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

[TRANSLATION]

Citation: *A. J. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 28

Tribunal File Number: GE-16-2205

BETWEEN:

A. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: January 19, 2017

DATE OF DECISION: March 3, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

A. J., Appellant

INTRODUCTION

[1] The Appellant submitted an initial claim for Employment Insurance regular benefits on June 27, 2015. On April 12, 2016, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay out benefits to her from December 7, 2015, because she had lost her job due to a labour dispute. On April 27, 2016, the Commission received from the Appellant her Request for Reconsideration of the decision that the Commission had made. On May 26, 2016, the Commission amended its decision of April 12, 2016, such that the Appellant's disentitlement period beginning on December 7, 2015, went from indeterminate to ending on April 20, 2016. The Appellant appealed to the Social Security Tribunal of Canada (Tribunal) on June 3, 2016.

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

a) the complexity of the issue or issues

b) the information in the file, including the need for additional information

c) the fact that this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit

ISSUE

[3] The Tribunal must determine whether the Appellant should be disentitled under subsection 36(1) of the Employment Insurance *Act* (Act), given the fact that she lost her job because of a work stoppage due to a labour dispute.

EVIDENCE

[4] The Tribunal has reviewed all the documents in the appeal docket. The following is a summary of the evidence that the Tribunal has found to be the most relevant to its decision.

[5] A Record of Employment from the Université du Québec à X, dated May 19, 2016, specifies that the Appellant worked from September 16 to December 4, 2015, and that the date of her last pay period was December 6, 2015. The reason in the Record of Employment is specified as “strike or lockout,” and her total insurable earnings are $1,265.88 for a total of 56 hours.

[6] An article appeared in *La Presse* on December 7, 2015, entitled *Grève des étudiants employés de l’UQAM: cours perturbés* ([translation] “UQAM student employees on strike: classes disrupted.”) The article says that students employed by the University called an unlimited strike with a mandate of 85% of the members voting in favour, following negotiation meetings that, according to the union, had gone nowhere.

[7] A Notice of Strike Form under section 111.111 of the *Quebec Labour Code* dated December 7, 2015, specifies that a strike of indeterminate duration would be called by the certified association SÉTU of the Public Service Alliance of Canada as of December 7, 2015, at 8 am.

[8] In a Service Canada form for the investigation on the start of the work stoppage, which the employer filled out on January 11, 2016, it is noted that the university teaching institution affected by the strike is the Université du Québec à X. The employer specifies that the collective agreement expired on December 31, 2013, and that the main points at issue were money and the minimum employee level. The employer specifies that negotiations broke off on December 3, 2015, and that a conciliator was appointed as of December 12, 2015. It specifies also that teaching, research and recreation services were not being provided. The employer stated that the research assistants and teaching assistants were picketing, and that the doors to the institution had been blocked on December 7, 2015, but that an injunction had been obtained as of December 8, 2015.

[9] The Appellant's name appears in a list of employees at the Université du Québec à X, members of the certification units 1 and 2, who had an employment contract at the time of the dispute, between December 7, 2015, and January 17, 2016.

[10] For its investigation on the start of the work stoppage, the Commission also contacted the union (Public Service Alliance of Canada) to obtain information. Union adviser J. F. confirmed that the labour dispute pertained to assistant teaching jobs and research assistant jobs, as well as academic assistant and logistical assistant jobs at the Université du Québec à X (UQAM). He confirmed also that the dispute was indeed a strike, and that the points at issue were salaries and minimum employee level. The stop-work initiative was taken on December 7, 2015, and the unlimited general strike had been called subsequent to the vote of December 3, 2015.

[11] The Commission contacted the Appellant on April 19, 2016. It is indicated in the conversation record that the Appellant affirms that the main employer is the Université de X. She indicated also that she had 2 contracts with UQAM totalling 65 hours for the duration of the contracts, which ended on December 16 and 17, 2015, respectively.

[12] The back-to-work agreement reached by UQAM and the Public Service Alliance of Canada (SÉTU), signed on March 31, 2016, specifies that the unlimited general strike that began on December 7, 2015, ended on April 3, 2016.

