

UNEMPLOYMENT BENEFIT

Whether unemployed—work available on 3 days a week only during power emergency—whether guarantee agreement suspended.

The claimant's normal working week was Monday to Friday: work on Saturday or Sunday carried premium rates. He was covered by an agreement guaranteeing the hourly rated manual workers employment for five days in each normal pay week or earnings equivalent to the time rate for 40 hours if such employment was not available.

Government imposed restrictions caused the factory to go on to a three-day—Thursday, Friday and Saturday—working week. The change of time-table was agreed between the management and unions. The claimant claimed benefit for Monday, Tuesday and Wednesday in each of two consecutive weeks. The guaranteed agreement was suspended with effect from the following Monday by agreement between the company, the unions and the shop stewards.

Held that:—

1. the claimant was not unemployed on the days in question because he was covered by the guarantee agreement (paras 4 & 5);
2. a re-arrangement of hours or days to be worked does not of itself abrogate the guarantee provisions of a working agreement (para 7);
3. the fact that part of the time worked during the re-arranged week was outwith the normal working days did not cause the guarantee to be abrogated in respect of work done outwith the normal hours or days (para 8).

R(U) 21/56 and R(U) 10/73 followed.

1. My decision is that unemployment benefit is not payable from 7th January 1974 to 9th January 1974, nor from 14th January 1974 to 16th January 1974 (all dates included).

2. The claimant is a member of the Amalgamated Society of Boilermakers, Shipwrights, Blacksmiths and Structural Workers ("the claimant's association") who was employed at a tractor factory. The normal standard working week was Monday to Friday: work on Saturday or Sunday carried overtime or premium rates. There was in operation a "Guarantee of Employment for Hourly Rated Manual Workers", of which the relevant portion is as quoted below.

"All hourly rated manual workers who have been continuously employed by a federated firm for not less than four weeks shall be guaranteed employment for five days in each normal pay week. In the event of work not being available for the whole or part of the five days, employees covered by the guarantee will be assured earnings equivalent to their time rate for 40 hours.

This guarantee is subject to the following conditions:

(a) That the employees are capable of, available for, and willing to perform satisfactorily, during the period of the guarantee, the work associated with their usual occupation, or reasonable alternative work where their usual work is not available.

(b) Where approved short time is worked as an alternative to redundancy, or in the case of a holiday recognised by agreement, custom or practice, the guarantee shall be reduced proportionately.

(c) In the event of dislocation of production in a federated establishment as a result of an industrial dispute in that or any other federated establishment, the operation of the period of the guarantee shall be automatically suspended.

(d) In computing the assured earnings referred to above, premium payments due for overtime worked on weekdays, and premium payments for work done on Sundays and holidays, shall be ignored."

3. In January 1974, because of restrictions imposed by the Government in the use of electricity, the factory had, generally, to go on to a three-day working week. In this particular case, the working days were Thursday, Friday and Saturday. (Some of the personnel were required to come in on Sunday for special duties.) The change of time-table was agreed between the management and the unions concerned, one of which was the claimant's association. So, in general, the employees were made idle on Monday, Tuesday and Wednesday, because the management were unable to offer them work on these days. In particular, the claimant was idle from (Monday)

7th to (Wednesday) 9th and from (Monday) 14th to (Wednesday) 16th January 1974. He claimed unemployment benefit for these days, but his claim was disallowed by the local insurance officer. He appealed to the local tribunal, but the tribunal confirmed the disallowance. He then appealed to the Commissioner and at his request the appeal was heard by me orally, the claimant being represented by an officer of his association.

4. The basic reason why the claimant was not regarded as "unemployed" on the days in question, and was therefore refused unemployment benefit, was that he was considered to be "covered", in respect of these days, by the guarantee agreement already quoted in paragraph 2 above: which, on the authority of Commissioners' Decisions—particularly Decisions R(U) 21/56 and R(U) 10/73—meant that the days in question could not be regarded as days on which he was "unemployed". At the hearing, a recent decision of my own—Decision C.S.U. 8/74 (dated 11th September 1974 and not reported)—was also referred to. That was a decision in which I applied the principles of Decisions R(U) 21/56 and R(U) 10/73 in circumstances apparently similar to those of the present case. Put very shortly, and perhaps in an over-simplified way, the principle emerging from these decisions is that where a guaranteed week agreement is in operation, an employee is not "unemployed" on any day of the week covered by the guarantee.

