FAMILY INCOME SUPPLEMENT

Normal Gross Income—treatment of expenses.

The claimants made a claim for family income supplement for a family consisting of themselves and their 3 children. The husband was engaged as Church of England Clergyman and was paid a monthly stipend by the Church Commissioners. This stipend was divided into 2 elements, taxable pay and a non-taxable allowance for heating, lighting, cleaning and garden maintenance. In addition to the items for which the tax free allowance was paid the claimant maintained that he incurred other expenses such as travelling, maintenance of robes and secretarial services, which were allowed by the Inland Revenue and which should be allowed in computing his earnings. In assessing the family's gross income the adjudication officer had taken into account the whole of the taxable element and one-third of the non-taxable allowance. The social security appeal tribunal upheld the adjudication officer's decision.

Held by the Commissioner (and as to points 4 and 5 confirmed by the Court of Appeal, there being no appeal from the Commissioner on the other points) that:

1. the decision of the social security appeal tribunal was erroneous in law and is set aside (paragraph 1);

2. a payment to cover exclusively expenses incurred in the course of performing the duties of an office or employment does not enter into the computation of normal gross income either under regulation 2(3) or regulation 2(4) of the Family Income Supplement (General) Regulations and ought not to be taken into account at all (paragraph 9);

3. payments expressed to be for expenses that go beyond reimbursement of expenses incurred in connection with the duties of the employee constitute part of a person's earnings subject only to such deductions (if any) as are allowable under family income supplement law (paragraph 9);

4. in the first limb of regulation 2(3) of the Family Income Supplements (General) Regulations the word "thereof" relates to "a person's earnings" not to "salary, wages or fees" (paragraph 11);

5. in this regulation "gross" means before the deduction of tax but after deduction of the expenses that are allowable in arriving at the taxable sum. Expenses do not include those payments that are in reality ways of spending income that happen to be allowed as deductions for tax purposes (such as mortgage interest) but only money that has to be expended to make the earnings (paragraph 12);

6. the claimant's right to occupy his house rent free does not fall to be included in the family's resources (paragraph 13).

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1. My decision is that the decision of the supplementary benefit appeal tribunal dated 16 February 1984 was erroneous in point of law and it is set aside. The matter must be referred to a social security appeal tribunal.

2. This is an appeal by the claimant, against a decision refusing to award family income supplement to him on the ground that the resources of his family as computed for the purpose of the supplement were equal to or exceeded the appropriate prescribed amount at the date of his claim. The claimant is the vicar of a parish in Yorkshire. It appears that his stipend consists of amounts paid to him monthly by the Church Commissioners. In addition he lives in a parsonage house provided for him, which although it is rent free he has to maintain, heat and light. He claims that it is a much larger residence than he would otherwise maintain. His family consists of himself his wife and three children aged at the date of the claim 8, 6 and 2.

3. Section 1 of the Family Income Supplements Act 1970 defines a family for the purposes of the Act, and by subsection (2) provides that a benefit to be known as family income supplement is to be paid on a claim for it for any family in Great Britain if the weekly amount of its resources so far as taken into account for the purposes of the Act falls short of the prescribed amount. It is not in dispute that the claimant's family was a family within the definition (not here quoted) in section 1 or that at the date of the claim (21 November 1983) the prescribed amount in relation to a family comprising husband, wife and three children was £104.50. The sole question to be decided was as to the amount of the family's weekly "resources".

4. Section 4(1) of the Act provides that the resources of a family taken into account for the purposes of the Act shall be the aggregate of the normal gross income of its members (excluding, except where regulations other provide, the income of any child). Section 4(2) provides that a person's normal gross income and the weekly amount thereof shall be calculated in such manner as regulations may provide, and that in particular such regulations may provide among other things for making deductions in ascertaining the amount of any income. It should perhaps be added that section 10(3A) of the Act incorporates among other things section 166(2)(b)(ii) of the Social Security Act 1975, which authorises regulations either to make the same provision for all cases in relation to which the regulation-making power is exercised or different provisions for different cases or classes of case.

