

Chapter R5 - Trade disputes

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Chapter R5 - Trade disputes

General

R5001 This Chapter gives guidance on trade disputes. Throughout this Chapter, unless otherwise specified, “claimant” includes a member of a joint-claim.

R5002

Introduction

Entitlement

R5003 Claimants are not entitled to JSA for any week in which they

1. are not employed because of a stoppage of work caused by a TD at their place of work¹ **or**
2. withdraw their labour to help further a TD².

1 JS Act 95, s 14(1); 2 s 14(2)

R5004 A joint-claim couple are not entitled to a joint-claim JSA for any week in which

1. both members of that couple are not employed because of a stoppage of work caused by a TD at their place, or places, of work **or**
2. each member withdraws their labour to help further a TD.

However where only one member of a joint-claim couple is affected by the above they may still be entitled to joint-claim JSA¹.

1 JS Act 95, s 15A(2) & (3)

R5005 A week is a period of seven days beginning with a Sunday¹.

1 JS Act 95, s 35

Exceptions

R5006 The TD provisions do not apply if claimants can show that during the stoppage of work¹ they

1. start work somewhere else (see R5252 - R5260) **or**
2. have been made redundant² (see R5264 - R5265) **or**
3. have returned to work for their employer but have then left for reasons other than the TD (see R5266 -R5274) **or**
4. are not directly interested in the dispute³ (see R5201 - R5222).

1 JS Act 95, s 14(3); 2 ER Act 96, s 139(1) & (2); 3 JS Act 95, s 14(1)

R5007 The DM is not concerned with the merits of a dispute or whether the behaviour of those involved is reasonable¹.

1 R(U)17/52(T); R(U)19/53; R(U)1/56; R(U)21/59; R(U)17/61; R(U)12/62

Trade disputes and sanctions

R5008 If the DM is asked to consider whether claimants have lost employment

1. due to a TD **and**
2. for reasons which may lead to a sanction

the TD question should be considered first.

R5009 If claimants can show that, although there is a stoppage of work, their employment has ended, the TD provisions will not apply. But doubts may arise on a sanction question¹.

1 JS Act 95, s 19

R5010 If claimants leave a job because they did not know that the vacancy was caused by a TD stoppage when they accepted it see ADM Chapter K2: Good Reason.

When there is no trade dispute

R5011 There is no TD where the stoppage of work is due only to a protest against the government or an Act of Parliament. But there is a TD where the dispute

1. involves government policy **and**
2. is between
 - 2.1 employer and employees **or**
 - 2.2 employees and employees **and**
3. is about the
 - 3.1 terms of employment **or**
 - 3.2 the employment of any person **or**
 - 3.3 the non-employment of any person.

What the DM must establish

R5012 Before deciding whether the claimant has lost employment because of a stoppage of work caused by a TD the DM must establish

1. the claimant's place of work (see R5016 - R5057) **and**
2. that there was a TD at the place of work **and**

3. that there was a stoppage of work at the place of work **and**
4. that the stoppage was due to the TD **and**
5. that the claimant lost employment because of the stoppage of work.

R5013 If all of the points at R5012 **2.** to **5.** are proved the claimant will not be entitled to JSA unless they can show that R5006 applies¹.

1 JS Act 95, s 14(1)

R5014 If claimants have no direct interest in the TD but have withdrawn their labour to help further the dispute they will not be entitled to JSA¹.

1 JS Act 95, s 14(2)

Evidence

R5015 Evidence is usually in the form of oral or written statements from the claimant or the employer. The DM should not rely on unchallenged newspaper reports¹.

1 R(U) 6/61; R(U) 11/63

Place of work

R5016 As a general rule a place of work is the premises or place where a person is employed¹.

1 JS Act 95, s 14(4);

R5017 However, there is an exception to the general rule which helps claimants who work for a large company which is made up of more than one business in the same premises. In certain circumstances separate departments that would normally be classed as one place of work, can be treated as separate places of work (see R5039 - R5057)¹.

1 JS Act 95, s 14(5)

R5018 The DM must be satisfied that there is a TD at the place of work as defined in the general rule¹. If not there is no need to consider the exception.

1 JS Act 95, s 14(4)

Burden of proof

R5019 If there is a TD at the place of work within the general meaning, then claimants must prove that the exception applies to them.

R5020 - R5021

General rule

R5022 When considering what the general meaning of place of work is, a reasoned, practical approach should be taken. This must be neither too literal nor too narrow.

R5023 A place of work may be

1. a works of one or more buildings on one site **or**
2. a works where buildings are
 - 2.1 spread over two or more adjoining sites **and**
 - 2.2 integral parts of the business even if separated by a road, railway or river¹ **or**
3. a building site where several employers and employees are following various trades, even where this is not the employers' permanent place of business.

1 R(U) 1/70

Example

Robin works as a repair welder in the paint trim and assembly plant of a motor company. The company consists of several plants on one large site which has two roads and a railway running through it. Car bodies made in the connected body plant are built into finished cars in the paint trim and assembly plant. Robin makes a claim for JSA when he loses work because of a strike by sewing machinists who work in a trim shop at another plant on the site. The DM decides that the company's site is one place of work.

R5024 If an employer's buildings are on sites that are some distance apart they are separate places of work.

R5025 If a firm owns several works in different places, each works is a separate place of work.

R5026 - R5027

Dock workers

R5028 Docks and shipyards are usually spread over a wide area. They are often made up of several docks, yards buildings or wharves owned or used by several employers.

R5029 If a TD covers the whole area of the dock or shipyard, then there is a TD at the claimant's place of work.

R5030 But if the dispute is limited to a particular yard or vessel the claimant's place of work must be established. For the TD provisions to apply there must be a dispute at the claimant's place of work.

R5031 If claimants look for work only at one particular place, for example a dock or warehouse, then that is their place of work¹. But if those claimants were to

1. look for work **or**
2. be required to work

at different parts of the dock or shipyard, then all of those parts will be the place of work². Their place of work will not be limited to the building or vessel where they were working at the time the stoppage began.

1 R(U) 26/57; 2 R(U) 8/71; R(U) 30/57

Example 1

Vaughn is a dock pilot and is licensed to pilot vessels within the port of Milford Haven. He loses his employment when a national strike reduces shipping. The DM decides that the whole port is Vaughn's place of work.

Example 2

Fergal is employed by a firm of boilerscalers and worked for nine months on ships berthed at a dock in Liverpool. The DM decides that the dock is Fergal's place of work. The fact that the dock is not owned by his employers does not matter.

Other similar jobs

- R5032 Consider such jobs as porters in markets or casual workers in the newspaper industry in the same way as dock workers.
- R5033 In the coal mining industry each pit or colliery is a separate place of work. But districts or other divisions of a colliery are not separate places of work.
- R5034 The reason the TD has to be at the claimants' place of work is so that they do not lose JSA only because of an economic consequence of a dispute somewhere else (but see R5092 - R5099 on the extension of a dispute).
- R5035 The DM need not define exactly the place of work for people who normally travel around in their job, for example sales representatives, lorry drivers and street cleaners.

Example

Una works as a cab washer at a garage where taxi drivers are in dispute with their employers. Because of the dispute with the taxi drivers Una is told there is no work for her. She makes a claim for JSA. The DM decides that, as Una works at the same place as the taxi drivers, there is a TD at her place of work.

R5036 Where

1. claimants work in several places **and**
2. there is a TD at each of them

there is a TD at the place of work, even if there is a stoppage at only one of them.

R5037 - R5038

Modification to the general rule

- R5039 The general rule is that the place of work is the premises or place where the claimant is employed. But if
1. part of the premises or place in question is a separate department in which a separate branch of work is carried out **and**
 2. that separate branch of work is usually carried out as a separate business in separate premises or places
- then the separate department is a separate place of work¹.

