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

[TRANSLATION]

Citation: *B. L. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 31

Tribunal File Number: GE-15-3381

BETWEEN:

B. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

DATE OF HEARING: February 2, 2016

DATE OF DECISION: February 26, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, Mr. B. L., participated in the telephone hearing (teleconference) held on February 2, 2016. He was represented by Isabelle Demers of the law firm Rivest Schmidt, a partnership. Ms. Lisette Trépanier, president of the Syndicat de l'enseignement du Bas-Richelieu [Bas-Richelieu teachers' union], also attended the hearing.

INTRODUCTION

[2] On June 29, 2015, the Appellant filed a renewal claim for benefits starting on June 28, 2015. The Appellant reported that he worked for the Commission scolaire de Sorel-Tracey [Sorel-Tracey school board] from August 25, 2014 to June 26, 2015 inclusive. The Appellant indicated that the date of his return to work with this employer was unknown (Exhibits GD3-3 to GD3-13).

[3] On August 13, 2015, the Respondent, the Canada Employment Insurance Commission ("the Commission"), informed the Appellant that it could not pay him employment insurance benefits from August 3, 2015 because he had obtained a full-time contract that began on August 3, 2015 with the Commission scolaire de Sorel-Tracey. The Commission informed the Appellant that it could not pay him employment insurance benefits from June 29, 2015 to July 31, 2015 and from December 23, 2015 to January 5, 2016 (Exhibits GD3-19 and GD3-20).

[4] On August 26, 2015, the Appellant filed a request for reconsideration of an employment insurance decision (Exhibits GD3-21 and GD3-22).

[5] On September 27, 2015, the Commission informed the Appellant that it upheld the decision made on August 13, 2015 regarding his disentitlement to employment insurance benefits. The Commission stated that the start of the disentitlement period was June 19, 2015, the date of the start of the summer non-teaching period, not June 29, 2015. The Commission also informed the Appellant that the disentitlement for the period from December 23, 2015 to January 5, 2016 had not been recorded in his file because his benefit period would be over then (Exhibits GD3-28 and GD3-29).

[6] On October 23, 2015, the Appellant, represented by Isabelle Demers, filed a Notice of Appeal with the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada ("the Tribunal") (Exhibits GD2-1 to GD2-14).

[7] This appeal was heard by teleconference for the following reasons:

a) The Appellant would be the only party attending the hearing;

b) The Appellant or other parties would be represented;

c) This form of hearing complies with the requirement under the *Social Security Tribunal Regulations* to conduct proceedings as informally and as quickly as circumstances, fairness and natural justice permit (Exhibits GD1-1 to GD1-4).

ISSUE

[8] The Tribunal must determine whether imposing disentitlement to employment insurance benefits on the Appellant is warranted under section 33 of the *Employment Insurance Regulations* (the "Regulations") because as a teacher, he was unable to prove that he was entitled to these benefits during a non-teaching period.

THE LAW

[9] Under "Additional Conditions and Terms in Relation to Teachers," section 33 of the Regulations provides as follows.

> (1) The definitions in this subsection apply in this section. *non-teaching period* means the period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching. (*période de congé*). *teaching* means the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school. (*enseignement*). (2) A claimant who was employed in teaching for any part of the claimant's qualifying period is not entitled to receive benefits, other than those payable under section 22, 23, 23.1 or 23.2 of the Act, for any week of unemployment that falls in any non-teaching period of the claimant unless (a) the claimant's contract of employment for teaching has terminated; (b) the claimant's employment in teaching was on a casual or substitute basis; or (c) the claimant qualifies to

> receive benefits in respect of employment in an occupation other than teaching. (3) Where a claimant who was employed in teaching for any part of the claimant's qualifying period qualifies to receive benefits in respect of employment in an occupation other than teaching, the amount of benefits payable for a week of unemployment that falls within any non-teaching period of the claimant shall be limited to the amount that is payable in respect of the employment in that other occupation.