5. It will be noted that the definition of resources in section 4(1) introduces the word "gross", and in relation to words such as earnings and income gross has undoubtedly at least two meanings; it can connote that the earnings or income are to be taken before any deduction is made for

expenses incurred in achieving them; or it can mean that they are to be taken before the deduction of income tax. The word "gross" undoubtedly has the latter meaning in regulation 11(6) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] the draftsman of the Family Income Supplements Act 1970 has left it to the regulation-making authority to say what it means in the context of family income supplement; and the answer is not so clear.

6. The relevant regulation is regulation 2 of the Family Income Supplements (General) Regulations 1980 [S.I. 1980 No. 1437]. Regulation 2(2) lays down (subject to a discretion in the determining authority to depart from it) a general rule of practice that a person's normal gross income derived from earnings shall be determined by reference to the amount of such earnings (where paid monthly) in the two pay-months immediately preceding the date of claim. In the present case it was not thought appropriate to depart from the general rule and the earnings of the claimant (which seem to have been identical in each month) in the months of September and October 1983 were taken. The claimant received nothing by way of fees or special offertories (these it seems being subsumed into his general pay) and he was entitled in each of the two months to what were called a taxable payment of £425.59 and a non-taxable payment of £103.59, and he received on account of these a net amount after deduction of tax and national insurance contributions of £496.99. The supplement officer took the whole of the taxable payment and one-third of the non-taxable payment and, converting them into weekly amounts arrived at a total gross weekly income of £106.17, which exceeded the prescribed amount of £104.50 even without taking into account interest on savings or capital of £5.00 per annum (or 9 pence per week). Accordingly he refused to award the supplement. This refusal was confirmed on appeal by the supplementary benefit appeal tribunal and the claimant now appeals to the Commissioner. He was represented at the oral hearing before me by Mr. Mark Rowland, of Counsel instructed by Mr. S. Jones, a solicitor with Harehills and Chapeltown Law Centre and the supplement officer (now the adjudication officer) was represented by Mrs. A. M. Stockton of the Solicitor's Office of the Department of Health and Social Security.

7. The debate centred on regulation 2(3) and 2(4) of the above mentioned regulations which are as follows:—

> "(3) In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof shall be taken into account; and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account.
>
> (4) In so far as a person's normal gross income does not consist of earnings from a gainful occupation, the weekly amount thereof shall be calculated or estimated on such basis as appears to the determining authority to be appropriate in the circumstances of the particular case."

The claimant maintained that he incurred expenses in connection with his work which were allowed by the Inland Revenue (and therefore accepted by them as being wholly exclusively and necessarily in the performance of his duties within the meaning of section 189(1) of the Income and Corporation Taxes Act 1970 (the Taxes Act)), and which should be allowed in computing his earnings. He also contended that the non-taxable payment was not, or at all events was not to the extent of one-third, to be treated as part of his normal gross income.

8. I will take first this second point as it is one on which both Mr. Rowland and Mrs. Stockton seemed to be agreed that the tribunal had erred in law. The payer of remuneration cannot of course simply by declaring a payment to be non-taxable make it so. To be non-taxable a payment must not have the character of income taxable under any of the Schedules in the Taxes Act. Mr. Rowland referred me to the decision of the House of Lords in *Pook v Owen* [1970] AC 244 and that of Walton J. in *Donnelly v Williamson* (1981) 54 TC 636. Owing to the differences of opinion between the members of the House of Lords in the former case it takes some careful scrutiny to establish what was there decided, but in my judgment it emerges as the majority view in the case that sums paid by an employer to meet expenses incurred by an employee in connection with his employment (even expenses that would not be an allowable deduction for tax purposes if not met by the employer) are not emoluments taxable under Schedule E; and this seemed to be the conclusion of Walton J. in the latter case (see page 646). It was not suggested that such payments were income under any other Schedule (even Case VI of Schedule D comprehending tax in respect of any annual profits or gains not charged by virtue of any other case of Schedule D and not charged by virtue of Schedule A, B, C or E). These are decisions on income tax law, but they are not based on any special wording in the Taxes Act; and the reasoning behind them is in my judgment pertinent to the determination of what is the claimant's normal gross income for purposes of family income supplement. In my judgment payment to cover expenses incurred in the course of performing the duties of the office or employment ought not to be taken into account at all. This is however subject to an important caveat.