1 JS Act 95, s 14(5)

- R5040 To benefit from this modification of the general rule claimants must show that
1. they are employed in a separate department on a separate branch of work **and**
 2. that separate branch of work is one that is usually carried on as a separate business in **separate** premises or at a **separate** place **and**
 3. that separate branch of work is carried on in a separate department **on the same** premises or at the **same** place.

- R5041 There is no need to consider the modification if it is clear that
1. there is a TD at the place of work **and**
 2. it is in the claimant's department as well as others.

R5042 - R5044

Separate department

- R5045 The DM must first decide whether the premises or place is divided into separate departments. Take into account
1. the organization, by the employer, of work and workers at the premises or place¹ **and**
 2. the division of work and responsibilities between managers and supervisors **and**
 3. the lay-out of the buildings, shops and machines.

The arrangements for payment of wages and salaries, or for accounting or costing should be ignored.

1 R(U) 24/57

- R5046 The actual organization by the employer at the premises or place in question should be accepted. It cannot be altered by claimants or the DM. If there is no departmental organization one cannot be invented.

Example

Richard is employed as a lorry driver by a firm of ship repairers. Apart from carrying materials for their own firm, the transport section also does haulage work for ship owners in the area. There is a stoppage of work at Richard's employer's premises. Owing to a shortage of work caused by the stoppage, Richard is laid off. He makes a claim for JSA. The DM decides that the transport section is a separate department.

R5047 - R5049

Separate branch of work

R5050 A separate branch of work means more than just different work. In a large business the work is usually organized as a series of operations performed by specialists. Each operation is normally undertaken in different parts of the premises.

R5051 Where one operation is made up of several processes, one process will not usually be a branch of work separate from the complimentary processes¹.

1 R(U) 4/62

Example

A firm of iron-founders usually produces castings at their own foundries. The enamelling department at the firm processes these castings, and either assembles them into complete appliances or puts them aside for the service department. Enamelling is an integrated process of the production and not a separate branch of work. The enamelling department is therefore not a separate place even though the process of enamelling castings is usually carried on as a separate business.

R5052 The following are not separate branches of work

1. ancillary work, such as day to day maintenance and repair of machines and tools
2. general office work performed for production departments.

R5053 - R5054

Commonly carried on as a separate business

R5055 Whether the separate branch of work is commonly carried on as a separate business at separate premises is a question of fact. The answer depends on current industrial organization. It is not enough for claimants to show that the branch of work

1. could be carried on as a separate business **or**
2. is carried on separately in isolated instances.

R5056 Claimants must show that the branch of work

1. is carried on as a separate business **and**

2. is carried on separately to such an extent that it can be said to be normally carried on separately¹.

1 R(U) 5/61

R5057 The practice in other industries is not relevant.

Example 1

Zelda is employed in the export despatch department of a firm of iron-founders. She loses her employment because of a stoppage of work caused by a TD in the foundry. Zelda makes a claim for JSA. The DM obtains evidence that the packing and despatching of manufactured products for export is highly specialised and that many firms carry on the business of export packers on behalf of customers of all kinds. There is also evidence that the packing and despatching of manufactured goods for export is usually carried on as a separate business. The DM decides that the TD was not at Zelda's place of work.

Example 2

Shirley is employed in the despatch department of a home delivery mail order company. She loses her employment because of a stoppage of work caused by a TD. Shirley makes a claim for JSA and the DM decides that the despatch department is not a separate place of work.

R5058 - R5059

Trade dispute

Definition

R5060 The statutory definition of TD covers

1. the people involved in the dispute **and**
2. the reason for the dispute.

R5061 A TD is any dispute

1. between
 - 1.1 employers and employees **or**
 - 1.2 employees and employees **and**
2. that is connected with
 - 2.1 the employment or non-employment **or**
 - 2.2 the terms or conditions of employment

of any person whether or not they are employees of the employer with whom the dispute arises¹.

1 JS Act 95, s 35(1)

R5062 Disputes between two or more employers are not included in the definition.

Parties to the dispute

R5063 A TD can be between

1. an employer and their own employees **or**
2. an employer and employees of a different employer **or**
3. two or more groups of employees, whether employed by the same or different employers.

R5064 Employees are persons classed as employed earners. They need not be in employment or under contract at the time of the dispute. It is enough that they are employees when working.

R2065 – R2066

R5067 It does not matter whether a TD is

1. in one place, a few places or is nationwide **or**
2. pursued by employers or employees acting on their own behalf, or represented by an employer's organization or trade union(s) **or**
3. supported, recognized or approved by the appropriate organisation or trade union **or**
4. between more than two parties (for example an employer and two opposing groups of employees).

R5068 - R5069

Reason for the dispute

R5070 A TD must be connected with

1. the employment or non-employment **or**
2. the terms and conditions of employment of a person.

R5071 Most disputes fall within this definition, including those connected with the way in which work is performed¹. If

1. employees
 - 1.1 work to rule **or**
 - 1.2 go slow **or**
 - 1.3 ban overtime **and**
2. the employer threatens to

2.1 lock them out **or**

2.2 lay them off

there is a TD. Any resultant lock out or lay off is a stoppage of work due to a TD.

1 R(U) 5/87

R5072 Some issues that have led to a TD are

1. wages and hours of work¹
2. redundancy and dismissal²
3. doing work taken over from another firm where there was a TD³
4. picketing⁴
5. a demand by fishermen for a registration system, work to be offered first to union members, together with the setting up of a joint council⁵
6. withholding a bonus from an employee due to absence from work⁶
7. disagreement between two trade unions over the division of duties⁷
8. whether workers can be asked to do each others jobs⁸
9. an increased work quote⁹
10. trade union membership¹⁰
11. taking part in a compulsory pension scheme¹¹
12. the stopping of tea-breaks and altering of time-keeping rules¹²
13. a change of conditions based on religious beliefs¹³
14. safety of machines¹⁴
15. a dispute over duties and rights under legislation dealing with the conditions of employment¹⁵
16. an employer saying that the employees were not working as hard as they could¹⁶.

*1 CWU 18/49(KL); R(U) 19/53; R(U) 27/56, R(U) 30/59; R(U) 12/60; 2 CU 274/50(KL); R(U) 11/52,
R(U) 25/53(T); R(U) 36/53; R(U) 29/59; 3 R(U) 19/51; 4 R(U) 2/53; R(U) 3/69; 5 R(U) 1/56;
6 R(U) 25/56; 7 R(U) 39/56; R(U) 36/58; R(U) 1/60(T); R(U) 14/64; 8 R(U) 6/61; 9 R(U) 32/57;
10 R(U) 12/60; R(U) 11/63; 11 R(U) 17/61; 12 R(U) 3/62; R(U) 4/62; 13 R(U) 12/62; 14 R(U) 3/71;
15 R(U) 5/77; 16 R(U) 5/87*

R5073 As the DM is not concerned with the reasons for, or merits of, a TD the following do not matter

1. whether the dispute is about something illegal
2. which party has caused the dispute or stoppage
3. whether one party is acting unreasonably, without consultation, or against agreement or longstanding custom.

R5074 A dispute can start as a personal matter between one or more workers and the employer. A stoppage of work can follow when other workers become involved¹.

1 R(U) 25/56; R(U) 12/62

R5075 The person causing the dispute does not have to be employed by the employer involved in the dispute. A TD at one firm can spread to another firm and cause a stoppage of work there.

