

Citation: *A. A. et al v. Canada Employment Insurance Commission*, 2014 SSTGDEI 4

Appeal No.: GE-13-1289

BETWEEN:

A. A. et al

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Me Dominique M. Bellemare, Vice-Chair
(Employment Insurance)

DATE OF DECISION: January 15, 2014

DECISION

[1] The Tribunal dismisses the motion to stay proceedings submitted by the Respondent.

INTRODUCTION

[2] In order to make this decision easier to read, the style of cause names only one of the appellants but this decision applies *mutatis mutandis* to all the appellants named in the annexed list.

[3] The motion to stay proceedings was sent to the Tribunal on November 8, 2013, by the Respondent's representative, Éric Giguère, Director of Employment Insurance Appeals. On November 20, 2013, the Tribunal sent a letter to the Appellants to whom this motion applies, or to their representative, inviting them to submit arguments regarding this motion.

ISSUE

[4] The issue is whether appeal proceedings before the General Division of the Tribunal should be stayed in the case of the Appellants named in the list annexed.

APPLICABLE LAW

[5] The parties did not refer to any particular legislative or regulatory provisions. This decision is based on section 4 of the *Social Security Tribunal Regulations*, which provides that, a party may request the Tribunal to provide for any matter concerning a proceeding.

EVIDENCE

[6] No particular additional evidence was filed by any of the parties to support the motion that is the subject of this decision, with the exception of the evidence in the record.

PARTICULAR FACTS

[7] More than 300 Aveos/Air Canada appeals have been filed with the Tribunal, but this motion covers approximately 250 of them.

[8] The Social Security Tribunal is dealing with this situation because the Tribunal was created by Parliament on April 1, 2013. All of the cases here are the result of initial decisions or requests for reconsideration. Before April 1, 2013, an appeal to a Board of Referees could be filed from an initial decision. As of April 1, 2013, an appeal to the General Division of the Tribunal can be filed from a reconsideration decision. For this reason, some appeals were heard by Boards of Referees and some appeals are currently before the General Division of the Tribunal. Moreover, because of the transitional provisions that now apply, appeals from Board of Referees' decisions that were previously heard by Umpires have been transferred to the Tribunal's Appeal Division.

[9] All of the Appellants covered by this motion are former employees of Aveos Fleet Performance and Air Canada. The Respondent is claiming repayment of benefits that they supposedly received in overpayment because the Respondent determined that the severance pay they received constituted earnings.

SUBMISSIONS BY THE PARTIES

[10] The Respondent pointed out that:

- (a) It is preferable to have appeals decided at a level higher first.
- (b) The decision by a Member of the Appeal Division will be taken into consideration and could influence the Respondent's position regarding other appeals under way and may have an impact on the results of appeals at the General Division.
- (c) In the event that these appeals come before the Federal Court of Appeal, this decision would then be binding on both the Tribunal and the Respondent.

[11] The Appellants pointed out that:

- a) There is no specific reason that would justify staying proceedings. The only difference between cases that were heard by the Board of Referees and cases that will be heard by the General Division of the Tribunal is the date on which the Respondent received the letters of appeal or the requests for reconsideration from the claimants.
- b) To the extent that the Appeal Division renders its decision before the appellants being heard by the General Division have had a chance to present their explanations, there could reasonably be some doubt about the Tribunal's impartiality when Appellants subsequently need to appear before the General Division. The principles of natural justice dictate that, regardless of whether the Appellants filed their appeal or request for reconsideration before or after April 1, 2013, they must have the same opportunities before the courts. It is essential that justice be seen to be done for everyone.
- c) The General Division could feel bound by the decision of a higher level of the Tribunal, which might give the Appellants the impression that the hearing before the General Division is just a formality. Their impression that the outcome of their case has been decided in advance regardless of what they put forward before the General Division may be right.
- d) There is no administrative advantage in breaking down the cases in this way, because if the Tribunal allows this motion and the appeals are grouped in this manner, two separate hearings will have to be held rather than one, which will create additional costs for the Tribunal and the parties.
- e) In the circumstances, the Tribunal's Appeal Division would have decisions from two lower levels (namely the Board of Referees and the General Division).

