



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 342

Tribunal File Number: AD-16-111

BETWEEN:

M. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF HEARING: June 21, 2016

DATE OF DECISION: June 28, 2016

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On December 1, 2015, the Tribunal's General Division found as follows:

- The Appellant's appeal concerning a disentitlement imposed on her under section 33 of the *Employment Insurance Regulations* ("the Regulations") should be summarily dismissed because she failed to establish that she was entitled as a teacher to receive Employment Insurance benefits during a non-teaching period.

[3] The Appellant filed an appeal before the Appeal Division on December 31, 2015.

FORM OF HEARING

[4] The Tribunal determined that this appeal would proceed via teleconference for the following reasons:

- the fact that the credibility of the parties was not one of the main issues;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant was present at the hearing. The Respondent was absent even though it had been duly sent a notice of hearing.

THE LAW

[6] Under subsection 58(1) of the *Department of Employment and Social Development Act* ("the DESD Act"), the following are the only grounds of appeal:

- (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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

ISSUE

[7] The Appeal Division must determine whether the General Division erred in summarily dismissing the Appellant's appeal.

ARGUMENTS

[8] The Appellant's arguments in support of her appeal are as follows:

- she believed she was entitled to Employment Insurance benefits for the period from July to August 2015: she was a teacher and was unemployed for two months;
- she was entitled to benefits because she was not permanent;
- she had paid her contributions throughout the year and it was therefore normal for her to draw benefits;
- she had been given no assurance of employment in June, having merely received a text message informing her of the possibility of a contract for the following school year;
- everything at a school board can change and be cancelled during the summer holiday;

- she would not claim benefits for the rest of her life since she would soon be granted permanent status.

[9] The Respondent's arguments against the Appellant's appeal are as follows:

- the General Division did not err in summarily dismissing the Appellant's appeal and correctly exercised its jurisdiction;
- the Appellant did not show that she had a ground of appeal and the Respondent respectfully requests that the Appeal Division dismiss the appeal.

STANDARDS OF REVIEW

[10] The parties made no submissions concerning the applicable standard of review.

[11] The Tribunal notes that the Federal Court of Appeal held at paragraph 19 of its decision in *Canada (AG) v. Jean*, 2015 FCA 242, that, when the Appeal Division "acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[12] The Federal Court of Appeal continued, emphasizing the following:

Not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[13] The Federal Court of Appeal concluded by noting, "Where it hears appeals pursuant to subsection 58(1) of the Department of Employment and Social Development Act, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act."

[14] The mandate of the Tribunal's Appeal Division described in *Jean* was subsequently confirmed by the Federal Court of Appeal in *Maunder v. Canada (AG)*, 2015 FCA 274.

[15] Accordingly, unless the General Division has failed to observe a principle of natural justice or erred in law in making its decision based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

[16] The Respondent's initial determination concerns the matter of the disentitlement that was imposed on the Appellant under section 33 of the Regulations because she had failed to prove that she was entitled as a teacher to Employment Insurance benefits during a non-working period. However, the Tribunal must first rule on the General Division's decision to summarily dismiss the Appellant's appeal.

[17] The Tribunal must consider whether the General Division erred in summarily dismissing the appeal under subsection 53(1) of the DESD Act.

[18] Although the Federal Court of Appeal has not yet considered the question of summary dismissal in the context of the Tribunal's legislative and regulatory framework, it has considered the matter on several occasions in the context of its own summary dismissal procedure. The Tribunal is guided in its analysis by *Lessard-Gauvin v. Canada (AG)*, 2013 FCA 147, *Sellathurai v. Minister of Public Safety and Emergency Preparedness*, 2011 FCA 1, and *Breslaw v. Canada (AG)*, 2004 FCA 264.

[19] In *Lessard-Gauvin*, the Federal Court of Appeal indicated the following:

[8] The standard for a preliminary dismissal of an appeal is high. This Court will only summarily dismiss an appeal if it is obvious that the basis of the appeal is such that the appeal has no reasonable chance of success and is clearly bound to fail.

[20] In *Sellathurai v. Minister of Public Safety and Emergency Preparedness*, 2011 FCA 1, the Federal Court of Appeal stated:

[8] . . . it must be "plain and obvious" that the appeal has no chance of success.

[21] Lastly, in *Breslaw*, the Federal Court of Appeal stated the following:

[7] . . . the threshold for the summary dismissal of an appeal is very high, and while I have serious doubt about the validity of the appellant's position, the written representations which he has filed do raise an arguable case. The appeal will therefore be allowed to continue.

[22] As may be seen from the Federal Court of Appeal decisions cited above, in the context of summary dismissal, it is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed.

[23] Before summarily dismissing an appeal, the Tribunal must instead ask itself the following question:

- Does the appeal manifestly lack substance, and is it clearly bound to fail?

[24] Even if the General Division did not expressly cite the applicable test in this instance, it seems clear to the Tribunal that the General Division considered the purpose of the summary procedure while applying the very high threshold necessary before summarily dismissing the Applicant's appeal.

[25] The Federal Court of Appeal has repeatedly stated the applicable legal standard: 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 (*Oliver*, A-811-00).

[26] The Tribunal is of the view that the Appellant's appeal before the General Division manifestly lacked substance since there was no veritable break in the continuity of her employment.

[27] Indeed, the evidence before the General Division shows that the Appellant, who occupied a teaching position during the 2014-2015 school year, received an offer of employment on June 25, 2015, for the following school year, which offer was accepted that same day. Furthermore, she continued to accumulate seniority with her contracts as well as pension amounts.

[28] The Appellant also does not fall within the definition set forth in paragraph 33(2)(b) of the Regulations and does not meet the conditions to qualify for benefits in respect of employment in another occupation within the meaning of paragraph 33(2)(c) of the Regulations.

[29] The Tribunal therefore has no cause to intervene.

CONCLUSION

[30] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division