R5076 - R5079

Identifying the reason for the dispute

R5080 As there can be a dispute without a stoppage, the DM must distinguish between them. If there was a dispute at the claimant's place of work, the DM should collect information¹ to decide

1. what the dispute was about **and**
2. who was affected by it **and**
3. the background to it **and**
4. its development during the stoppage².

1 JS Act 95, s 14(1); 2 R(U) 25/56; R(U) 30/59; R(U) 6/61; R(U) 5/86

Meaning of dispute

R5081 A dispute means that two or more parties do not agree on an issue. They try to persuade or force each other, and they resist each other. Disputes usually include

1. demands or proposals
2. objections
3. meetings
4. negotiations
5. other forms of mutually planned action or counter-action.

R5082 A dispute and a stoppage are not the same thing. There can be a dispute without hostile action¹ (see R5085), and before agreed procedures for settling differences are used². Just because an employer's association or the employees' trade unions do not support the demands or proposals made, that does not mean that there is not a TD³.

1 R(U) 21/59; 2 R(U) 36/58, R(U) 1/60(T); 3 R(U) 18/58

R5083 If workers at the claimants place of work refuse to accept a practice which has been accepted by their union's executive there is a TD¹.

1 R(U) 6/61

R5084 What the parties to the dispute do is often a better guide to the realities of the situation than what they say¹.

1 R(U) 11/63

Hostile action

R5085 Hostile action includes

1. a strike
2. go-slow working or working to rule
3. an overtime ban
4. meetings held by workers.

Note: Claimants may say there is no dispute in spite of evidence to the contrary¹.

1 R(U) 36/58; R(U) 21/59

R5086 A dispute can exist without hostile action. But if there is hostile action it is usually an indication that there is a dispute.

R5087 Although the employer and the workers may have differences, there is not dispute where there are only

1. complaints
2. grumblings
3. agitation by discontented workers
4. tentative talks about future terms of employment¹.

Something more definite is needed before there is a dispute.

1 R(U) 21/59

R5088 If

1. an employer wants to impose new terms of employment on workers **and**
2. instead of disputing the matter, the workers simply leave their jobs the loss of employment is not because of a stoppage of work due to a TD (see R5121 - R5125).

R5089 - R5090

At place of work

R5091 The TD must be at the claimant's place of work¹.

1 JS Act 95, s 14(1)

R5092 A TD can

1. start in one place and spread to another **or**

2. be brought to a place of work by pickets from somewhere else¹.

1 R(U) 1/74

R5093 If there is a TD at one place of work, and workers somewhere else strike in sympathy, the dispute spreads to the place of work of the striking workers. This is so even if they are not affected by the matter in dispute¹.

1 R(U) 15/55

R5094 If an employer locks workers out in support of another employer, the dispute has been extended¹.

1 R(U) 23/64

R5095 A stoppage in one place of work can cause a stoppage at another place of work where there is no dispute. If this is only because of an interruption in the supply of

1. materials **or**
2. service

then there is no dispute at the second place of work.

R5096 Workers at the claimant's place of work may be prevented from working by strikers from another. The dispute can be

1. between the strikers and the non-strikers **or**
2. the strikers and their employers.

If the reason for the dispute is the employment, or non-employment, of some or all of the workers at the claimants' place of work there is a TD at the claimants' place of work.

R5097 A TD can be on a national or regional level. It can be between

1. a trade union or group of unions **and**
2. an employer or employer's association.

R5098 Even if the employers and workers at the different places of work affected by the dispute take no part in the negotiations, there can still be a TD at all of those places of work.

R5099 In all cases the DM must consider whether a stoppage at a particular place of work is due to a TD, or is simply due to the effects of a stoppage somewhere else.

R5100 - R5101

Stoppage of work

Meaning of stoppage of work

R5102 All work does not have to have stopped for there to be a stoppage of work. As long as operations have been stopped or limited to more than just a negligible extent, there is a stoppage. So work which would have been done is not being done because of the stoppage.

R5103 A stoppage may be in the form of

1. a strike by workers **or**
2. a lock-out by employers **or**
3. an interruption or dislocation of work due to
 - 3.1 an overtime ban **or**
 - 3.2 a meeting¹ **or**
 - 3.3 a stoppage at some other place of work.

1 R(U) 36/53

R5104 The number of workers not working is not so important as the proportion not working. Where

1. a considerable number of workers stop work together **and**
2. an appreciable interval of time passes before
 - 2.1 they return to work **or**
 - 2.2 their places are filled by others

there will almost certainly be a stoppage of work¹.

1 R(U) 7/58

R5105 There can be a stoppage of work even if only one, or a few, workers stop work. Large numbers of workers do not have to be involved.

Appreciable interval

R5106 An appreciable interval does not have to be measured in days. It can be measured in

1. minutes **or**
2. hours **or**
3. days¹.

1 R(U) 12/62

R5107 There is no stoppage of work where an employer does all of the work and maintains output either by

1. getting replacements for workers who have stopped work **or**
2. reorganization.

R5108 If work is held up while replacements are obtained or re-organisation takes place, there is a stoppage during the interval before work restarts. Where the employer

1. gets some replacements **or**
2. manages some reorganization but
 - 2.1 has to give up **or**
 - 2.2 postpone some parts of the work **or**
 - 2.3 reduce output

there is a stoppage of work¹.

1 R(U) 7/58

R5109 It is up to the DM to get enough information to show that there is a stoppage of work at the claimant's place of work.

R5110 - R5113

Stoppage due to trade dispute

R5114 If the DM is satisfied that there is both

1. a TD **and**
2. a stoppage of work at the claimant's place of work

the DM must then decide whether the stoppage of work was due to the TD.

A move in the contest

R5115 To be due to a TD a stoppage of work must be a move in a contest between

1. an employer and employees, whether their own or not¹ **or**
2. employees and employees.

The aim of the stoppage is that work should be resumed on certain conditions².

1 R(U) 1/74; 2 R(U) 17/57

R5116 The stoppage of work is due to a TD if there

1. has been a refusal to work overtime, as a move in a dispute, somewhere at the place of work **and**

2. is a stoppage of work somewhere else at the same place of work as an economic consequence.

R5117 Where a stoppage is not a move in a dispute but happens only because of a decision to

1. stop working altogether for an employer **or**
2. stop employing workers at all

it is not due to a TD. This is so even if the decision is taken because a TD exists¹.

1 R(U) 17/52(T)

R5118 A stoppage due to a TD means not only a stoppage of work, but a stoppage of work because either

1. employees are unwilling to work **or**
2. employers are unwilling to give work

so long as some matter in dispute is unsettled¹.

1 R(U) 19/51; R(U) 17/52(T)

R5119 - R5120

Significance of termination of employment

R5121 It is not usually significant that notice to end employment has been given by the employer or workers. Contracts of employment usually state that notice must be given.

R5122 The fact that notice has been given does not mean that there is no intention to return to work on new terms. It may be clear from

1. the conduct of the parties **or**
2. the course of previous negotiations **or**
3. the number of workers and employers involved

that neither side intends, or can afford, a permanent ending of relations¹. The termination of employment is a trial of strength, ending in a resumption of relations when the trial of strength is over².

1 R(U) 19/53; R(U) 19/51; 2 R(U) 17/52(T)

R5123 The fact that contracts have been terminated **as a move in the dispute** does not matter. All that matters is that workers were in employed earner's employment when employment was lost. Even if the employment of **some** workers has been unconditionally terminated it does not mean that the stoppage at the place of work is not due to a TD.

R5124 Terminations are not to be affected by the TD rules if it is shown that the employer or the **whole body** of workers in dispute, are no longer willing to employ or to work for the other party **on any terms**. Such stoppages are due to the determination of one or both parties to have nothing further to do with the other¹.

