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

[TRANSLATION]

Citation: *C. F. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 77

Tribunal File Number: GE-15-3537

BETWEEN:

C. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: June 8, 2016

DATE OF DECISION: June 10, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, C. F., was present at the telephone hearing (teleconference) held on June 8, 2016.

INTRODUCTION

[2] On July 2, 2015, the Appellant filed an initial claim for benefits that took effect on June 28, 2015. The Appellant stated that she had worked as a [translation] “high school teacher” for the employer Commission scolaire de Montréal (CSDM) from January 5, 2015, to June 29, 2015, and had stopped working for that employer because of a shortage of work (Exhibits GD3-3 to GD3-17).

[3] On August 7, 2015, the Respondent, the Employment Insurance Commission of Canada (the “Commission”) informed the Appellant that it could not pay her employment insurance benefits during the following periods: from June 30, 2015, to August 21, 2015; from December 21, 2015, to January 1, 2016; and from February 29, 2016, to March 4, 2016. The reason was that it could not pay benefits to her during non-teaching periods (Exhibits GD3-23 and GD3-24).

[4] On September 3, 2015, the Appellant filed a Request for Reconsideration of an Employment Insurance (EI) Decision in order to the Commission’s decision of August 7, 2015, in her case (Exhibits GD3-26 and GD3-27).

[5] On October 7, 2015, the Commission informed the Appellant that it was upholding the decision made in her case on August 7, 2015 (Exhibits GD3-32 and GD3-33).

[6] On November 3, 2015, the Appellant 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 GD2-7).

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

a) The Appellant would be the only party in attendance;

b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to conduct proceedings as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[8] The Tribunal must determine whether the imposition of disentitlement for employment insurance benefits in the Appellant's case is justified under section 33 of the *Employment Insurance Regulations* (the "Regulations") because she was unable to prove that she was entitled to receive such benefits as a teacher 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 July 3, 2015, indicates that the Appellant worked as a "teacher" for the employer Commission scolaire de Montréal from January 5, 2015, to June 29, 2015, inclusive, and that she stopped working for that employer because of a shortage of work (Code A – Shortage of work / End of Contract or Season). The document indicates that the anticipated recall date was unknown (Exhibit GD3-18);

b) A document from the Commission scolaire de Montréal entitled "Résultats SAI Bassins du 26 au 29 juin 2015" [posting periods] indicates that the Appellant was included on a priority list and had been assigned a positon number with the name of the school to which she had been posted (Exhibits GD3-19 and GD3-20);

c) In statements made to the Commission between July 21, 2015, and August 17, 2015 (information entered on October 7, 2015), the employer stated that the Appellant's name appeared on a list of teachers who had been offered contracts during the posting period of June 26 to 29, 2015. It stated that contracts are offered on the basis of the priority list. The employer explained that teachers accumulate seniority and that pension contributions accumulate with every contract they perform and that unused sick leave is paid at the end of the school year. It explained that group insurance premiums paid during the summer break are deducted from the last paycheque in June. The employer indicated that teachers retain their coverage under the group insurance plan during the summer break because the premiums have already been paid by the employees themselves. It noted that the summer break started on June 30, 2015, and ended on August 21, 2015, that the holiday break started on December 21, 2015, and ended on January 1, 2016, and that spring break was from February 29, 2016, to March 4, 2016 (Exhibit GD3-22 and GD3-31);

d) In a document entitled "Détails sur l'avis de dette (DH009)", dated August 15, 2015, and reproduced on November 9, 2015, the total amount of what the Appellant owed was indicated as $1,261.00 (Exhibit GD3-25);

e) The Appellant sent a copy of the following documents, first to the Commission on October 6, 2015, and then in her Notice of Appeal filed on November 3, 2015:

i. Appellant's contract with the employer Commission scolaire de Montréal, signed on April 16, 2015, indicating that the Appellant undertook to teach a full teaching load at Marguerite-De Lajemmerais school for this employer from April 1, 2015, to June 29, 2015 (Exhibit GD2-6 or GD3-29);

ii. Appellant's contract with the employer Commission scolaire de Montréal, signed on August 27, 2015, indicating that the Appellant undertook to teach 48.78% of a full teaching load at Marguerite-De Lajemmerais school for this employer from August 24, 2015, to June 27, 2016 (Exhibit GD2-7 or GD3-30).