[13] In a conversation between the Commission and the Appellant occurring on April 25, 2016, the Appellant indicates that, during her contracts with UQAM, she had no activity, while, during the next two weeks, she worked full-time as a marker. The Appellant also specifies that she attended a union meeting at the beginning of the dispute to find out what was going on, but that that she did not go back thereafter. She claims also to have left the country between January 12 and February 22, 2016, as well as between February 29 and April 14, 2016, and that her absence means that she did not participate in the dispute.

[14] In her Request for Reconsideration of the decision that the Commission had made, the Appellant specifies that the hours worked as a marker for UQAM was the source of a secondary income totalling only less than $1,500 for the four months in fall.

[15] The Commission contacted the Appellant on May 19, 2016, to obtain more information on these jobs and the labour dispute at UQAM. The Appellant affirms that she held an assistant teaching position—a unionized position—at UQAM. She claims to have had two contracts with UQAM: the first ending on December 16, 2015, totalling 35 hours of work for an income of $791. The second one ended on December 17, 2015, totalling 30 hours for an income of $681. On the question of how many days or hours the Appellant had been working, she answered that she had worked when there were markings to do for the number of hours provided for in her contracts. The Appellant claims to have attended two union meetings in October and November but not to have picketed or to have exercised her right to vote. She claims to no longer have benefited from a salary increase following the signing of the collective agreement, since she had no other contract after December 2015.

[16] In a calculation table from the Commission determining the number of days the Appellant should be disentitled, the Commission allocated the Appellant's work hours and income to the weeks from September 13 to November 29, 2015, and found that the Appellant's weekly earnings from UQAM were $106.75 and that her total weekly insurable earnings arising from the sum of her jobs were $951.89. The Commission claims it then calculated, on that basis, that the weekly insurable earnings from working at UQAM represented 11% of her overall weekly insurable earnings (established pursuant to section 14 of the Act).

[17] The employer (J. B., Director of the total compensation division) completed a questionnaire on April 21, 2016, on the work stoppage (labour dispute). He indicated that the agreement in principle had been reached on March 18, 2016, that the union had accepted the theoretical ruling by the conciliator on March 24, 2016, that the back-to-work agreement had been signed on March 31, 2016, and that the collective agreement had been signed on April 6, 2016. Mr. J. B. specified that, as of April 4, 2016, the student employees could get new contracts.

Appellant's Testimony

[18] The Appellant claims to have worked as a lecturer at the Université de X since 2004 and that, each year at the end of her contract and just before summer, she submits an Employment Insurance claim and receives benefits until September upon the resumption of classes. She affirms to have taken the same approach in June 2015 following the end of her work as a lecturer. In September 2015, as is the case every year, she stopped receiving benefits due to her return to work and the return to classes. In addition to her usual and main work as a lecturer at the Université de X, the Appellant claims to have obtained from a friend two small marking contracts with UQAM.

[19] In December, at the same time that she finished her tasks as a lecturer at the Université de X, the labour dispute at UQAM began. It was during that same period that the Appellant requested the reactivation of her benefit period. The Appellant explained that she was leaving for Senegal on January 14 to finish her doctorate work and that, therefore, she was expecting to receive benefits for a month before leaving. She did receive benefits until her departure for Senegal.

[20] The Appellant affirms that her primary workload originated in her position as a lecturer at the Université de X. The Appellant affirms that she was initially supposed to be a lecturer at UQAM for the fall 2015, session, but that the course was cancelled. Her friends, having sympathy for her, took her as an assistant lecturer to give her a way of getting into UQAM. She claims to have had only two small marking contracts. She earned less than $1,500, which represents about two weeks of work as a lecturer at the Université de X. At the Université de X during the 2015 fall session, she gave two courses, which accounts for 6 hours of classes, and she affirms that this represents about $1,400 every two weeks.

[21] In light of the Commission's recommendation to disentitle her for one day a week, the Appellant consents that the calculation seems slightly exaggerated; she specifies that, in a 15-week session of classes, she had not worked 15 days, but rather about 5 full days in total. The Appellant claims that the contracts that she had signed with UQAM indicate loads of 30 hours and 35 hours respectively, but that she marked a lot more quickly than that.

[22] As for her participation in the strike, the Appellant emphasizes that the strike was voted for on December 7, 2015, and that she finished her contracts on December 16 and 17, 2015. She claims to have twice gone to the local union and to have helped set up tables for a meeting on the strike. Beyond that, she did not picket, but she did receive $100 for attending the meeting and for helping out with it. She claims not to have received strike pay thereafter.

