Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 472

Tribunal File Number: AD-17-264

BETWEEN:

R. T.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Nancy Brooks

DATE OF DECISION: September 21, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant disagrees with the amount paid to him as his combined retirement/survivor pension (combined pension) under the *Canada Pension Plan* (CPP) starting when he turned 65 years of age. He made an objection to the Respondent. In its original decision and upon reconsideration, the Respondent refused to change the amount being paid.

[2] In a decision issued on March 3, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) summarily dismissed the appeal.

[3] The Appellant appeals from that decision.

[4] Pursuant to paragraph 37(*a*) of the *Social Security Tribunal Regulations* (Regulations), I have decided that no further hearing is necessary and that the appeal will proceed on the basis of the documentary record. There are no gaps in the file, there is no need for clarification, and proceeding in this manner respects the requirement under the Regulations to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

DECISIONS BELOW

[5] The Appellant elected to receive his retirement pension in October 2013, when he was 62 years of age. At the time he elected to receive his retirement pension, he was already receiving a survivor's pension and his combined pension was calculated in accordance with s. 58(2)(*a*) of the CPP to be $1,051.64 per month. When he turned 65 in January 2016, his combined pension was recalculated in accordance with s. 58(2)(*c*) of the CPP, which resulted in a decrease in the monthly payment to $918.78 payable from February 2016.[1]

[6] After the amount of his combined pension was reduced due to application of the s. 58(2)(*c*) recalculation, the Appellant wrote to the Respondent to dispute the amount that was being paid to him, contending that the Respondent was obligated to pay him the amount "promised" to him in correspondence the Respondent had sent to him in 2013.

[1] GD2-31 to GD2-35.

[7] In the Respondent's initial decision dated March 30, 2016,[2] the Respondent reproduced s. 58(2)(*c*) of the CPP and set out the calculation using the Appellant's information. No change to the amount of the combined pension was made.

[8] The Appellant requested a reconsideration.[3] In its reconsideration decision,[4] the Respondent refused to change the amount of the combined pension. In the letter conveying the reconsideration decision dated September 9, 2016, the Respondent stated:

> We have reviewed your file and maintain our original decision for the following reason:
>
> We have re-examined the amount of your benefits, and we can confirm that you are receiving the correct monthly amount.
>
> In your letter, you write that you should be receiving "the amounts [you were] promised for [your] CPP." However, our letter to you of September 18, 2013, explicitly states that the amounts indicated are estimates only. They are not a promise of benefit amounts.
>
> Our letter of September 18, 2013, also states that the estimates for both age 62 and age 65 are based upon "the anticipated retirement ages indicated on your request." The estimate listed for age 65 is calculated based on you starting your retirement pension at age 65. It is not an estimate of what your pension would be at age 65 if you started your retirement pension at age 62.

[9] The Appellant's appeal to the General Division was summarily dismissed on March 3, 2017 on the grounds that the amount of the combined pension is determined by calculations stipulated in the CPP and the Appellant had not pointed to any error in the calculation carried out by the Respondent.

[10] With respect to the Appellant's argument that the Respondent should be required to pay the figure stated in correspondence sent by the Respondent to the Appellant before he turned 65, the General Division found that it was clearly communicated to the Appellant that the stated amounts were estimates only and the combined pension amount would be recalculated when he reached age 65 as all information was not available at the time the letters were written. The

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[2] GD2-31 to GD2-35.
[3] GD2-18.
[4] GD2-16 to GD2-17.

Appellant was seeking an equitable remedy, but the General Division has no jurisdiction to vary or waive the provisions of the CPP.

[11] With respect to the Appellant's suggestion that the Tribunal should contact the Prime Minister of Canada "to help resolve my problem", the General Division member wrote that the Tribunal is an independent quasi-judicial body that is not subject to political interference and it would be entirely inappropriate for the Tribunal to contact the Prime Minister or any other elected official concerning the appeal.

SUBMISSIONS

[12] The Appellant submits that the General Division decision:

> […] fails to address any of the points I've put forward in my appeal. They fail to address that the CPP estimate calculations provided to me were done by Service Canada in 2013 and not by myself and they fail to take any accountability for the accuracy of their estimates. If Service Canada is incompetent in providing estimates and is providing them with such large margins of error, simply letting the taxpayer know that they don't know how to calculate the estimate would have been better.

[13] The Appellant complains that Service Canada instructed him to appeal the reconsideration decision to the Tribunal, which then held that it had no equitable jurisdiction "to correct the CPP payments". He questions why, if this is the case, he was asked to appeal to the Tribunal. He also questions how, if the General Division had no jurisdiction to correct the CPP payments, it had the authority to dismiss the appeal.

