

Citation: *Canada Employment Insurance Commission v. P. B.*, 2015 SSTAD 342

Appeal No. AD-14-453

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

P. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 11, 2015

DECISION

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

INTRODUCTION

[2] On July 24, 2014, the General Division of the Tribunal determined that:

- The Respondent met the exception set out in paragraph 33(2)(a) of the *Employment Insurance Regulations* (the “*Regulations*”), and therefore was entitled to benefits for her weeks of unemployment between June 29, 2012 and September 3, 2012.

[3] The Applicant requested leave to appeal to the Appeal Division on August 18, 2014.

ISSUES

[4] The Tribunal must decide if 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* (the “*DESD 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 *DESD 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] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are 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.

[8] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant argues that he SST-GD erred when it decided that the end date of the Respondent's contract on June 29, 2012 was determinative of a contract termination within the meaning of s. 33(2)(a) EIR, that there was a veritable severance in the employer/employee relationship and that the Respondent did not have a 'non-teaching period' as she was not employed under a full term contract.

[10] The Applicant pleads that the Respondent carried over seniority, sick leave credits and pension contributions; she received a verbal offer to continue in the same position prior to June 29, 2012; s. 33(1) defines the non-teaching period as the period that occurs annually, at a regular or irregular interval, during which no work is performed by a significant number of people, engaged in teaching and is not defined by the dates of a teacher's contract (*Bazinet v. Canada (AG)*, 2006 FCA 174).

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised questions regarding the interpretation and application of section 33(2)(a) of the *Regulations* by the General Division that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division