[23] The Appellant affirms that, in a normal year, she would have resumed working at the Université de X in January 2016. However, the peculiarity of 2016 was that she travelled for doctoral work during the entire winter. She was outside of the country from January 14 to April 14, 2016.

PARTIES' ARGUMENTS

[24] The Appellant argues as follows:

a) The Appellant found it unjust that her income from UQAM constituted only 10–20% of all her employment income.

b) She should be entitled to Employment Insurance benefits for the period from December 2015 until her departure from Canada in January 2016, since the end of her contracts—not the labour dispute—was the cause of her work stoppage.

c) Her main employment has been lecturing at the Université de X since 2004, and her benefits are consistent with that job and the end of the teaching contract for the fall sessions, as shown by her Record of Employment from the Université de X— not by the one for her position as marker at UQAM. Her employment as a marker at UQAM constituted a slightly higher secondary income ($1,500 for the whole session).

[25] The Respondent made the following submissions:

a) The evidence in the docket shows that, in the workplace where the Appellant had been hired, there was a labour dispute because negotiations with a view to renewing the new collective agreement took place before the beginning of the dispute. On December 3, 2015, 80% of the employees in attendance voted in favour of the strike. The management side had already asked that a conciliator be appointed. An agreement in principle was reached between UQAM and the union on December 15, 2015, but it was rejected on December 21, 2015.

b) There is therefore an element of insistence by one party and of resistance by the other, with respect to certain claims (pages GD3-11, GD3-12, GD3-49 to GD3-56, GD3-57 and GD3-58, GD3-59 to GD3-64). According to the Federal Court of Appeal, when the employees and an employer negotiate a collective agreement, there is a labour dispute (*Gionest v. Canada (U.I.C.)*, A-787-81, *Canada (AG) v. Simoneau*, A-611-96).

c) Secondly, the employer's evidence and the union's evidence confirm that there was an unlimited strike called as of December 7, 2015, at the place where the Appellant had been hired.

d) In the present case, the evidence is clear that the Appellant lost her job at the Université du Québec à X (UQAM) as of December 7, 2015, due to a lack of work because of the labour dispute. Accordingly, the conditions that call for disentitlement under subsection 36(1) of the Act were met.

e) The Commission submits that the case law supports its decision. The Federal Court of Appeal has confirmed the principle that a disentitlement under subsection 36(1) of the Act applies when: 1) there is a labour dispute at the claimant's workplace; 2) the labour dispute caused a work stoppage at the claimant's workplace; and 3) the work stoppage caused the loss of the claimant's employment (*White v. Canada (AG)*, A-1037-92).

f) The Court has confirmed that, when a work stoppage arises during a labour dispute, there is a causal connection between the labour dispute and the work stoppage (*Canada (AG) v. Simoneau*, A 611-96, *Dallaire v. Canada (AG)*, A-825-95 (leave to appeal was refused by the Supreme Court of Canada, 1996 S.C.C.A. No. 598). The Court has confirmed that these provisions apply also to any previous employment that a claimant cannot resume on a specific date because of a work stoppage attributable to a labour dispute (*White v. Canada (AG)*, A-1037-92; *Morrison v. C.E.I.C.,* A-209-89).

g) The Commission submits also that the Appellant has failed to prove that she was entitled to Employment Insurance benefits pursuant to subsection 36(4) of the Act because, namely, she did not participate in the dispute, she did not make money from it and she had no direct stake in it. From the time that she had been hired, the Appellant was an employee as defined in the collective agreement, and she was unionized, since it was an essential condition for keeping a job. As the Appellant was unionized upon being hired, she participated in the dispute because she was negotiating with the employer, even if it was by way of a representative. Although she did not take part in the strike by picketing, the claimant made and distributed material for the union. Whether by solidarity, compliance with the union directors or out of necessity, the fact that she sided with the strikers means she thereby supported their claims. The Commission finds that the Appellant had a direct stake because she benefited from the achievements of the new collective agreement, and the issues were directly tied to the job she held. The Commission submits that the case law supports its decision. The Federal Court of Appeal has confirmed the principle that, once disqualified from receiving benefits by subsection 36(1), claimants have the burden of proving that they are entitled again under subsection 36(4) of the Act *(Black v. Canada (AG)*, 2001 FCA 255).

