[TRANSLATION]

Citation: *A. C. v. Canada Employment Insurance Commission*, 2014 SSTAD 308

Appeal No. 2013-0255

BETWEEN:

A. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER:	Pierre LAFONTAINE
DATE OF DECISION:	October 23, 2014
TYPE AND DATE OF HEARING:	Telephone hearing held on October 21, 2014, at 9h30 am (Eastern Time)

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On November 22, 2012, a panel of the board of referees determined that:

- An allocation of earnings was imposed in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the "*Regulations*");
- A non-monetary warning penalty was imposed in accordance with section 38 of the *Employment Insurance Act* (the "*Act*").

[3] The Appellant appealed that decision to the Office of the Umpire on February 13, 2013.

TYPE OF HEARING

[4] The Tribunal held a telephone hearing for reasons mentioned in the notice of hearing dated April 8, 2014. The Appellant was present. The Respondent, represented by Mrs. Davis, was also present at the hearing.

THE LAW

[5] The Appeal Division of the Tribunal becomes seized of any appeal filed with, but not heard by, the Office of the Umpire before April 1, 2013, in accordance with section 266 and 267 of the *Jobs, Growth and Long-term Prosperity Act of 2012*. As of April 1, 2013, the Office of the Umpire had not decided whether to grant or dismiss the Appellant's appeal. The appeal was transferred from the Office of the Umpire to the Appeal Division of the Social Security Tribunal (the "Tribunal"). Leave to appeal is deemed to have been granted by the Tribunal on April 1, 2013 in accordance with paragraph 268 of the *Jobs, Growth and Long-term Prosperity Act of 2012*.

[6] To ensure fairness, this matter will be examined based on the Appellant's legitimate expectations at the time of the appeal to the Office of the Umpire. For this reason, the present appeal will be decided in accordance with the legislation in effect immediately prior to April 1, 2013.

[7] The only grounds of appeal presentable to the Tribunal mentioned in subsection 115(2) of the *Act*, immediately in effect prior to April 1, 2013, are that:

a. the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b. the board of referees erred in law in making its decision, whether or not the error appears on the face of the record; or

c. The board of referees 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.

ISSUES

[8] The Tribunal must decide whether the board of referees erred in fact or in law when it concluded that the allocation of earnings was performed in accordance with sections 35 and 36 of the *Regulations* and that the non-monetary warning penalty was imposed in accordance with section 38 of the *Act*.

ARGUMENTS

[9] The Appellant submits the following arguments in support of the appeal:

- The board of referees used a racial comment following his request to terminate the hearing because he was expecting a phone call from India;

- No proof was made that he was working and getting paid wages during the relevant period of time;

- He was not permitted to file important evidence from his union;

- He is claiming 150,000.00$ in damages from the board of referees for the racial comment of the chairperson of the board and because he was forced to proceed with the hearing while he was sick.

[10] The Respondent submitted the following arguments against the appeal:

- Based on the evidence provided by the employer, the Appellant worked and had earnings from April 20, 2008 to November 1, 2008;

- In light of these factors, the Respondent correctly allocated the Appellant's earnings in accordance with section 35(2) and 36(4) of the *Regulations*;

- The board of referees findings that the Appellant knowingly provided false or misleading information to the Respondent pursuant to section 38 of the *Act* and thus, the commensurate penalty is warranted was also reasonable based on the evidence before them;

- There is nothing in the board's decision to suggest that it was biased against the Appellant in any way, or that it did not act impartially; nor that there is evidence to show there was a breach of natural justice in this case.

STANDARD OF REVIEW

[11] No representations were made to the Tribunal by the parties regarding the applicable standard of review.

[12] The Tribunal acknowledges that the Federal court of appeal determined that the standard of review applicable to a decision of a board of referees or an Umpire regarding questions of law is the standard of correctness - *Chaulk v. Canada (AG)*, 2012 FCA 190, *Martens c. Canada* (*AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Canada (AG) v. Hallée*, 2008 FCA 159.

