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

Citation: *C. C. v. Canada Employment Insurance Commission,* 2016 SSTADEI 199

Tribunal File Number: AD-14-289

BETWEEN:

C. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 12, 2016

DECISION: Appeal dismissed

Canada

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On June 2, 2014, a General Division member dismissed the appeal of the Appellant against the previous determination of the Commission.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On November 3, 2015, a teleconference hearing was held. Although the Appellant attended and made submissions, the Commission did not. Because I was satisfied that the Commission had received proper notice of the hearing, I proceeded in their absence.

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

> (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.

ANALYSIS

[6] This case revolves around the application of the law and jurisprudence regarding the receipt of benefits by teachers during a non-teaching period.

[7] The *Employment Insurance Regulations* (the Regulations) state that in order to qualify for anything other than maternal or parental benefits during a non-teaching period (such as the March break or when school is out for the summer), a teacher must show that they meet the exceptions set out in ss. 33(1). This requires that either the teacher be employed on a casual or substitute basis, that during the qualifying period the teacher has earned enough insurable hours to qualify for benefits from some other employment source, or that the teacher's contact of employment has terminated.

[8] Usually, as in this case, the disputed issue is whether or not the teacher's contract of employment has actually terminated. In *Oliver v. Canada (Attorney General)*, 2003 FCA 98, and many other cases, the Federal Court of Appeal explained that:

> "…unless there is a veritable break in the continuity of a teacher's employment, the teacher will not be entitled to benefits for the non-teaching period. It is important that this fundamental premise be strongly underlined…"

[9] Recently, in *Dupuis v. Canada (Attorney General)*, 2015 FC 228, the Court phrased it this way:

> "The facts established that there was no final severance of the employment relationship and that [the Appellant] was not unemployed. On the contrary, a few days after the end of the school year, [the Appellant] signed a contract of employment for the following school year… [The Appellant] therefore did not meet the criteria set out in section 33 of the *Employment Insurance Regulations*, SOR/96-332."

[10] In this case, the Appellant has appealed against the General Division decision on the basis that the General Division member failed to properly consider the impact of Ontario Bill 115 (also known as the *Putting Students First Act*) on her situation. Specifically, she alleged that Bill 115 eliminates the carry-over of sick days from one teaching contract to the next, and that the carry-over of sick days was the main ground upon which the member based his conclusion that her employment had not terminated. The Appellant did not suggest that she met any of the other exceptions set out in ss. 33(1) of the Regulations.

[11] As noted above, for unknown reasons the Commission did not attend the hearing. Because of this, I was forced to rely upon their written submissions. Those submissions correctly noted the law and cited the applicable jurisprudence, including *Oliver*. The Commission argued that the General Division member was correct in finding that the Appellant's employment had not terminated. They noted that regardless of Bill 115, the Appellant had failed to show that "there was a break in the continuity of her employment", and asked that the appeal be dismissed.

[12] The ultimate question before the General Division member was whether or not the Appellant's employment had been terminated. After stating the law and summarizing the evidence, the member applied that law to the evidence and found that it had not. He noted that Bill 115 did not seem to impact the Appellant's existing sick days, and that she had signed a new contract the very same day the old contract expired. Based upon this, he concluded that the Appellant's appeal must be dismissed.

[13] Having reviewed the evidence and the law, I find myself in agreement with the General Division member.

[14] The important facts in this case are not contested. The Appellant was employed as a teacher and her initial contract terminated on June 29, 2012. On that same day, she signed a new contract for the next school year.

[15] Based upon the above, I cannot see how it could be argued that there was a "veritable break" or a "final severance" in the Appellant's employment. Her situation was essentially identical to that of a teacher who worked during the 2011-2012 school year, stopped working during the summer months, and then returned to work once again at the beginning of the 2012-2013 school year. At no time during the period that a teacher would be expected to work was the Appellant unemployed or without a contract of employment.

[16] Further, I have great difficulty accepting the Appellant's argument that Bill 115 affects matters. I take judicial notice of the fact that Bill 115 received Royal Assent on September 11, 2012. This is after the Appellant had already returned to work. I also note that, as admitted by the Appellant, sick days accumulated prior to September 1, 2012, are

not affected by this law. I therefore do not accept the argument that Bill 115 establishes that there was no continuity of employment in the Appellant's case.

[17] The General Division member was aware of (and correctly cited) the jurisprudence of the Court and I find that, as evidenced by his decision, he understood and applied it to the facts at hand. The Appellant has failed to convince me that the member made any errors in doing so. I find that the factual findings made by the member were entirely open to him based upon the evidence, and indeed I agree with them.

[18] I have found no evidence to support the grounds of appeal invoked or any other possible ground of appeal. In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made appropriate findings of fact, established the correct law, and came to a conclusion that was intelligible and understandable.

CONCLUSION

[19] For the above reasons, the appeal is dismissed.

Mark Borer

Member, Appeal Division