h) The Federal Court of Appeal has confirmed that, in order to determine whether a claimant participating in a labour dispute or is an innocent bystander swept up in another's dispute, the claimant's conduct and his or her bargaining agent must be considered. Regardless of the degree of the union's involvement or its interest in the dispute, and all of the other surrounding circumstances, if a Union has been actively involved in a labour dispute, its members cannot later claim that, because they were not

personally participating in the dispute, they are entitled to Employment Insurance benefits. (*Battista v. Canada (AG)*, 2004 FCA 241).

i) The Court has confirmed the principle that, unless the relationship between employees and the employer and the union is permanently severed, the conditions under subsection 36(4) of the Act have not been met (*Canada (AG) v. Hurren*, A-942-85).

j) In this case, although the strike ended on April 3, 2016, the management side could not quantify the return-to-work percentage, given that it pertained to student employment and that the session was about to end. On April 21, 2016, one thousand one hundred and fifty people (1,150) signed a contract or were about to do so for a total of one thousand nine hundred and thirty-four (1,934) contracts in total. On December 7, 2015, the day on which the strike was called, one thousand six hundred and sixty-three (1,663) student employees had a contract between December 7, 2015, and January 17, 2016.

k) The Commission considered the information from the management side to conclude that the end of the work stoppage concluded when the number of employees and the activities reached 85% of the normal level, namely, on April 21, 2016 (pages GD3-87 to GD3-89). As a result, the disentitlement pursuant to subsection 36(1) of the Act was correctly terminated on April 20, 2016.

l) The Commission claims that the case law supports its decision. The Federal Court of Appeal has affirmed that a work stoppage has ended once the conditions set out in the *Regulations* have been met. The Court has confirmed also that it is up to the Commission to evaluate the situation based in the requirements of the Act and those of the *Regulations* (*Carole Oakes-Pepin v. Canada (AG)*, A-38-96).

m) In this case, the evidence is clear that the Appellant stopped working on December 7, 2015, due a dispute. Although the contracts that had initially provided for the end dates of December 16 and 17, 2015 were rescinded, the Appellant maintained a lay-off right and could obtain a contract as of the end of the work stoppage. It happens that the employer suspended the sum of its activities because the union had informed it of its intention to respect the strike picketing, or that it lay off certain workers because

they were derelict in being absent from their post. Furthermore, even if the employment was temporary or about to end, the Commission must not consider that the Appellant met the exempting conditions on the assumed end date. Accordingly, the claimant became disentitled under subsection 36(1) of the Act until the conditions set out in subsection 36(1)(*a*) or subsection 36(1)(*b*) of the Act were met. Moreover, the Commission took all the information in the docket in order to disentitle the Appellant only to the extent of the part-time employment that she had lost. The Commission submits that the case law supports its decision. The Federal Court of Appeal has confirmed that it is the cause of a claimant's loss of employment at the time the claimant became unemployed that disentitles him or her from receiving benefits. Accordingly, once a claimant has lost his or her employment because of a work stoppage attributable to a labour dispute, the disentitlement remains until one of the situations identified in the Act arises, even if the labour dispute ceases to be the true cause of the unemployment (*Canada (AG) v. Gadoury*, 2005 FCA 14 (leave to appeal was refused by the Supreme Court of Canada, S.C.C. Docket No. 30815).

n) The number of days of disentitlement per week is established based on the claimant's average weekly earnings from part-time employment and from the relationship between the earnings and the weekly insurable earnings that the claimant received during the rate-calculation period. Depending on whether the percentage representing the relationship between these two earnings is low or high, the number of days of disentitlement per week varies from 0 to 5. In this docket, the Commission has come to the conclusion that the disentitlement would be 1 day per week (page GD3-86). The Commission recommends to this Tribunal to amend the disentitlement from 5 days per week to 1 day per week.

ANALYSIS

[26] The relevant legislative provisions are reproduced in an appendix to this decision.

