Guaranteed week

A labourer in an iron foundry, whose normal working week was Monday to Friday inclusive, became idle on Friday because in that week short-time working had been introduced, the working days being Monday to Thursday His employment was covered by an agreement between the National Light Casting and Ironfounders' Federation and the Light Metal Trades Unions, which provided for either 34 hours work or a wage equivalent to plain time rate for 34 hours, with a proviso that piece-work wages in excess of the normal hourly rate would not be taken into consideration. In the week in question the claimant, a piece-worker, had worked 35½ hours

Held that the agreement was in the ultimate resort a guarantee of a minimum weekly wage, and as the claimant was during the relevant week protected by the guarantee he did not qualify for unemployment benefit for any day in that week.

1. My decision is that the claimant is not entitled to unemployment benefit in respect of the 26th November, 1954.

2. The claimant claimed unemployment benefit in respect of the 26th November, 1954 in the following circumstances. He was employed as a moulder's labourer in the small castings section of an iron foundry. Up to the 26th November, 1954 (which was a Friday) the normal working week in that section had been from Monday to Friday inclusive. On the 26th November, 1954 short-time working was begun in the section, the working days being from Monday to Thursday inclusive so that the workers became idle on Fridays as well as on Saturdays. Friday the 26th November, 1954 was the first "idle" Friday.

3. The local insurance officer having decided that unemployment benefit was not payable on the ground that the claimant had failed to prove that he was unemployed on the 26th November, 1954 the local tribunal on the 26th April, 1955 by a majority allowed the claimant's appeal. It is recorded that the majority considered that the case was ruled by Commissioner's decision C.S.U. 49/50 (reported). The chairman dissented, being of opinion that Decision R(U) 27/51 was more appropriate. The present case is taken as a test case affecting three other workmen as well as the claimant.

4. The terms of the claimant's employment are regulated by an agreement made between the National Light Castings and Ironfounders' Federation and the Light Metal Trades Unions. The second paragraph of this agreement provides as follows—"All manual workers who have been continuously employed by the same member of the Federation for not less than four weeks shall be guaranteed that work will be available for 34 hours in any pay week or, if not, a guaranteed wage equivalent to their inclusive hourly plain time rate for 34 hours shall be paid, always providing that piece-work earnings in excess of the normal hourly plain time rates will not be taken into account in assessing the sum earned towards the guaranteed wage." The claimant is a person to whom this article of agreement applies. At the oral hearing of the appeal it was explained to me by the representative of the claimant's association that such an agreement is considered to operate disadvantageously in relation to piece-workers such as the claimant, and that the terms of the agreement are not really appropriate to the particular conditions of his situation. Underlying this criticism of the agreement one may discern a possible argument that if the effect of the agreement is to deprive an insured person of a right to unemployment benefit on certain days when he is idle, he might—in an extreme case—be better off without any such agreement. Be that as it may (and I had better not express

any opinion on that matter) I must accept the fact that the agreement in question is in force in relation to the claimant; and I must try to interpret its terms, for it is really common ground between the parties that the issue in this case turns upon the interpretation of the agreement. It is said that this agreement is an unusual one in that it in terms provides alternatively for a guaranteed number of hours of work in the week *or* for a guaranteed wage.

5. The distinction between a guarantee of so many hours work in the week, and a guarantee of wages has, I understand, been taken since the days of the Umpire's decisions under the old Unemployment Insurance Acts, and has been regarded as a vital distinction—see, for example, U.D. 215/47 (reported), and C.U. 137/49 (reported) at paragraph 11. It is a distinction far too well-established for me to ignore. In cases of guaranteed minimum wage agreements there is moreover a well-established principle to the following effect. "Where a minimum wage is paid in respect of any week in which work is done, it has always been held that the recipient of that wage is not unemployed during that week, on the ground that the wage is a payment made in respect of each and all the days of the week and is a payment for the whole week." (This quotation is from Decision C.U. 137/49, adopted from U.D. 215/47.)

6. In Decision C.S.U. 49/50 (reported) the Commissioner again referred to this principle, but in that case he was able to allow a claim for unemployment benefit because he took the view that the agreement which regulated the claimant's employment in that case was not a minimum wage agreement but was an agreement which guaranteed a specified number of hours of employment.

7. In Decision R(U) 27/51, on the other hand, a claim for unemployment benefit was disallowed because the agreement which regulated the claimant's employment was regarded as a minimum wage agreement.

8. I therefore look at the terms of the agreement in the present case, in order to determine, if possible, whether it is truly one which guarantees a specified minimum number of hours of work, or one which guarantees a specified minimum wage. *Ex facie* of the agreement the employer undertakes in the first place to guarantee that a specified number of hours of work will be available. In a sense, therefore, his primary obligation is to furnish work. But that is not an absolute obligation, for the agreement goes on—"or, if not, a guaranteed wage . . . etc." That is to say: if the employer fails to provide the specified number of hours work, he is not thereby under any breach of his guarantee. He has the option of paying (or rather of making up) the guaranteed wage. It is thus the wage which is absolutely guaranteed; not the hours of work. The truth is that the two so-called alternatives are not in *pari casu*. The agreement plainly means that if the specified hours of work are not made available, the specified wage will be forthcoming. It seems to me that the true character of such a so-called alternative guarantee is to be determined by what is guaranteed *in the ultimate resort*. In the present case that is wages, and not work. I hold this agreement to fall within the category of a minimum wage guarantee.

9. The point is made that even under the agreement a person in the position of the claimant is not guaranteed a minimum wage in all possible circumstances. It was pointed out that a piece-worker may work for over 34 hours, and yet conceivably earn nothing. His work may be spoiled by factors outwith his control, and he may get nothing for performing that work. Yet, if he has had 34 hours work, the first alternative of the

agreement (namely provision of 34 hours work) is satisfied, and accordingly the second alternative (payment of minimum wage) does not arise. That may be so. I reserve my opinion on the point, and on its implications.

10. It is sufficient for present purposes that that situation does not arise in the present case. In the present case, during the relevant week, the claimant had by Thursday evening (the 25th November, 1954) worked for 35½ hours and had earned a sum in excess of the guaranteed wage. And although, having worked for 35½ hours, and having earned more than the guaranteed wage, he did not have to fall back upon the guarantee in order to claim his wages, I think it is proper to regard him as throughout the week being under the umbrella of the guaranteed wage, even although (to complete the metaphor) it did not rain.

11. Taking the view, as I do, that during the relevant week the claimant's employment was regulated by a guaranteed minimum wage agreement, I must hold consistently with previous decisions, that having earned a wage amounting to no less than the guaranteed minimum wage, the claimant does not qualify for unemployment benefit in respect of any day during that week: and in particular that he does not qualify for unemployment benefit in respect of Friday the 26th November, 1954.

12. I agree with the dissenting view of the chairman of the local tribunal, and must allow the appeal of the insurance officer.