9. It is not at all uncommon for employers to make payments expressed to be for expenses that go beyond reimbursement of expenses incurred in connection with duties of the employee. An instance of such a payment came before the High Court in the tax case of *Perrons v Spackman* [1981] 1 WLR 1411, where it was held that such a payment was taxable income subject to the deduction therefrom only of such expenses as were allowable under the tax law. In my judgment such a payment would for family income supplement purposes likewise constitute part of a person's earnings subject only to such deductions (if any) as are allowable under family income supplement law (as to which see below). On the present point however Mr. Rowland and Mrs. Stockton were I think at one with me in thinking that the function of the tribunal was to decide into which of the two categories the non-taxable payment fell. Was it a payment only of expenses incurred in connection with the performance of the duties of the claimant's office or was it a payment that covers other matters as well? If it is the former then it does not enter into the computation at all either under regulation 2(3) or 2(4), if it is the latter it enters into the computation under regulation 2(3) in the manner hereinafter indicated. It will be for the tribunal to whom the matter is remitted to decide into which category it fell. It will be in view that the Inspector of Taxes has (after what measure of scrutiny I know not), decided to treat it as falling in the former category. His conclusion will not bind the tribunal. But I accept Mr. Rowland's submission that the tribunal if they are satisfied that the Inspector's decision was reached after a proper scrutiny of the matter may be treated as evidence on which they can act, rather like the decision of another tribunal can be so used (as to which see Decision R(U)2/74).

10. I come now to the taxable payments. These were plainly to be taken into account under regulation 2(3), which however divided the ingredients of a person's earnings from any gainful occupation into two categories viz. (category A) those comprising salary, wages or fees related to a fixed

period; and (category B) those not comprising salary, wages or fees related to a fixed period. Some people's earnings will like the claimants be wholly of a category A type; other peoples will be wholly of a category B type, while yet other people may have earnings in both categories. With category A earnings the gross amount thereof is to be taken; with category B earnings the net profit derived from the occupation is to be taken into account. The supplement officer took the view that this meant that the full amount of the earnings had to be taken into account without allowance of anything for expenses, even though full deduction of expenses was allowable in arriving at the earnings of a person whose earnings are of the category B type. Or to put it briefly he considered that in the one case "gross" means "gross" and that in the other "gross" means "net", which, to be fair, the regulation at first sight seems to say.

11. I confess that when I first read regulation 2(3) I thought that there was no escape from this conclusion however inequitable as between one citizen and another it might seem. Mrs. Stockton submitted that it was the intention of the draftsman to have a simple, if rough, system that could enable the supplement payable to be readily determined, and that it was the intention of the draftsman to facilitate this. Mr. Rowland on the other hand submitted that if "gross"means before the deduction of income tax all anomalies and inequities are eliminated and that this was the only sensible interpretation of the regulation. In support of the proposition that "gross" meant before the deduction of tax but after the deduction of expenses he cited a case on the construction of a deed *Re Hiscott's Indenture* (1937) 158 LT 368. I cannot regard this decision as conclusive of the question that I have to determine, though it does perhaps furnish some support for Mr. Rowland's argument. The words that I have to interpret here are: "In so far as a person's earnings from any gainful occupation comprise salary, wages, or fees related to a fixed period, the gross amount thereof shall be taken into account." The word "thereof" may grammatically relate either to the "earnings" or to the "salary, wages or fees." I take it to be the former. It is the gross amount of the earnings that I have to take into account. It will be at once apparent that if I accept the supplement officer's conclusion upheld by the tribunal and supported by Mrs. Stockton I have to conclude that the regulation makes different provision for different classes of earner. I have to accept that section 166 of the Social Security Act 1975, incorporated into family income supplement law by section 10(3A) of the Family Income Supplements Act 1970, allows this to be done. But the regulation-making authority is not obliged to exercise this power and I find the distinction made hard to understand in fairness and I very much prefer an interpretation of the regulation that avoids it.