[27] The general rule for matters on labour disputes is that a claimant who lost a job or who cannot resume a job due to a work stoppage due to a labour dispute in his or her place of work is not entitled to benefits. According to subsection 36(1) of the Act and subject to the *Regulations*, a claimant is not entitled to receive benefits if:

1. the claimant loses an employment, or is unable to resume an employment,
2. because of a work stoppage,
3. attributable to a labour dispute;
4. at the factory, workshop or other premises at which the claimant was employed

[28] The onus lies with the Commission to demonstrate that a claimant is not entitled to benefits (*Bendetti*, 2009 FCA 283). The issue of whether the Commission met its onus of demonstrating that the work stoppage was due to a labour dispute is a mixed question of fact and law, since the response depends on the application of the facts in the legal expression "labour dispute" (*Benedetti*, 2009 FCA 283; *Lepage*, 2004 FCA 17; *Stillo*, 2002 FCA 346).

[29] In order to address the issue of whether the work stoppage is attributable to a labour dispute pursuant to subsection 36(1) of the Act, it must first be established that there was a "labour dispute" at the time of the work stoppage. In this case, it is not contested that there was a labour dispute. The term "labour dispute" is clearly defined in the Act. Section 2 of the Act defines the term "labour dispute." It states that a "labour dispute" means a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms of employment, of any persons. The evidence clearly reveals that there was a dispute between the union and UQAM about the issues of salaries and minimum employee level. Furthermore, the parties admit that an unlimited general strike was called as of December 7, 2015, at UQAM, specifically in the union certification unit, of which the Appellant was a member (*Syndicat des Étudiant-e-s employé-e-s de l'UQAM-FTQ, Unité 1, L'Alliance de la Fonction Publique du Canada* [translation: Union of Student

employees of UQAM-FTQ, Unit 1, Public Service Alliance of Canada]). Media outlets covered this strike, and the picket lines went up on December 7, 2015. Although the existence of a strike is not automatically synonymous with a labour dispute, in this case here, the strike shows, without a shadow of a doubt, the existence of a labour dispute.

[30] The Tribunal shares the Commission’s opinion with respect to the fact that the Appellant must be considered a participant in the dispute that had taken place. As a teaching assistant, the Appellant admitted to being a member of the SÉTUE certification unit and to have even been in attendance at several union meetings to stay up-to-date on the collective bargaining business. The Federal Court of Appeal confirmed in *Black v. Canada (AG)*, 2001 FCA 255, and *Battista v. Canada (AG)*, 2004 FCA 241, that a claimant cannot dissociate themselves easily from the dispute according to his or her degree of personal involvement in the dispute. When the union participates actively in a dispute, which was the case in the current file, all its members have direct stakes in the outcomes that will or will not be obtained upon the culmination of the dispute, and they are deemed to participate in it. Although the Tribunal recognizes that the Appellant had limited personal involvement in the dispute in part because she was outside the country during a large part of the dispute, it is nonetheless the case that she participated in it somewhat by staying up-to-date and by having direct stakes with respect as a party to a contract for which salary conditions had been negotiated. In this way, the Tribunal finds that the Appellant failed to show that she had no stake or involvement in the dispute.

[31] Having established that a labour dispute existed at the time of the work stoppage, the Tribunal must therefore consider whether the work stoppage was attributable to a labour dispute. The Federal Court has established that when there is a work stoppage during the negotiation of a new collective agreement, there is a clear causal connection between the labour dispute and the work stoppage. In fact, there must be a “real link” between the claimant and the dispute. A claimant cannot be disentitled based on conjectures on the issue of whether the group to which the claimant belongs can draw from a portion of the ruling that another group has concluded (*Black*, 2001 FCA 255, leave to appeal to the S.C.C. refused, [2001] S.C.C.R. No. 526). In this case, the parties were negotiating the renewal of their collective agreement when the employees/union members went on strike and the sum of the union members stopped working. The Tribunal is in agreement with the Commission on the existence of a cause and effect

between the work stoppage and the labour dispute. The peculiarity in this case is that the Appellant, although a full-fledged member of her union, was employed by UQAM on a contractual basis as a teaching assistant. As such, she worked as a marker in the context of two distinct contracts, which ended on December 16 and 17, 2015, respectively. From her contracts and their end dates, the Appellant had an ongoing, legally valid employment link when the labour dispute arose. The Tribunal considers, therefore, that it was the work stoppage that caused her work stoppage. Unfortunately, in this case, the Tribunal recognizes that the Appellant finds herself in an undesirable position, given that her work stoppage would have nonetheless surfaced a few days later. However, although it is true for a matter of days, the Tribunal is bound by the Act and does not have the discretion to amend it. Since the Appellant was an incumbent of two teaching assistant contracts when the work stoppage arose, the Tribunal cannot find that it is the labour dispute that caused the Appellant's work stoppage on December 6, 2015, before the end of her contracts.

