

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. R. T.*, 2015 SSTAD 48

Appeal No. AD-13-975

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**R. T.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Application for Leave to Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 13, 2015

## **DECISION**

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On July 11, 2013, a Board of Referees found that:

- The Respondent's earnings were not allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the Regulations);
- Imposing a penalty under section 38 of the Act was not justified.

[3] On July 18, 2013, the Applicant filed an application for leave to appeal with the Appeal Division.

## **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

## **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

## **ANALYSIS**

[7] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal 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 or order, whether or not the error appears on the face of the record; or
- (c) the Board of Referees based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In its application for leave to appeal, the Applicant maintains that the Board of Referees did not explain in its decision why it rejected some of the evidence submitted, including the statements by the Respondent and his representative.

[13] In the matter of earnings, the Applicant argues that the statements by the Respondent and his foreman show that the Respondent earned sums of money during the weeks in question. In the matter of the penalties, the Applicant maintains that the Board disregarded the documentary evidence in the docket, the Respondent's statements and the statements by his foreman. It claims that the Respondent stated that he knew that he was making false

representations when he completed his reports and he admitted that he did not always report his work or his earnings in order to retain his unemployment benefits.

[14] The Applicant also argues that the Board erred in deciding that the Applicant had to establish its calculations on the basis of the Records of Employment. According to the Applicant, it was acknowledged that the Records of Employment contained false information because of the banking of hours situation. It argues that, given the Respondent's initial statements, it is obvious that the information was false.

[15] Finally, the Applicant argues that the amounts used by the Applicant were from documents entitled [translation] "Wage Calculation" and not the weigh scale tickets, contrary to what the Board indicated in its decision. It maintains that the Board did not explain how the [translation] "Wage Calculation" document from which the amounts used by the Applicant were taken was incorrect or why the Applicant could not rely on this document.

[16] After reviewing the appeal docket, the Board of Referees' decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised several questions of fact and of law whose response might justify setting aside the decision under review.

## **CONCLUSION**

[17] Leave to appeal is granted.

*Pierre Lafontaine*

Member, Appeal Division