UNEMPLOYMENT BENEFIT

Whether a Tribunal of Commissioners is bound by a decision of a previous Tribunal of Commissioners—part-time teacher: recognised or customary holiday: effect on all days in school holiday.

The claimant, employed as a temporary part-time teacher for about 6½ hours over two days a week, did not work over the school Christmas holidays and claimed unemployment benefit for that period. His salary was spread uniformly over the entire period of the contract and represented 13/55 of a full-time teacher's salary. The adjudication officer concluded that unemployment benefit was not payable for the holiday period because all of the days in that period were days of recognised or customary holiday within regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983, (per the decision of a Tribunal of Commissioners in R(U) 18/64). The social security appeal tribunal upheld the decision of the adjudication officer. On the claimant's appeal to a Commissioner the Chief Commissioner directed that the matter be heard by a Tribunal of Commissioners which could consider whether they were bound by the decision of the earlier Tribunal of Commissioners.

Held that:

1. in determining whether to be bound by a decision of a previous Tribunal of Commissioners a Tribunal of Commissioners should adopt and adapt the principles laid down in the *Practice Statement (Judicial Precedent)* of the House of Lords reported at [1966] 1 WLR 1234, as had the Industrial Relations Court in *Chapman v. Goonvean and Rostowrack China Clay Co., Ltd.*, [1973] ICR 50 at p. 58; it should not adopt the principles laid down in *Young v. Bristol Aeroplane Company Ltd.* [1944] KB 718 approved by the House of Lords in *Davis v. Johnson* [1979] AC 264 (paragraphs 5 to 17);

2. applying those principles, the Tribunal of Commissioners should not disturb and should follow the decision of the earlier Tribunal of Commissioners in decision R(U) 18/64 whereby the words in regulation 7(1)(h) "recognised or customary holiday" in connection with an employment apply to the periods of holiday at the establishment in question, so that in the present case all of the days in the school holiday and not merely those days on which in term time the claimant would have worked were precluded by regulation 7(1)(h) from being days of unemployment (paragraphs 18 to 28).

1. This is an appeal by the claimant against a decision of a social security appeal tribunal dated 19 May 1986 affiriming a revised decision of the adjudication officer to the effect that unemployment benefit was not payable to the claimant for the inclusive period from 21 December 1985 to 4 January 1986 on the ground that the period was a period of recognised or customary holiday in connection with the claimant's employment. Repayment of the overpaid benefit has not been required. The claimant at the material time was employed by the educational department of a metropolitan borough in a temporary part-time appointment to the teaching staff for the period from 24 October 1985 to 31 August 1986 teaching classes for 6 hours and forty minutes per week, in fact on Thursdays and Fridays. He later worked on Tuesdays also. He did not work during the school holidays which comprised among other periods the period from 21 December 1985 to 4 January 1986, but his pay was spread uniformly over the entire period of the contract and represented 13/55 of a full-time teacher's salary.

2. The adjudication officer's revised decision was based on regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 [S.I. 1983 No. 1598] which provides as follows:

"(h) subject to heads (i) and (ii) of this sub-paragraph, where in the case of any person an employed earner's employment has not

been terminated, a day shall not be treated as a day of unemployment if it is a day of recognised or customary holiday in connection with that employment, unless that person's employment therein has been indefinitely suspended and the day in question is the seventh or a later day, ascertained in accordance with the provisions of section 17(1)(b) as substituted by section 17(3)(a), in a continuous period of days on which that suspension has lasted:

(i) for the purposes of this sub-paragraph and of section 17(1)(b) as substituted by section 17(3)(a), where a person is engaged in Great Britain under a contract of service (hereafter in this head of this sub-paragraph referred to as "the subsisting contract"), any day of recognised or customary holiday in connection with his employment under the subsisting contract (hereafter in this head of this sub-paragraph referred to as "the relevant day") which occurs during the currency of that contract shall not be deemed to be such a day of holiday if, in the period beginning on the 1st March next preceding the relevant day and ending immediately before the relevant day, the number of days of recognised or customary holiday which he has had in connection with any employment in which he has been engaged in Great Britain under a contract of service equals or exceeds the number of days of recognised or customary holiday in connection with his employment under the subsisting contract in the period of twelve months beginning on the first day of his employment under the subsisting contract or on the 1st March next preceding the relevant day, whichever is the later;

(ii) in computing any number of days of recognised or customary holiday for the purpose of the application of head (i) of this sub-paragraph in relation to any person there shall be disregarded any day for which he has been paid unemployment benefit and any day which is a Bank Holiday or other public holiday applying in his case, or any other day of holiday granted in lieu thereof;".