[32] Put another way, the Tribunal finds that, even if there had been marking or other assistant tasks to do between December 6 and December 16–17, 2015, the Appellant could not have done them, since she was legally on a work stoppage due to a dispute between UQAM and her union certification unit. Although sympathetic to the Appellant's personal circumstances regarding the unfortunate timing of her modest incumbent contracts with UQAM and the labour dispute arising on December 6, the Tribunal finds that the sum of the evidence supports the Commission's conclusion and the fact that the Appellant must be disentitled for having lost her employment due to a labour dispute, pursuant to the section 36 of the Act.

[33] However, when someone loses or cannot resume his or her employment due to a labour dispute, but this employment is part-time, section 52 of the *Regulations* provides that the disentitlement must also be applied in part. In this way, the *Regulations* specify the formula and the calculation that must be considered, depending on the case. The Appellant argues that she should not be penalized for the labour dispute at UQAM, since she was there only for her secondary employment as an incumbent. She argues also that her Employment Insurance benefits claim is based on her primary job of lecturer at the University of X and, therefore, her non-significant incumbent job for UQAM should not be detracting from her rights acquired from her first employer. In light of the Appellant's explanations at the hearing, the Tribunal

recognizes that the Appellant found herself, despite being involved as a unionized member, in a labour dispute for her last contract days with UQAM. The Tribunal finds that it is exactly for situations like the Appellant's that section 52 of the *Regulations* is in place and that it is possible to delineate, depending on the circumstances.

[34] In this case here, the Tribunal is therefore in agreement with the Commission's recommendation to modify the disentitlement from 5 days a week so that it applies only according to the Appellant's employment at UQAM. The Commission determined that the average weekly insurable hours obtained from the Appellant's employment at UQAM represented 11% of her weekly insurable earnings. The Appellant does not dispute the number of insurable hours that the Commission established and, without evidence to the contrary, the Tribunal accepts these hours as fact. As a result, the Tribunal finds that the Commission calculated the percentage correctly, according to section 52 of the *Regulations*, namely, $106.75 (average weekly insurable earnings arising from employment from UQAM), divided by $951.89 (weekly insurable earnings established pursuant to the Act), which does equal 11%. Furthermore, section 52 of the *Regulations* specifies in its table that the percentage (11%) corresponds to a disentitlement of 1 day per week. The Appellant admitted that it was difficult for her to advance a percentage that her working hours for UQAM versus her hours for the Université de X represented. The Appellant actually testified to the effect that her marking work at UQAM had been concentrated in different times rather than spanning equally across each week.

[35] With respect to the end of the disentitlement, subsection 36(1) of the Act provides that a claimant is not entitled to receive benefits until the earlier of: a) the end of the work stoppage; or b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment. The Federal Court of Appeal confirms the principle that once a claimant has lost his or her employment because of work stoppage attributable to a labour dispute, the disentitlement continues until one of the exceptions in the Act is met (*Gadoury*, 2005 FCA 14). With respect to the end of the work stoppage, it is section 53 of the *Regulations* that covers it. Where applicable, the evidence reveals that an agreement in principle between the employer and the union was reached on March 18, 2016, and that a back-to-work agreement was signed on March 31, 2016. The Tribunal also accepted the employer's uncontested evidence to the effect that the collective agreement had been signed on April 6, 2016, and that, as of April 4, 2016, the

student employees could obtain new contracts. The Tribunal notes that the concept of the end of work stoppage must not be mistaken for the concept of the end of a strike (*Rasmussen*, A-647-95). Although the strike ended on April 3, 2016, section 53 of the *Regulations* requires that the number of employees at work represent at least 85% of the normal level or that the activities that are undertaken there for the production of goods or the provision of services represent at least 85% of the normal level.

