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

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 79

Tribunal File Number: GE-17-48

BETWEEN:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: May 25, 2017

DATE OF DECISION: June 7, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, M. L. [Appellant], participated in the hearing via teleconference.

INTRODUCTION

[1] The Appellant [Claimant] filed for Employment Insurance benefits effective July 3, 2016. On October 12, 2016, the Canada Employment Insurance Commission (Commission) informed the Claimant that it could not pay her Employment Insurance benefits starting August 25, 2016, because it considered the claimant to have worked the entire week. Furthermore, the Commission stated that it could not pay her Employment Insurance benefits from July 8 to August 24, 2016, because it cannot pay benefits during the non-teaching period.

[2] On November 24, 2016, further to the Appellant's request for a reconsideration review, the Commission informed her that it was maintaining the decision concerning the "teacher" issue. The claimant appealed that decision to the Social Security Tribunal of Canada (Tribunal) on December 28, 2016.

[3] The 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 to obtain additional information; and

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

ISSUE

[4] The Claimant is appealing the decision concerning a disentitlement imposed on her under section 33 of the *Employment Insurance Regulations* (Regulations) because she failed to establish that she was entitled as a teacher to receive Employment Insurance benefits during a non-teaching period.

EVIDENCE

[5] The evidence in the file is as follows:

a) The employer indicated that there would be a staffing session on August 15 and 22, 2016, according to the priority list. Permanent regular positions would be offered between July 4 and 15, 2016. To have access to a vacant regular position, a teacher must, among other things, be on the priority list and have had three contracts in the last four years. The Commission sent a list of teachers who had accepted a regular position (GD3-17 to 18);

b) Contract signed on May 10, 2016, indicating a full contract with the Commission scolaire des Hautes-Rivières school board, Commission scolaire des Hautes-Rivières (school board), from September 1, 2015, to June 30, 2016 (GD3-20);

c) Excerpt from the August 23, 2016, minutes indicating that the Claimant was hired for a regular position starting August 25, 2016 (GD3-21);

d) The employer confirms that the names of the people on the list are those who have obtained a regular position. The offers were made and accepted on July 8, 2016 (GD3-22);

e) The Claimant indicated that she is a primary school teacher and has a certificate. She is a member of the X X teachers union. In 2015-2016, she had a full contract at the school X X-X X X with the school board from September 1, 2015, to September 27, 2016. Toward late June or early July, she received a call from the school board for a regular full-time position at X X-X X X school. She accepted the position and began

work on August 25, 2016. She expected to receive written confirmation. Her years of seniority and pension plan contributions accumulated yearly (GD3-23).

f) The Claimant confirms that she received a call from someone at the school board on July 8, 2016, offering her a position for the 2016-2017 school year, but that she did not know at what level. She knew only the name of the school. She stated that it was a verbal offer, she had just signed her contract, anything could have happened during the summer, and the school board was under no obligation to her. The Claimant explained that she was already on the priority list, which means that, normally, she would have had to attend the staffing session in August to be assigned a contract. That year, the difference was that, since she had been offered a contract in July, she did not need to attend the staffing session. She specified that the contact that she had signed ends on June 20, 2017. She stated that, if she had a contract like her current one, she believes that, three years later, she would become permanent. She also stated that teachers have always had precarious employment and are never sure that their hiring conditions will stay the same, so she does not understand why she would not be entitled to benefits during the summer since she was not paid by the employer (GD3-29).

[6] The evidence submitted through the Appellant's [Claimant's] testimony at the hearing is as follows:

a) The Claimant indicated that she is a teacher and the road for a new teacher is long and uncertain.

b) Usually she is out of work in the summer and entitled to Employment Insurance benefits.

c) In early July 2016, she received a call informing her that she was eligible for a position. She was waiting to receive written confirmation of the position. The official excerpt from the minutes is dated August 25, and the meeting did not take place until August 23. She considers herself to have been hired on that date.

d) She notes that the Commission considers the call in early July to have created a relationship, whereas this relationship did not exist without written evidence. She finds it questionable that she cannot receive Employment Insurance benefits for that summer given that her salary was not allocated over that period as it was for previous years.

e) She does not understand how the call she received created the relationship because her salary was not allocated at all. She is not permanent and can still be found on the recall list.

f) She would like the Act to be changed because that summer without income was particularly difficult.