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

a) The Appellant recalled the major elements of the file and detailed her work history as a teacher (high school level) and with the Commission scolaire de Montréal (CSDM) in particular. She stated that she had entered into her first contract with the CSDM in November 2012 and that it had been completed at the end of the 2012-2013 school year. The Appellant also said that she had worked as a substitute teacher for the Commission scolaire de la Riveraine (Trois-Rivières Rive-Sud region) after earning her Bachelor of Education in 2011;

b) She indicated that she had accumulated approximately two years of seniority with the Commission scolaire de Montréal (level 4 of the salary scale). The Appellant stated that she had always taught at Marguerite-De Lajemmerais high school (a girls' school where she taught geography and history) since she started working for the CSDM (Exhibit GD3-28);

c) She indicated that her employment was precarious and that her name had been put on the employer's priority list when the contract she had obtained in November 2012 ended. The Appellant said that when her name was added to the priority list for a permanent position, under the geography specialty (social sciences), she was tenth on the list. She noted that she was still tenth on the list.

d) The Appellant stated that she had obtained a replacement contract for a full teaching load for the period from January 5, 2015, to February 25, 2015. She stated that she had then worked as a substitute teacher (on call) before obtaining another contract (teaching history) for a full teaching load for the period from April 1, 2015, to June 29, 2015 (Exhibits GD2-1 to GD2-7, GD3-3 to GD3- 18 and GD3-28);

e) She indicated that the employer had posting job openings for a specific period of time (June 26 to 29, 2015) to award part-time contracts. The Appellant stated that the inclusion of her name on the “Résultats SAI Bassins du 26 au 29 juin 2015” document (Exhibits GD3-19 and GD3-20) meant that she could apply for a contract for the next school year, but there was no guarantee on the part of the employer. The Appellant said that at that time she expressed her interest in an offer for a contract at Marguerite-De Lajemmerais school for the 2015-2016 school year (Exhibits GD2-1 to GD2-7);

f) She noted that the offer the employer had made during the posting period of June 26 to 29, 2015, was for 48.78% of a full teaching load. She explained that the teaching load had been changed on March 8 or 9, 2016, when classes resumed after the spring break. As a result of this change, her teaching load was increased by 5% for a period of 12 weeks (evening courses offered to fourth-year high school students). After that time it returned to 48.78% of a full teaching load, as it had been at the beginning, for the rest of the school year (Exhibits GD2-1 to GD2-7, GD3-28 and GD3-30);

g) The Appellant indicated that the $1,261.00 amount being asked from her as an overpayment applied to the period during which she received benefits in the summer of 2015. She said that she could not understand why that $1,261.00 amount was higher than the amount that had been paid to her in benefits. She indicated that she had received two payments of benefits on August 5, 2015, totalling $1,109.00: one payment of $213.00 and another of $896.00 ($213.00 + $896.00 = $1,109.00), while the amount claimed is $1,261.00. She said that she could not understand why the Commission had chosen to pay her benefits on August 5, 2015 – more than 30 days after she had applied for benefits – only to inform her two days later, on August 7, 2015, that she was not entitled to those benefits. The Appellant said that she was hoping for greater clarity

regarding the provisions of section 33 of the Regulations (Exhibits GD3-23 and GD3-24);

h) She stated that she had not applied for benefits at the beginning of the 2015-2016 school year even though her work accounted for only 48.78% of a full teaching load for the major portion of the 2015-2016 school year.

