



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. N. C.*, 2017 SSTADEI 136

Tribunal File Number: AD-16-1048

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

N. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARING DATE: March 21, 2017

DATE OF DECISION: April 3, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed, the General Division's decision concerning the allocation of earnings dated July 29, 2016, is rescinded and the Respondent's appeal before the General Division concerning the allocation of earnings is dismissed.

INTRODUCTION

[2] On July 29, 2016, the Tribunal's General Division allowed the Respondent's appeal in part, finding that corrections had to be made to the allocation of earnings in accordance with section 36 of the Regulations.

[3] On August 25, 2016, the Appellant applied for leave to appeal to the Appeal Division. Leave to appeal was granted by the Appeal Division on September 7, 2016.

FORM OF HEARING

[4] The Tribunal held this appeal by teleconference for the following reasons:

- The complexity of the issue or issues;
- The parties' credibility was not a key issue;
- 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] At the hearing, the Appellant was represented by Rachel Paquette. Although it received notice of the hearing, the Respondent did not attend.

THE LAW

[6] Under subsection 58(1) of the *Department of Employment and Social Development 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, whether or not the error appears on the face of the record;
- 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.

ISSUE

[7] The Tribunal must decide whether the General Division erred when it allowed the Respondent's appeal in part on the issue of the allocation of earnings.

STANDARDS OF REVIEW

[8] The Appellant submits that the appropriate standard of review for questions of law is correctness, and that the appropriate standard of review for questions of mixed fact and law is reasonableness—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[9] The Respondent did not make any submissions regarding the applicable standard of review.

[10] The Tribunal notes that the Federal Court of Appeal in *Canada (Attorney General) v. Jean*, 2015 FCA 242, refers to paragraph 19 of its decision, 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.”

[11] The Federal Court of Appeal further indicated that:

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.

[12] The Court concluded that "[w]he[n] 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."

[13] The mandate of the Tribunal's Appeal Division as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[14] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

ANALYSIS

[15] The Federal Court of Appeal reaffirmed that the onus of proof is on the claimant to contest payroll information and that mere allegations are insufficient—*Dery v. Canada (Attorney General)*, 2008 FCA 291.

[16] The evidence submitted before the General Division relies on the employer's statements, who twice confirmed the amounts payable to the Respondent for each week in question.

[17] The Respondent asked the General Division to verify his records of payment for each two-week pay period. He also produced certain bank statements in support of his request for verification.

[18] However, nothing in the Respondent's evidence contradicts the employer's evidence for the relevant weeks to this case. Nothing in the pay stubs that were submitted specifies the hours or earnings for each week in question. There is no document in the file showing that the Respondent did not actually receive the earnings indicated by the employer for the weeks in question.

[19] The Respondent cannot, with a simple request for verification, question the veracity of the employer's statements. Based on the evidence before it, the General Division, with respect, could not have arrived at the conclusion it did.

[20] For the above-mentioned reasons, the appeal will be allowed and the General Division's decision rescinded.

CONCLUSION

[21] The appeal is allowed, the General Division's decision concerning the allocation of earnings dated July 29, 2016, is rescinded and the Respondent's appeal before the General Division concerning the allocation of earnings is dismissed.

Pierre Lafontaine
Member, Appeal Division