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

[TRANSLATION]

Citation: *J. B. v. Canada Employment Insurance Commission*, 2018 SST 208

Tribunal File Number: AD-16-1368

BETWEEN:

J. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 2, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On November 4, 2016, the Tribunal's General Division found that payments had been allocated to the Appellant in accordance with ss. 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On December 12, 2016, the Appellant filed an application for leave to appeal with the Appeal Division, after being notified of the General Division decision on November 10, 2016. Leave to appeal was granted on December 30, 2016.

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 prevailing issue;
- the cost-effectiveness and expediency of the hearing choice; 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 J. O. The Respondent did not attend the hearing, even though it had received the notice of hearing.

THE LAW

[6] According to s. 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] Did the Tribunal's General Division err by finding that the Appellant's earnings had been allocated in accordance with ss. 35 and 36 of the *Regulations*?

STANDARDS OF REVIEW

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by ss. 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 had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

Facts

[10] The Appellant filed an initial claim for sickness benefits on September 22, 2013. He worked for Service Canada until September 17, 2013. On January 8, 2014, he made a renewal claim for regular benefits because he could not return to his old job for reasons related to his health. He received regular benefits in the amount of $501 per week from January 5, 2014, to September 13, 2014.

[11] On November 27, 2014, the Appellant notified the Respondent that he had received retroactive wage-loss benefits from Industrial Alliance following a late decision rendered by the insurer in November 2014. He received a payment of $4,611.93 on November 25, 2014, for the period from November 23, 2013, to December 31, 2013, and then a second payment of $40,346.35 on November 26, 2014, for the period from January 1, 2014, to November 30, 2014. On February 5, 2015, the Appellant notified the Respondent that he had received another payment of $6,128 for the period from October 16, 2013, to November 22, 2013.

[12] The Respondent notified the Appellant that he had received these sums as wage-loss benefits and that they would be deducted from his benefits under ss. 35 and 36 of the *Regulations*. The decision resulted in an overpayment.

[13] On January 29, 2015, the Appellant requested a reconsideration of the Respondent's decision that was rendered on January 14, 2015. More specifically, he asked that the payment of his debt be suspended until his hearing before the Commission des lésions professionnelles in September 2015 or that the claim be dropped; this would represent a first instance of compensation among more significant instances to come.

[14] Following the Appellant's request for reconsideration, the Respondent increased the amount of the debt.

[15] On May 21, 2015, a memorandum of understanding was signed with the employer as a "complete settlement," following the Respondent's complaint to the Commission des lésions professionnelles.

[16] On November 4, 2016, the General Division dismissed the Appellant's appeal.

General Division decision

[17] The General Division found that the sum that the Appellant had received for the period from October 16, 2013, to November 30, 2014, was related to the job that he had had with his employer.

[18] The General Division found that this sum constituted earnings under s. 35 of the Regulations because it had been paid to the Appellant as benefits from a collective wage-loss indemnity plan with his employer and that it had been allocated in accordance with the terms of s. 36(12)(*b*) of the Regulations.

[19] The General Division found that nothing in the memorandum of understanding stipulated that the payment to the Appellant of $75,000—including $35,000 in damages—would absolve the Appellant of his obligation to reimburse the overpayment of Employment Insurance benefits that he had received, in spite of the fact that the employer, Human Resources and Skills Development Canada, and the Respondent may represent a single legal entity.

[20] The General Division found that the employer had made no representations or guarantees to the Appellant regarding the manner in which the agreement would be addressed under the *Employment Insurance Act* (Act) or any other legislation.

[21] The Tribunal found that s. 46 of the Act stipulated provisions according to which the employer is required to reimburse benefits, but if the employer does not reimburse the benefits in question, s. 45 of the Act stipulates that this obligation falls to the claimant.

Position of the parties

[22] The Appellant argues that s. 46(2) of the Act explicitly stipulates that it is the employer's responsibility to transfer the sum "to Her Majesty." The employer, which represents Her Majesty, acknowledged that the damages resulting from the actions of its personnel should be paid to the Appellant. Said employer could not easily claim to misunderstand the Act.

[23] Furthermore, given that the same legal entity recognizes the $35,000 in damages dated May 21, 2015, claiming previously-received benefits would modify the understanding in a substantial and unilateral fashion (reimbursing almost $23,000 of $35,000), which the Tribunal should not permit or allow.

[24] The Appellant also argues that the work environment established by the employer is at the root of his health problems. Even though he later realized that he could return to work in a different location—away from the work team that caused his health problems—the employer refused to transfer him to another department, in spite of the medical opinions and expert assessments that the Appellant had submitted.

[25] The Appellant is asking the Tribunal to recommend that the claim be written off as compensation for the negative effects caused to the Appellant's health and the lack of requalification to an appropriate position.

[26] The Respondent argues that the Appellant wants his employer to reimburse the overpayment because it caused the situation that made him ill and because he believed that the sum was included in the agreement that he signed when he left his employment. He cannot receive double payments in the form of disability wage-loss benefits and Employment Insurance benefits for the same period. The Appellant should have negotiated for an additional sum with his employer in order to repay his Employment Insurance debt.