EVIDENCE

[10] The evidence in the file is as follows.

a) A record of employment dated June 29, 2015 indicates that the Appellant worked as a "teacher" for the Commission scolaire de Sorel-Tracey from January 5, 2015 to June 19, 2015 inclusive and that he stopped working for this employer because of a shortage of work (code A – shortage of work/end of contract or season). The document states that the expected date of recall is "unknown" (Exhibit GD3-14);

b) A record of employment dated July 9, 2015 indicates that the Appellant worked as a "teacher" for the Commission scolaire de Sorel-Tracey from June 25, 2015 to June 26, 2015 inclusive and that he stopped working for this employer because of a shortage of work (code A – shortage of work/end of contract or season). The document states that the expected date of recall is "unknown" (Exhibit GD3-15);

c) On August 5, 2015, the employer (assistant director of the vocational training centre) stated that the Appellant had started teaching full time on August 3, 2015 and that his schedule was guaranteed until August 21, 2015. The employer indicated that in the week of August 17, 2015, it would be in a position to offer the Appellant a full-time position until May 20, 2016 (a 200-day contract). The employer stated that it had offered the Appellant this position in an email sent to him in late June 2015. The employer reported that the Appellant had accepted the position the same day that the email had been sent to him (Exhibit GD3-17);

d) On August 10, 2015, the employer indicated that the number of positions and assignments in the vocational training sector as well as adult training was directly linked to the number of registrations received during the registration period, i.e., during the summer. The employer stated that it would offer duties to teachers, based on the priority list (recall list) dated August 2015. The employer explained that teachers were generally offered a job between 24 and 48 hours before the start of the training (Exhibit GD3-18);

e) On September 25, 2015, the employer indicated that the Appellant was teaching at the vocational training centre, which is an adult education centre for people 16 years of age and older who meet the basic requirements for admission into this program leading to a diploma of vocational studies (DVS) (Exhibit GD3-24). The employer sent the Commission a copy of the following documents.

   i. The Appellant's employment contract with the employer, the Commission scolaire de Sorel-Tracey, signed on February 11, 2015, indicating that the Appellant was being hired to teach for this employer from October 30, 2014 to June 19, 2015, with a full workload (metallurgy) (Exhibit GD3-25);

   ii. The Appellant's employment contract with the employer, Commission scolaire de Sorel-Tracey, signed on August 20, 2015, indicating that the Appellant was being hired to teach for this employer from August 3, 2015 to May 26, 2016, with a full workload (metallurgy) (Exhibit GD3-26).

f) With the Notice of Appeal filed on October 23, 2015, the Appellant's representative sent a copy of the following documents:

   i. The Commission's letter (decision under reconsideration) of September 25, 2015 to the Appellant (Exhibit GD2-7);

   ii. Request for reconsideration of an employment insurance decision filed by the Appellant on August 26, 2015 (Exhibit GD2-8);

   iii. The Commission's letter (initial decision) of August 13, 2015 to the Appellant (Exhibit GD2-9);

iv. The Appellant's employment contract with the employer, Commission scolaire de Sorel-Tracey, signed on February 11, 2015 (Exhibit GD2-10 or GD3-25);

v. The Appellant's employment contract with the employer, Commission scolaire de Sorel-Tracey, signed on August 20, 2015 (Exhibit GD2-11 or GD3-26);

vi. Record of employment dated June 29, 2015, indicating that the Appellant had worked as a "teacher" for the employer, Commission scolaire de Sorel-Tracey, from January 5, 2015 to June 19, 2015 inclusive (Exhibit GD2-12 or GD3-14);

vii. Record of employment dated July 9, 2015, indicating that the Appellant had worked as a "teacher" for the employer, Commission scolaire de Sorel-Tracey, on June 25 and 26, 2015 inclusive (Exhibit GD2-13 or GD3-15);

viii. "Authorization to disclose" form duly completed by the Appellant and his representative dated October 23, 2015 (Exhibit GD2-14).

g) On February 2, 2016, the Appellant's representative sent the Tribunal a copy of the following documents:

i. Excerpts from the teachers' collective agreement (2010 – 2015), (clauses 13-2.02C) and 13-7.11), (Exhibits GD5-3 to GD5-10);

ii. The priority list (recall list) of teachers belonging to the "metallurgy/welding-assembly" teaching field (core specialty) on which he appeared in fifth place (Exhibit GD5-11);

iii. The teacher's pay stub dated August 20, 2015 (pay period from August 9, 2015 to August 22, 2015) indicating that he had been paid based on an hourly rate (Exhibit GD5-12);

iv. Decision in ***F.B. v. Canada Employment Insurance Commission***, **2014 SSTGDEI 15** (March 25, 2014), (Exhibits GD5-13 to GD5-24).