PARTIES' ARGUMENTS

[12] The Appellant made the following submissions and arguments:

a) She argued that when she performed the teaching contracts during the 2014-2015 school year the employment was not [translation] "sufficiently regular, continuous and predetermined", as the Commission had stated in its arguments (Exhibit GD4-4). The Appellant explained that the teachers she had replaced from January 5, 2015, to February 25, 2015, and from April 1, 2015, to June 29, 2015, could have returned to take back their positions before the date on which those contracts were supposed to end (Exhibits GD3-3 to GD3-18 and GD3-28);

b) She explained that during the posting period of June 26 to 29, 2015, she had looked at the contracts that were available and had agreed at that time to offer her services for the posting she had chosen but that there was no guarantee she would obtain that posting. She said that she had expressed her interest and had accepted the offer for the position at Marguerite-De Lajemmerais school for the 2015-2016 school year at 48.78% of a full teaching load (Exhibits GD3-28 and GD3- 30). The Appellant indicated that she did not consider this to be a formal contract offer or contract signing (Exhibits GD3-21 and GD3-28). She said that she had received an email notifying her that she had been assigned the position she had chosen and that it would be in effect as of August 24, 2015. The Appellant noted that she had received an offer in the past that had [translation] "fallen through". She said that she had been [translation] "taken in" in 2013-2014 when she chose a teaching assignment at Évangéline school for 78% of a full teaching load, only to learn on her first day of work that she would not be receiving this contract. The Appellant asserted that as long as the contract had not been signed it could

be cancelled or changed if there were fewer students, for example, and that the contract contained a specific provision to that effect. According to her, there were plenty of things that could happen between the posting period and the start of the school year that could result in there being no contract when school started (Exhibits GD2-1 to GD2-7, GD3-21, GD3-28 and GD3-30);

c) The Appellant indicated that she disagreed with the Commission's determination that she was not entitled to benefits during the summer break and that she had to repay the benefits she had been paid during the summer. The Appellant asserted that she met the criteria set out in section 33 of the Regulations and detailed in the letter she had received from the Commission (Exhibits GD3-23 and GD3-24 and GD3-28);

d) She argued that, as her record of employment shows, her contract had ended on June 29, 2015, that she had worked as a casual or substitute teacher during the 2014-2015 school year and that she had not received any guarantee that her contract would be for a specific length of time determined in advance. She maintained that her contract had not been renewed and that her employment relationship had been severed on June 29, 2015, given that in August 2015 she did not hold the same position as the one she had held during the previous school year (Exhibits GD3-28 and GD4-4);

e) The Appellant explained that she did not have the option of retaining some of her benefits, such as the coverage provided under her group insurance contract. She stated that, contrary to the Commission's assertion, her sick days were not paid out at the end of the school year, noting that at the end of her contract her sick days were neither paid out nor accumulated for the following school year (Exhibit GD4-4). She indicated that she continued to accumulate years of experience for retirement purposes as well as years of seniority with the Commission scolaire de Montréal from year to year;

f) The Appellant argued that the facts and circumstances that had led to the Commission's decision in her case did not apply to her situation (Exhibits GD2-1 to GD2- 7).

[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 the exemption conditions set out in subsection 33(2) of the Regulations have 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 asserted that the Appellant had not established that her teaching contract had ended on June 29, 2015, or that she would not be returning to her employer’s employment after the non-teaching period. The Commission indicated that the Appellant had entered into another teaching contract with the same school board during the posting period of June 26 to 29, 2015, i.e. before the date on which her existing contract expired, and that she had maintained her seniority and all of her benefits during the summer period (Exhibits GD3-19, GD3-20, GD3-22, GD3-28 and GD3-31). The Commission maintained that the employment relationship continued when the Appellant entered into an agreement with her employer for the next teaching period. It determined that the Appellant did not meet the exemption conditions set out in paragraph 33(2)(a) of the Regulations (Exhibit GD4-4);

