Guarantee agreement not retrospective

Claimant's employers were not members of Employers' Federation but observed agreements between the Federation and the Unions. An amendment to a guarantee agreement was not brought to the notice of the employers until after the days for which benefit was claimed.

Held that there could be no alteration in an undertaking by mutual consent until the suggested alteration was known to both parties and they had decided to adopt it. Nothing done on a given date could alter the mutual obligations by which the parties were in fact bound on a day before that date.

1. My decision is that on the 12th March, 1956, the 17th March, 1956, the 19th March, 1956, the 24th March, 1956, the 26th March, 1956, the 31st March, 1956, the 9th April, 1956 and the 14th April, 1956 the claimant was not unemployed.

2. The claimant, a press operator, lodged a claim for unemployment benefit on the 14th April, 1956. On the following day she lodged a delayed claim for unemployment benefit in respect of the other days listed in the first paragraph hereof, which are all days prior to the 14th April, 1956.

3. In order to qualify for unemployment benefit in respect of any of these days, the claimant must prove that they were days on which she was unemployed—Section 11(1) of the National Insurance Act, 1946 and Regulation 6(1) of the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948 [S.I. 1948 No. 1277]. Whether she was so is the primary question in the case, which is accepted as a test case covering approximately 350 workers. If the claimant succeeds on this point she must go on to show, in relation to the days for which benefit was not claimed timeously, that there was good cause for the delay in making the claim.

4. The position is that the claimant was employed by a firm called A.W. Ltd., which normally worked a five-day week, from Monday to Friday. In March, 1956 the firm went on to short-time working, namely from Tuesday to Friday. The days in question in the present case are days—Mondays and Saturdays—on which the claimant was not in fact provided with work by her employers.

5. The employers in the present case are not members of the Engineering and Allied Employers Federation, but it is their custom to observe the agreements made between the Federation and the Confederation of Shipbuilding and Engineering Unions. Among such agreements operated by the employers was the 1946 agreement as to "Guaranteed Week" which was cited and discussed in the recent decision of a Tribunal of Commissioners—R(U) 21/56. This was an agreement whereby qualified workers were guaranteed "Wages equivalent to their inclusive hourly plain time rate for 34 hours in any pay week." It is not suggested, and in the light of previous Commissioner's decisions it could not be maintained, so long as the "1946 guarantee" prevailed, that an idle day in a short-time week was a day of unemployment for the purposes of the National Insurance Acts.

6. The contention for the claimant is that an amendment of the "1946 guarantee" (referred to in Decision R(U) 21/56 as "the 1956 guarantee") was signed on the 10th March, 1956; that the "1956 guarantee" thereupon became effective; and that as a result idle days occurring in a short-time week became days of unemployment for the purposes of the National Insurance Acts. The "1956 guarantee" was designed to achieve the result of making the claimant unemployed (for purposes of the National Insurance Acts) on her idle days, on the principles explained in Decision C.U. 12/56 (printed with Decision R(U) 21/56). For the purposes of the present appeal it is not necessary to decide whether in any establishment in which the relationship of employer and employee was in fact regulated unreservedly by the "1956 guarantee," an idle day in a short-working week would become a day of unemployment, as from the time when the "1956 guarantee" in fact came into operation. For even if this question were answered in the affirmative, it would still be necessary to decide whether, by the 14th April, 1956, the "1956 guarantee" had come into operation in the establishment in which the claimant worked. Unless I am satisfied that it had done so, the claim must fail.

7. It is a special feature of the present case that the employers in question are not members of the Employers' Federation. Signature of an agreement by the Federation could not *ipso facto* bind these employers. These employers could of course if they wished adopt any such agreement in practice, and I entirely accept that it was their practice to do so. The

information before the local tribunal was that the employers being non-federated knew nothing of the revised agreement until it was brought to their notice on the 13th April, 1956, whereupon they agreed to operate the "1956 guarantee" from the beginning of the following week, namely from Monday the 16th April, 1956. On behalf of the claimant it is argued that —"In view of known willingness of A.W. Ltd. to abide by Confederation agreement the effective date should be taken as 10/3/56 when amended agreement was finally signed. . . . A.W. Ltd. always make payment increases retrospective to date of agreement." In support of this argument a letter has been obtained from A.W. Ltd. who say—"We have always honoured A.E.U. Agreements concerning us from the date of the signing of the agreement."

8. I do not doubt that this has been the employers' practice. It seems to me, however, that while there are certain matters which *can* be altered with retrospective effect (e.g. wage rates), there are situations which from their nature are incapable of being altered with retrospective effect. The crucial question in the present context is—What was the employee undertaking to do in consideration of his employer's guarantee? Was he undertaking to be at the employer's disposal (if required) on each of the days in question? What the employee was undertaking to do on a given day could be altered at any time by mutual consent; but there could be no alteration by mutual consent until the suggested alteration was known to both parties and they had decided to adopt it. It is not disputed in the present case that the employers were not informed of the "1956 guarantee" until the 13th April, 1956, and they in fact adopted it with effect from the 16th April, 1956. But nothing done on the 16th April, 1956 could alter the mutual obligations by which the parties were in fact bound on days before that date. Accordingly if on idle days before the 16th April, 1956 the obligations of the claimant and her fellow-workpeople towards their employers were such that they were not unemployed on these days, no subsequent agreement could, in my judgment, make them unemployed retrospectively.

9. I therefore agree with the majority of the local tribunal in holding (as they did in two decisions dated the 7th June, 1956) that the days in question were not days of unemployment within the meaning of the National Insurance Act, 1946. The appeal does not raise any question as to the treatment of idle days occurring on or after the 16th April, 1956.

10. There is a suggestion in the case papers that the claimant acted on advice given to her in delaying to claim benefit for the earlier days in question. It becomes unnecesssary to consider whether, if that was so, it constituted good cause for delay on the part of the claimant. If, as I hold, the claimant was not unemployed on any of the days in question, the matter of her delay in claiming becomes of no importance.

11. The claimant's appeal is not allowed.