[11] The evidence presented at the hearing is as follows.

a) The Appellant recalled the main points in the file and described his employment history at the Commission scolaire de Sorel-Tracey. He indicated that he had started working for this employer on August 25, 2014. The Appellant stated that he worked as a "welding-assembly" (metallurgy) teacher in the Commission scolaire's vocational training section (Centre de formation professionnelle de Sorel-Tracy [Sorel-Tracy vocational training centre]). He said that he appeared in fifth and final place on the employer's priority list (priority of employment list) (Exhibits GD3-16, GD3-23 and GD5-11);

b) The Appellant stated that he worked from October 30, 2014 to June 19, 2015 (teaching period "B") under a full-time teaching contract. He said that he had signed this contract on February 11, 2015 (Exhibits GD3-16, GD3-21, GD3-24 and GD3-25);

c) He also said that he had worked, at an hourly rate, for the employer, Commission scolaire de Sorel-Tracey, on June 25 and 26, 2015 (Exhibits GD3-15 and GD3-21).

PARTIES' ARGUMENTS

[12] The Appellant and his representative made the following submissions and arguments.

a) The Appellant stated that the management of the institution where he had worked during the 2014-2015 school year sent him an email in late June 2015 to determine whether he was interested in returning to work starting on August 3, 2015 (teaching period "A"). He stated that he had replied in the affirmative to this offer the same day he had received this email. The Appellant said that this email indicated that he would start work on August 3, 2015. In his opinion, however, this was not a formal offer on the employer's part. He said that [translation] "it was just tossed out there like that" (Exhibit GD3-23). The Appellant explained that such an offer is conditional upon the number of registrations received by the Commission scolaire. He stated that the duties assigned to the teachers vary depending on the number of registrations received. The Appellant emphasized that he was the last person on the priority list and it was possible that he

would not have a contract for the next teaching period. He said that he did not know in late June 2015 whether he would be given a contract. The Appellant pointed out that at that time, he no longer had an employment relationship with the Commission scolaire de Sorel-Tracey and no promise had been made that he would be hired (Exhibits GD3-16, GD3-21, GD3-23 GD5-11);

b) He stated that he went back to work for the employer on August 3, 2015 but without knowing at that time whether he would have the anticipated contract. The Appellant said that he was first paid on an hourly basis and when he entered into this contract, he did not have a set schedule and only found out that day whether he would be able to work the next day. He stated that he then signed a contract with the employer on August 20, 2015, indicating that his period of employment would be from August 3, 2015 to May 26, 2016 (teaching period "A") (Exhibits GD2-11, GD3-26 and GD5-12);

c) The Appellant said that the teaching experience he accumulates is recognized for his seniority. He pointed out that he accumulated seniority from year to year. The Appellant stated that he was paid for his unused sick leave at the end of the school year and that his pension contributions were carried forward to the next teaching year (Exhibits GD3-16 and GD3-23);

d) The representative explained that the Appellant was a part-time teacher in vocational training for the Commission scolaire de Sorel-Tracey; he had a contract of employment starting on October 30, 2014 and this contract expired on June 19, 2015. The representative argued that on that date, the Appellant did not have any guarantee that he would be re-hired for the following school year and thus there was a clear break in his contracts (Exhibits GD2-5 and GD2-6);

e) The representative stated that the Appellant started work on August 3, 2015 but he was not under contract from that date. She pointed out that the Appellant was at that time paid by the hour and that he was also paid an amount as vacation pay, as shown on his pay stub of August 20, 2015 (pay period from August 9, 2015 to August 22, 2015), (Exhibit GD5-12);