g) In 2015-2016, she was under contract with the same school board. Her salary was therefore not allocated over the following summer. She considers August 23 to be the date she received confirmation of her contract.

h) There had been errors in the past, and she could have lost her contract during the summer. Usually classes are opened and closed during the summer, which leads to changes. She does not consider a call the equivalent of proof of hiring.

i) She stressed the job insecurity of newly graduated teachers.

j) She did not go to the contract assignment session in August because she had received the telephone call in July.

k) She is not a casual or substitute teacher.

l) She does not understand the difference between that summer and previous years.

m) She states that some teachers seemed to say that they were entitled to benefits and she wants to know whether the criteria have changed.

n) She considers her 2015-2016 contract to have terminated like her employment relationship. Her pay was not allocated, and she does not see the difference

compared to previous years. The only difference is that she knew where she would work before August. There was no difference in terms of group benefits.

ARGUMENTS

[7] The Appellant [Claimant] presented the following arguments:

a) 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.

b) She is a teacher with the Commission scolaire des Hautes-Rivières school board (school board). Until that year (2016-2017), she was on the contract priority list, which was created by the school board.

c) At the end of the 2015-2016 school year, her contract was terminated, and she filed an Employment Insurance claim as she had done in previous years. In early July, she received a call informing her she was eligible for a (temporary) position at a specific school, an offer which she thought unwise to refuse. As a result, she entered into a verbal agreement a few days before the school board closed for the summer in early July. This brief agreement should have prevented her from receiving Employment Insurance benefits under the pretext of a new relationship being created during the call. If she had turned down the position, her name would have remained on the contract list, and she would have known in August instead of July where she would be working in the school board.

d) She accepted, with no guarantee, no proof, no paperwork proving that this position would truly be hers at the end of the month. Job insecurity is chronic in teaching, especially within the school board. Furthermore, there are frequent errors, and anything can happen during the summer without warning. A class could close, a teacher could change their mind about a decision, and the school board often forgets employees, which can cause a snowball effect.

e) She firmly maintains that a call does not constitute proof of hiring.

f) She states that the only differences between a contract and a position are that a contract ends in June and does not continue the following year. A position also ends in June but may continue the following year. That said, she signed her employment contract, which is in effect between August 2016 and June 2017.

g) Officially, her position ends in June. The contract and the position give her a unique certainty: she will work for the school board next school year. The position gives her pay allocated over 12 months, instead of 10, during the summer after hiring! Last summer was therefore identical to previous summers in every way.

h) In closing, she finds it unlawful that $3,000 is being claimed from her, she finds it unlawful that access to Employment Insurance benefits is being taken away from teachers, who, like her, are trying their best to make ends meet during the summer months without pay.

[8] The Respondent made the following submissions:

a) The facts on file show that the Claimant is a teacher as defined by the Regulations because she teaches in an elementary school (GD3-6, GD3-19, GD3-23). The Claimant applied for and received benefits during the summer break, from July 1, 2016, to August 24, 2016 (GD3-18). The Claimant obtained a teaching contract during the qualifying period (GD3-20).

b) 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 Employment Insurance benefits, other than maternity or parental benefits, during a non-teaching period, unless one of the conditions specified in subsection 33(2) is 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.

Contract termination according to paragraph 33(2)(*a*) of the Regulations

c) In this case, the Claimant has failed to show that her contract of employment for teaching terminated on June 30, 2016, and that she would not return to working for her employer following the non-teaching period. She had entered into another contract with the same school board on July 8, 2016, (GD3-22) during the non-teaching period from July 1, 2016, to August 24, 2016, and that offer was made only a few days after the end of the school year. It is clear that when the Claimant filed her request for benefits, she was expecting to return the following year because she indicated an anticipated return to work on August 25, 2016 (GD3-5). The Commission maintained that the employment relationship continued when the Claimant entered into an agreement with her employer for the next teaching period.

d) Therefore, the Claimant does not qualify for the exception in paragraph 33(2)(*a*) of the Regulations.

e) The Commission claims that the case law supports its decision. The Federal Court of Appeal has upheld the principle that the exemption provided by 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 who had their contracts renewed for the new school year before the end of their teaching contracts, or shortly afterwards, were not unemployed and their employment continued. The legislative intent behind section 33 of the Regulations is based on the clear premise that, unless there was a genuine severance of the continuity of a teacher's employment, a teacher would not be entitled to benefits during non-teaching periods (*Oliver v. Canada (Attorney General)*, 2003 FCA 98; *Stone v. Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v. Robin*, 2006 FCA 175).