12. At first sight one may think of the category A type of earnings as those of the holder of an office or employment (taxable under Schedule E) and category B type of earnings as those of a self employed person (taxable under Schedule D). But this first impression is misleading. A landlady who takes in a lodger and provides him with, say, breakfast and an evening meal at a fixed weekly charge would be in category A and, if the supplement officer's interpretation of the regulation is correct, could deduct nothing for the cost of providing the meals. Conversely an employee on piecework could deduct expenses that an employee on time work could not. These anomalies are avoided, if I accept Mr. Rowland's submission that in the present context gross means before the deduction of tax but after deduction of the expenses that are allowable in arriving at the taxable sum. I do not include in this payments that are in reality ways of spending income that happen to be allowed as deductions for tax purposes (such as mortgage interest) but only money that has to be expended to make the earnings. I

have reached the conclusion that despite my first impression of the meaning of the regulation the draftsman of the Act cannot be taken to have intended the anomalies and inequities inherent in the interpretation relied on by the supplement officer and now maintained by the adjudication officer and I accept Mr. Rowland's interpretation.

13. The new tribunal will take into account the foregoing in arriving at their decision. There are two other small matters to which I should refer. Mrs. Stockton referred to the claimant's right to occupy his vicarage rent free. Such a right has never for income tax purposes been regarded as earnings and it is certainly not a payment, and I do not think that it falls to be included in the family's resources. I note that regulation 2(5)(f) of the above mentioned regulations provides for the disregard of rent allowance as part of the family resources and it would be consonant with that to disregard the value of any right to occupy premises rent free. Secondly the claimant's expenses allowed by the Inland Revenue include a payment made by him to his wife for secretarial help. The amount so paid to her constitutes earnings of hers and thus falls to be included in the family's resources. It would be somewhat preposterous if at the same time it was not allowed as a deduction in computing the claimant's earnings with the result that it was included twice.

14. The appeal is allowed.

(Signed) J. G. Monroe
Commissioner

NOTE ISSUED ON THE AUTHORITY OF THE CHIEF COMMISSIONER

The Chief Adjudication Officer appealed to the Court of Appeal. On 23 May 1985 the Court of Appeal dismissed the appeal.

APPENDIX TO R(FIS) 4/85

THE CHIEF ADJUDICATION OFFICER Appellant

-v-

WILLIAM R. HOGG Respondent

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, WC2A 3RU)

MR. JOHN LAWS (instructed by The Solicitor to the Department of Health and Social Security) appeared on behalf of the Appellant.
MR. M. ROWLAND (instructed by The Harehills & Chapeltown Law Centre, Leeds) appeared on behalf of the Respondent.

JUDGMENT

A LORD JUSTICE SLADE: This is an appeal by the Chief Adjudication Officer from a decision of a Social Security Commissioner, Mr. J. G. Monroe, dated 7 March 1985, whereby he allowed an appeal by the respondent, Mr. William R. Hogg, from a decision of the Leeds Supplementary Benefit Appeal Tribunal given on 16 February 1984. The appeal is brought with the leave of the Chief Social Security Commissioner B given on 19 March 1985.

The respondent, Mr. Hogg ("the claimant") is the vicar of a parish in Yorkshire. He lives in a rent-free parsonage house provided for him which he has to maintain, heat and light. The case concerns the proper method to be employed in ascertaining his family's weekly "resources" for the purpose of determining the family's entitlement, if any, to family income sup- C plement, pursuant to a claim made by him on 21 November 1983.

The material statutory provisions are to be found in the Family Income Supplements Act 1970, as amended ("the Act") and certain Regulations made thereunder.

Section 1(1) of the Act defines a "family" for the purposes of the Act. It is not in dispute that at the material time the claimant's family, which D consists of himself, his wife and three children, was a family within the definition.