3. The adjudication officer decided that the claimant's employment had not been terminated or indefinitely suspended in terms of the foregoing provision. He concluded further that every day in the school holidays was in the claimant's case affected by this provision and not just the days on which the claimant would have worked but for the holiday, relying in support of his view on a decision of a Tribunal of Commissioners R(U) 18/64. This decision was actually given on the rather different wording of regulation 6(1)(e) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1948 [S.I. 1948 No. 1277] ("the 1948 Regulations"), but it was considered that the reasoning in that decision compelled a like decision on the wording of regulation 7(1)(h). The appeal tribunal agreed with the adjudication officer. When the matter came before the Commissioner he, feeling himself bound to follow decision R(U) 18/64, since that was a decision of a Tribunal of Commissioners, put the matter before the Chief Commissioner. The Chief Commissioner directed, pursuant to section 116 of the Social Security Act 1975, that the matter be heard by a Tribunal of Commissioners, which could consider among other things whether they were bound by the decision of the earlier Tribunal of Commissioners.

4. At the hearing the adjudication officer was represented by Mr. Patrick Darby, counsel instructed by the Solicitor to the Department of Health and Social Security, and Mr. Philip Vallance, counsel instructed by the Treasury Solicitor, appeared as *amicus curiae*. The claimant did not appear and was not represented. We are grateful to both counsel for their submissions and for their careful research.

5. It is helpful at this point to set out the statutory provision under which Tribunals of Commissioners are appointed. It is contained in section 116 of the Social Security Act 1975 which as amended runs as follows:—

> "116.—(1) If it appears to the Chief Social Security Commissioner (or in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone, but by a Tribunal consisting of any 3 of the Commissioners.
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> (2) If the decision of the Tribunal is not unanimous, the decision of the majority shall be the decision of the Tribunal."

There is not a great deal of authority on the extent to which Commissioners and Tribunals of Commissioners are bound by one another's decisions, and Mr. Vallance helpfully called our attention to a range of decisions on the like point in relation to the Courts and other tribunals. We think that any consideration of the matter in relation to Commissioners should begin with the Decision of a Tribunal of Commissioners R(I) 12/75, where at paragraph 21 the position of individual Commissioners was put as follows:

> "In so far as the Commissioners are concerned, on questions of legal principle, a single Commissioner follows a decision of a Tribunal of Commissioners unless there are compelling reasons why he should not, as, for instance, a decision of superior Courts affecting the legal principles involved. A single Commissioner in the interests of comity and to secure certainty and avoid confusion on questions of legal principle normally follows the decision of other single Commissioners .....It is recognised however that a slavish adherence to this could lead to the perpetuation of error and he is not bound to do so."

6. This ruling places single Commissioners in a position analogous to that of puisne judges in the High Court, but draws a distinction between single Commissioners and a Tribunal of three Commissioners. It was suggested to us that there was no warrant for this distinction, just as it has been held that a "full" Court of Appeal is in no different position from that of a division of that Court (see *Young* v *Bristol Aeroplane Company Ltd* [1944] KB 718 at page 725 per Lord Greene M.R.). We consider however that a Tribunal of three Commissioners has under section 116 of the Social Security Act a special status to determine questions of law of special difficulty, which must include questions on which Commissioners have differed one from another. We consider that the purpose of the section would be frustrated if Commissioners were free to follow their own views on a point of principle on which a Tribunal of Commissioners has pronounced, and we consider that subject only as mentioned in Decision R(I) 12/75 at paragraph 21 a single Commissioner should follow a decision of a Tribunal of Commissioners on points of legal principle governing the case before him. We note that in *Regina* v *Greater Manchester Coroner, Ex parte Tal* [1985] QB 67 at page 81D the Court deprecated the idea of a single judge departing from a decision of a Divisional Court rather than arranging

for the matter to be heard by a Divisional Court. A similar course should in general be followed by a single Commissioner, as was done in the present case.