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

f) In this case, the Claimant was employed for a full-time teaching contract from September 1, 2015, to June 30, 2016 (GD3-20). The Commission argues that the Claimant's employment from September 1, 2015, to June 30, 2016, was sufficiently regular, continuous, and predetermined and that, for that reason, it does not meet the definition of casual or substitute teaching within the meaning of paragraph 33(2)(*b*) of the Regulations.

g) The Commission submits that the case law supports its decision. The Federal Court of Appeal has stated that the exemption 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 determined manner cannot be considered employment on a casual or substitute basis. Teachers who enter into temporary regular teaching contracts during the school year no longer meet the definition of "casual" or "substitute" teaching within the meaning of paragraph 33(2)(*b*) of the Regulations (*Arkinstall v. Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v. Blanchet*, 2007 FCA 377).

Employment other than teaching according to paragraph 33(1)(*c*) of the Regulations

h) In this case, there was no evidence that the Claimant was entitled to benefits for employment in an occupation other than teaching. Therefore, paragraph 33(2)(*c*) of the Regulations does not apply.

i) The Claimant alleges that she received only verbal notice from the employer, and that there was therefore no guarantee of returning the following year (GD3-28). A contract of employment in teaching may be written or verbal. It is reasonable to infer that there is a new contract when the employer has made a bona fide offer of employment to teach during the next teaching period. In other words, the employer has a vacant position to fill during the next teaching period and the teacher has accepted the offer. The teacher's decision to verbally accept an offer of employment in teaching but sign the contract on a future date during the non-

teaching period does not change the fact that a teaching contract was entered into on the date on which the offer was made by the employer and verbally accepted by the teacher. For employment continuity to exist, normally the employer or school board must be the same. In this case, the Claimant verbally accepted a contract with the same school board.

j) The Claimant alleges that there were two months for which she was not paid by the employer (GD3-28). Unfortunately, whether or not payments are made by an employer for a non-teaching period does not constitute a factor considered during the decision-making for teachers.

k) The Claimant alleges that her contract could have been cancelled at any time during the summer break (GD2-8). The Commission is of the view that an agreement was still reached between the employer and the Claimant and that there was still a connection between the contracts. The contract was therefore not terminated. If it had been cancelled during the summer break, the Claimant could then have requested a reconsideration.

l) The Commission maintained that the Claimant could not be entitled to receive benefits during the non-teaching period from July 8, 2016, to August 24, 2016, since she had not established that she met any of the conditions for exemption set out in subsection 33(2) of the Regulations.

ANALYSIS

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

[9] 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.

[10] Subsection 33(2) establishes the conditions that make a teacher disentitled to receive Employment Insurance benefits during non-teaching periods:

> (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 sections 22 and 23 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.

[11] The Federal Court of Appeal 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 v. Canada (Attorney General)*, 2003 FCA 98; *Stone v. Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v. Robin*, 2006 FCA 175).

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

[12] The Claimant worked as an elementary school teacher for the Commission scolaire des Hautes-Rivières school board in the 2015-2016 school year. She completed a contract for a full teaching load from September 1, 2015, to June 30, 2016 (GD3-20). This contract ended a few days before, on June 27, 2016, when the teacher she was replacing returned.

[13] The Claimant indicated that she had expressed her interest and had verbally accepted a regular full-time position in July 2016. She stated she began the position on August 25, 2016 (GD3-23).

[14] The employer confirms that offers were made for people who had obtained a regular position on July 8, 2006 (GD3-22). The Claimant appears on the list given by the employer. This list is dated July 11, 2016 (GD3-17).

[15] In *Lafrenière*, the Court made the following reminder:

> 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."
> (*Lafrenière*, 2013 FCA 175)

[16] In *Oliver*, 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.
> (*Oliver v. Canada (Attorney General)*, 2003 FCA 98)

[17] In *Robin*, the Court stated the following:

> 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.
> (*Canada (Attorney General) v. Robin*, 2006 FCA 175)

[18] In *Stone*, the Court suggested nine factors to consider when determining whether a genuine severance in the continuity of employment had occurred 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. 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 v. Canada*, 2006 FCA 27).