ANALYSIS

Request for 2nd adjournment

[13] The Appellant first requested a second adjournment from the Tribunal to have the necessary time to obtain a court order forcing his ex-employer to reveal the correct period of time he worked and the related earnings.

[14] The Tribunal took notice that the original letter dated February 9, 2012, sent by the Respondent to the Appellant was received by the Appellant on April 19, 2012, by his own admission (Exhibit 10). Said letter clearly explains the wages and the relevant period of time. The hearing before the board of referees took place on November 22, 2012 and the Appellant was clearly explained by the board the issues to decide. The Appellant then filed a late appeal on February 13, 2013 for which he was granted an extension of time to appeal. The Tribunal granted a first adjournment to the Appellant on July 17, 2014 because he had to leave the country.

[15] A total of two and a half years have passed since the Appellant received the decision from the Respondent and a total of twenty months since he filed his appeal to the Umpire. The Tribunal has no doubt that the Appellant clearly knew the issues and that he had plenty of time to prepare his present appeal including obtaining the relevant information from his former employer.

[16] Therefore, the Tribunal denied his second request for an adjournment in the absence of exceptional circumstances as per section 11(2) of the *Social Security Tribunal Regulations*.

Earnings, allocation of earnings and non-monetary penalty

[17] The undisputed evidence before the board of referees clearly establishes that the Appellant had received earnings during his benefit period and had failed to declare his earnings.

[18] The Appellant did not "substantiate his position in any way" (p.5 of the decision of the board) after being asked if he had worked from April 20, 2008 to October 26, 2008. He also did not offer "a reasonable explanation to show that the statements were not knowingly made" (p.7 of the decision of the board).

[19] Therefore, the Tribunal finds no reason to intervene on these issues.

Principles of natural justice

[20] The Appellant argues that he was not given the opportunity by the board of referees to file important evidence in support of his position.

[21] The Tribunal notices again that the Appellant had plenty of time to file the union letter he claims was highly important to his case prior to the hearing before the board of referees specially that the board had granted two previous adjournments. He could also have easily attached it to his letter of appeal to the Umpire. He also had plenty of time to file said letter before the hearing of the present appeal. He decided not to although he had every opportunity to file said letter.

[22] Therefore, the Tribunal finds that this argument has no merits.

[23] The Appellant also argues that the chairperson used a racial comment during the hearing. It is interesting to note that the hearing was not recorded at the request of the Appellant.

[24] The board of referees mentioned the following in its decision:

> "The Board notes that the claimant throughout the hearing repeatedly interrupted the chair, yelled, spoke over and refused to listen to one complete sentence by any member of the Board. He stated that the "this is a golden opportunity for a million dollars law suit" and expressed his anger at the Board…"

[25] The Appellant denies this behavior in his letter of appeal (Exhibits 25-3 to 25-5).

[26] However, during the appeal hearing, the Tribunal noticed a similar type of behavior from the Appellant where the Appellant interrupted, spoke over, was aggressive at times and refused to listen attentively to the presiding Member.

[27] Furthermore, the Appellant denies in his letter of appeal to the Umpire having said to the board that "it was a golden opportunity for him to file a lawsuit" (Exhibit 25-3) but yet, he is now claiming the amount of 150,000.00$ in damages from the board of referees.

[28] In such scenarios, the version of the Appellant will be accepted as accurate if there is no reason to question the Appellant's credibility. Unfortunately, for the above mentioned reasons, the Tribunal seriously questions the credibility of the Appellant.

[29] Furthermore, the Tribunal finds that there is nothing in the board's decision to suggest that it was biased against the Appellant in any way, or that it did not act impartially in rendering its decision.

[30] In regards to Appellant's 150,000.00$ claim in damages, it is clear that the Tribunal doesn't have jurisdiction to order compensation for such damages, if any.

[31] In conclusion, the Tribunal finds no evidence to support the grounds of appeal invoked by the Appellant. The decision of the board of referees was open to it and is a reasonable one that complies with the law and the decided cases.

CONCLUSION

[32] The appeal is dismissed

Pierre Lafontaine
Member, Appeal Division