7. This however does not cover the extent to which a Tribunal of Commissioners is bound to follow an earlier decision of such a Tribunal. Is it in the position in which the Court of Appeal is placed by the principles stated in *Young* v *Bristol Aeroplane Company Ltd supra* approved by the House of Lords in *Davis* v *Johnson* [1979] AC 264, so that, subject to a very limited range of exceptions, a Tribunal of Commissioners is bound to follow a previous decision of a Tribunal of Commissioners on a point of legal principle? Alternatively is the position in this class of case that set out by Sir John Donaldson (President) in relation to the former National Industrial Relations Court in *Chapman* v *Goonvean and Rostowrack China Clay Co Ltd* [1973] ICR 50 at p.58 adopting and adapting for that Court the *Practice Statement (Judicial Precedent)* of the House of Lords at [1966] 1 W.L.R. 1234?

8. Sir John Donaldson in *Chapman* v *Goonvean* said:

> "In our judgment, the interests of justice will best be served if this court retains a measure of flexibility. While expressly disavowing any pretensions to the status of the House of Lords, we can think of no better way of stating the extent to which this court will treat itself as being bound by its own decisions than respectfully to adopt and adapt the words of the declaration delivered by Lord Gardiner LC in 1966: see *Practice Statement (Judicial Precedent)* [1966] 1 W.L.R. 1234. Accordingly, we wish to say that this court regards the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules in the field of industrial relations. The court nevertheless recognises that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of industrial law. The court, therefore, while treating its own former decisions as normally binding, will consider itself free to depart from them when it appears right to do so. In this connection the court will bear in mind the danger of disturbing retrospectively decisions which have formed the general basis of industrial relations agreements and practices."

The part of the passage cited beginning "Accordingly..." closely follows the language of the House of Lords Practice Statement apart from the last sentence, which starts "In this connection...". That sentence is a modification to fit the circumstances of industrial relations of the following sentence in the House of Lords Practice Statement—

> "In this connection they [their Lordships] will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the special need for certainty as to the criminal law."

9. Mr. Darby was not instructed by the adjudication officer to make submissions as to *stare decisis* as between the decisions of Tribunals of Commissioners, but for our assistance he presented argument to the effect that the same doctrine bound a Tribunal of Commissioners as bound the Court of Appeal. He pointed out that there is a right of appeal from Commissioners on a point of law to the Court of Appeal and thence to the House of Lords (in both of which legal aid can be obtained) and that a Tribunal of Commissioners, just as much as a single Commissioner, plays

"an intermediate and not a final role", the general description applied to the Court of Appeal in civil actions by Lord Diplock in *Davis* v *Johnson supra* at page 324A. Mr. Darby referred to the risk of "irremediable confusion" (per Lord Salmon in *Davis* v *Johnson supra* at p.344F) if a different basis were to be adopted in this jurisdiction.

10. Mr. Darby referred to the need for certainty in the law (emphasised by Lord Diplock in his citations in *Davis* v *Johnson supra* at pp.326–7), and he pointed out that in the adjudication system—and with a Tribunal of Commissioners having a "high degree of finality" as he put it—a high degree of certainty was desirable. He referred also to legitimate benefit planning, so that trade unions and other advisers could properly advise claimants as to their actions and rights so far as the social security field was concerned. He submitted also that in the social security field mistakes in the construction of, particularly, subordinate legislation but also statutes could be put right by amendment and that this was an existing and much used mechanism. He said that the procedure was not simply adversarial and the adjudication officer occupied a role more akin to that of an *amicus curiae.* Mr. Darby cautioned us against, as he put it, the *prima facie* attractive argument about a role of Commissioners in the development of social security law. This was, he submitted, no new jurisdiction, it was primarily a statutory and regulatory one, and it was for Parliament alone to correct error in conjunction with appeals to the Court of Appeal and the House of Lords.

11. In the consideration of the possible application of *Davis* v *Johnson* to a Tribunal of Commissioners it is we think important to note that the speeches of the members of the House of Lords were made in the context of a Court of Appeal both increasing in number and usually sitting in several three-judge divisions—see per Lord Diplock at page 326B–C. Lord Salmon's reference to "irremediable confusion" was we think made in the same context; he said at page 344E–F—

> "There are now as many as 17 Lords Justices in the Court of Appeal, and I fear that if stare decisis disappears from that court there is a real risk that there might be a plethora of conflicting decisions which would create a state of irremediable confusion and uncertainty in the law. This would do far more harm than the occasional unjust result which stare decisis sometimes produces but which can be remedied by an appeal to your Lordships' House."

