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Claimant fished by himself from May to November and joined forces with other fishermen in the winter months, during which he was under contract of service to a firm of fish merchants, being paid piece-rates

*Held* that he was a share fisherman during the winter months and that single-handed fishing was "some other occupation" which excused him from having to satisfy the conditions prescribed in Regulation 14B of the Mariners Regulations from May onwards

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1. Our decision is that the claim for unemployment benefit is allowed.

2. The claimant is one of a number of fishermen whose claims for unemployment benefit were the subject of a reference to the Local Tribunal by the Insurance Officer. The question referred was "whether the claim may be allowed as from and including the 5th May, 1949, and in particular whether the claimant is a person who is required to satisfy the additional conditions for receipt of unemployment benefit laid down in Regulation 14B of the National Insurance (Mariners) Regulations, 1948 (as amended) and in particular the date of entry into the fishing industry was at least 12 months before that day and if so he has proved that he is not a person who during the 12 months immediately preceding that day has or would but for his being unemployed or incapable of work have been wholly or mainly engaged in and derived his livelihood wholly or mainly from employment as a share fisherman or such employment and any other employment as an employed person, or that before that day and since he was last employed as a share fisherman he has become regularly engaged in some other occupation."

3. The Local Office report on form L.T.2 contains the following statement:—"It is understood that the M. fishermen sell their catch to three fish merchants, viz., Messrs. R., Messrs. P. and Messrs. E. The fishermen sell their catch to their respective merchants and the merchants in turn will not accept any fish other than from their particular fishermen and no poaching is done by either side."

4. The claimant stated before the Local Tribunal that he fishes by himself "from about May to November" and that it is only in a month or two of bad weather that he joins forces with another of the claimants. The claim for unemployment benefit was questioned from the 5th May. At the hearing before us we understood the Insurance Officer to concede that by the 5th May the claimant's season of single-handed fishing had begun and we think that this is the reasonable inference from the evidence.

5. The first question is whether the claimant is a share fisherman within the meaning of the National Insurance (Mariners) Regulations, 1948 [S.I. 1948 No. 1467], as amended by the National Insurance (Mariners) Amendment Regulations, 1949 [S.I. 1949 No. 301], which we refer to hereafter as "the regulations". We are of opinion that he is. "Share fisherman" is defined in the regulations as a person who is "or has been" employed in the fishing industry, whether or not under a contract of service, as master or a member of the crew of any ship or vessel, being a fishing vessel manned by more than one person and remunerated in respect of that employment in whole or in part by a share in the profits or gross earnings of the fishing vessel; . . .

6. It is not disputed that during the winter months the claimant was employed by Messrs. P. under a contract of service in a fishing vessel manned by more than one person. It was submitted by the claimant's representative at the hearing that the claimant was not remunerated in whole or in part by a share in the profits or gross earnings of the vessel because he and his fellow-fisherman were paid a certain piece rate based on the market price of the fish and the only profit or gross earnings would be that realised by Messrs. P. on selling the fish. We cannot accept this argument, the expression "profits or gross earnings of the fishing vessel" clearly refers to the money received for the catch by those who fish from the vessel; whether these fishermen sell this catch retail or wholesale, or catch the fish for their employer, so that their remuneration is by way of a piece-rate wage, this remuneration is none

the less " the gross earnings of the vessel " and the " profits of the vessel " are this remuneration less expenses.

7. The next question is whether the claimant can satisfy the conditions specified in Regulation 14B(4) of the regulations so that he is not required to satisfy Regulation 14B(1) and (2).

8. It is clear from what has been stated above that in our view the claimant cannot satisfy Regulation 14B(4)(a) because that paragraph requires him to show that during the winter months preceding the 5th May he has not been wholly or mainly engaged in and derived his livelihood wholly or mainly from employment as a share fisherman or such employment and any other employment as an employed person. We have found that during the winter months, when he fishes with another fisherman, he is employed as a share fisherman under a contract of service with Messrs. P. We were informed at the hearing that Messrs. P. from time to time require the claimant to do work on shore when fishing is impracticable—if so, during the winter months the claimant is engaged in employment as a share fisherman and in other employment as an employed person.

9. It remains to consider whether the claimant satisfies Regulation 14B(4)(b), i.e., whether he can show that before the 5th May and since he was last employed as a share fisherman he has become regularly engaged in some other occupation.

10. By the 5th May the claimant's season for single-handed fishing had begun and would continue until about the beginning of November. Was this single-handed fishing " some other occupation " within the meaning of Regulation 14B(4)(b) ?

11. We have found this a difficult question, for some passages in the regulations might be thought to suggest an affirmative and others a negative answer. On the one hand it may be urged that the presence or absence of a colleague who shares the remuneration does not, according to the ordinary use of language, constitute a change of occupation and that the use of the word " occupation " in sub paragraph (b)—instead of " employment " as in sub-paragraph (a)—indicate that the change of occupation in view was from employment as a fisherman to some employment of a different kind. On the other hand, it might be contended that, whatever may be the case in other contexts, the contrast between " employed as a share fisherman " and " some other occupation " suggests that the framers of Regulation 14B(4)(b) regarded share fishing and single-handed fishing as different occupations. On that view it might be said that to hold that single-handed fishing is not " some other occupation " within the meaning of Regulation 14B(4)(b) is equivalent to substituting " fisherman " for " share fisherman " in that paragraph. Further conflicting arguments might be based on other parts of the regulations.

12. We have come to the conclusion that single-handed fishing is " some other occupation " within the meaning of Regulation 14B(4)(b). We base this conclusion not merely upon that paragraph taken by itself, but upon the terms of the regulations taken as a whole and the broad purpose disclosed by those terms. It is clear that the framers of the regulations regarded share fishermen as defined by Regulation 2 of the Amendment Regulations as a special class of workers, and thought that while it was right to give them

the advantage of the unemployment provisions of the National Insurance Scheme they ought to be required to comply with special conditions for the receipt of unemployment benefit. From this point of view the material feature of the share fisherman's employment would not be that his work consists in fishing but that he works as " a member of the crew of a fishing vessel manned by more than one person and remunerated by a share in the profits or gross earnings of the fishing vessel " ; share fishing and single-handed fishing would thus be regarded as distinct occupations. In our opinion, therefore, the contrast in Regulation 14B(4)(b) is between employment as a share fisherman and " some other occupation ", including that of single-handed fishing. We therefore hold that when the claimant began his season of single-handed fishing he became " regularly engaged in some other occupation " within Regulation 14B(4)(b), notwithstanding his intention to resume share fishing some six months later. The condition is that the claimant shall have become " regularly "—not " permanently "—engaged in some other occupation.

13. In our opinion, therefore, the claimant is not required to satisfy the conditions prescribed in Regulation 14B(1) and (2). We understand that it is not disputed that the claimant is entitled to benefit if he is not required to satisfy these conditions. The appeal of the Chief Insurance Officer is therefore not allowed.

14. The Chief Insurance Officer also appealed from the decision of the Local Tribunal in five other cases

15. In the written grounds of appeal it is stated that the only material difference in the circumstances of the claimants is the length of the periods during which they fish alone and with another fisherman. At the oral hearing this point was not alluded to, so that the question whether all the claimants had begun their season of single-handed fishing by the 5th May was not investigated.

16. Our decision will apply to all the claimants from the time when their single-handed season had begun. If there is any dispute on this point the cases must be remitted to the Local Tribunal, who should allow the claim in respect of any period of unemployment after the claimants' single-handed season had begun.

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