f) The representative pointed out that the Appellant had replied to the employer (the director) in an email that he was interested in going back to teach at the school where he had worked but he did not know if he would actually get a contract. She emphasized that the Appellant appeared in fifth and final place on the priority list (Exhibit GD5-11);

g) She explained that the Appellant's contract with the Commission scolaire de Sorel-Tracey had terminated on June 19, 2015 (Exhibit GD3-25). The representative argued that the Appellant's situation was one of the exceptions stipulated in paragraph 33(2)(a) of the Regulations;

h) The representative pointed out that the purpose of section 33 of the Regulations is to prevent "double dipping" (***Lafrenière***, **2013 FCA 175**, para. 37). She said that at the time of filing his claim for benefits, in June 2015, the Appellant was not earning any income and there had been no "double dipping" in his case (***Lafrenière***, **2013 FCA 175**);

i) She stated that although the Appellant's intention was to agree to return to teach at the institution where he had worked until June 19, 2015, he had no guarantee that he would obtain a contract and he was merely seeking information. She pointed out that the Appellant started working based on an hourly rate, without having a set schedule and that he was paid only for the period he worked, as stipulated in article 13-2.02C) of the teachers' collective agreement (Exhibits GD5-5 and GD5-12);

j) The representative indicated that the Appellant simply went to the Commission scolaire in August 2015 and learned at that time that he had a contract from August 3, 2015 to May 26, 2016. She stated that this contract had later been signed by the Appellant (Exhibits GD2-5 and GD2-6);

k) She pointed out that even if the Appellant had stated that he had accepted the offer made by the employer in late June 2015, this was not a formal job offer. The representative explained that the assignment given to a teacher is dependent upon the number of registrations received by the educational institution. She stated that under clause 13-7.11 of the collective agreement, the employer (school board) may reduce the length of a

part-time contract or the number of hours in this contract, to reflect a decrease in the number of students (Exhibit GD5-9). The representative pointed out that the contract signed by the Appellant on August 20, 2015 mentioned this aspect (Exhibit GD2-11 or GD3-26);

l) She expressed the opinion that there was a clear break in the Appellant's contract on June 19, 2015, that there was no continuity in his employment relationship and that he had not received an actual job offer in late June 2015 (***F.B. v. Canada Employment Insurance Commission***, **2014 SSTGDEI 15**, March 25, 2014), (Exhibits GD5-13 to GD5-24). She pointed out that in this decision, the situation of the teacher involved fell within the exceptions stipulated in section 33 of the Regulations;

m) The representative pointed out that the Commission's interpretation of the Appellant's situation is incorrect in fact and in law, and that the Appellant is entitled to employment insurance benefits for the period from June 19 to July 31, 2015 because his teaching contract had ended under the terms of paragraph 33(2)(a) of the Regulations (Exhibits GD2-5 and GD2-6);

n) The representative argued that there was no continuity in the Appellant's employment relationship, that his situation fell within the exceptions stipulated in paragraph 33(2)(a) of the Regulations and consequently the appeal should be granted.

o) The representative asked that the Commission be ordered to pay the Appellant employment insurance benefits for the period from June 19, 2015 to July 31, 2015 because his contract of employment for teaching had ended under the terms of the Act and the Regulations (Exhibits GD2-5 and GD2-6).

[13] The Commission made the following submissions and arguments.

a) Subsection 33(1) of the Regulations defines teaching as the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school. Under subsection 33(1) of the Regulations, a teacher is not entitled to receive employment insurance benefits, other than maternity and parental benefits, during a

non-teaching period, unless one of the exceptions stipulated in subsection 33(2) of the Regulations has been met: (a) the claimant's contract of employment for teaching has terminated; (b) the claimant's employment in teaching was on a casual or substitute basis; or (c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching (Exhibit GD4-3);