[14] The Appellant states that he told the General Division that if it lacked equitable jurisdiction to correct the retirement/survivor pension amount, it should contact the Prime Minister of Canada who would give the Tribunal the authority to change the pension amount. He states that the General Division said it was inappropriate to do this and alleges it "just dismissed the appeal instead as this is easier for them [*sic*] to do". He asserts on this appeal that it is "absurd that […] our Prime Minister would have no authority in this matter".

[15] The Respondent made no submissions on the appeal.

RELEVANT LEGISLATION

[16] Section 22 of the Regulations states that before summarily dismissing an appeal, the General Division must give an appellant notice in writing and allow the appellant a reasonable period to make submissions. In compliance with s. 22 of the Regulations, the Appellant was given notice in writing of the General Division member's intent to summarily dismiss the appeal and was allowed a reasonable time to make submissions.[5] The General Division complied with these procedural requirements before issuing the decision summarily dismissing the Appellant's appeal.

[17] Pursuant to s. 53(1) of the *Department of Employment and Social Development Act* (DESDA), the General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success. The issue before me is whether the General Division committed an error within the scope of s. 58(1) of the DESDA when it summarily dismissed the Appellant's appeal.

[18] Subsection 58(2) of the CPP sets out a formula for the calculation of a recipient's retirement and survivor pension. Paragraph 58(2)(*a*) sets out the formula that is applied to someone who is receiving a survivor's pension and starts receiving his or her retirement pension before age 65. Paragraph 58(2)(*c*) sets out the formula for the recalculation of the combined pension that occurs when the recipient turns 65.

THE APPEAL DIVISION'S ROLE

[19] This is an appeal of a summary dismissal brought under s. 53(3) of the DESDA and, as such, no leave to appeal is necessary.

[20] Subsection 58(1) of the DESDA specifies that the only grounds of appeal to the Appeal Division are that:

> a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

[5] GD0: Notice of Intention to Summarily Dismiss.

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.

[21] Subsection 59(1) of the DESDA provides that the Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate, or confirm, rescind or vary the General Division's decision in whole or in part.

[22] In *Canada (Minister of Citizenship and Immigration) v. Huruglica*, [2016] 4 FCR 157, 2016 FCA 93, at paras. 46–48, the Federal Court of Appeal held that neither the standards of review analysis applied by courts when they conduct judicial review of decisions made by administrative decision-makers (as discussed in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9) nor the principles engaged by an appellate court's review of a lower court decision (as discussed in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33) necessarily apply to appeals within a multilevel administrative framework. Rather, "the role of a specialized administrative appeal body is purely and essentially a question of statutory interpretation, because the legislator can design any type of multilevel administrative framework to fit any particular context" (at para. 46).

[23] Thus, when Parliament has designed a multilevel administrative framework, the scope of the appeal tribunal's review of the lower tribunal's decision is to be determined by the language in the governing statute. Although *Huruglica* dealt with a decision of the Refugee Appeal Division of the Immigration and Refugee Board, the Court's reasoning applies equally to other multilevel administrative frameworks, such as the Social Security Tribunal.

[24] Turning to the Appeal Division's role on an appeal of a General Division decision, the DESDA provides for appeals only on the grounds set out in s. 58(1). The Federal Court confirmed in *Marcia v. Canada (Attorney General)*, 2016 FC 1367, that an appeal to the Appeal Division does not constitute a hearing *de novo*. Therefore, the Appeal Division must base its decision on the decision rendered by, and the record that was before, the General Division.

[25] Given the unqualified wording of ss. 58(1)(*a*) and (*b*) of the DESDA, no deference is owed to the General Division on questions of natural justice, jurisdiction or errors of law. The General Division's decisions on such questions may be set aside if the Appeal Division concludes that the decision was not correct.

[26] The wording of s. 58(1)(*c*), combined with the fact that the appeal is based on the same evidence that was presented at the General Division level, suggests that the Appeal Division owes a degree of deference to the General Division findings of fact: in addition to the impugned finding of fact being material ("based its decision on") and incorrect ("erroneous"), for the appeal to succeed, the impugned finding must also have been made in a perverse or capricious manner or without regard for the evidence before the General Division. In *Hussein v. Canada (Attorney General)*, 2016 FC 1417, at para. 44, the Federal Court held that "[t]he weighing and assessment of evidence lies at the heart of the SST-GD's [General Division's] mandate and jurisdiction. Its decisions are entitled to significant deference."