1 R(U) 17/52(T)

R5125 But, if at any time during the stoppage either

1. the employer decides never to re-engage a particular employee or group of employees (this decision may itself be a move in the dispute, for example to coerce other workers) **or**
2. one employee, or group of employees, decide never to accept work again on any terms with that employer

this decision does not end the stoppage¹.

1 R(U) 1/65

Example 1

Graham works in a machine shop. During a stoppage of work due to a TD his employers move the machinery from the machine shop to other premises where it could be operated by non-union workers. Graham's trade union say that the dispute ended when his employers said that the machinery was to be moved because, from that date, there was no work available to him. However, Graham's employers have stated that they have not closed the machine shop with the intention of not opening it again. When Graham makes a claim for JSA the DM decides that the stoppage of work due to the TD continued after the machinery was moved.

Example 2

Emma's employer gave her and her colleagues notice of the termination of their contracts. Emma and her colleagues were then offered new contracts of employment. The offer was not accepted and a stoppage of work resulted. Emma makes a claim for JSA. The DM decides that the stoppage of work was not due to her employer's intention to finally sever relations with the workers but to the workers' attitude to the notice. The DM also decides that Emma's stoppage of work was due to a TD.

R5126 - R5129

Stoppage no longer due to the dispute

R5130 A stoppage of work may be due to a TD at the start. But a stoppage can continue even though the dispute has been settled. The DM should not give an adverse decision for weeks in which none of the days of stoppage were due to the dispute.

Return to work delayed

R5131 If a dispute is settled but claimants cannot return to work because

1. a different dispute starts **and**
2. the claimants have no direct interest in the new dispute

they have no longer lost work because of a stoppage caused by a TD.

R5132 Claimants must prove that the stoppage of work is not caused by the TD¹.

1 CWU 18/49; R(U) 1/56

R5133 A stoppage sometimes carries on after the dispute is settled or after it has been determined to go back to work. A stoppage can still be due to the dispute if there is a delay before work

1. is started again **or**
2. can be said to be proceeding normally.

Whether the stoppage is still due to the dispute depends on the cause of the delay. It does not matter who is to blame for the delay¹.

1 R(U) 1/56

R5134 Delays in returning to work after the settlement of a dispute or a decision to return to work can be caused by the need to

1. carry out repair or maintenance work which has not been done or is needed because of disuse
2. heat furnaces or ovens, or otherwise re-start processes in stages
3. get fresh supplies of stocks or raw materials
4. bring back machinery or equipment from other premises, where it was moved during the stoppage.

R5135 Whatever the cause of the delay in returning to work, the stoppage is still due to the dispute if

1. the cause of the delay was a natural and probable (not necessarily inevitable) result of the TD **and**
2. it could reasonably have been foreseen by the parties to the dispute¹.

1 R(U) 9/80 Appendix

R5136 Where industrial action leads to a situation in which decisions have to be taken for the best, claimants cannot successfully argue that a different decision would have let them return to work at an earlier date.

R5137 Claimants can only successfully argue this if they are able to show that the decisions taken were unreasonable or unacceptable for some other reason¹.

1 R(U) 9/80

R5138 A stoppage is no longer due to a TD if

1. the delay is obviously extreme (for example because the repair work has been delayed unreasonably) **or**
2. some unrelated circumstances have clearly replaced the dispute as the reason why the stoppage is continuing.

R5139

R5140 The DM is not concerned with the merits of the dispute or whether the parties have acted reasonably (except as in R5136 - R5137). But

1. if a dispute has been settled or abandoned **and**
2. the workers are willing to return to work on terms acceptable to the employer **and**
3. the employer prolongs the stoppage as an act of retaliation or as a disciplinary measure

the stoppage continues to be due to the dispute¹. If at the end of that period, the workers refuse to work, the fact that both parties have prolonged the stoppage may indicate that the dispute is continuing and that the stoppage was due to the dispute during both periods.

1 R(U) 17/52(T)

R5141 During a stoppage, disputes about further matters can replace, or be added to, the original cause of the dispute. If these further matters prolong the stoppage, it continues to be due to a TD¹.

1 R(U) 12/60

R5142 Sometimes different groups of workers at the same place of work are arguing for different things at the same time, and a stoppage follows. The stoppage may be due partly to each of the disputes. It depends on the extent to which the issues and events are connected.

Example

A national TD has caused a stoppage of work in the printing trade. When the dispute is settled, the workers at Simon's firm are ready to go back to work on the negotiated terms. However, by this time Simon's employer said that only non-union workers will be taken on. The stoppage continues because the workers are not prepared to give up their union membership. The DM decides that Simon continues to lose employment because of a stoppage of work due to a TD, though not the dispute which caused the original stoppage.

R5143 - R5149

Not employed due to stoppage

R5150 If there is a stoppage of work due to a TD at the claimant's place of work, it must then be decided whether the stoppage caused the claimant not to be employed.

Direct result of stoppage

R5151 Claimants are not employed as a direct result of a stoppage where they

1. strike **or**
2. are locked out **or**
3. are prevented from working because of the action of violent pickets at their place of work¹.

1 R(U) 5/86(T) Appendix

Indirect result of stoppage

R5152 Employment may be lost as an indirect result of a stoppage¹ even when it is one or more stages removed from the stoppage.

1 R(U) 5/86(T) Appendix

Example

All the workers in a factory are stood-off as an economic consequence of a strike at their place of work. The stand-off is not itself a move in the contest. But it has happened by reason of the stoppage which was caused by the strike due to a TD.

R5153

Not in work immediately before stoppage

R5154 Claimants may lose employment because of a stoppage of work even though

1. the work is intermittent **or**
2. they are not actually at work when the stoppage begins (see R5177).

R5155 If claimants have an offer of employment

1. withdrawn **or**
2. postponed because of a TD

they are not yet employed to work at a place of work¹.

1 R(U) 23/64

R5156 - R5159

Significance of final termination of employment

R5160 Not being employed because of a stoppage is usually temporary. But there may be cases where the loss of employment is not expected to be temporary.

Example

There is a stoppage of work caused by a TD at a clothing factory. Saleha is one of four employees who have their employment terminated because of the stoppage. All the other employees will be returning to work at the end of the stoppage. Saleha makes a claim for JSA. The DM decides that she has lost her employment because of the stoppage of work caused by the TD.

R5161 So final termination of employment is not always significant when deciding whether employment has been lost due to a TD.

R5162 When considering what effect final termination has on deciding whether a stoppage of work is due to a TD (see R5121 - R5125).

Employment lost for other reasons

R5163 A person is presumed to have lost employment because of the stoppage where

1. the employment ends **and**
2. a stoppage of work due to a TD starts at the same time.

R5164 But a person has not left work due to a stoppage of work if

1. the final date of employment was fixed before the dispute arose (for example a person has a fixed term contract) **and**
2. the termination was not connected to the reasons for the dispute **and**
3. the dispute did not affect the termination of the employment in any way.

R5165 But the employment has been lost due to the stoppage if

1. the employment was due to end at a certain time **and**
2. it ends earlier because of the stoppage (even by only an hour).

R5166 - R5167

Left employment voluntarily before stoppage

R5168 When claimants leave employment shortly before a stoppage of work begins the DM must establish whether they have

1. simply anticipated the stoppage **or**
2. left for some other reason.

R5169 If the DM finds that the claimants only wanted to avoid the effects of losing work due to the stoppage then the employment was lost because of the stoppage¹ from the date on which they last worked.

1 R(U) 30/55, R(U) 29/59

R5170 If a person genuinely leaves work for some other reason the employment has not been lost because of the stoppage.

R5171 Where R5168 - R5170 applies a sanction question may arise.