b) The Commission argued that the Appellant had failed to demonstrate that his contract of employment for teaching had terminated on June 19, 2015 and that he would not return to work for his employer following the non-teaching period. It pointed out that the Appellant had entered into another contract with the same Commission scolaire in June 2015 (Exhibit GD3-17) via email, during the non-teaching period. It pointed out that, in the case at bar, because the Appellant had spanned the two possible calendars at the Commission scolaire, the summer non-teaching period involved was the shorter one, i.e. the period from June 19, 2015 to July 31, 2015. The Commission also stated that the Appellant keeps his seniority from one year to the next and that his pension contributions are carried forward from one year to the next (Exhibit GD3-16). According to the Commission, there is thus no break in the employment relationship in the Appellant's case despite the fact the new contract was not signed before the start of the next school year. It pointed out that the employment relationship still existed when the Appellant entered into an agreement with his employer for the next teaching period and consequently he did not meet the exemption condition stipulated in paragraph 33(2)(a) of the Regulations (Exhibit GD4-3);

c) The Commission determined that the Appellant was employed on a full-time teaching contract from October 30, 2014 to June 19, 2015 (Exhibit GD3-25). According to the Commission, the Appellant's employment from October 30, 2014 to June 19, 2015 was sufficiently regular, continuous and predetermined and therefore does not meet the definition of teaching on a casual or substitute basis under paragraph 33(2)(b) of the Regulations (Exhibit GD4-4);

d) It argued that there was no evidence to show that the Appellant was entitled to benefits for employment in an occupation other than teaching. Consequently, paragraph 33(2)(c) of the Regulations does not apply (Exhibit GD4-4);

e) The Commission found that the Appellant is not entitled to benefits during the non-teaching period from June 19, 2015 to July 31, 2015 because he failed to demonstrate that he met one of the exemption conditions described in subsection 33(2) of the Regulations (Exhibit GD4-5).

ANALYSIS

[14] Under section 33 of the Regulations, a teacher is not entitled to receive employment insurance benefits during non-teaching periods unless:

> […] (a) the claimant's contract of employment for teaching has terminated; (b) the claimant's employment in teaching was on a casual or substitute basis; or (c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

[15] In ***Lafrenière*** **(2013 FCA 175)**, the Federal Court of Appeal (the "Court") stated:

> […] The intent of Parliament is to pay benefits to those individuals who, through no fault of their own, find themselves unemployed and who are seriously engaged in an earnest effort to find work. Under section 33 of the Regulations, the teachers referred to are not considered to be unemployed during the annual non-teaching periods and are therefore not entitled to receive benefits unless they meet one of the three criteria set out in subsection 33(2) of the Regulations […] the purpose of section 33 of the Regulations […] is to prevent "double dipping."

[16] The Court upheld the principle that the exception stipulated in subsection 33(2)(a) of the Regulations is intended to provide relief to teachers who experience a veritable break in the employee-employer relationship at the end of the teaching period. Teachers whose contracts were renewed before their contracts of employment for teaching expire, or just shortly afterwards, for the new school year, were not unemployed and had continued employment. Parliament's intent behind section 33 of the Regulations is based in part on the premise that, unless there is an veritable break in the continuity of a teacher's employment, the teacher

would not be entitled to benefits during the non-teaching period (**Oliver et al, 2003 FCA 98, Stone, 2006 FCA 27, Robin, 2006 FCA 175**).

[17] In ***Oliver et al* (2003 FCA 98)**, the Court offered the following explanation.

> […] All of the decisions of this Court, except Ying, have denied benefits to teachers in application of paragraph 33(2)(a) of the Regulations. The Umpire distinguished Ying. He was of the view that a determination of whether a teacher fell or not within the scope of the exemption was not a determination which could be based solely on a purported date of termination stated in a contract. All the circumstances in a particular case had to be examined in light of the purpose and intention of the legislative scheme. […] With respect, I believe the Umpire understood well the governing principle endorsed by this Court in all the cases he cited and properly applied it to the facts of this case. […] All the decisions of this Court, including Ying, sought to determine whether there was a continuity of employment for the claimants. No such continuity was found in Ying as "there was a period between June 30 and August 26, 1996 when the claimant could not have been said to have a contract of employment in operation": see Ying, supra, paragraph 1. […] The legal situation is different in the case at bar. Contracts of employment were renewed prior to the expiry of the claimants' probationary contracts or very shortly thereafter. It cannot be said as in Ying that the claimants had no contract of employment in operation. The legal status of the claimants was analogous to those of the teachers in Partridge, supra, and in Bishop v. Canada (2002), FCA 276.