Section 1(2) provides:

> "A benefit, to be known as a family income supplement, shall be paid (on a claim duly made thereto) for any family in Great Britain if the weekly amount of its resources, so far as taken into account for the E purposes of this Act, falls short of the prescribed amount".

The formula for ascertaining the prescribed amount for any family is to be found in section 2. It is not in dispute that at the date of the claim in the present case the prescribed amount in relation to the claimant's family was £104.50. The dispute concerns the weekly amount of the family's "resources".

F Section 4(1) of the Act provides:

> "The resources of a family taken into account for the purposes of this Act shall be the aggregate of the normal gross income of its members, excluding, except where regulations otherwise provide, the income of any child".

The word "gross" in relation to the word "income" is capable of bearing G different meanings according to the context. The draftsman of the Act, in

A effect, left it to the regulation-making authority to define what it should mean for the purposes of the Act. Section 4(2), so far as material, provides that for such purposes—

> —"a person's normal gross income and the weekly amount thereof shall be calculated or estimated in such manner as regulations may provide; and regulations may, in particular, provide—(a) for making
B deductions in ascertaining the amount of any income...".

The relevant Regulations are to be found in Regulation 2 of the Family Income Supplements (General) Regulations 1980 (S.I. 1980 No.1437).

Regulation 2(1) provides that for the purposes of the Act a person's normal gross income and the weekly amount thereof shall be calculated or estimated in the manner provided in paragraphs (2)-(6).

C Regulation 2(2) designates the period over which a person's earnings from a gainful occupation fall to be looked at for the purpose of calculating his normal gross income. In any case, the determining authority is given a discretion to have regard to the average of his earnings over such period or periods "as may appear to it to be appropriate in order properly to determine what is that person's normal weekly income therefrom". Subject to
D this discretion, the general rule laid down by Regulation 2(2) is that the weekly amount of the normal gross income from earnings is to be calculated or estimated (a) in the case of a person who is paid weekly, by reference to the average of his earnings over the five pay-weeks immediately preceding the date on which his claim is made, and (b) in the case of a person who is paid monthly, by reference to the average of his earnings over the two
E pay-months immediately preceding that date.

Regulation 2(3) sets out the elements which are to be taken into account for the purposes of the Act in the calculation or estimate of a person's earnings from any gainful occupation. It provides:

> "In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof
F shall be taken into account, and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account".

Regulation 2(4) sets out the manner of calculating the weekly amount of a person's normal gross income from sources other than earnings from a
G gainful occupation. It provides:

> "In so far as a person's normal gross income does not consist of earnings from a gainful occupation, the weekly amount thereof shall be cal-

culated or estimated on such basis as appears to the determining authority to be appropriate in the circumstances of the particular case".

Regulation 2(5) lists a number of specific items which fall to be deducted "in calculating a person's normal gross income and the weekly amount thereof".

On 21 November 1983 the claimant applied for family income supplement. The determining authority did not see fit to depart from the general rule applicable under Regulation 2(2) to the case of a person who is paid monthly. Accordingly, the weekly amount of the claimant's normal gross income from his earnings fell to be calculated by reference to the average of such earnings in the two pay-months immediately preceding the date of his claim—i.e. September and October 1983.

In each of these months the claimant received from the Church Commissioners a stipend comprising what were called in their written statements "taxable payments" of £425.59 and "non-taxable payments" of £103.59. He actually received in each of these two months, after deduction of tax and National Insurance contributions, a net total sum of £496.99. In his letter which accompanied his claim he said that the non-taxable payment was "an allowance for heating, lighting, cleaning and garden maintenance of the parsonage which is also my place of work". He said that at the end of each financial year he also reclaimed the tax on other expenses such as travel, telephone, secretarial assistance, uniform, postage, etc., wholly and necessarily incurred in the performance of his duties. He said that during the fiscal year 1982-83 these expenses (leaving aside sums paid to his wife for secretarial assistance) had amounted to £1,229 (an average of £102.42 per month). He submitted that for the purpose of applying for family income supplement his monthly salary should be treated as being £425.59 less one-twelfth of £1,229, i.e. £323.17.