[36] In this case here, the Commission considered the information obtained by the employer to determine that the work stoppage had ended on April 21, 2016, when the number of employees and the Activities had reached 85% of the normal level. The employer affirmed that, during the Commission's investigation on April 21, 2016, one thousand five hundred individuals signed a contract or were about to do so for a total of one thousand nine hundred and thirty-four contracts. It affirmed also that, as of December 7, 2015, the day on which the strike was called, one thousand six hundred and sixty-three student-employees had a contract between December 7, 2015, and January 17, 2016. The Tribunal finds that the Commission's conclusion is reasonable according to the information available in the docket on the part of the employer, and it accepts April 20, 2016, as the day on which the Appellant's partial disentitlement was raised.

[37] Based on the evidence available in the docket and the Appellant's testimony, the Tribunal is satisfied, on the balance of probabilities, that the Appellant lost her job at UQAM due to a labour dispute. The Tribunal finds that the amendment of the disentitlement calculation that the Commission suggested complies with section 52 of the *Regulations*. As a result, the Commission is justified according to the Act to disentitle the Appellant for one day per week between December 6, 2015, and April 20, 2016.

CONCLUSION

[38] The appeal is dismissed with changes. The entitlement [*sic*] of 5 days must be reduced to a disentitlement of one day, and the overpayment must be recalculated.

Lucie Leduc
Member, General Division—Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

Subsection 2(1)

"labour dispute" means a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons.

Section 36

Subject to the regulations, if a claimant loses an employment, or is unable to resume an employment, because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which the claimant was employed, the claimant is not entitled to receive benefits until the earlier of

(a) the end of the work stoppage, and

(b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment.

(2) The Commission may, with the approval of the Governor in Council, make regulations for determining the number of days of disentitlement in a week of a claimant who loses a part-time employment or is unable to resume a part-time employment because of the reason mentioned in subsection (1).

(3) A disentitlement under this section is suspended during any period for which the claimant

(a) establishes that the claimant is otherwise entitled to special benefits or benefits by virtue of section 25; and

(b) establishes, in such manner as the Commission may direct, that before the work stoppage, the claimant had anticipated being absent from their employment because of any reason entitling them to those benefits and had begun making arrangements in relation to the absence.

(4) This section does not apply if a claimant proves that the claimant is not participating in, financing or directly interested in the labour dispute that caused the stoppage of work.

(5) If separate branches of work that are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department is, for the purpose of this section, a separate factory or workshop.

Employment Insurance Regulations

Section 52

52(2) Where a claimant loses a part-time employment or is unable to resume a part-time employment for any reason mentioned in subsection 36(1) of the Act, the number of days of disentitlement of the claimant in a week is, for the percentage that is set out in column I of the table to this subsection and that is the ratio between the claimant's average weekly insurable earnings in that part-time employment and the weekly insurable earnings as determined under section 14 of the Act, the corresponding number of days of disentitlement set out in column II of that table, ending on the occurrence, in respect of the part-time employment, of an event referred to in paragraph 36(1)(a) or (b) of the Act.

Column I	Column II
Percentage	Number of Days of Disentitlement
more than 0 but not more than 10	0
more than 10 but not more than 30	1
more than 30 but not more than 50	2
more than 50 but not more than 70	3
more than 70 but not more than 90	4
more than 90	5

Section 53

53 (1) For the purposes of section 36 of the Act and subject to subsection (2), a stoppage of work at a factory, workshop or other premises is terminated when

(a) the work-force at the factory, workshop or other premises attains at least 85 per cent of its normal level; and

(b) the level of activity in respect of the production of goods or services at the factory, workshop or other premises attains at least 85 per cent of its normal level.

(2) Where, in respect of a stoppage of work, an occurrence prevents the attainment of at least 85 per cent of the normal level of the work-force or activity in respect of the production of goods or services at a factory, workshop or other premises, the stoppage of work terminates

(a) if the occurrence is a discontinuance of business, a permanent restructuring of activity or an act of God, when the level of the work-force or of the activity attains at least 85 per cent of that normal level, with the normal level adjusted by taking that occurrence into account; and

(b) if the occurrence is a change in economic or market conditions or in technology, when

(i) there is a resumption of activity at the factory, workshop or other premises, and

(ii) the level of the work-force and of the activity attains at least 85 per cent of that normal level as adjusted by taking that occurrence into account.

(3) For the purposes of calculating the percentages referred to in subsections (1) and (2), no account shall be taken of exceptional or temporary measures taken by the employer before and during the stoppage of work for the purpose of offsetting the effects of the stoppage.