



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. V. v. Minister of Employment and Social Development*, 2016 SSTADIS 378

Tribunal File Number: AD-15-1243

BETWEEN:

N. V.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills
Development)**

Respondent

and

J. V.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: September 28, 2016

REASONS AND DECISION

OVERVIEW

[1] At its core, this case is about whether a breach of natural justice occurred following a division of unadjusted pensionable earnings between the Appellant and her former spouse, which resulted in a reduced monthly retirement pension for the Appellant.

[2] The Appellant appeals a decision dated October 13, 2015 of the General Division, whereby it summarily dismissed her appeal of a decision upholding the Respondent's calculation of the division of unadjusted pensionable earnings. The General Division was satisfied that the appeal did not have a reasonable chance of success.

[3] The Appellant filed an appeal of the decision of the General Division on November 17, 2015 (the "Notice of Appeal"). She filed additional submissions on January 15, 2016 and on March 29, 2016. No leave is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Having determined that no further hearing is required, this appeal before me is proceeding pursuant to subsection 37(a) of the *Social Security Tribunal Regulations*.

ISSUES

[4] The two issues before me are as follows:

1. did a breach of natural justice occur following a division of unadjusted pensionable earnings, and
2. did the General Division err in choosing to summarily dismiss the Appellant's appeal?

BREACH OF NATURAL JUSTICE

[5] Under subsection 58(1) of the DESDA, the grounds of appeal are limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] The Appellant submits that there has been a breach of natural justice. However, she does not contest the appeals process or the summary dismissal procedure. Rather, she argues that the outcome following a credit split is unjust and unfair to her, as she now receives a smaller monthly retirement benefit than she had anticipated when she applied for the split and worse, she perceives that the Added Party has been unjustly enriched.

[7] Natural justice is concerned with ensuring that an appellant has a fair and reasonable opportunity to present his or her case, and that the decision rendered is free of any bias or the reasonable apprehension or appearance of bias. It relates to issues of procedural fairness before the General Division, rather than to how any decisions rendered by the General Division affects any of the parties. The Appellant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. She has not provided any evidence that the General Division has otherwise deprived her of an opportunity to fully and fairly present her case.

SUMMARY DISMISSAL PROCEDURE

[8] The Appellant did not contest the appropriateness of the summary dismissal of her appeal before the General Division. A summary dismissal is appropriate when there are no triable issues, when there is no merit to the claim, or as the statute reads, there is "no reasonable chance of success". On the other hand, if there is a sufficient factual foundation to support an appeal and the outcome is not "manifestly clear", then the matter is not appropriate for a summary dismissal. A weak case is not appropriately summarily

dismissed, as it involves assessing the merits of the case and examining the evidence and assigning weight to it.

[9] The General Division found that it was empowered only to the extent of its governing statute and that it was required to interpret and apply the provisions as set out in the *Canada Pension Plan* and the *Regulations* thereto. The General Division found the provisions of the *Canada Pension Plan* and the *Regulations* to be clear and the evidence unequivocal. The General Division found that there was no chance for the Appellant to succeed on an appeal, given the law and the facts.

[10] As the General Division was satisfied that the appeal was without any merit, it rightly concluded that the appeal had no reasonable chance of success, and properly summarily dismissed it on that basis.

CONCLUSION

[11] The appeal is dismissed.

Janet Lew
Member, Appeal Division