

R(U) 6/81

would have worked, he cannot rely on the escape route and he is caught by the disentitling provision of section 17(1)(b).

16. However, the insurance officer has very fairly brought to my attention paragraph 6 of unreported Decision C.U. 7/63. In that case the claimant, who was a teacher, claimed unemployment benefit for a holiday period. The learned Commissioner remarked that "during the holidays there was no other day in the week 'on which in the normal course he would so work'. I do not therefore consider that [Section 17(1)(b)], which is a disabling provision, applies to this case". This is, in my judgment, a wrong approach. The effect of there being no day on which a claimant in the normal course would work has the sole effect of preventing the *escape route* from operating. It has nothing to do with preventing the application of the disentitling effect of the section. The section will automatically operate unless the escape route is available to a claimant. The fact that it is not available in any given case does not mean that the disentitling effect of the section shall not operate either.

17. In view of what has been said above I am quite satisfied that the claimant is not entitled to unemployment benefit for the period in question. However, the claimant has pointed out that in his view there are other employees of the same employer whose position is exactly on all fours with his own, but that they are in fact receiving unemployment benefit during their periods on shore. He regards this as a monstrous injustice. Of course, if the position is as he states it, manifestly there is an injustice; but it is not to be put right by a perpetuation of error, but should be remedied by ensuring that persons who are not entitled to benefit do not receive it. I hasten to say that I am expressing no view whatsoever on the alleged entitlement of the persons referred to by the claimant, as I am only concerned with the matter under appeal. However, doubtless the Department will take up the matters referred to by the claimant and ensure that persons, whose position is no different from that of the claimant, are not obtaining unemployment benefit, if on the facts of the case they are not entitled to it.

18. I have no hesitation in dismissing this appeal.

(Signed) D. G. Rice
Commissioner

R(U) 7/81
(Tribunal Decision)

11.8.81

UNEMPLOYMENT BENEFIT

Earnings related supplement—exhaustion—effect of decision made at the Computer Centre.

The claimant's title to earnings related supplement exhausted on 7.10.80 but he contended that further benefit was payable because a deduction made from a payment in lieu of notice received from the Redundancy Fund constituted a "recovery" within the meaning of regulation 13(6) of the Social Security (General Benefit) Regulations. The local tribunal allowed the claimant's appeal in a majority decision contrary to decision R(U) 6/80, the Chairman dissenting. The insurance officer appealed to the Commissioner on the ground that the decision was a nullity since no formal decision had been given or communicated to the claimant.

Held by the Tribunal that:—

1. decision R(U) 6/80 was binding on the local tribunal (paragraph 8);

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2. form UB 25 issued by a Computer Centre formed part of the insurance officer's decision (paragraph 12);
3. the Computer Centre's decision included a judgment that the claimant's right to earnings related supplement became exhausted on 7.10.80; whether that decision was express or implied does not matter (paragraph 15);
4. failure to notify the claimant of an adverse decision as required by Section 100(2) of the Act does not invalidate the decision but the sub-section must be complied with (paragraph 21);
5. the proceedings of the local tribunal were not a nullity (paragraph 23).

1. Our decision is that the claimant's title to earnings related supplement to unemployment benefit for days forming part of his period of interruption of employment which began on 26 March 1980 ended on 7 October 1980.

2. This is an appeal by the insurance officer from a decision of the local tribunal in which by a majority, the chairman dissenting, the tribunal held that the claimant had not exhausted his title to earnings related supplement to unemployment benefit (referred to below as "ERS") on 7 October 1980. The same local tribunal gave similar decisions in five other cases which are not before us but in which, inevitably, the final decisions will conform with this decision.

3. At the oral hearing before us the insurance officer was represented by Mr D. M. James, of the solicitor's office of the Department of Health and Social Security, and we are much indebted to him for his submissions. The claimant, who attended but was not required to give evidence, was represented by Mrs N. E. Tarn of the South Shields Citizens Advice Bureau, whose submissions were also helpful.

4. In substance the claimant's case is indistinguishable from the case determined by the reported Decision of a Tribunal of Commissioners R(U) 6/80, and this appeal became necessary because the lay members of the local tribunal declined to follow that Decision. We will, therefore, relate the substance of the case only in sufficient detail to make the present decision intelligible without recourse to the report of R(U) 6/80. But in this appeal procedural problems arose which we have to discuss at length.