12. Tribunals of Commissioners on the other hand do not sit day by day in divisions. Further they are only convened when the Chief Commissioner as a matter of his discretion thinks it right to do so. The risk of "irremediable confusion" which Lord Salmon identified does not in our view exist as a significant practical risk in this jurisdiction as far as relates to decisions of Tribunals of Commissioners.

13. While of course the right of appeal from a decision of a Tribunal of Commissioners exists, we think that Mr. Darby was right to point out that in practice there is a high degree of finality in such decisions. The Commissioner is at *an* apex (although not *the* apex) of the system of social security adjudication, with the jurisdiction extending over Great Britain. At that level there is a further tribunal, a Tribunal of Commissioners, which—while not appellate from the Commissioner—has a statutory jurisdiction to determine questions of special difficulty. This distinguishes a Tribunal of Commissioners from the non-distinction between a division of the Court of Appeal sitting with three members and the Court of Appeal sitting with six or nine members, to which Lord Greene M.R., referred in *Young* v *Bristol Aeroplane Company Ltd supra* at p.725. This jurisdiction of a Tribunal of

Commissioners has as a significant practical function the role of resolving differences as to the law between single Commissioners. Further, the courts have recognised that social security is a complex field in which the Commissioners have a particular expertise; see *Regina* v *National Insurance Commissioner, Ex parte Stratton* [1979] QB 361 at pages 368–9 (also reported in Appendix II to Decision R(U) 1/79 at pages 2593–4); see also the House of Lords in *Presho* v *Department of Health and Social Security* [1984] AC 310 at page 319B (also reported in Appendix 2 to Decision R(U) 1/84 at pages 1567–8). Decisions of Tribunals of Commissioners are not frequently appealed. When a Tribunal of Commissioners sits to determine a question of law of special difficulty its members use their expertise in the exercise of their inquisitorial jurisdiction to relate the instant question to associated areas of social security law and may take a broader view in consequence.

14. Certainty is indeed important in the social security field, but the danger of disturbing retrospectively legitimate "benefit planning" is not, in our view, sufficient to justify the adoption of the strict doctrine of *stare decisis* as set out in the *Bristol Aeroplane* case.

15. The amendment of social security law by statute or regulation involves considerations of policy, with which the Commissioners are not concerned. In our view the possibility of such amendment affords no ground for restricting the statutory power of a Tribunal of Commissioners to determine questions of law of special difficulty. Given the high, general, and continuing significance of social security law it is we think important that its interpretation be right, even if correction is involved, and if correction is involved that the correction be earlier rather than later.

16. We have borne in mind Mr. Darby's warning against Commissioners and, relevantly, Tribunals of Commissioners, taking on a role of developing the law. The determination of the correct legal effect of the language used in the statutes and regulations relating to social security has in many cases led to a changed perception of what the relevant legal position in fact is. This is a necessary consequence of the statutory duty of Commissioners to decide appeals and give reasons for their decisions. This is undoubtedly a proper function of the Commissioners even though in one sense it does "develop" the law.

17. In our judgment the lack of flexibility which a precise importation of the principles of *Young* v *Bristol Aeroplane Company Ltd* into the social security field at the level of Tribunals of Commissioners will bring is both unnecessary to achieve adequate certainty and unduly restrictive. In our respectful judgment it is appropriate to adopt and adapt, as did the former National Industrial Relations Court, and with the like disavowal, the principles laid down in the *Practice Statement (Judicial Precedent)* of the House of Lords. Both Sir John Donaldson and the Practice Statement in the sentence beginning in each case "In this connection..." pointed to relevant dangers specific in the context in each case of disturbing retrospectively previous decisions. As to previous decisions of Tribunals of Commissioners, we would not think it right to endeavour to spell out comprehensively the risks from disturbance which should be borne in mind. However, they clearly include disturbing the basis for decisions which may reasonably be taken to have affected many thousands of citizens and have been acted upon by adjudication officers and tribunals over many years, and also decisions which may be taken to have passed the scrutiny of Parliament without adverse comment.

