



Social Security  
Tribunal of Canada  
[TRANSLATION]

Tribunal de la sécurité  
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2018 SST 519

Tribunal File Number: AD-17-729

BETWEEN:

**J. M.**

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: May 10, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the appeal.

### **OVERVIEW**

[2] The Appellant, J. M. (Claimant), made an initial application for Employment Insurance benefits. After reviewing the request, the Respondent, the Canada Employment Insurance Commission (Commission), informed her that she was not eligible for Employment Insurance benefits because she had lost her job due to her own misconduct. The Claimant, who teaches at the primary level, was to help Cree students pass an important French examination. The Claimant requested a reconsideration of that decision. The Commission informed the Claimant that it was maintaining its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant had been dismissed because she not only explained the questions to the students, but she also told them what answers to give. The General Division found that this went against the very purpose of the examination and an ethical rule of conduct related to her job. The General Division found that the Claimant had been so reckless that she ought to have known that it might lead to her dismissal.

[4] The Tribunal granted leave to appeal. The Claimant states that she could not have known that her conduct was such as to impair the performance of duties owed to her employer or that she could be dismissed given that she was teaching in an Indigenous community and that there was a certain acceptance of help given to students.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant's actions constituted misconduct while she found herself in an atypical situation of teaching in an Indigenous community and that there was a certain acceptance of help given to students.

[6] The Tribunal dismisses the Claimant's appeal.

## **ISSUE**

[7] Did the General Division err by finding that the Claimant found herself in an atypical situation of teaching in an Indigenous community and that there was a certain acceptance of help given to students?

## **ANALYSIS**

### **Appeal Division's Role**

[8] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).<sup>1</sup>

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division. It does not exercise a superintending power similar to that exercised by a higher court.

[10] 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.

### **Preliminary Matters**

[11] The Appellant filed a discharge grievance against her employer; this grievance has still not been heard by an adjudicator. The Tribunal suggested to the Claimant that she suspend this case while she waits for the results of her grievance.

[12] The Appellant informed the Tribunal in writing that she wished to have the Appeal Division render a decision without waiting for the result of the grievance.

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<sup>1</sup> *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

**Issue: Did the General Division err by finding that the Claimant found herself in an unusual situation of teaching in an Indigenous community and that there was a certain acceptance of help given to students?**

[13] The General Division's role is to determine whether the employee's conduct amounted to misconduct within the meaning of the *Employment Insurance Act* (EI Act) and not whether the employee's conduct was a valid ground for dismissal.<sup>2</sup>

[14] On the other hand, the notion of misconduct does not imply that the breach of conduct be the result of a wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, in order to constitute misconduct, the act complained of must have been willful or at least of such a careless or negligent nature that one could say the employee willfully disregarded the effects his or her actions would have on her performance.<sup>3</sup>

[15] The Tribunal notes that the General Division took into account in its decision the atypical situation of teaching in an Indigenous community and that there was a certain acceptance of help given to students. However, based on the evidence, it found that the Claimant had done more than simply help the students and that she had exceeded certain limits. As a result, the students were not evaluated based on their own writing abilities, but rather those of their teacher.

[16] The Tribunal carefully listened to the recording of the hearing before the General Division, especially the Claimant's testimony.

[17] The Tribunal finds that that the General Division did not commit an error when it determined, based on the evidence before it, that the Claimant had been dismissed because she had not only explained the questions to students, but also told them what answers to give. The Claimant testified before the General Division that she acted as a reference for the students so that they did not turn in blank examinations. This went

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<sup>2</sup> *Canada (Attorney General) v. Lemire*, 2010 FCA 314.

<sup>3</sup> *Canada (Attorney General) v. Hastings*, 2007 FCA 372; *Tucker A-381-85*; *Mishibinijima*, A-85-06.

against the very purpose of the evaluation and constituted an ethical lapse with regard to her job.

[18] In her submissions on appeal, the Claimant drew the Tribunal's attention to two arbitration decisions that supported her position. With all due respect, the Tribunal finds that said arbitration decisions do not help the Claimant at all. To the contrary, the Umpire mentions in one of the arbitration decisions that doing the work instead of the students is not a method that the school board supported and does not constitute an appropriate means of teaching students and evaluating their work.<sup>4</sup>

[19] The Tribunal therefore finds that the General Division considered the Claimant's arguments, that its decision rests on the evidence submitted before it, and that this decision complies with the legislation provisions and with the jurisprudence.

[20] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

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<sup>4</sup> Arbitration decision dated November 24, 2015, paras. 102–104.

**CONCLUSION**

[21] The Tribunal dismisses the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	May 1, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	J. M., Appellant Eve-Lyne Fecteau, Appellant's representative Manon Richardson, Respondent's representative