[18] In ***Robin* (2006 FCA 175)**, the Court stated the following.

> […] It is not enough simply to look, as the umpire did, at the commencement and termination dates of the contract in order to determine whether a claimant's contract of employment for teaching has terminated within the meaning of paragraph 33(2)(a) of the Regulations. In addition, as we can see from Oliver, supra, it is necessary to determine whether there has been a clear severance of the continuity of the claimant's employment so that the latter has become "unemployed." The fact that an interval may exist between two contracts, during which the teacher is not under contract, does not in my opinion mean that there has been a genuine severance of the relationship between the teacher and his or her employer. It should be borne in mind that the purpose of the exercise is not to interpret contractual provisions so as to determine the respective rights of the employer and employee, but to decide whether a claimant is entitled to receive employment insurance benefits because he or she is in fact unemployed.

[19] In ***Bazinet et al*** **(2006 FCA 174)**, the Court stated the following.

> […] Whereas the applicants worked as part-time teachers for the Commission scolaire from the end of August 2002 to the end of June 2003; whereas in late June 2003 the Commission scolaire made them offers of employment for the 2003-2004 school year, offers which they accepted a few days later; and as the applicants, like all the other teachers of the Commission scolaire, did not have to work during July and August 2003, I do not see how it is possible to conclude that there was any termination in the employment relationship between the applicants and the Commission scolaire. […] Accordingly, the fact of the matter is that the applicants taught in the schools of the Commission scolaire without interruption during 2002-2003 and 2003-2004. The factual situation establishes beyond any doubt that the applicants' relationship with their employer did not terminate. Therefore, there was no cessation of the continuity of their employment with the Commission scolaire. […] As to the applicants' argument that there could be no continuity of their employment since the offers of employment which they received from the Commission scolaire at the end of June 2003 were only oral offers and were made by persons not legally authorized to hire them, I am of the view that this argument is without merit. Firstly, as I mentioned earlier at paragraph 44 of my reasons, it should be borne in mind that the purpose of the exercise is not to interpret the contractual provisions so as to determine the respective rights of the employer and employees, but to decide whether a claimant is entitled to receive employment insurance benefits because he or she is in fact unemployed. Secondly, I agree with the respondent that this argument is entirely academic, in view of the fact that the applicants accepted offers made by the Commission scolaire and resumed their work on August 27, 2004, even though their contracts were not signed until fall 2004.

[20] The Tribunal notes that the Supreme Court of Canada dismissed the claimant's application for leave to appeal from that decision (Bazinet et al, 2006 FCA 174 – SCC 31541).

[21] In ***Stone*** **(2006 FCA 27)**, the Court suggested nine factors to consider when determining whether a veritable break in the continuity of employment had occurred under paragraph 33(2)(a) of the Regulations. The Court notes that the list is not exhaustive, that the factors are not to be weighed mechanistically and that all of the circumstances of every case must be examined.

[22] These nine factors are as follows: the length of the employment record; the duration of the non-teaching period; the customs and practices of the teaching field in issue; the receipt of compensation during the non-teaching period; the terms of the written employment contract, if any; the employer's method of recalling the claimant; the record of employment form completed by the employer; other evidence of outward recognition by the employer; and the

understanding between the claimant and the employer and the respective conduct of each (**Stone 2006 FCA 27**).

[23] The Court has also stated that the exception stipulated at the end of paragraph 33(2)(b) of the Regulations emphasizes the performance of the employment and not the status of the teacher who holds it. Employment performed in a continuous and determined manner cannot be considered employment on a casual or substitute basis. Teachers who enter into temporary regular teaching contracts in the school year no longer meet the definition of teaching on a "casual" or "substitute" basis under the terms of paragraph 33(2)b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[24] In the case at bar, the Tribunal believes that there was no veritable break in the continuity of the Appellant`s employment and he is not entitled to employment insurance benefits during the non-teaching period (***Oliver et al*, 2003 FCA 98, *Stone*, 2006 FCA 27, *Bazinet et al*, 2006 FCA 174, *Robin*, 2006 FCA 175, *Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[25] The Tribunal states that, in the case at bar, further to the Commission`s reconsideration decision regarding the Appellant, disentitlement for employment insurance benefits under section 33 of the Regulations was imposed on him on June 19, 2015, i.e. from the start of the non-teaching period in the vocational training sector in which the Appellant worked (Exhibits GD3-28 and GD3-29).