The Supplement Officer (who, we are told, now bears the title "Adjudication Officer") by a decision of 1 December 1983 rejected these submissions, basing her calculation on the gross "taxable payment" of £425.59 a month received in each of the two relevant months. She assessed the claimant's normal weekly gross earnings as £98.21 and added an amount of £7.96 representing the weekly value of one-third of the monthly "non-taxable payment" of £103.59. She regarded this one-third as representing part of the claimant's private expenses. As the total of £106.17 thus calculated as representing the weekly amount of the family's resources exceeded the prescribed amount of £104.50 she decided that family income supplement was not payable.

A The refusal of the Supplement Officer to award the supplement was confirmed on appeal to the Supplementary Benefits Appeal Tribunal on 20 February 1984.

The claimant then appealed to the Social Security Commissioner. On that appeal two principal points were submitted on his behalf. One was that no part of the monthly "non-taxable payments" of £103.59 should have been B treated as part of his normal gross income. As to this point, the learned Commissioner's conclusion was in effect that

(a) a payment to cover exclusively expenses incurred in the course of performing the duties of an office or employment does not enter into the computation either under Regulation 2(3) (presumably because it is not "earnings") or under Regulation 2(4) (presumably C because it is not "normal gross income") and ought not to be taken into account at all in estimating a person's "normal gross income" for the purpose of Regulation 2;

(b) a payment, which though expressed to be for expenses, in fact goes beyond reimbursement of the expenses incurred in the course of performing the duties of the office or employment does enter into D the computation under Regulation 2(3) and should be taken into account for such purposes, subject only to such deductions as are allowable under family income supplement law;

(c) it would be for the tribunal to decide whether the non-taxable payments of £103.59 fell into the former or the latter category;

(d) if the tribunal were satisfied that the Inspector of Taxes had E decided to treat the payment as falling into the former category after a proper scrutiny of the matter, they could treat this as evidence on which they could act.

Neither party to this appeal now seeks to challenge this part of the Commissioner's decision.

The other main point submitted to the Commissioner on behalf of the F claimant concerned the "taxable payments" of £425.59. Since these consisted of earnings from a gainful occupation, it was common ground that they had to be dealt with in accordance with Regulation 2(3). This Regulation divides the ingredients of a person's earnings from any gainful occupation into two quite separate and distinct categories, viz. those comprising salary, wages or fees related to a fixed period (which the G Commissioner called "category A") and those not comprising salary, wages or fees related to a fixed period (which he called "category B"). I will use the same abbreviations.

A The system for the payment of stipends of clergy of the Church of England is not an entirely simple one. My understanding is that their stipends may be derived from a number of different sources. This system does not call for investigation on this appeal. In the present case the claimant has explained that he receives no special offerings or fees, all fees having been assigned to the Diocese, and that the payments which he receives through B the Church Commissioners represent the totality of his stipend. Beyond this, the source of his monthly "taxable payments" of £425.59 has never been investigated in these proceedings. It has always been assumed and accepted that these payments constitute "salary, wages or fees related to a fixed period", that is to say, category A earnings, falling within the first limb of Regulation 2(3). We must proceed on the same assumption, though C I suppose it is at least theoretically possible that the stipends of some other clergy might fall to be dealt with under the second limb of that Regulation.

The principal contest before the Commissioner, which is now the sole issue on this appeal, concerned the question whether the expression "the gross amount thereof" in the first limb of Regulation 2(3) means (i) (as the Chief Adjudication Officer has contended) the full amount of each monthly D "taxable payment" of £425.59 received by the claimant or (ii) (as the claimant has contended) the amount of such monthly payment after deduction of the expenses wholly and necessarily incurred in the performance of his duties.