18. We turn therefore to the substantive issue in the present case. We can dispose at once of the question whether the claimant was outside regulation

7(1)(h) on the ground either that his employment had at the relevant time been terminated or indefinitely suspended. No argument was presented to us that it had been, nor do we see how on the facts outlined in paragraph 1 above it could have been. The fundamental issue remains. Was the claimant rightly refused benefit under the provisions of regulation 7(1)(h) cited above in respect of the days on which he would in any case not have been working during the school's Christmas break? In terms of regulation 7(1)(h), were these days of recognised or customary holiday in connection with the employed earner's employment of the claimant? On the one hand it is argued that there was undoubtedly a period of recognised or customary holiday that affected the claimant's employment and that any day in that period is a day of recognised or customary holiday in connection with the claimant's employment. On the other, it is argued that a person is not on holiday and that a day of recognised or customary holiday is not connected with his employment unless that person is relieved of the obligation to perform the normal duties of that employment by reason of the holiday.

19. The adjudication officer and on appeal the appeal tribunal adopted the first answer, considering themselves bound to do so by the Decision of a Tribunal of Commissioners R(U) 18/64. That decision concerned a school teacher working part-time in circumstances not dissimilar from those of the present claimant. But the decision went against her by reference to a differently worded regulation (regulation 6(1)(e) of the 1948 Regulations) which provided that a day should not be treated as a day of unemployment if on that day a person did no work and was "on holiday". One may be pardoned for enquiring why, if the regulation to be applied was differently worded, Decision R(U) 18/64 should have been regarded as binding. An answer to this question is to be found in paragraph 7 of the Decision, where it was stated that the case was covered by the principle stated in Decision R(U) 1/62, which was also a case concerning the question whether the claimant was "on holiday" within the meaning of regulation 6(1)(e). The principle stated in the latter decision (which is also a decision of a Tribunal of Commissioners) is to be found in paragraphs 6, 7 and 8 thereof and is as follows:

> "6. ...When however a teacher is employed by the day, or by the week, or by the term, two differing views have been taken as to whether after the term ends, the teacher is 'on holiday' during the school holiday (and therefore not entitled to unemployment benefit) or not.
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> 7. The first view [which the Tribunal accepted] is that an employee will be held to be on holiday during any day of recognised or customary holiday in his employment and applying to him unless his employment has been 'terminated' in the sense that both (a) the legal obligations of the contract of service have been terminated and (b) there is no intention that the employment shall be resumed on the next available opportunity.
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> 8. The second view [which the Tribunal rejected] is that in such a case a person will not be held to be on holiday if the employment has been terminated, in the sense that the legal obligations of the contract of service have been terminated; and it is irrelevant whether there is any intention of resuming the employment in the future."

It will be seen that the reference to "recognised or customary holiday" extends to both alternatives; and that the claimant's employment in this case had not been terminated whichever alternative is adopted.

20. The Tribunal in Decision R(U) 18/64, adopting this principle, concluded that the claimant fell to be regarded as "on holiday" during the whole of the school holiday period and not merely during the days on which

she worked during term time. They considered that the opposite view would import into this branch of the law considerable complexity, as for instance in a case where a claimant worked Mondays sometimes but not always or otherwise had an irregular pattern of working. It may be added that the precise terms on which claimants work are not in our experience always readily ascertainable. In effect the Tribunal considered the fact that it was a period of *holiday at the establishment* where the claimant worked that fell to be considered as the reason why on a particular day during that period the claimant was not working, and not the fact that under the terms of his or her contract he or she would in any case not be working.

21. The Tribunal in Decision R(U) 18/64 reached their conclusion without reference to decisions on the meaning of the phrase "recognised or customary holiday", which is the expression used (in conjunction with the words "in connection with that employment") in the regulation that we have to construe in the present case. It appears that the expression has its origin in the judge-made law of the Umpires under the Unemployment Insurance Acts. There were a number of statutory conditions of title to unemployment benefit found successively in section 86 of the National Insurance Act 1911, in section 7 of the Unemployment Insurance Act 1920 and in sections 22 to 25 of the Unemployment Insurance Act 1935. The second statutory condition made it necessary to prove unemployment at the appropriate time, and it appears from Umpire's Decision No. 7712 (16/6/1924) that as early as 1912 it had been laid down that a person cannot be regarded as unemployed on customary holidays, and that the phrase "customary holiday" later expanded to "recognised or customary holiday" or "customary or recognised holiday" became almost a term of art, though there does not appear at that time to have been any statutory recognition of it. In Decision 18284/32 (1/9/32) the Umpire "For the purpose of determining the existence or duration of a customary or recognised holiday in an industrial establishment" set out no less than 21 principles that he considered had been "settled". The third of those principles reads as follows:

> "A recognised holiday does not cease to be such merely because it falls during the time when the establishment is closed owing to economic causes or because it falls at a time when a particular claimant would in the ordinary course have been 'stood off' under a system of short time working, or because it falls on a day upon which no work is usually done either in the establishment generally or by a particular shift or by the particular claimant."