5. The claimant, a married man aged 55, suffered the misfortune of redundancy on the closure of his employers' business because of insolvency. He claimed unemployment benefit on 26 March 1980 and, in compliance with section 14(3) and (7) of the Social Security Act 1975 ("the SS Act"), flat rate benefit began to be paid to him on 29 March and ERS on 9 April 1980. The claimant had been entitled to 12 weeks' notice of the termination of his employment but had received no notice. Consequently, he became eligible for a payment out of the Redundancy Fund under section 122 of the Employment Protection (Consolidation) Act 1978. Such a payment was made to him in August 1980, calculated by deducting from his estimated earnings for 12 weeks the amount of unemployment benefit, including ERS, paid to him in respect of the notice period. This amount was £505.93.

6. The effect of the payment to the claimant out of the Redundancy Fund was to destroy his title to unemployment benefit, including ERS, for the notice period, because the payment ranked as a payment in lieu of notice or of the remuneration which he would have received if his employment had not been prematurely terminated: regulation 7(1)(d) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [S.I. 1975 No. 564]. Accordingly, by a review decision dated 8 September 1980 the insurance officer held that unemployment benefit had not been payable

to the claimant for the 12 weeks of the notice period, 26 March to 17 June 1980; that he had been overpaid benefit amounting to £505.93; but that he was not required to make any repayment.

7. The insurance officer's review decision in turn brought into play regulation 13(4) and (6) of the Social Security (General Benefit) Regulations 1974 [S.I. 1974 No. 2079] of which only regulation 13(6) is now relevant. This provides that for the purpose of ascertaining whether a person has been paid ERS for the full number of 156 days allowed by statute (formerly section 10(8) of the Social Security Act 1973 but now section 14(7) of the SS Act), ERS paid to the person for any day for which he was not entitled to it shall be treated as if he had been entitled to it unless the sum paid is "recovered". The application of this regulation to the claimant's case led to the conclusion that he received his full entitlement to ERS during the inclusive period 9 April to 7 October 1980. It was contended at the local tribunal's hearing, and also before us, that the meaning of the word "recovered", used in regulation 13(6), includes the deduction on account of unemployment benefit made in calculating the payment to the claimant out of the Redundancy Fund. But this contention was rejected in R(U) 6/80 and is no longer open to argument before any of the statutory authorities.

8. The refusal of the lay members of the local tribunal to follow R(U) 6/80 was very wrong. They were told that the decision was binding on them but nevertheless struck out on a line of their own. The law applied in that decision is undoubtedly a cause of grievance to those affected by it and, so far as we know, has few friends if any. Nevertheless, it is not for members of a local tribunal to make up the law themselves. Their task is to apply the law, and if they depart from it they only cause confusion, unnecessary appeals, and ultimately disappointment to those whom they seek to help. However, possibly the conduct of the majority members of the local tribunal may be regarded as an ill wind which has blown some good. It has enabled us to consider the procedural questions discussed below.

9. In the submissions of the insurance officer now concerned he advanced as the first ground of his appeal the contention that no formal decision had ever been made by an insurance officer to the effect that the claimant was not entitled to ERS for 8 October 1980; that no reference to the local tribunal of that question had been made under section 99(2) of the SS Act; and that accordingly the tribunal's decision from which he was appealing was a nullity because there was nothing on which the tribunal could adjudicate. He therefore submitted that the decision be set aside as a nullity unless it were considered that the tribunal had made a determination under section 102(1) of the SS Act (power of a local tribunal to determine a question first arising in the course of an appeal to them).

10. At our oral hearing Mr James abandoned that submission and explained his reasons for doing so. But it is still necessary for us to explain how the submission came to be made, and for this purpose we must give some account of the insurance officer's decisions on the claimant's relevant claims to unemployment benefit. These were made at the Computer Centre of the Department of Employment at Reading ("the Computer Centre") and, at our request, Mr Mantel attended the hearing in order to explain the procedures followed at the Computer Centre. He is a Systems Analyst there and his evidence was most helpful to us.

11. The current practice requires that a person claiming unemployment benefit attend at his local unemployment benefit office ("the UBO") at fortnightly intervals. On each attendance he signs a Form UB25 and thereby claims unemployment benefit for the preceding week and the following week. The form which he signs also includes particulars of the period for

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which and the amount at which his last preceding claim has been allowed. When a change in his entitlement occurs or is approaching, a letter is sent to him from the Computer Centre, under the address of the UBO, informing him of the change and of the reason for it. At our oral hearing we were handed copies of three such letters sent to the claimant, of which the third stated that the claimant had received ERS for 151 days and that the supplement would cease after five more days. This was a reference to the cessation of the claimant's ERS on 7 October 1980.

12. We were assured that no claim requiring the exercise of human discretion is dealt with by means of a computer. Otherwise, nearly all claims to unemployment benefit are so dealt with at the present time. Decisions emanating from the Computer Centre are signed, in a document dealing with thousands of claims, by an officer who acts both as an insurance officer and as a supervisor. At our oral hearing we were handed copies of the document covering the claimant's claim to unemployment benefit for the inclusive period 2 to 15 October 1980. It is dated 8 October 1980 and, so far as material, reads as follows:—

"Serial Numbers from 072563777 to 072614630.