[27] Paragraph 58(1)(*c*) directs the Appeal Division to intervene if the General Division based its decision on an erroneous finding of fact made "in a perverse or capricious manner" or "without regard for the material before it". As suggested by *Huruglica*, those words must be given their own interpretation: the language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record: see *R. H. v. Minister of Employment and Social Development*, 2017 SSTADIS 58. Avoiding a standard of review analysis, I conclude that, based on the wording of s. 58(1)(*c*), the Appeal Division is empowered to intervene where a finding of fact that the General Division has made is outside the range of acceptable and rational outcomes given the evidence before it.

DISCUSSION

[28] This appeal concerns whether the Appellant is entitled to have the amount of his combined pension at age 65 adjusted to reflect the amounts that were stated in correspondence sent to the Appellant before he turned 65.

[29] The Respondent provided the Appellant with a detailed calculation of his combined pension in letters dated March 30, 2016[6] and April 25, 2016.[7] The contents of these two letters are identical and show the calculation carried out to reach the conclusion that under s. 58(2)(*c*) of the CPP, the Appellant's retirement/survivor pension upon turning age 65 was $918.78.[8] The Appellant has not pointed to any error in this calculation; rather, his position is that the Respondent should be obligated to pay the amount that had been stated in correspondence sent to him in 2013, before he turned 65 years of age.

[30] Given the Appellant's reliance on the Respondent's correspondence, I will describe it in some detail.

[31] In a letter to the Appellant dated September 4, 2013, the Respondent stated:

> The estimate shown below is based on your earnings and contributions made to the Canada Pension Plan to date and calculated using the anticipated retirement age indicated on your request.
>
> At age 65, you will have earned a combined retirement/survivor pension of $1012.50 per month.
>
> Please note the above calculation is an estimate only. We calculated the estimated value of your retirement pension based on currently available data".[9]

[32] From this letter, it is apparent that if the Appellant retired at age 65, his combined pension would be $1,012.50 per month.

[33] On September 4, 2013, the Appellant wrote to the Respondent to inquire about the amount he would be paid if he started to receive his CPP retirement pension "now" and whether, if he started to receive his retirement pension "now", there would be a change to his CPP pension when he reached age 65.[10]

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[6] GD2-31 to GD2-34.
[7] GD2-26 to GD2-29.
[8] This amount is adjusted in January of each new year to apply a cost of living adjustment.
[9] GD2-45.
[10] GD2-47.

[34] On September 5, 2013, the day after that letter was sent, the Appellant submitted his CPP Retirement Application electronically.[11] The application gave his birth date as January 15, 1951, and stated that he wished to have his retirement pension start in October 2013. His retirement pension was approved by the Respondent, effective October 2013,[12] when the Appellant was 62 years of age. As the Appellant was already receiving a survivor's pension when he applied for his retirement pension, in accordance with the calculation set out in s. 58(2)(*a*) of the CPP, he received a combined pension at this time, in the amount of $1,051.64.

[35] On September 18, 2013, the Respondent wrote as follows:

> We have received your request of September 10, 2013[13] for an estimate of your Canada Pension Plan retirement pension. The estimate shown below is based on your earnings and contributions made to the Canada Pension Plan to date and calculated using the anticipated retirement ages indicated on your request.
>
> At age 62, you will have earned a retirement pension of $874.43 per month and a survivor's pension of $177.21. [Total: $1051.64]
>
> At age 65, you will have earned a retirement pension of $1011.49 per month and a survivor's pension of $1.01. [Total: $1012.50]
>
> Please note that the above calculations are estimates only. We calculated the estimated value of your retirement pension based on currently available data.

[36] The Appellant relies on the September 18, 2013 letter to assert that the Respondent effectively promised him that even if he started his retirement pension payout at age 62, his combined pension at age 65 would be $1,012.50. This is not how I read this letter. The estimates given are for the anticipated retirement ages inquired about: age 62 and age 65. The estimate given for age 62 is based on the Appellant starting his retirement pension at age 62. The estimate given for age 65 is based on the Appellant starting his retirement pension at age 65. The Respondent's letter of September 4, 2013 supports this interpretation of the September 18, 2013 letter.

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[11] GD2-48 to GD2-51.
[12] GD2-51.
[13] I assume September 10, 2013 is the Respondent's date-stamp on the Appellant's September 4, 2013 letter.

[37] In any event, the figures provided are expressly stated to be estimates only. Regardless of these estimates, the formulae set out in the legislation would have to, by law, prevail. As noted earlier, the CPP provides one formula in s. 58(2)(*a*) for a combined pension where the surviving spouse has not reached age 65. Upon the survivor turning 65, the combined pension is recalculated in accordance with s. 58(2)(*c*). The estimates given by the Respondent in the September 18, 2013 letter cannot change what is provided for by law under the CPP.