c) It stated that in her Notice of Appeal (Exhibits GD2-1 to GD2-7) the Appellant indicated that she had obtained a part-time contract that was not effective until August 24, 2015, and that nothing was guaranteed or in effect before the contract was signed. On that point, the Commission noted that a contract offer can be verbal or written. It noted that, even though the contract was signed at a later date, the Appellant entered into a contract with her employer for the next teaching period before the end of her contract on June 29, 2015. The Commission asserted that as long as a contract has not been cancelled it is deemed to have been accepted by a teacher, even if this takes place verbally (Exhibit GD4-4);

d) The Commission stated that the Appellant had been employed by the Commission scolaire de Montréal on a replacement contract from January 5, 2015, to February 25, 2015, and had also obtained a part-time teaching contract starting on April 1, 2015, and ending on June 29, 2015 (Exhibits GD3-21, GD3-28 and GD3-29). It determined that the Appellant's employment from January 5, 2015, to February 25, 2015, and from April 1, 2015, to June 29, 2015, was sufficiently regular, continuous and predetermined and that therefore it did not meet the definition of casual or substitute teaching within the meaning of paragraph 33(2)(b) of the Regulations (Exhibits GD4-4 and GD4-5);

e) It determined that there was no evidence that the Appellant qualified to receive benefits in a job other than teaching and that therefore paragraph 33(2)(c) of the Regulations did not apply (Exhibit GD4-5);

f) The Commission found that the Appellant could not be entitled to receive benefits during the non-teaching period from June 30, 2015, to August 21, 2015, since she had not established that she met any of the conditions for exemption set out 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] The Federal Court of Appeal (the "Court") has upheld the principle that the exemption provided for under paragraph 33(2)(a) of the Regulations is intended to provide relief to teachers when there has been a genuine severance of the employee-employer relationship after the teaching period. Teachers whose contracts are renewed for the new school year before or shortly after their teaching contracts expire were not unemployed and there was continuity of employment. Parliament's intention with regard to section 33 of the Regulations is based in part on the premise that, unless there has been a genuine severance of the continuity of a teacher's employment, the teacher will not be entitled to benefits for the non-teaching period (***Oliver et al*, 2003 FCA 98, *Stone*, 2006 FCA 27, *Robin*, 2006 FCA 175**).

[16] In ***Lafrenière* (2013 FCA 175)**, the Court noted as follows:

> […] 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".

[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 as follows:

> […] 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 as follows:

> […] 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 that should be taken into account in determining whether there has been a veritable break in the continuity of the employment 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] Those 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 exemption provided for at the end of paragraph 33(2)(b) of the Regulations focuses on the performance of the employment and not the status of the teacher who holds it. Employment performed in a continuous and defined manner cannot be considered casual or substitute employment. Teachers who sign temporary regular teaching contracts during the school year do not meet the definition of "casual" or "substitute" teaching within the meaning of paragraph 33(2)(b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

[24] In this case, the Tribunal finds that there was no genuine severance in the continuity of the Appellant's employment and that she cannot be entitled to receive 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 notes that, in this case, disentitlement to receive employment insurance benefits under section 33 of the Regulations was imposed on the Appellant for the non-teaching periods of June 30, 2015, to August 21, 2015, December 21, 2015, to January 1, 2016, and February 29, 2016, to March 4, 2016 (Exhibits GD3-23 and GD3-24).

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

[26] The Appellant worked as a high school teacher for the Commission scolaire de Montréal during the 2014-2015 school year. She performed a contract for a full teaching load during the period from January 5, 2015, to February 25, 2015. The Appellant then worked as a substitute teacher before performing another contract for a full teaching load for the period from April 1, 2015, to June 29, 2015 (Exhibits GD2-1 to GD2-7, GD3-3 to GD3-18, GD3-28 and GD3-29).