The learned Commissioner accepted that at first sight Regulation 2(3) appears to require that in the case of category A earnings the full amount E received has to be taken into account without any deduction for expenses, even though a deduction of this nature is clearly permissible in the case of category B earnings. But he considered that this construction would produce a thoroughly anomalous and inequitable result, which would mean that the Regulation made different provision for different classes of earners. The route by which he ultimately rejected this construction was, in F summary, as follows. First, he read the word "thereof" in the first limb of Regulation 2(3) as relating grammatically to the phrase "a person's earnings" rather than to "salary, wages or fees". He therefore regarded this first limb as requiring the gross amount of the person's "earnings" of category A to be taken into account, rather than the gross amount of his "salary, wages or fees". Secondly, he accepted the submission of Mr. G Rowland, on behalf of the claimant, that in the first limb of Regulation 2(3) "gross means before the deduction of tax but after deduction of the expenses that are allowable in arriving at the taxable sum".

Mr. Laws, on behalf of the Adjudication Officer, has pointed out, correctly, that on this appeal it is the composite phrase "the gross amount

thereof", rather than the single word "gross", which ultimately falls to be interpreted and applied. It is therefore necessary to identify the subject matter of which the "gross amount" falls to be taken into account. Mr. Laws submitted that this subject matter is the relevant "salary, wages or fees related to a fixed period". I take the contrary view. With the learned Commissioner, I think that the word "thereof" in the first limb of Regulation 2(3) relates grammatically more easily to the phrase "a person's earnings" than to "salary, wages or fees". Furthermore, this construction tallies with Regulation 2(4) where the phrase "the weekly amount thereof" clearly refers back to "normal gross income". I therefore read the phrase "the gross amount thereof" as meaning "the gross amount of such person's earnings".

The next problem presented by this phrase concerns the force to be attributed to the word "gross". The central feature of Mr. Laws' argument on behalf of the appellant related to the apparent contrast between the phrase "gross amount" in the first limb of Regulation 2(3) and "net profit" in the second limb. Due regard, he submitted, must be paid to the clear dichotomy between the two limbs of that Regulation and to the distinction drawn by them between category A and category B earners. Since the phrase "net profit" clearly means after payment of expenses, the expression "gross amount", he suggested, must mean before payment of expenses: the contrary construction, it was said, would mean that category A earners and category B earners would fall to be treated in just the same way by the Regulation, which cannot have been its intention.

This is, superficially, an attractive argument because at first sight it may seem natural to read the phrase "gross amount" as simply bearing the opposite sense to "net profit". In my opinion, however, the argument is not well founded, because it wholly disregards what must have been at least a primary purpose of the draftsman's use of the word "gross". The first limb of Regulation 2(3) is concerned with earnings by way of "salary, wages or fees related to a fixed period". Many, perhaps most, persons who receive earnings of this nature will receive the payments in question subject to deduction of tax at source. A primary purpose of the use of the phrase "the gross amount thereof" must, in my opinion, have been to ensure that any tax deducted on the payment of a person's category A earnings shall be notionally added back to the payments in question, for the purpose of determining his family's entitlement (if any) to family income supplement. It is inconceivable that such entitlement should depend on whether or not he happens to receive his regular pay net of tax under the PAYE system. The phrase "gross amount" in relation to any payment is frequently used to refer to the sum which, after deduction of income tax, is equal to the sum

A actually paid (see, for example, para.16, Part III, Schedule 10 Income and Corporation Taxes Act 1970). There is, therefore, no prima facie difficulty in attributing a similar sense to the phrase "gross amount" in the context of Regulation 2(3) and this, I think, is the sense which it bears.

It remains to consider the meaning of the word "earnings" in Regulation 2(3). Does it mean simply the remuneration actually received by the person B in question? Or does it mean such receipts after payment of the expenses wholly and necessarily incurred in the course of winning them?