[26] The Commission also stated in this decision that disentitlement for the period from December 23, 2015 to January 5, 2016 had not been recorded in the Appellant's file because his benefit period would be over then (Exhibits GD3-28 and GD3-29). On this point, the Appellant indicated that he was not requesting a reconsideration of the decision regarding the fact that he was not unemployed during the school year, but on the issue of disentitlement to benefits imposed on him during the summer non-teaching period (Exhibit GD3-27).

End of the Appellant's contract of employment and continuity in the employment relationship (paragraph 33(2)(a) of the Regulations)

[27] The Appellant worked as a teacher in the vocational training sector for the Commission scolaire de Sorel-Tracey during the period from October 30, 2014 to June 19, 2015, with a 100% teaching load (full workload) (Exhibit GD3-25).

[28] After his contract had expired on June 19, 2015, the Appellant also worked for this employer on June 25 and 26, 2015 (Exhibit GD3-15).

[29] The Appellant stated that in late June 2015, he received an email from the employer offering him a new teaching assignment to start on August 3, 2015. The Appellant stated that he accepted this offer the same day he had received it.

[30] This was a part-time contract representing a full workload that the Appellant signed with the employer, Commission scolaire de Sorel-Tracey, indicating that he undertook to teach from August 3, 2015 to May 26, 2016 (Exhibit GD3-26).

[31] The Tribunal believes that even if this offer were made via an email sent by the employer, it was a formal job offer. This offer, made in writing, has at least as much value as a verbal offer made by the employer.

[32] The Tribunal does not accept the argument made by the Appellant's representative that at the time of accepting this offer, the Appellant had not received any guarantee from the Employer that he would obtain a contract and the Appellant was merely seeking information.

[33] The Tribunal believes that, in the case at bar, there was not just an exchange of information between the Appellant and his employer, but in fact a job offer to which the Appellant gave a positive response.

[34] The Tribunal finds that when he accepted a new contract in late June 2015, after completing the contract that expired on June 19, 2015, the Appellant thus confirmed that there was no clear break in his employment relationship with the Commission scolaire de Sorel-Tracey.

[35] By accepting a new contract in late June 2015, the Appellant clearly demonstrated the continuity in his employment relationship with the employer. He did not demonstrate that he would not return to work for this employer.

[36] In addition, the fact that the Appellant also worked on June 25 and 26, 2015, after his contract had expired on June 19, 2015, also lends support to the fact that there was no clear break in the continuity of his employment relationship with the employer.

[37] The Appellant's employment relationship with his employer, Commission scolaire de Sorel-Tracey, thus continued after June 19, 2015.

[38] The Appellant's representative argued that there was no continuity of employment for the Appellant after his contract expired on June 19, 2015. She pointed out that the Appellant did not have any guarantee that he would obtain a contract for the teaching period from August 3, 2015 to May 26, 2016.

[39] The Tribunal does not accept the argument presented by the Appellant's representative on this point because it does not reflect the fact that the termination or start dates of a contract are not the only aspects on which a decision on whether there is a clear break in the employment relationship must be based.

[40] The Tribunal points out that although there can be an interval between two contracts during which a teacher is without a contract, such a situation does not mean that there is a veritable break in the relationship between the teacher and his or her employer (***Robin*, 2006 FCA 175**).

[41] It is not enough to take into account contract termination and start dates to determine whether a claimant's contract of employment for teaching has ended under the terms of paragraph 33(2)(a) of the Regulations; it is necessary to examine whether there was a clear break in the continuity of employment, thereby resulting in unemployment (***Oliver et al*, 2003 FCA 98, *Robin*, 2006 FCA 175**).