As insurance officer I award benefit to the persons identified on the girocheques numbered as above at the rates shown on the relevant unemployed register slips and for the periods shown on the girocheques. Excluded from this award are...

The reason for any reduced rate is as shown on the accompanying or previous notice to the claimant.

Unemployment benefit is not payable to the persons identified by the entry 'BNP' on the unemployed register slips issued today.

As supervisor I authorise payment of the amounts shown on the girocheques.

Signature.....

Date 08.10.80"

That document is in standard form and authorised the sending direct to each person concerned of the relevant girocheque. The "unemployed register slips" referred to in it are Forms UB25, each of which is sent to the appropriate UBO for signature by the person concerned at his next attendance there when he makes his next claim. Thus the Form UB25 signed by the claimant on 22 October 1980 was one of the unemployed register slips referred to in the quoted document and, of course, constitutes part of the decision on his claim made on 8 October 1980. This form, copies of which were handed to us at our oral hearing, contained particulars of the amount of benefit paid to the claimant for the two weeks for which he claimed on 8 October 1980. It also contained a box headed "Notes" in which the following was entered:—

"BY 291
DAYS 02/10 - 07/10
PAID AT £46.10
DAYS 08/10 - 15/10
PAID AT £29.95
ERS EX 07/10"

The last line presumably means: "ERS exhausted (or expired) on 7 October".

13. On receipt of the above-mentioned letter informing him of the imminent cessation of the payment to him of ERS, the claimant visited the UBO and insisted on being given the appropriate form for appealing to the local tribunal. He wished to appeal against a decision that he had exhausted

his right to ERS on 7 October 1980, and he initiated an appeal on that ground on 13 October 1980.

14. In the submission referred to in paragraph 9 above the insurance officer reasoned that on 13 October 1980 there had been no formal decision that the claimant had exhausted his right to ERS. He evidently considered that the Computer Centre decision dated 8 October 1980 was not such a decision, and he relied on the non-observance by the UBO of a practice that, we were told, has been laid down for UBOs by their superiors. This practice requires that, in circumstances such as obtained in the claimant's case, the person concerned is treated as having raised a question whether or not his right to ERS has become exhausted on the relevant date, and the local insurance officer gives a new decision disposing of this question. The person concerned then appeals from that decision to the local tribunal. However, in this case no such new decision was brought into existence. Instead, after the claimant had initiated his appeal, and entry was made in Box 1 of the Form LT2, the wording of which resembled that of a local insurance officer's decision, and the local tribunal proceeded on the footing that that entry reproduced the decision from which the claimant was appealing. The insurance officer now concerned submitted that there was no decision capable of reproduction from which the claimant could appeal to them.

15. Mr James submitted to us that the claimant's appeal to the local tribunal was in reality an appeal from the Computer Centre decision dated 8 October 1980 subject, however, to a legal point which we discuss below. We agree with Mr James's submission. In our view, the Computer Centre decision undoubtedly included a judgment to the effect that the claimant's right to ERS became exhausted on 7 October 1980; whether that judgment was express or implied does not matter. And the claimant had a perfect right to appeal from the decision on the ground that it included a disallowance of his claim to ERS from and including 8 October 1980.

16. We have to consider whether in substance the local tribunal dealt with the claimant's appeal to them as an appeal from the Computer Centre decision dated 8 October 1980, although not conscious of doing so. And we conclude that they did. The decision under appeal was described to them in the following terms:—

“Earnings-related supplement is not payable for 8.10.80 because the claimant has been entitled to such supplement for a total of 156 days in the relevant period of interruption of employment. (Social Security Act 1975 section 14(7)).”

Possibly a more accurate account might have been given of the relevant part of the decision of 8 October 1980, but we consider that the wording adopted is an acceptable paraphrase of it. The local tribunal should have been told of the date and origin of the decision, and that only part of it was challenged. But these omissions do not, in our view, invalidate the proceedings of the local tribunal or detract from the fact that they determined the issue which the claimant wished them to determine.

17. Before leaving this aspect of the case, we must point out that, in our view, the practice of treating the person concerned as raising a question requiring a decision additional to the Computer Centre decision is unsound. The Computer Centre decision, like any other insurance officer's decision, is only capable of alteration by appeal or review. If the local tribunal proceedings do not determine an appeal from it, then it continues in full force whatever the tribunal decide. Thus, if the local tribunal allow the appeal presented to them, the position is reached in which there are apparently two mutually inconsistent decisions dealing with the same claim.