[27] The Appellant stated that she had expressed her interest and had accepted a new contract of employment with the same employer for the 2015-2016 school year during an online posting period that took place from June 26 to 29, 2015. She stated that this contract had started on August 24, 2015, that it represented 48.78% of a full teaching load and that it was to end on June 27, 2016 (Exhibit GD2-7 or GD3-30). The Appellant indicated that the contract had been amended to include a 5% increase in her teaching load for a 12-week period starting on March 2016 and then reverted to the original 48.78% of a full teaching load until the end of the contract.

[28] The Tribunal is of the opinion that, in June 2015, when the Appellant accepted the new contract starting on August 24, 2015, she clearly demonstrated that there had been no clear severance of her employment relationship with the Commission scolaire de Montréal.

[29] The fact that the Appellant performed a teaching contract that ended on June 29, 2015, and that she accepted another one for the 2015-2016 school year a few days before the end of that contract confirms the continuity of her employment relationship with the employer.

[30] The Appellant's employment relationship with her employer, the Commission scolaire de Montréal, continued up to the time when she entered into an agreement with that employer for the teaching year that following the termination of her contract, in June 2015. Accordingly, the

Appellant failed to establish that she would not be resuming her employment with her employer after the non-teaching period.

[31] The Tribunal notes that, even if there is an interval between two contracts during which time a teacher is not under contract because of a non-teaching period, such a situation does not mean there has been a genuine severance of the relationship between the teacher and the teacher's employer (***Robin*, 2006 FCA 175**).

[32] The Tribunal therefore notes that it is not sufficient to look only at a contract's termination and commencement dates to determine whether a claimant's teaching contract has terminated within the meaning of paragraph 33(2)(a) of the Regulations; rather, it is necessary to consider whether there has been a clear severance of the continuity of the claimant's employment, thus rendering the claimant unemployed (***Oliver et al*, 2003 FCA 98, *Robin*, 2006 FCA 175**).

[33] The Tribunal notes as well that the purpose of such an undertaking is not to interpret contractual provisions to determine the respective rights of employer and employee but to decide whether a claimant might be entitled to receive employment insurance benefits he or she is unemployed (***Bazinet et al*, 2006 FCA 174, *Robin*, 2006 FCA 175**).

[34] The Tribunal further notes that the Court has held that the issue of whether or not a teacher was covered by the exemption 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 had to be taken into consideration in light of the purpose and intention of the legislation (***Oliver et al*, 2003 FCA 98**).

[35] The Tribunal also notes that, in this case, the Appellant accepted her new contract during the posting period of June 26 to 29, 2015, and that disentitlement was imposed for the non-teaching period as of June 30, 2015 (Exhibits GD3-23 and GD3-24).

[36] The Tribunal does not accept the Appellant's argument that she looked at the contracts available during the posting period and expressed her interest and agreed to offer her services for the posting she had chosen for the 2015-2016 school year. The Tribunal finds that during the posting period the Appellant clearly accepted a contract offer that had been made in accordance

with the established conditions. She did not merely express interest in a specific position or declare herself available to hold such a position. The Appellant stated at the hearing that she had chosen of a number of postings that had been offered to her.

[37] The Appellant argued that she did not consider the offer she had accepted for the 2015-2016 school year to be a formal contract offer or a contract signing (Exhibits GD3-21 and GD3-28), noting that in the past she had received a similar offer but that it had ultimately [translation] "fallen through". She noted that as long as a contract has not been signed it can be cancelled or changed if, for example, there are fewer students than anticipated. There is a specific clause to that effect in the contract.

[38] The Tribunal does not accept the Appellant's argument on this point since the evidence shows that the Appellant started her new contract on August 24, 2015, as anticipated, after accepting the offer her employer made to her in June 2015 during the posting period.

[39] The Tribunal finds that the contract offer and the Appellant's acceptance of it, in accordance with the established conditions, are elements of a "written employment contract" and show that there was no break in the employment relationship (***Stone*, A-367-04**).

Other factors

[40] Aside from the timing of the acceptance of her new contract of employment, a number of other factors also indicate that there was no veritable break in the Appellant's employment relationship with the employer Commission scolaire de Montréal (***Stone*, A-367-04)**.