Example 1

Desmond is a boilerman in a dockyard who leaves his employment four days before the start of an unofficial strike at his place of work. Desmond makes a claim for JSA. He gives no reason for leaving his employment. However, on the day he leaves strikes have started elsewhere though it is not certain that there would be a stoppage at his place of work. The DM decides that Desmond has left work in anticipation of a stoppage and has lost his employment due to a TD stoppage.

Example 2

Rose is one of twelve workers given notice that they are to be made redundant. A dispute arises between the unions and Rose's employer about the redundancies and as a result the workers decide to strike. Rose leaves her employment, with the agreement of her employer, eleven days before her notice is due to run out. Rose leaves before there is a stoppage of work which starts later that same day. She makes a claim for JSA. The DM decides that Rose lost her employment due to a TD stoppage. This is because if Rose had not anticipated the stoppage, there would have been no reason for her not to work her notice.

R5172 - R5174

Employment suspended indefinitely before stoppage

Suspended

R5175 A worker is suspended when

1. the employer has no work for the person **and**
2. the worker is stood-off but not finally discharged.

The 12-day rule

R5176 The DM must apply the 12-day rule to decide whether a claimant's lack of employment is due to a TD where

1. employment is indefinitely suspended **and**

2. a trade dispute occurs at the place of work.

R5177 Where a claimant's employment has been indefinitely suspended 12 working days or less before a stoppage of work at the premises where they usually work they have lost work due to the stoppage¹.

1 R(U) 20/57(T); R(U) 26/57

R5178 The presumption in the 12 day rule is that a claimant who

1. is suspended within 12 days of a stoppage **and**
2. would, but for the stoppage, have been re-employed after the date on which the stoppage began

has lost the employment which would have existed after that date¹.

1 R(U) 31/57

R5179 A period of suspension from work starts on the day after the last day of work. If before the stoppage a claimant

1. is suspended **and**
2. returns to work **and**
3. is suspended again

there are two separate periods of suspension. Apply the 12 day rule to the last period of suspension even where the claimant returns to work for only one day¹.

1 R(U) 29/57

R5180 Days of recognized or customary holiday are not counted when deciding the number of working days for which a claimant has been suspended¹. For guidance on days of recognized or customary holiday see ADM Chapter R2: JSA conditions of entitlement.

1 R(U) 21/57

R5181 - R5182

When the 12 day rule does not apply

R5183 The presumption of the 12 day rule can be disproved if there is definite evidence to the contrary¹. If a claimant is suspended within 12 days of a stoppage they must show that it is very likely that

1. they did not lose work due to the stoppage **and**
2. they would not have been employed had there been no stoppage.

If it is doubtful whether they would have been employed had there been no stoppage, they have not discharged the burden of proof.

1 R(U) 20/57(T), R(U) 21/57

R5184 If a claimant was suspended more than 12 days before the stoppage the DM should accept that employment was not lost because of the stoppage.

Example 1

Gerald is suspended indefinitely twelve working days before the start of a stoppage of work at his place of work. Several other workers are suspended at the same time. Most of the other workers are re-engaged before the stoppage begins but Gerald is not. Gerald remains unemployed and makes a claim for JSA until after the stoppage is over. He then takes a job in another industry. The DM decides that Gerald has proved that he did not lose his employment because of the stoppage of work.

Example 2

Laura is suspended indefinitely on the day before a stoppage of work at her place of work begins. She makes a claim for JSA. The DM obtains evidence that work on the order on which Laura had been working was completed. Laura starts work again two days after the stoppage. The DM decides that Laura has not proved that she has not lost work because of the stoppage. The DM makes this decision because the fact that the work on the order was finished does not mean Laura would have been dismissed. Also, the fact that Laura had been kept on until the day before the stoppage began strongly suggests that she was suspended because of the impending stoppage.

R5185 - R5187

Definite period of suspension before stoppage

R5188 If

1. a claimant's employment is suspended for a definite period **and**
2. during that suspension a stoppage of work begins **and**
3. the stoppage prevents that claimant returning to work on the agreed date

the claimant has lost employment due to the stoppage from the date work should have been resumed¹.

1 R(U) 12/61

R5189 This situation may arise where claimants are working

1. to a shift system **or**
2. to a rota system **or**
3. on short-time.

R5190 If claimants work only on certain days of the week, the days on which no work is done should be treated as definite periods of suspension.

R5191 If a stoppage begins on a day claimants would not normally work, they have lost employment due to a stoppage caused by a TD.

Example

Tom works on Mondays, Tuesdays and Saturdays. He makes a claim for JSA on Wednesday 22.10.14, the day on which a stoppage of work due to a TD begins at his place of work. The stoppage ends on Saturday 1.11.14. The DM decides that Tom has lost employment due to a TD from Sunday 19.10.14 to Saturday 1.11.14.

R5192 - R5194

Incapacity for work during stoppage

R5195 Claimants may be off work due to illness when a stoppage of work begins. If

1. they recover and claim JSA during the stoppage **and**
2. work would have been available if it were not for the stoppage

they have lost work due to the stoppage.

R5196 But where they were given notice before the stoppage began and

1. they do not recover until after their employment was due to end **or**
2. it cannot be confirmed that they would have been employed on their recovery but for the stoppage

they have not lost employment due to the stoppage.

R5197 The DM should establish

1. what the claimant's contract says about sickness absences **and**
2. what the employer's practice is for holding open the jobs of sick workers.

R5198 Claimants may become ill during a stoppage of work due to a TD. If when recovered they

1. make a claim to JSA **and**
2. the stoppage of work due to a TD is continuing

they will have lost employment because of the stoppage.

R5199 - R5200

Directly interested

R5201 If claimants can show that they have no direct interest in the dispute they will not have lost employment because of a stoppage of work due to a TD¹.

R5202 There is no statutory definition of the term “directly interested”. The question whether claimants are directly interested in a dispute must always depend on the particular facts and circumstances of each case¹. Claimants may have a direct interest in a dispute and yet take no part in that dispute².

1 R(U) 14/71; 2 R(U) 14/64, R(U) 4/65

R5203 Where it is almost automatic that claimants will be affected by the outcome of a TD they are treated as having a direct interest in that dispute¹. If there has to be an intervening event between the outcome of the dispute and the terms of employment being affected, claimants are not directly interested in the dispute².

1 R(U) 13/71, Watt v. The Lord Advocate 1979 S.C 120; 2 R(U) 8/72, R(U) 8/80

Example

The overlockers at Binita’s place of work are in dispute with the management over the rate of pay for overtime working. Binita is a clipper and is not directly involved in the dispute. However, any renegotiated overtime rate will apply to all of the workers at Binita’s place of work. Therefore Binita has a direct interest in the outcome of the dispute.

R5204 If claimants are laid off because of a dispute this does not mean that they have a direct interest in that dispute. There must be a direct interest in the outcome of the dispute, not simply in its existence¹.

1 Watt v. The Lord Advocate 1979 S.C 120

R5205 If claimants are laid off only because of the action of strike pickets that, on its own, does not mean that they are directly interested in the dispute¹.

1 R(U) 3/69

R5206 It does not need to be the claimant's own pay or conditions that are the subject of the dispute. Where different groups of workers, belonging to different trade unions are employed by the same employer at the same place of work and there is a dispute between the employer and trade union A, workers belonging to trade union B are directly interested in that dispute if

1. whatever the outcome of the dispute the employer will apply it to workers in trade union B as well as those in trade union A **and**
2. the application of the outcome of the dispute to all workers comes about automatically as a result of
 - 2.1 a collective agreement which is legally binding **or**
 - 2.2 a collective agreement which is not legally binding **or**
 - 2.3 established industrial custom and practice at the place of work concerned¹.

