1978 Act. Any such "right" or "privilege" that she might have had by virtue of a potential entitlement to credits for contributions was inchoate and did not crystallise until she made her claim on 13 April 1987."

He went on to consider section 165A of the Social Security Act 1975 and said at paragraph 20:

"20. I therefore conclude that there was no "right" or "privilege" under section 16(1)(c) of the Interpretation Act 1978 which could possibly be preserved by that Act and that no entitlement in fact arose until the claimant made her claim for unemployment benefit on 11 April 1987. In this respect, in my view, the decision of a Commissioner in a recent case on file CG/069/1988 (relating to widows claims), referred to at the second hearing before me, is distinguishable. There the learned Commissioner applied section 16(1)(c) of the Interpretation Act 1978 in a situation where he held that entitlement to benefit had undoubtedly arisen on the dates of death of the widows' husbands. But for the reasons I have stated above no entitlement of any kind could have arisen in the present case until the actual claim for unemployment benefit and therefore for crediting of contributions arose. Moreover, doubtless in CG/069/1988, there were already in existence claims for the appropriate widows' benefit at the date the amending legislation had come into operation. I have read with interest the written submission dated 15 March 1989 on CG/069/1988, made on behalf of the claimant, but for the reasons stated above, I do not consider that the general principles stressed in that submission apply to the special circumstances of this case."

It seems to us that the principle enunciated by the Commissioner applies equally to the circumstances of the case before us. In our judgement it is correct to say that in accordance with the proper use of language a person who has not become entitled to a benefit cannot be said to have acquired a right to that benefit.

17. There is no dispute as to the facts. Both Mr Parke and Mr Drabble submit that this is a case where we ourselves should give the decision and we think it right to do so. The appeal is allowed, the decision of the tribunal is reversed and the decision of the adjudication officer is restored.

(Signed) V G H Hallett
Commissioner

(Signed) R F M Heggs
Commissioner

(Signed) J J Skinner
Commissioner

Date: 11 April 1990