



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. R. v. Canada Employment Insurance Commission*, 2018 SST 77

Tribunal File Number: AD-17-518

BETWEEN:

**R. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 29, 2018

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed.

### INTRODUCTION

[2] On June 7, 2017, the Tribunal's General Division found that the Respondent had correctly applied the provisions of paragraph 55(1)(f) of the *Employment Insurance Regulations*, which allows for claimants to be outside Canada for a period of not more than 14 consecutive days to conduct a *bona fide* job search and not lose their entitlement to benefits.

[3] The Appellant filed an application for leave to appeal to the Appeal Division on July 18, 2017, after receiving the General Division's decision dated June 19, 2017. Leave to appeal was granted on July 25, 2017.

### TYPE OF HEARING

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

- the complexity of the issue or issues;
- the fact that the parties' credibility was not a key issue;
- the information in the file, including the need for additional information; and
- the need to proceed as informally and as quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing and was represented by Kim Bouchard. The Respondent was represented by Elena Kitova.

## **THE LAW**

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

- 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; or
- 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 by finding that the Appellant's exemption from disentitlement under paragraph 55(1)(f) of the Regulations applied from the beginning of her time outside Canada until the end of the last day in the period of 14 consecutive days.

## **STANDARDS OF REVIEW**

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division cannot exercise the review and superintending powers reserved for higher courts [*Canada (Attorney General) v. Jean*, 2015 FCA 242, *Maunder v. Canada (Attorney General)*, 2015 FCA 274].

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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**

### **The Facts**

[10] The Appellant filed an initial claim for benefits that took effect on June 19, 2016. The Appellant was outside Canada for her job search from June 18, 2016, to July 8, 2016. She knew that the vacation pay from her employer was delaying her Employment Insurance payments. The Respondent determined that the Appellant was not entitled to Employment Insurance benefits during the period from June 20, 2016, to July 8, 2016. This decision resulted in an overpayment of \$373.

[11] The Appellant requested a reconsideration of the Respondent's decision. She sent a list of job searches she had conducted while in Louisiana. The Respondent therefore informed the Appellant that it was allowing her the first 14 days overseas to conduct a job search (i.e. the period from June 19 to July 2, 2016).

### **Position of the Parties**

[12] The Appellant argues that her benefit period began on June 19, 2016, and that the vacation pay from her employer was allocated in the first week. She adds that the waiting period began on June 26, 2016. Therefore, it would not be logical to find the Appellant entitled to benefits under paragraph 55(1)(f) when no benefits were payable. She argues that the period in which she should have been exempt from disenitment was June 26 to July 9, 2016, i.e. during her waiting period.

[13] The Respondent maintains that the period of exemption from disenitment was to begin the day after the Appellant left Canada, in accordance with the interpretation of the Digest of Benefit Entitlement Principles. In this case, the period of exemption from disenitment began on June 19 and ended on July 2, 2016, and was followed by a disenitment from July 3, 2016, to July 9, 2016.

## **General Division Decision**

[14] The General Division found that the wording of section 55 of the Regulations was sufficiently clear and that there was no real ambiguity in the manner of establishing the period of exemption from disentitlement of up to 14 consecutive days under paragraph 55(1)(f) of the Regulations.

[15] Therefore, when the period outside Canada extends beyond 14 days, the exemption from disentitlement applies from the beginning of the time outside Canada until the end of the last day in the period of 14 consecutive days. This means that after the first 14 days outside Canada, the exception no longer applies and the disentitlement applies for the remainder of the time outside Canada.

**Did the General Division err by finding that the exemption from disentitlement set out in paragraph 55(1)(f) of the Regulations applied from the beginning of the Appellant's time outside Canada until the end of the last day in the period of 14 consecutive days?**

[16] Following the appeal hearing, the Tribunal invited the parties to discuss the matter to see if it could be settled, and to inform the Tribunal of the outcome of their discussion.

[17] In its response to the Tribunal, the Respondent acknowledges that neither the Act nor the Regulations specify when the calculation of the 14-day period under paragraph 55(1)(f) of the Regulations begins.

[18] The Respondent is now of the opinion that the 14-day exemption from disentitlement can be applied to the weeks beginning on June 26 and July 3, 2016.

[19] In light of the above, the Respondent agrees with the Appellant's grounds of appeal and recommends that the Tribunal allow the appeal in accordance with paragraph 58(1)(b) of the DESD Act.

[20] The Tribunal finds that the Respondent's submissions before the General Division regarding the allocation of the Appellant's earnings were ambiguous, to say the least, and that they likely led the General Division to conclude as it did.

[21] The Tribunal had the benefit of being reassured by the Respondent that the Appellant's vacation pay had been allocated beginning on the date her employment ended, in accordance with subsection 36(9) of the Regulations.

[22] Therefore, since the Appellant was not entitled to benefits during the period in which the earnings were allocated, it would be inconceivable to establish a period of exemption from disentitlement that would allow her to receive benefits to which she was not yet entitled. A logical and coherent interpretation of the Act leads the Tribunal to find that for a claimant to be deemed exempt from disentitlement under section 55, he or she must first be entitled to benefits.

[23] The Tribunal agrees with the parties that the period of exemption from disentitlement coincided with the beginning of the waiting period in the week of June 26, 2016, when the Appellant became entitled to benefits.

[24] For the above reasons, the appeal should be allowed.

## **CONCLUSION**

[25] The appeal is allowed.

[26] The Appellant's period of exemption from disentitlement applies to the weeks beginning on June 26 and July 3, 2016.

Pierre Lafontaine  
Member, Appeal Division