[38] On September 24, 2013, the Respondent wrote again and explained the calculation of the Appellant's combined pension as it then stood to be $1,051.64. The Respondent's letter continued:

> The amount above [$1,051.64] represents the current total amount of your combined benefit.
>
> Please note that Canada Pension Plan benefits are adjusted in January of each new year to take into account changes in the cost of living.
>
> **Recalculation at age 65**
>
> It is important to remember that your benefit will be recalculated when you reach the age of 65.
>
> Because this calculation will involve new information that is not available at this time, we cannot tell you what the exact amount of your benefit will be after it is recalculated. However, **as a rough estimate only**, if you had turned 65 this year your total benefit amount would have been adjusted to approximately **$883.86.** [bold and underlining in original]

[39] As is apparent from this letter, the Appellant was advised that his combined pension would be recalculated at age 65. He was advised that as a result of this recalculation, as a rough estimate the combined pension when he turned 65 would be $883.86.

[40] It is clear from this letter that the Appellant was advised in no uncertain terms that there would be a recalculation of his total benefit when he turned 65 years of age, and the amount of the estimate of the total benefit amount was lower than what he was entitled to at age 62.

[41] The essence of the Appellant's argument is that a representation was made to him by a government official and he should be able to hold the Respondent to the representation he perceives was made. There is no merit to this argument for the following reasons.

[42] First, there was no representation as to what would be paid, as all figures, in every item of the Respondent's correspondence, referred to the numbers given as "estimates".

[43] Second, the September 18, 2013 letter never represented that if the Appellant took his retirement pension at age 62, his combined pension at age 65 would be $1,012.50. As I noted above, the two estimates given in the September 18, 2013 letter are based on the two "anticipated" start dates at age 62 and age 65. The September 24, 2013 letter advised the Appellant of the recalculation that would occur at age 65.

[44] Third, even if I were to find that the officials who wrote the September 18, 2013 letter had made the representation the Appellant says was made, the Courts have held that the doctrine of legitimate expectations cannot create substantive rights,[14] therefore any representation had it been made would not affect the actual amount of the payment. The officials could not commit the Respondent to acting contrary to the law, in this case the formula for calculating the combined benefit provided for in s. 58(2) of the CPP.

[45] The Appellant provided to the General Division supporting letters, including one from his Member of Parliament, which are described at para. 10 of the General Division decision. The authors of these letters expressed their support for the Appellant's position. It is apparent that the Appellant went to significant effort to put his case forward in as strong a light as possible by including letters from these supporters. However, the General Division committed no error in refusing to be swayed by these letters. He noted the opinions of the authors of the letters misinterpreted the meaning of estimate as the word "estimate" in no way means commitment. I would add that the opinions of the authors of the letters were irrelevant to the issue that was before the General Division member, which was whether the combined pension being paid was incorrect. None of the authors had any expertise in this subject.

[14] See *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 SCR 249, 2002 SCC 11.

[46] Paragraph 81(1)(*c*) of the CPP stipulates that a beneficiary who is dissatisfied with any determination as to the amount of a benefit payable may seek reconsideration by the Minister. If the beneficiary is dissatisfied with the Minister's reconsideration decision, he or she may appeal to the Tribunal. Thus, Parliament has delegated authority to the Tribunal to decide appeals of decisions of the Minister as to the amount of the benefit payable to the Tribunal. The Appellant did not suggest any basis on which the actual calculation of his combined pension was erroneous under s. 58(2) of the CPP, but was seeking the Tribunal's assistance to hold the Respondent to estimates as he understood them. The General Division member noted that in circumstances where the calculations had been carried out in accordance with the CPP and the Appellant was seeking an equitable remedy, he had no jurisdiction to do this. He was correct in this regard: under the statutory regime, the Tribunal is not empowered to provide any form of equitable relief.

[47] Finally, with respect to the submission that the General Division member should have approached the Prime Minister to intervene on the Appellant's behalf, there is no merit to this submission. The General Division member was entirely correct to reject the Appellant's suggestion since it would be highly improper for him, as a member of a quasi-judicial tribunal, to approach a member of the political branch for assistance in resolving a dispute that had come before the Tribunal for decision.

DISPOSITION

[48] I conclude that the General Division member correctly stated and applied the law to the issues before him. In my view, he correctly concluded the appeal had no reasonable chance of success.

[49] The Appellant has not put forward any basis for me to find that the General Division member committed an error falling within the scope of s. 58(1) of the DESDA. Accordingly, I dismiss the appeal.

Nancy Brooks
Member, Appeal Division