[41] Among those factors, the Tribunal notes the "length of the employment record" that the Appellant had with her employer given that she had accumulated approximately two years of seniority with that employer since performing her first contact during the 2012-2013 school year. In the Tribunal's opinion, that element also illustrates that there was no veritable break in the Appellant's employment relationship (***Stone*, A-367-04**).

[42] Moreover, the Appellant's name appeared on a priority list after the first contract she had obtained with this employer in November 2012. The Appellant was tenth on the list in her specialty (geography). The fact that the Appellant was included on the list thus gave her the right

to accept a new contract of employment on the basis of her placement on the list. The Tribunal finds that this element is also part of the "employer's method of recalling the claimant" or the "understanding between the claimant and the employer and the respective conduct of each" and establishes that there was no veritable break in the employment relationship (***Stone*, A-367-04**).

[43] The record of employment issued by the employer on July 3, 2015, indicates that the date on which the Appellant was to be called back to work was not known. It did not state that she would not be called back (Exhibit GD3-18).

[44] The Tribunal also observes that when the Appellant filed her claim for benefits on July 2, 2015, she stated that the date of her return to work with the employer was not known (Exhibit GD3-7). The Appellant did not indicate that she would not be returning to work for the employer.

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

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

[46] The Tribunal finds that the contracts the Appellant performed during the 2014-2105 school year (from January 5, 2015, to February 25, 2015, and then from April 1, 2015, to June 29, 2015) and the one she accepted in June 2015 for 48.78% of a full teaching load do not meet the definition of "casual" or "substitute" teaching within the meaning of paragraph 33(2)(b) of the Regulations (***Arkinstall*, 2009 FCA 313, *Blanchet*, 2007 FCA 377**).

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

[48] The Appellant asserts that the contracts she performed during the 2014-2015 school year did not constitute sufficiently regular, continuous and predetermined employment, as the Commission submitted in its arguments (Exhibit GD4-2). She explained that the teachers she

replaced during that school year could have taken back their positions before the date on which the contracts were to end.

[49] The Tribunal does not accept the Appellant's argument on this point. Notwithstanding the situation the Appellant described and the possibility that the term of her contract might be shortened if the teachers she was replacing were to return unexpectedly, the Appellant was able to carry out her employment in a continuous and predetermined manner, as provided for in each of her employment contracts.

[50] For the contracts performed during the 2014-2015 school year (from January 5, 2015, to February 25, 2015, and then from April 1, 2015, to June 29, 2015) as well as the one she accepted in June 2015 for the 2015-2016 school year, there is no reason to think that, in any of these cases, the Appellant carried out her employment "on a casual or substitute basis" as referred to in 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)

[51] The Tribunal also finds that evidence in the file gives no indication that the Appellant qualified to receive benefits in an occupation other than teaching. Accordingly, paragraph 33(2)(c) of the Regulations does not apply in this case.

[52] In short, although the Appellant did not work and did not receive any compensation from her employer for the period during which her disentitlement was established, i.e. from June 30, 2015, to August 21, 2015, from December 21, 2015, to January 1, 2016, and from February 29, 2016, to March 4, 2016, there was no clear severance in the continuity of her employment (***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**).

[53] On the basis of the jurisprudence cited above, the Tribunal finds that the Appellant has not established that she could be entitled as a teacher to receive benefits during a non-teaching period, since she does not meet the criteria set out in subsection 33(2) of the Regulations.

[54] Accordingly, the Commission’s decision to impose disentitlement on the Appellant for the periods from June 30, 2015, to August 21, 2015, from December 21, 2015, to January 1, 2016, and from February 29, 2016, to March 4, 2016, inclusive, under section 33 of the Regulations is justified in the circumstances.

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

CONCLUSION

[56] The appeal is dismissed.

Normand Morin
Member, General Division - Employment Insurance Section