22. Although the phrase "recognised or customary holiday" did not appear in regulation 6(1)(e) of the 1948 Regulations it did appear in regulation 6(2); and in Decision R(U) 11/53 the Commissioner (at paragraph 7) intimated that the Umpire's principles are applicable and ought to be followed in cases arising under regulation 6. In decision R(U) 8/64 the Commissioner placed a gloss on one of the principles but without impugning them in general. In our judgment, the third principle and the general association of the phrase "recognised or customary holiday" with the establishment at which the claimant works rather than with the particular terms of his employment is entirely consistent with the view of the Tribunal of Commissioners that gave Decision R(U) 18/64. There had down to 1964 been a consistent line of decisions on this issue over many years.

23. In 1966 the 1948 Regulations were amended and in 1967 were repealed and re-enacted in consolidation regulations of that year. The net

effect for present purposes was that regulation 6(1)(e)(i) of the 1948 Regulations was revoked and instead there was a new regulation 7(1)(j) of the National Insurance (Unemployment and Sickness Benefit) Regulations 1967 [S.I. 1967 No. 330], in terms analogous to those of the present regulation 7(1)(h).

24. We turn therefore to this regulation, which was first considered in a reported Decision in Decision R(U) 8/68, a decision of a Tribunal of Commissioners. The claimant in that case was a part-time teacher working on specified days in each week, and was held not to have escaped the consequences of the regulation during the school holidays on the ground that his employment had been terminated. The Tribunal held the claimant to be adversely affected by the regulation throughout the school holidays. In paragraph 11 they said

> ".....in view of our findings as to the nature of the claimant's contract and his employment, in our judgment the conclusion is inescapable that the days in the school holidays were days of recognised or customary holiday in connection with the claimant's employment within the meaning of regulation 7(1)(j)."

25. So far as we are aware this decision is the only reported decision either of a single Commissioner or of a Tribunal of Commissioners touching upon the question before us in the context of the then new regulation 7(1)(j). The Tribunal seem to have accepted as an "inescapable" conclusion the relevance of the former judge-made law to the interpretation of the phrase "recognised or customary holiday in connection with" a person's employment without apparently having had the regulation subjected to the close analysis to which it was subjected by counsel in the present appeal. Moreover the claimant's association did not seek to distinguish between different days of the week during the holiday period (see paragraph 12). We have not been referred to any decision in which this case has not been followed.

26. The alternative proposition with which we were pressed is that only the days actually affected by the occurrence of the holiday can be considered as days of recognised or customary holiday in connection with the employment. This alternative proposition is supported by the consideration that unemployment benefit is a daily benefit, by the provision in regulation 7(1)(h) introduced by the word "unless" for the non-operation of the paragraph and by the language of head (i) of that regulation.

27. We are all, with differing degrees of conviction, satisfied that if we were construing the regulation for the first time and without there being any history of decisions on the matter before the law was modified into the present form, we should have preferred the alternative proposition. But we are not convinced that the point is so clear that it would now be right to disturb a consistent line of authority which has been applied for more than fifty years, and which we think that the draftsman of what is now regulation 7(1)(h) must be taken to have intended to adopt; nor have we perceived any disapproval by Parliament of the principle established by that authority, or an intention by the material change of wording to change the law.

28. Accordingly, in conformity with the view expressed in Decision R(U) 8/68, we hold that all the days in the school holidays were days of recognised or customary holiday in connection with the claimant's employment. We accept that there is no question of any lack of due care

and diligence on his part and repayment is not required of the amount overpaid. The appeal however fails.

Commissioners' File No:—CU 224/86

(Signed) Leonard Bromley
Chief Commissioner

(Signed) J. G. Monroe
Commissioner

(Signed) V. G. H. Hallett
Commissioner