1 R(U) 1/84 Appendix

R5207 - R5209

R5210 It is for claimants to show that whatever the outcome of the dispute the terms or conditions of their employment would not be affected almost automatically. It does not matter whether the outcome is likely to be to the advantage or disadvantage of the claimant¹.

1 R(U) 3/56

R5211 A dispute which starts off as personal, affecting only one person, can develop into a dispute about a matter of principle affecting many others¹.

1 R(U) 25/56

R5212 It is the nature of the interest which is important, not its degree¹. For example workers may have a direct interest in a dispute about plans

1. to abolish their afternoon tea break²
2. to reduce the time allowance for unpenalised lateness by two minutes a day³.

Even though these matters are so insignificant that they could be ignored the workers still have a direct interest in the dispute.

1 R(U) 3/62; R(U) 4/62; 2 R(U) 3/62; 3 R(U) 4/62

R5213 Workers are not directly interested in a dispute where an amendment of an agreement to which they are party would not affect their position either for the better or the worse¹.

1 R(U) 18/58

R5214 Workers are not directly interested in a dispute if their interest is only in an effect which is not, and does not become, the subject of a dispute. The subject and limit of the dispute must be identified before deciding whether a workers has a direct interest in it.

Example 1

Eric is a surface worker at a coal mine. Some underground workers do not report for work on a Sunday night because of a dispute about the pay for that shift. Eric loses part of his weekly bonus as a result. Eric is not directly interested in the dispute because it is about rates of pay for underground work on a Sunday night, not the circumstances in which his bonus is withheld. Eric's loss of bonus is only an effect of the dispute.

Example 2

Roy is also a surface worker at a coal mine. Paul, an underground worker at the same coal mine, does not receive his bonus payment because he is absent from work. A dispute develops because of this and all the underground workers withdraw their labour as a result. Roy is directly interested in the dispute. This is because it is about the conditions in which a bonus can be made and is of direct interest to all workers covered by the bonus agreement. Roy is one of those workers.

R5215 - R5217

R5218 Workers may have no direct interest in a dispute at the start of a stoppage. But during the stoppage new matters may become the subject of the dispute. Workers may then have a direct interest¹.

1 R(U) 12/60

R5219 A dispute can be about several things. Workers who are directly interested in some, but not all, of these matters, are directly interested in the dispute¹.

1 R(U) 17/61; R(U) 3/62; R(U) 4/62

R5220 If workers are directly interested in the dispute then their own views on the subject in dispute do not matter. It does not matter that they

1. are not members of the trade union involved in the dispute¹ **or**
2. disagree with fellow workers demands and wish to continue working² **or**
3. do not know what the dispute is about, nor that they have a direct interest in it³ **or**
4. do not know that a dispute exists⁴.

1 R(U) 22/57, R(U) 26/57; 2 R(U) 17/61; 3 R(U) 22/57; 4 R(U) 14/64

R5221 A TD can be about any condition of employment. Workers may have a direct interest in disputes about

1. pay¹ **or**
2. the method of working out bonus earnings² **or**
3. the conditions governing payment of bonus³ **or**
4. superannuation⁴ **or**
5. time allowed for unpenalised lateness⁵ **or**
6. tea breaks⁶ **or**
7. demarcation of duties⁷ **or**
8. interchangeability⁸ **or**
9. heating arrangements⁹ **or**
10. free provision of protective clothing¹⁰.

*1 R(U) 3/56; R(U) 13/71; R(U) 14/71; R(U) 8/72; R(U) 1/74; R(U) 6/78; R(U) 8/80; R(U) 12/80; R(U) 1/84;
2 R(U) 18/58; 3 R(U) 25/56; 4 R(U) 17/61; 5 R(U) 4/62; 6 R(U) 3/62; 7 R(U) 1/60(T); R(U) 14/64;
8 R(U) 6/61; R(U) 9/80; 9 R(U) 4/65; 10 R(U) 5/77*

R5222 Workers who have a direct interest in a dispute may be able to show that they have stopped having such an interest before the stoppage has ended.

R5223 - R5224

Start date of stoppage

General rule

R5225 A stoppage starts on the first day on which work is

1. stopped **or**
2. limited to more than just a minor extent.

R5226 A stoppage can only begin on a day when work

1. is done **or**
2. would be done

but for the stoppage.

R5227 A stoppage cannot begin on a day when work would not be done anyway. If a national or regional stoppage is arranged for a given date, and that day is a non-working day in some of the places of work affected, the stoppage at those places begins on the next working day.

R5228 A stoppage cannot start on different dates for workers at the same place of work. Where different groups of workers at the same place of work stop work on different dates the stoppage begins on the date the first group refuses to work or is prevented from working. This may happen if

1. different groups decide to strike or are laid off on different dates **or**
2. there is shift, or staggered short time, working.

R5229 If the premises is divided into separate places of work the stoppage in these separate places may begin on different dates.

R5230 - R5232

Direct interest acquired

R5233 Workers who have no direct interest in the TD have not lost employment due to the stoppage. But if at a later date

1. a new matter becomes an issue in the dispute **and**
2. those workers have a direct interest in it

they will have lost employment due to the stoppage¹. Any entitlement to JSA will end from the first day of the week in which they do have an interest in the dispute.

Not employed because of the stoppage

R5234 The DM must decide whether the stoppage of work has caused claimants not to be employed on any day. If it has, they will not be entitled to JSA for any week which includes a day on which they were not employed for this reason¹.

1 JS Act 95, s 14

Week

R5235 A week is a period of seven days beginning on a Sunday¹.

1 JS Act 95, s 35(1)

R5236 Even if

1. subject to R5238 **5.** the employment would have finished anyway before the end of the stoppage¹ **or**
2. claimants would not normally have worked on every day during the stoppage, for example because they are
 - 2.1 a five-day week worker **or**
 - 2.2 on short time **or**
 - 2.3 a casual worker² **or**
3. claimants become incapable of work during the stoppage

they are not entitled to JSA.

1 R(U) 11/52; R(U) 17/56; R(U) 29/59; R(U) 12/72(T); 2 R(U) 32/55, R(U) 12/80

R5237 But if

1. a stoppage of work that claimants are directly interested in, ends **and**
2. claimants cannot work because of a further dispute that they do not have a direct interest in

the stoppage of work caused by the second dispute will not have caused them not to be employed.

R5238 When either

1. the stoppage comes to an end **or**
2. although the stoppage has not ended, it is no longer due to a TD **or**
3. claimants are no longer directly interested in the dispute **or**
4. claimants become genuinely employed somewhere else¹ **or**
5. claimants become redundant within the meaning of the relevant legislation²
or

6. having genuinely resumed work with their employer, claimants then leave for reasons unconnected with the TD³

the stoppage of work will no longer have caused the claimants not to be employed. When either reason 1. or 2. applies, the same date is applied to all workers at the same place of work. If 3. to 6. apply the date may be different for each worker at the same place of work.

1 JS Act 95, s 14(3)(a); 2 ER Act 96, s 139(1)(2); 3 s 14(3)(c)

- R5239 A stoppage of work can end even though the dispute continues. Claimants cannot lose employment due to a stoppage of work if there is no stoppage in that week (but see R5278 - R5284 if considering withdrawal of labour). But if, at a later date, there is another stoppage of work because of the same dispute, this stoppage will have caused them not to be employed¹.

1 R(U) 14/64

- R5240 If workers refuse to work only on some days each week but work normally on other days, there is a series of stoppages. But the DM will be concerned with the weeks which include at least one day of stoppage.

Return to work delayed

- R5241 In some cases a dispute is settled but return to work is prevented because of a different dispute that claimants have no direct interest in. In these cases as the claimants have no direct interest in the dispute, they have no longer lost work due to a stoppage caused by a TD.