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18. The legal point mentioned in paragraph 15 above, to which Mr James very properly drew our attention, arises out of the fact that a Computer Centre decision is not communicated to the person concerned; although he is given written information of its effect in a Form UB25 which he signs at the UBO on a later date. It may be considered a tenable view that all decisions of insurance officers should be communicated to the person concerned and that if this is not done the decision is incomplete and invalid; cf paragraph 14(a) of the reported Commissioner's Decision R(I) 14/74. But Mr James persuaded us that the proposition is too general. He rested his argument on the contrast noticeable between sections 99 and 100 of the SS Act. So far as material these sections provide as follows:—

- “99.—(1) An insurance officer to whom a claim or question is submitted... shall take it into consideration and, so far as practicable, dispose of it in accordance with this section... within 14 days of its submission to him.
- (2) Subject to section 103 below (reference of special questions), the insurance officer may in the case of any claim or question so submitted to him—
- (a) decide it in favour of the claimant; or
- (b) decide it adversely to the claimant; or
- (c) refer it to a local tribunal.
- 100.—(1) ... where the insurance officer has decided a claim or question adversely to the claimant, the claimant may appeal to a local tribunal.
- (2) The claimant shall be notified in writing of the insurance officer's decision and the reasons for it, and of his right of appeal under this section.”

Mr James contended that the statutory requirement of written notification to a claimant is limited to adverse decisions, and we accept that contention. In our view, the requirement of section 100(2) is limited by the context to adverse decisions, and there is no other requirement of notification of an insurance officer's decision.

19. In fact it has always been the practice that commonplace decisions made by local insurance officers at UBOs have not been so notified. Such decisions used to be made by an insurance officer signing a large document containing the names and particulars of, perhaps, 30 claimants. They were non-controversial decisions of a mechanical nature, amounting to little more than exercises in arithmetic. Thus the computer system facilitates the continuance of, and enlarges, a system which used to obtain at local level for such decisions. We make no comment on the use of a computer for any other type of decision.

20. However, we must point out a difficulty that sometimes arises out of the distinction between favourable and adverse decisions. It is not always immediately obvious into which category a particular decision falls, and it may only become obvious when the person concerned objects to the decision. In such cases, we consider that section 100(2) must be complied with when he raises an objection.

21. There is no obvious sanction behind section 100(2) of the SS Act. We do not consider that failure to observe it invalidates the decision, but that the remedy is to comply with the subsection so soon as the failure is discovered. In some cases, it may be necessary for the person concerned to apply for an extension of time for appealing, and in such cases we would expect the insurance officer to support the application. Also we do not consider that notification of a Computer Centre decision must necessarily

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take the form of an exact copy of the original; indeed that would be confusing to many persons. But there must be an accurate disclosure in clearly intelligible terms of the effect of the decision, and of course the reasons for it must be supplied to the person concerned. We do not consider that the disclosure or the explanation of reasons must necessarily emanate from the Computer Centre.

22. We venture to suggest that some of the particulars included in each unemployed register slip are unintelligible to the uninitiated because of the use of unexplained abbreviations. With respect we suggest that the inclusion in the form of a legend explaining the abbreviations would be helpful to many persons.

23. For the reasons already explained, we conclude that the proceedings of the local tribunal were not a nullity, but were effective. And we allow the insurance officer's appeal from their decision. Our own decision is set out in paragraph 1 above.

(Signed) R. S. Lazarus
Commissioner

(Signed) J. N. B. Penny
Commissioner

(Signed) D. G. Rice
Commissioner

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19.10.81

UNEMPLOYMENT BENEFIT

Seasonal Worker—effect of the reciprocal agreement between Great Britain and the Isle of Man.

The claimant worked each summer from 1975 to 1979 inclusive as a waitress at various hotels in the Isle of Man. Her claim for unemployment benefit in September 1979 was disallowed on the ground she had become a seasonal worker. On appeal to the Commissioner a question arose out of the fact that the alleged seasonal work was in the Isle of Man.

Held that:—

1. the reciprocal agreement between Great Britain and the Isle of Man has the effect of causing the claimant's employment to be regarded as employment as an "employed earner" for the purposes of regulation 19 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (paragraph 9);

2. the claimant is a seasonal worker and unemployment benefit is not payable in her off-season (paragraph 1).

1. My decision is that the claimant was at the material time a seasonal worker and that consequently unemployment benefit is not payable to her for the inclusive period from 26 September 1979 to 10 May 1980 because that was her off-season. The claimant has not proved that she had, or could reasonably expect to obtain, during that period a substantial amount of employment: Social Security Act 1975, section 17(2)(a) and the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations

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