[19] The Court has also specified 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 determined manner cannot be considered employment on a casual or substitute basis. Teachers who enter into temporary full-time teaching contracts during the school year no longer meet the definition of "casual" or "substitute" teaching within the meaning of paragraph 33(2)(*b*) of the Regulations (*Arkinstall v. Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v. Blanchet*, 2007 FCA 377).

[20] The Tribunal is of the opinion that the Appellant's [Claimant's] employment relationship with her employer, Commission scolaire des Hautes-Rivières, continued from the moment that she entered into an—initially verbal—agreement with the employer for the teaching year following the conclusion of her contract.

[21] In *Bazinet*, the Court stated the following:

> […] 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.
>
> (*Bazinet v. Canada (Attorney General)*, 2006 CAF 174)

[22] 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).

[23] The verbal employment offer the Appellant [Claimant] received on July 8, 2016, which she accepted, confirms the continuity of her employment as of that date. The Tribunal notes that this employment relationship continued as of this date, even if the Appellant [*sic*] [Claimant] the school board's resolution was ratified only on August 23, 2016 (GD3-21).

[24] The Claimant argued that she did not consider the offer she had accepted for the 2016-2017 school year to be a formal contract offer since it was merely a telephone call for which she had received no written confirmation. She stressed that similar offers had been made in the past, but that they had ultimately been cancelled or changed. She noted that, as long as the contract has not been signed, it can be cancelled or changes can be made if there are fewer students than anticipated.

[25] However, the Commission also believes that the changes that may be made to a teacher's duties after the initially offered contract has been accepted do not alter the continuity of the employment relationship as such, even if such changes may result in an increase or decrease in the originally planned duties.

[26] Considering the evidence and arguments of the parties, the Tribunal believes that there was no genuine severance in the continuity of the Claimant's employment and that she cannot be entitled to Employment Insurance benefits during the non-teaching period.

[27] The Tribunal also notes that, although there can be an interval between two contracts during which a teacher is not under contract, such a situation does not mean that there is a genuine severance of the relationship between the teacher and their employer (*Canada (Attorney General) v. Robin*, 2006 FCA 175).

[28] The Tribunal is of the view that, by accepting the new contract in July 2016, the Claimant clearly demonstrated that there had been no clear severance of her employment relationship with Commission scolaire des Hautes-Rivières.

[29] The fact that the Claimant carried out a teaching contract that ended on June 27, 2016, and that she accepted another one for the 2016-2017 school year a few days before the end of that contract confirms the continuity of her employment relationship with the employer.

[30] Furthermore, the Record of Employment issued by the employer on July 12, 2016, indicates that the Claimant's expected date of recall was [translation] "unknown." It did not state that she would not be called back (GD3-15).

[31] The Claimant's employment relationship with her employer, Commission scolaire des Hautes-Rivières, continued from the moment she entered into an agreement with that employer for the teaching year following the end of her contract, in June 2016. The Claimant has therefore failed to establish that she would not be returning to working for her employer after the non-teaching period, especially since the Claimant confirmed that she did not attend the contract awarding session because she had received a call in July 2016.

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

[32] The Tribunal finds that the contract the Claimant carried out during the 2015-2016 school year, from September 1, 2015, to June 27, 2016, does not meet the definition of teaching. on a "casual" or "substitute" basis under the terms of paragraph 33(2)(*b*) of the Regulations.

[33] The Claimant also stated that she had not been a casual or substitute teacher for some years.

[34] 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).

[35] The Tribunal finds that paragraph 33(2)(*b*) of the Regulations does not apply to the Appellant's [Claimant's] situation.

Employment in an occupation other than teaching (paragraph 33(2)(*c*) of the Regulations)

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

[37] In summary, although the Appellant [Claimant] did not work and did not receive any compensation from her employer for the period during which her disentitlement was established, i.e. from July 8, 2016, to August 24, 2016, there was no veritable break in the continuity of her employment.

[38] On the basis of the jurisprudence cited above, the Tribunal finds that the Appellant [Claimant] 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.

[39] Therefore, the Commission's decision to impose a disentitlement on the Appellant [Claimant] for the period from July 8, 2016, to August 24, 2016, pursuant to section 33 of the Regulations, is justified.

CONCLUSION

[40] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Regulations

33 (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.