- R5242 Claimants must prove that the stoppage is not caused by the TD¹.

1 CWU 18/49, R(U) 1/56

R5243 - R5244

When disentitlement is not appropriate

Direct interest ends

- R5245 Disentitlement to JSA will not be appropriate if claimants can show that they no longer have a direct interest in the dispute. Claimants must show that they can no longer be affected in any way by the outcome of the dispute.

- R5246 They will usually be able to prove this by showing that they have permanently stopped being a person who can be directly interested in the dispute.

- R5247 Resignation or dismissal during the dispute is not enough to show that there is no longer a direct interest in the dispute. If the reinstatement of a dismissed worker

becomes an issue in the dispute, then it has not been shown that the worker has permanently ended relations with the employer.

- R5248 Even if claimants are able to show that they have permanently ended relations with the employer, they must also show that any settlement of the dispute does not affect their position in any way during the period before the employment ended.

Example

There is a dispute about work at Sandra's place of work. As a result she resigns and makes a claim for JSA. When the dispute is settled Sandra will receive arrears of pay for the period before her employment ended. The DM decides that Sandra cannot show that any settlement would not affect her position before her employment ended.

- R5249 It is important to look in detail at claimants' reasons for resigning, or the employer's reasons for dismissing claimants, where it is alleged that

1. there has been a permanent ending of relations between claimants and the employer **and**
2. the claimants' direct interest in the dispute has ended.

R5250 - R5251

Employed somewhere else

- R5252 If claimants can show that during a stoppage of work they have become genuinely employed somewhere else, they will no longer have lost employment due to the stoppage of work¹. But a sanction question may arise².

1 JS Act 95, s 14(3)(a); 2 s 19 & 19A

Employed

- R5253 "Employed" in this context means either employed earner's or self employment.

Somewhere else

- R5254 This means somewhere other than where claimants worked when the stoppage started. The new work must be

1. at different premises **or**
2. in a separate department on the same premises if that department is a separate place of work.

Genuinely

R5255 Whether work is genuine is a question of fact to be decided by the DM. The decision must be based on available evidence.

R5256 Work should be both genuine and taken up for an honest motive¹.

1 R(U) 6/74

R5257 If claimants show that the job was taken up for a proper reason, for example to have a job and earn a living, then it is genuine. If this has been shown, the work

1. does not have to be permanent **or**
2. taken with the intention of permanently ending relations with the previous employer.

R5258 Work can be genuine even if

1. it turns out to be temporary **or**
2. claimants know it will be temporary from the start.

The probable, or expected, duration of the work is only one element in considering whether it is genuine. The fact that it turns out to last only a short time is not enough on its own to find that it was not genuine.

R5259 Work is not genuine if the claimant

1. takes it **or**
2. maintains to have taken work which is a sham

simply to avoid disentanglement to JSA.

R5260 Work which is done for a big employer is usually genuine. But work which is done for a small firm, owned by a friend, will often not be genuine. The DM must, in all cases, find out exactly the nature of the work and how claimants came to start it¹.

1 R(U) 6/74

R5261 - R5263

Work ended due to redundancy

R5264 If claimants can show that during a stoppage they have been made redundant they can claim JSA¹. The redundancy must be within the meaning of the relevant legislation².

1 JS Act 95, s 14(3)(b); 2 ER Act 96, s 139(1)(2)

R5265 For guidance on whether work has ended due to redundancy within the meaning of the relevant legislation see ADM Chapter S5: JSA Higher level sanctions. If there is some doubt as to whether redundancy has resulted in the permanent ending of relations between the employer and the employee, for example because the redundancies were an issue in the dispute, refer the case to DMA Leeds.

Genuinely returned to work, then left

R5266 Claimants who can prove that during the stoppage they

1. genuinely returned to work as an employed earner for the employer **and**
2. then left for reasons other than the TD

will not have lost employment because of the stoppage¹. This applies from the date that the claimant returned to work for the employer.

1 JS Act 95, s 14(3)(c)

Resumed work with employer

R5267 Claimants have resumed work with the employer if they have gone back to work for the same employer they worked for immediately before the stoppage began. It does not have to be the same job. Any work with that employer is enough.

R5268 Claimants have not satisfied this condition if they have returned to work for a different employer at the same place of work where they worked when the stoppage began. Nor can they satisfy the "employed somewhere else" condition¹.

1 JS Act 95, s 14(3)(a)

R5269 - R5270

Subsequently left

R5271 The word "left" includes leaving voluntarily and dismissal. It does not include suspension. For guidance on the difference between termination and suspension from work see ADM Chapter S2: JSA & employed earners.

For a reason other than the trade dispute

R5272 The main reason for leaving must not be the TD¹. It does not matter that the dispute is a minor factor in the decision to leave if it seems likely that the claimants would have left for another reason in any event.

1 JS Act 95, s 14(3)(c)

R5273 But if

1. the dispute is a major factor in the decision to leave **and**
2. it seems unlikely that claimants would have left if it had not been for the dispute

then it cannot be said that the claimants have left for reasons other than the TD.

R5274 The circumstances in which claimants leave employment may give grounds for a sanction being imposed¹.

1 JS Act 95, s 19 & 19A

R5275 - R5277

When the stoppage has ended

R5278 Claimants have to prove that the stoppage of work has ended¹.

1 R(U) 1/56

R5279 A stoppage at a place of work ends when there has been a general return to work. If the dispute has not been settled

1. workers may return to work a few at a time **or**
2. their places may be gradually filled by others.

R5280 In such cases the stoppage ends when the employers have got all of the workers they need, that is, when work is no longer stopped or curbed

1. by workers refusing to work on the employer's terms **or**
2. by the employer's refusal to employ the workers on their terms **or**
3. because work has to be reorganised due to
 - 3.1 circumstances directly resulting from the dispute **or**
 - 3.2 repairs, which are necessary because of the stoppage, have not been completed¹.

1 R(U) 25/57

R5281 The ending of a stoppage is a question of fact¹.

1 R(U) 5/86(T)

R5282 The date of the end of the stoppage is the last day of the stoppage. This is normally the day before work is

1. resumed **or**
2. sufficiently resumed.

R5283 Settlement of the dispute, or an agreement to return to work, does not mean that the stoppage has ended. If the employer and workers at a particular place of work do not reach agreement on the terms of a return to work the stoppage has not ended at that place of work even though there has been

1. a national settlement **and**
2. a general return to work elsewhere¹.

1 R(U) 12/60

R5284 But a stoppage may end without settlement of the dispute if the number of workers

1. returning to work **or**
2. whose places are taken by others

is enough to enable work to carry on normally again at the place of work concerned.

R5285

Normal working

R5286 Normal working need not be the same as it was immediately before the dispute or stoppage started, for example

1. working practices **or**
2. the amount of work available

may have changed in the interim period, even if the stoppage had not happened. This may be so particularly if the stoppage was lengthy.

R5287 Normal working means working which would be regarded as normal on the particular day in question.

R5288 A stoppage of work cannot end on different days for different workers at the same place of work¹.

1 R(U) 17/56

Example 1

There is a stoppage of work at the factory where Samantha works. She then returns to work to do her own job but no other workers return to work. Samantha's return to work does not bring the stoppage to an end.

Example 2

There is a trade dispute at a factory involving the coppersmiths. The coppersmiths' labourers then withdraw their labour in support of the coppersmiths. However, a few days later the labourers return to work but the coppersmiths do not return to work for a further two weeks. The stoppage of work did not end until the date on which the coppersmiths returned to work.

R5289 If premises are divided into separate departments which are separate places of work, stoppages in these separate places can end on different dates.