This point I find rather more difficult, since I do not think the drafting of Regulation 2(3) is very happy or clear. Though the word "earnings" may quite often refer simply to receipts, I think it is well capable of bearing either of the two meanings just mentioned, according to the particular con- C text. If, for example, a barrister is asked what are his earnings at the Bar, he may well reply in either of these two senses, according to the identity of the questioner and the purpose of the question. In the face of this equivocal expression in Regulation 2(3) I think the court is entitled to pay regard to the statutory purpose of the formula for ascertaining the amount of a person's "earnings from a gainful occupation", which is contained in the D Regulation. This is to assist in ascertaining those resources of his family which are to be taken into account for the purposes of the legislation relating to family income supplements. If a category A earner, such as Mr. Hogg, has necessarily to incur expenditure of £103.59 per month in order to receive a pay packet of £425.59 per month, it seems to be inherently unlikely that the legislature would have intended that his "earnings" should E be treated as being the full sum of £425.59 for these purposes; the £103.59 simply does not form part of the resources which are available to him or his family. The improbability becomes even more apparent when it is seen that, for the purposes of ascertaining the resources of the family of a category B earner his receipts would be taken into account (undoubtedly) only after deduction of the expenses necessarily incurred in winning those F receipts. There appears to be no reason in logic or justice why category A earners should have been subjected by the Regulation to such harsh discrimination as is suggested.

Mr. Laws did not attempt to suggest any reason in logic or justice. He accepted that the construction for which he contended would produce rough and ready results, but suggested that the draftsman of the G Regulations, while content that expenses should be looked at in the case of category B earners, may deliberately have provided that they should be disregarded in the case of all category A earners in the interests of administrative convenience and simplicity. He pointed out that while category A earnings comprise salary, wages or fees related to a fixed period, the rel-

A evant expenses may have been incurred wholly or partly outside that period. Furthermore, he pointed out that while the Regulations could have contained an express provision for the deduction of expenses in the calculation of category A earnings, expenses are not included in the deductions listed in Regulation 2(5).

However, no such provision would have been necessary if the word
B "earnings" in Regulation 2(3) refers to what is left from a person's pay packet after expenses. This is what I think it means. By this route—albeit perhaps a slightly different one from his—I come to the same conclusion as the learned Commissioner, namely, that the phrase "the gross amount thereof" means before the deduction of tax but after deduction of the expenses that are allowable in arriving at the taxable sum. This construction
C has one further merit beyond avoiding the apparently unfair discrimination against category A earners which the contrary interpretation would involve. As Mr. Rowland pointed out in his attractive argument on behalf of the claimant, it produces the result that in the application of both the first and second limbs of Regulation 2(3) it is the earner's taxable earnings which are brought into account for family income supplement purposes. This result,
D which produces reasonable consistency in the application of the Regulation, seems to me to accord with fairness and common sense.

I would dismiss this appeal.

LORD JUSTICE LLOYD: I agree.

LORD JUSTICE GRIFFITHS: I cannot believe that it was either the wish or the intention of Parliament that this lowly paid clergyman's family
E should be sacrificed on an altar supported by the twin pillars of literal construction and administrative convenience. But such would be the effect of accepting the Ministry's construction of this legislation.

This is an Act intended to help the families of those who work for low remuneration. It surely must have been the intention to deal evenhandedly with the employed and the self-employed. I can see no justification for dis-
F criminating against the employed. I suppose it might be possible to justify the appellant's construction if the consequence of rejecting it would make the operation of the Act unworkable. I recognise that this would be so if it was necessary to enquire into the question of expenses on every application by an employed person. But I am satisfied that this will not be so. It must be a very rare state of affairs to find that out of a very low wage
G the earner has to pay expenses. As a general rule I have no doubt that the calculation will only involve adding back the tax to the net wage.

A I therefore agree with the construction that does justice between the employed and the self-employed and would dismiss this appeal for the reasons given by Lord Justice Slade.

LORD JUSTICE GRIFFITHS: This appeal will be dismissed for the reasons contained in the judgments of the court.

MR. ROWLAND: My Lord, I would ask that the appellant pay the respon-
B dent's costs of this appeal.

MR. LAWS: I do not resist that, but with great deference I make an application for leave. It will come as no great surprise to your Lordships to hear me say that the matter is regarded as one of considerable importance by those behind me, fit for their Lordships' House. It was not an easy matter. For all those reasons it is a case where, unusually perhaps, I would ask your
C Lordships for leave to appeal.

LORD JUSTICE GRIFFITHS: Having anticipated your request, we have considered it and we refuse leave.

MR. LAWS: If your Lordship pleases.