ANALYSIS

[12] The Tribunal is surprised that a motion to stay proceedings was filed in the case of only some of the Appellants rather than a motion being filed that would include all the Appellants. In support of its motion, the Respondent filed two lists of Appellants that are included in the motion. One list contains some 20 names of unrepresented Appellants, who for the most part live in Western Canada. The second one is exclusively made up of Appellants represented by the Mouvement Action-Chômage de Montréal, the only representative that filed submissions on behalf of the Appellants regarding the motion.

[13] The Tribunal agrees with the Appellants' position that allowing such a motion with respect to just some of the Appellants and not all of them is problematic. The Respondent failed to explain why the Tribunal should limit its interlocutory decision to just the Appellants identified by the Respondent. The choice of Appellants seems random, without any geographic or linguistic justification. The Tribunal notes that, out of over 300 cases involving former employees of Aveos and Air Canada, the Respondent chose approximately 250 that include both Francophones and Anglophones, and people from Quebec, Ontario and western Canada.

[14] The Tribunal notes that the motion applies almost exclusively to all the Appellants represented by the Mouvement Action-chômage de Montréal, without any valid explanation. This argument alone would have been enough for the motion to fail, but the Tribunal wants to deal with other issues raised by the parties.

[15] The Tribunal disagrees with the Appellants' argument that, if the General Division relies on a decision of the Appeal Division, this could raise doubt about its impartiality. The General Division is the first level of appeal and it is not bound by the principle of *stare decisis* regarding Appeal Division decisions. However, it could legitimately be inspired by them. Nevertheless, the argument that an appeal before the General Division would be no more than a simple formality is not valid.

[16] It is true that it may seem strange that some of the first-level appeals would be heard by one administrative tribunal and while other first-level appeals are heard by a

different administrative tribunal. However, this is the result of the will of Parliament, which specifically provided for the two tribunals to issue decisions concurrently during a period of time.

[17] The Tribunal disagrees with the Respondent's argument that it would be better to have the Appeal Division first hear an appeal regarding some of the cases, which would help the Respondent in managing the cases. An administrative tribunal's mandate is not to help one of the parties manage its cases, but to provide all parties with equitable access to justice. If the Tribunal were to proceed as the Respondent wishes, this would mean that the Tribunal would be going against the natural progression which dictates that cases be heard by the first level of appeal and then, if necessary, by the second level if they are appealed.

[18] The Tribunal's first level of appeal is not simply a replacement for the Board of Referees: it is a different administrative tribunal. Some of the powers and most of the rules of procedure that apply to the Tribunal are different from those that applied to the Board of Referees.

[19] The General Division is the last level for submitting facts and having them assessed. Since the hearings before the Board of Referees involving other former employees of Aveos and Air Canada took place, new evidence could have been discovered by the parties or new legal principles could have been established by higher courts. If these facts were submitted to the General Division, they may be considered by the Tribunal's Appeal Division. Therefore, should the Appeal Division decide to combine the cases from the Boards of Referees with those from the Tribunal's General Division, these new facts could make a difference in the outcome of the cases that were heard by the Boards of Referees.

[20] It is clear that this situation is specific to the transitional period during part of 2013: having two different tribunals at the first level of appeal. However, this is a situation that Parliament obviously foresaw by allowing both the Boards of Referees and the Tribunal to exist from April 1 to October 31, 2013.

[21] Finally, the Tribunal agrees with the administrative argument made by the Appellants: it would be illogical to have the Appeal Division receive three series of cases rather than two, namely those from the Boards of Referees, those that will be stayed if this motion is allowed and those that are before the Tribunal's General Division and are not covered by this motion. However, since this last argument is purely an administrative one, it has little legal weight.

CONCLUSION

[22] The motion is dismissed.

Me Dominique M. Bellemare,
Vice-Chair (Employment
Insurance)
Member, General Division