[42] The Tribunal also states that the purpose of such an exercise is not to interpret the provisions of a contract to establish the respective rights of the employer and the employee, but to decide whether a claimant may be entitled to employment insurance benefits during a period of unemployment (***Bazinet et al*, 2006 FCA 174, *Robin*, 2006 FCA 175**).

[43] The Tribunal further notes that the Court found that the issue of whether a teacher was covered by the exception provided for in paragraph 33(2)(a) of the Regulations cannot be determined solely on the basis of a termination date stated in a contract and that all of the circumstances of the case must be taken into consideration in light of the purpose and intention of the legislation (***Oliver et al*, 2003 FCA 98**).

[44] Furthermore, the Tribunal states that in the case before us, the Appellant accepted in late June 2015 the job offer that was made to him.

Other factors

[45] In addition to when the new contract of employment was accepted, several other factors help determine whether or not there was a clear break in a claimant's continuity of employment and specify the purpose and intention of the Act (***Stone*, 2006 FCA 27**).

[46] Among these factors, the Tribunal notes that the Appellant is on a priority list (recall list), which gives him the right to accept a new contract based on the position he holds on this list. The Tribunal believes that this aspect is also part of "the employer's method of recalling the claimant" or "the understanding between the claimant and the employer" for demonstrating that there was no break in the employment relationship (***Stone*, A-367-04**).

[47] The Tribunal also points out that at the time of filing his claim for benefits on June 29, 2015, the Appellant had specified the date of return to work to this employer as unknown (Exhibit GD3-7), not that there was no expected return date.

Employment on a casual or substitute basis (paragraph 33(2)(b) of the Regulations)

[48] The Tribunal finds that paragraph 33(2)(b) of the Regulations is not applicable to the Appellant's situation (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[49] The Tribunal finds that the contract worked by the Appellant for the period from October 30, 2014 to June 19, 2015 at full workload and the contract he accepted in late June 2015 for the period from August 3, 2015 to May 26, 2016, also at full workload, do not meet the definition of teaching on a "casual" or "substitute" basis under paragraph 33(2)(b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[50] It has been clearly established that teachers who enter into temporary regular teaching contracts during the school year no longer meet the definition of teaching on a "casual" or "substitute" basis under paragraph 33(2)(b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[51] Although the Appellant's representative pointed out that when he started teaching on August 3, 2015, he was being paid on an hourly basis, not knowing from one day to the next whether he would be able to continue working, the evidence demonstrates that he was able to do so in a continuous and predetermined manner. The Appellant experienced a temporary situation, until the number of registered students was confirmed. His pay at an hourly rate was also subsequently adjusted based on his pay scale for carrying out this contract of employment for teaching.

[52] Both for the contract completed during the 2014-2015 school year (from October 30, 2014 to June 19, 2015) and for the contract that he accepted, in late June 2015, for the 2015-2016 school year (from August 3, 2015 to May 26, 2016), nothing shows that the Appellant had employment "on a casual or substitute basis" in either case pursuant to paragraph 33(2)(b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377)**.

Employment in an occupation other than teaching (paragraph 33(2)(c) of the Regulations)

[53] The Tribunal also finds that there is no evidence in the file indicating that the Appellant was entitled to benefits in an occupation other than teaching. Consequently, paragraph 33(2)(c) of the Regulations does not apply to this case.

[54] In short, although the Appellant's contract expired on June 19, 2015, there was no veritable break in the continuity of his employment (***Oliver et al*, 2003 FCA 98, *Stone*, 2006 FCA 27, *Bazinet et al*, 2006 FCA 174, *Robin*, 2006 FCA 175**).

[55] On the basis of the aforementioned jurisprudence, the Tribunal finds that the Appellant failed to demonstrate that he was entitled, as a teacher, to employment insurance benefits during a non-teaching period because he did not fall within the exceptions stipulated in subsection 33(2) of the Regulations.

[56] Consequently, the Commission's decision to impose a disentitlement on the Appellant starting June 19, 2015, under section 33 of the Regulations, is warranted in the circumstances.

[57] The appeal is without merit on the issue in this case.

CONCLUSION

[58] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section