Gradual return to work

R5290 It can be difficult to decide on what date work can be said to have returned to normal in cases where there is a gradual return to work, for example where

1. it is normal for the number of workers to vary a lot depending on trading conditions **or**
2. business has been lost because of the stoppage **or**

3. fewer people are needed to do the same amount of work as before the stoppage (possibly because of previous over-staffing) **or**
4. the stoppage was so long, it is no longer possible to say what is normal working because of industrial or other changes happening during the stoppage.

R5291 When this happens the stoppage will have ended when the employers have got all the workers they need to perform the work available.

R5292 If the employer cannot say definitely when they have got all the workers they need, the stoppage will have ended when more than 90% of the workforce has gone back to work¹. Cases of doubt should be referred to DMA Leeds.

1 R(U) 5/86

R5293 - R5294

Closure of business

R5295 If

1. the employer
 - 1.1 closes the business **and**
 - 1.2 cuts all relations with the workers **and**
2. the only reason for the closure is the TD

claimants who have lost employment because of the closure have permanently lost it due to a stoppage caused by the dispute¹. This means they will not be entitled to JSA until they have had another job.

1 R(U) 15/80

R5296 But usually it is some reason other than the TD that leads to closure, such as financial difficulties. In these cases, once the closure is complete, the stoppage is no longer due to the TD.

R5297 In deciding whether there is a closure in this situation, the DM should consider the

1. nature **and**
2. extent **and**
3. characteristics

of the business. If the main reason for the company's existence has gone, and the company has lost, or given up, its essential function and taken on no other function, there is a closure¹. This is so even if work is continuing to dispose of the assets.

1 R(U) 15/80

Example

A company makes and sells goods. The employer has dismissed the productive workforce. He will never re-employ or replace them. All trading procedures such as looking for new work, selling and quoting for goods, has ended. The company is no longer "in business" - even if work continues to dispose of its assets.

R5298 It may only be possible to decide the date of closure with hindsight. If the employer has in effect withdrawn from the contest, continued picketing does not mean that the company has not closed.

R5299 Where the DM thinks that permanent closure was due only to the TD and that an adverse decision may be appropriate, the case should be referred to DMA Leeds.

R5300 - R5301

Permanent reduction in trade

R5302 A stoppage does not come to an end automatically where employers decide that in future they will only trade on a smaller scale. But once

1. all the necessary arrangements have been made **and**
2. business is being carried on at the reduced level

the stoppage is no longer due to the dispute.

Withdrawal of labour

R5303 Workers who

1. have not lost employment because there is a stoppage due to a TD **but**
2. nevertheless withdraw their labour to help further that dispute

are not entitled to JSA for any week that includes a day on which labour is withdrawn¹.

1 JS Act 95, s 14(2)

R5304 Claimants may have withdrawn their labour if they

1. have previously been found to have lost employment because of a stoppage of work caused by a TD **and**
2. make a new claim after the stoppage has ended.

R5305 Claimants who withdraw their labour in furtherance of a TD in which they have no direct interest may later acquire such an interest. In these cases they will have lost employment because of a stoppage of work caused by a TD¹.

1 JS Act 95, s 14(1)

R5306

Labour

R5307 Labour includes both self-employed and employed-earner's employment.

When has labour been withdrawn

R5308 Claimants will have withdrawn their labour if

1. they do not attend for work **or**
2. having turned up for work, they then refuse to do any (or only a small amount) of the work which is normally their own, even where their employer lays them off **or**
3. having been laid off they then refuse to return to work when it becomes available. In this case claimants will have withdrawn their labour from the date on which they refused to return to work.

R5309 Claimants will still have withdrawn their labour, even if the employer terminates their contract of employment as a move in the dispute.

R5310 - R5311

R5312 Whether claimants have withdrawn their labour is a question of fact. The DM should consider, amongst other things

1. what claimants were asked to do **and**
2. what duties they had to perform under the terms of their contracts **and**
3. what, if anything, they did in fact do **and**
4. what they were prepared to do.

If claimants refuse only to work overtime, or refuse to perform only a small portion of their own duties, they have not withdrawn their labour. Cases of doubt should be referred to DMA Leeds.

R5313 If claimants work for part of the day and then stop work, they will have withdrawn their labour for that day.

R5314 Withdrawal of labour is a voluntary act. Claimants who are prevented from working by picket violence, or the threat of it, have not withdrawn their labour.

To help further a trade dispute

R5315 The withdrawal of labour must be to help further a TD. The dispute does not need to be at the claimant's place of work. Nor does there need to be a stoppage of work, either at the claimant's or any other place of work.

Period of withdrawal

R5316 Claimants will not be entitled to JSA from the first day of the week in which, on any day, they withdrew their labour. This will be a Sunday.

R5317 If claimants then resign, or are dismissed by their employer, the DM must establish whether that is merely a move in the dispute.

R5318 If claimants can show that

1. their employment has been unconditionally ended **and**
2. the employer or the claimants concerned are no longer willing to employ or be employed by the other

an adverse decision should not be given.

R5319 Where the re-instatement of a worker becomes an issue in the dispute, it cannot be said that that person has permanently ended relations with the employer.

R5320 - R5322

Statutory sick pay

R5323 If an employer and an employee disagree about whether there is entitlement to SSP, a DM will make a decision.

R5324 There is no entitlement to SSP¹ if on the relevant date there is a stoppage of work due to a TD at the claimant's place of work.

1 SS CB Act 92, Sch 11, para 1 & 2(g)

R5325 This rule will not apply if the claimant can show that at no time, on or before the relevant date, did they have a direct interest in the TD in question¹.

1 SS CB Act 92, Sch 11, para 7

Relevant date

R5326 The relevant date is the date on which a period of entitlement to SSP would begin if it were not for the TD provision¹

1 SS CB Act 92, Sch 11, para 3

R5327 The DM dealing with the SSP question may not be experienced in deciding TD questions. The DM dealing with the SSP question can ask a SDM to decide whether, on the relevant date, there was

1. a stoppage of work due to a TD at the claimant's place of work **and**
2. if so, whether the claimant has proved that at no time on or before that date did they have a direct interest in the TD.

R5328 - R5329

Stoppage of work due to a trade dispute at the place of work

R5330 The DM deciding the TD question will only need to consider whether there was a stoppage of work due to a TD at the claimant's place of work on the date referred by the DM deciding the SSP question.

R5331 When considering whether there was a stoppage of work due to a TD see R5016 - R5118.

R5332 The question whether a claimant has lost employment due to the stoppage does not arise for SSP purposes.

Direct interest

R5333 In deciding whether claimants have, or had, a direct interest in the TD in question, follow the guidance in R5201 - R5222.

R5334 Claimants must prove that at no time on or before the relevant date did they have a direct interest in the dispute.

R5335 Once claimants have had a direct interest it cannot assist their claim if their interest ended before the relevant date. But if claimants have not had a direct interest in the dispute, up to and including the relevant date, it does not matter if they later acquire a direct interest. It is only the position up to and including the relevant date that matters.

R5336 - R5337

Other benefits

R5338 There are other benefits where entitlement depends on whether the claimant, or their partner, is involved in a TD.

R5339 The DM determining entitlement to these benefits may not be experienced in deciding TD questions. They may ask the DM who is experienced in deciding TD questions for

1. a decision **or**
2. an opinion

as to whether the claimant, or their partner, is involved in a TD.

R5340 If such a question is referred to the DM who is experienced in deciding TD questions, they should

1. make their decision **or**
2. give their opinion

using the guidance in R5003 - R5335.

R5341 - R5499

The content of the examples in this document (including use of imagery) is for illustrative purposes only