5. On behalf of the claimant it was sought to distinguish Decision C.S.U. 8/74. In that case the three working days were Monday, Tuesday and Wednesday: Thursday and Friday were therefore made "idle" days within the normal working week. Benefit was not claimed for Saturday. In the present case, by contrast, Monday, Tuesday and Wednesday (which had been normal working days) became "idle" days, and the three working days Thursday, Friday and Saturday included one (Saturday) which had not previously been a normal working day. The facts of the two cases are thus manifestly different: but in my judgment the difference in the days worked is irrelevant, so far as the applicability and operation of the principles laid down in Decisions R(U) 21/56 and R(U) 10/73 are concerned.

6. Realising, no doubt, the difficulty presented by Decisions R(U) 21/56 and R(U) 10/73, the claimant's representative argued that the guarantee had, in the present instance, been abrogated. If that were so, then of course the claimant would not be precluded, by reason of the guarantee, from claiming to be unemployed on his idle days. I am satisfied that the guarantee was not, in terms, abrogated or suspended until Monday 21st January 1974. It is true that when a re-arrangement of working was imposed upon the factory, both management and unions (representing the employees) agreed by mutual consent to a re-arrangement of the working time-table. But that did not in the least mean that the *guarantee* was abrogated. Indeed, since such a guarantee is (generally speaking) conceived in the interests of employees, and represents a liability on the part of the employers, it is difficult to see what advantage the employees could hope to gain by abrogating it. One of the documents in the case papers, being a document signed on behalf of unions, shop stewards, and the employing company, dated 21st January 1974, records specifically that it had been mutually agreed "that the Guaranteed Week Agreement shall be suspended with effect from Monday, January 21st, 1974". This is cogent evidence that it was still operative up to that date: i.e. throughout the period in question in this appeal.

7. I think it quite clear that a re-arrangement of hours or days to be worked does not of itself abrogate the *guarantee* provisions of a working agreement, although it may in certain cases (depending on the precise

working of the agreement) raise questions as to what precisely are the rights emerging in favour of the employees in the event of the employers failing to provide the stipulated amount of work.

8. In the present case, much was sought to be made of the fact that part, at least, of the time worked by the claimant was outwith what had been the normal working days. Reference back to the agreement, as quoted in paragraph 2 above, shows that the employers in effect guaranteed payment equal to 40 hours plain time: so that if an employee in fact earned less than that, the employers were under liability to make up the deficiency. Head (d) of the clause is interesting: the primary effect of it, as I understand it, is that when a claim is made under the guarantee certain premium payments in fact earned are to be disregarded, so that, in effect, the employee is *deemed* to have earned X hours' pay although he has in fact earned more. It is the amount of the "deemed" earnings which governs the amount of the deficiency which the employer must make up. But the reference in head (d) to ignoring, for purposes of computing the assured earnings, "premium payments due for overtime worked on week days, and premium payment for work done on Sundays and holidays" negatives, rather than reinforces, any contention that the guarantee was abrogated in respect of work done outwith the normal hours or days. To put the extreme case: if the only work which the employers had been able, in any week, to offer the claimant had been done on Sundays or holidays, at premium rates, so that the claimant's "deemed" earnings amounted to less than the guaranteed sum, he would surely have been able to claim payment under the guarantee. I do not think he would have contended that the guarantee had been abrogated. I am clearly of opinion, therefore, that the guarantee remained effectively a liability on the shoulders of the employers, until it was expressly suspended on 21st January. Since up to that date, i.e. throughout the period in question in this case, the claimant remained under the protection of the guarantee, he could not—on the authority of Decision R(U) 21/56 and R(U) 10/73—be regarded as "unemployed" on any of the days on which he was in fact idle. In my judgment the decision of the local tribunal, confirming that of the local insurance officer, was correct, and I agree with it.

9. The appeal of the claimant is not allowed.

(Signed) H. A. Shewan
Commissioner