[27] The Respondent must apply the Act and the Regulations, and Employment Insurance constitutes payment under s. 35(2) of the Regulations. As a result, as per s. 36(12), the payments are allocated to the weeks for which they were paid. The Respondent argues that the General Division has assessed the evidence properly and rendered a well-founded decision.

Medical evaluations

[28] At the appeal hearing, the Tribunal allowed the Appellant to present two expert medical evaluations that the Appellant referenced in his argument in favour of writing off the overpayment. These documents were sealed for reasons of confidentiality.

Did the General Division err by finding that the Appellant's earnings had been allocated in accordance with s. 35 and 36 of the Regulations?

[29] In the matter at hand, the Appellant does not contest the General Division's decision that the sum of money received constituted earnings under s. 35 of the Regulations because it had been allocated to him as benefits from a collective wage-loss indemnity plan through his employer. He did not contest that these earnings were correctly allocated to the weeks for which the payments were made, as per the provisions of s. 36(12)(*b*) of the Regulations.

[30] The Appellant argues that s. 46(2) of the Act explicitly provides that the employer is responsible for paying the sum "to Her Majesty." The employer, which represents Her Majesty, recognized that damages resulting from the behaviour of its staff must be paid to the Appellant. Said employer can hardly claim ignorance of the Act.

[31] The Federal Court of Appeal has already decided that the employer's failure under s. 46(2) to verify and, if necessary, deduct the amounts in question does not absolve the Appellant of his obligation under s. 45 to reimburse the sum that he had received. It is up to either the employer or the Appellant who has "made money" at the government's expense to repay it (*Lauzon v. Canada (Employment and Immigration Commission)*, A-836-97; *Canada (Attorney General) v. Ellis* (1992), 145 N.R. 265).

[32] In this case, the Appellant is the one who received the benefits to which the wage-loss benefits were added. The excess amount that he received in benefits must therefore be repaid by the Appellant under the Act. The Tribunal finds that the fact that the employer is, in fact, Her Majesty changes nothing with regard to the fact that the Appellant has a legal obligation to reimburse the overpayment.

[33] The Appellant also argues that in light of the recognition by the same legal entity of $35,000 in damages dated May 21, 2015, the reclamation of previously-received benefits would modify the agreement (a reimbursement of almost $23,000 of the $35,000) in a substantial and unilateral fashion, which must not be allowed or authorized by the Tribunal.

[34] The Tribunal is of the opinion, with respect, that it is not the Tribunal's role to redefine or renegotiate the terms of an agreement reached between the Appellant and his employer.

[35] The Tribunal finds that at the time he signed the agreement in May 2015, the Appellant knew that he had to reimburse a significant overpayment to the Respondent, following the allocation of his collective wage-loss benefits. The Appellant should have negotiated an additional amount with his employer in order to reimburse his wage-loss debt or, at the very least, receive a final release from his overpayment.

[36] What is more, in the agreement dated May 21, 2015, the Appellant [translation] "attests that the employer made no representation or guarantee regarding the way in which this agreement or the resulting sums will be handled under the *Income Tax Act*, the *Employment Insurance Act*, or any other law."

[37] Furthermore, the Appellant argues that this agreement:

> [translation]
> constitutes a complete and definitive settlement of the grievances and any other form of action, cause of action, request, complaint, inquiry, proceeding, or request that have or may have resulted from the grievant's employment and the termination of his employment, in addition to the events that led to his employment at ESDC. The grievant releases and forever discharges Her Majesty the Queen in right of Canada, ESDC, the Ministers of the Crown and their agents, officials, and past and present employees of damages, obligations, costs, fees, claims, complaints, causes of action, and any other affair or procedure resulting from his employment with the ESDC or related to this employment, without exception.

[38] Unfortunately for the Appellant, nothing in this agreement provides that the employer will reimburse the benefits that had been paid to him in addition to the benefits that the employer

had paid to him, nor does it exempt him from repaying the benefits that he received, or at the very least, the overpayment that resulted from the allocation of these benefits.

[39] Finally, the Appellant also argues that the work environment established by the employer is at the root of his health problems. Even though he later realized that he could return to work in a different location—away from the work team that caused his health problems—the employer refused to transfer him to another department, in spite of the medical opinions and expert assessments that the Appellant had submitted.

[40] The Appellant therefore asks that the Tribunal recommend that the claim be written off as compensation for the negative effects on his health and the absence of requalification to an appropriate position.

[41] It has been said many times that a judge is to apply the law and not to modify it. The Act specifically provides that claimants must repay overpayments that they may have received. This was Parliament's intent in establishing ss. 45 and 46 of the Act.

[42] However, in light of the facts of this particular matter, the Tribunal can only recommend that the Respondent reconsider his request for reimbursement.

CONCLUSION

[43] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division