



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v. Canada Employment Insurance Commission*, 2018 SST 538

Tribunal File Number: AD-17-560

BETWEEN:

B. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 15, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, B. P. (Claimant), applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), approved the Claimant's application, and she received benefits under that claim. Her former employer notified the Commission in writing that it had paid \$2,500.00 to the Claimant in a court settlement. The Commission wrote to the Claimant that this \$2,500.00 was considered earnings and would be applied to reduce the benefits she had received, resulting in an overpayment. The Claimant sought reconsideration of that decision. The Commission modified its initial decision to deduct legal fees from the \$2,500.00 and to allocate the balance as earnings.

[3] The Claimant appealed the decision to the General Division of the Social Security Tribunal of Canada (Tribunal). The General Division found that the label "general damages," by itself, did not provide sufficient evidence as to the nature of the loss being compensated and that the Claimant had not met the onus of proving that the settlement money did not constitute earnings.

[4] The Claimant was granted leave to appeal to the Appeal Division. She submits that the General Division erred in considering the amount that she received to be income under the *Employment Insurance Regulations* (Regulations). The settlement terms specifically refer to the monies as general damages that do not constitute unpaid wages. She therefore has met her onus to prove the settlement was for monies other than wages.

[5] The Appeal Division must decide whether the General Division erred in law when it concluded that the settlement monies received by the Claimant and identified by the parties as "general damages" were earnings under the Regulations that had to be allocated.

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

ISSUE

[7] Did the General Division err in law when it concluded that the settlement monies received by the Claimant and identified by the parties as “general damages” were earnings under the Regulations that had to be allocated?

ANALYSIS

Mandate of the Appeal Division

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to s. 58(1) of the *Department of Employment and Social Development Act*, the Appeal Division’s mandate is conferred to it by ss. 55 to 69 of that Act.¹

[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 which is exercised by a higher court.²

[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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue 1: Did the General Division err in law when it concluded that the settlement monies received by the Claimant and identified by the parties as “general damages” were earnings under the Regulations that had to be allocated?

[11] The appeal is allowed.

[12] The General Division's role is to consider the evidence presented to it by both parties, to determine the facts relevant to the particular legal issue before it, and to articulate, in its written decision, its own independent decision with respect thereto.

¹ *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274.

² *Idem*.

[13] In this case, the General Division overlooked the Claimant's evidence showing that, due to "special circumstances," the amount should have been considered something other than compensation for lost wages or other employment benefits.

[14] The General Division also based its decision on an erroneous finding of fact made in a perverse or capricious manner. It based its decision on evidence that was not introduced in the record.

[15] Furthermore, the General Division seems to have imposed too great a burden of proof on the Claimant to prove that the amount received did not constitute earnings to be allocated.

[16] The Appeal Division is therefore justified in intervening and in rendering the decision that the General Division should have rendered.

[17] There is abundant case law supporting the idea that if a claimant claims that amounts received from that claimant's present or former employer were paid out for reasons other than the loss of revenue arising from employment, a settlement or agreement based upon a lawsuit, or a complaint or claim because of a dismissal, it is up to the claimant to demonstrate that due to "special circumstances" some portion of it should be regarded as compensation for some other expense or loss.³

[18] In this case, it must be determined whether the Claimant demonstrated that due to "special circumstances," the \$2,500.00 she received as a settlement of her court claim should be regarded as compensation for something other than the loss of wages or other employment benefits.

[19] The General Division found that the label "general damages" in the settlement agreement was quite broad and could include awards for many types of losses relating to the termination of the employment. Therefore, the label "general damages" by itself did not provide sufficient evidence as to the nature of the loss for which the Claimant was being compensated. The General Division found that the Claimant had not satisfied the onus of proving that the settlement money did not constitute earnings.

³ *Canada (Attorney General) v. Radigan*, A-567-99; *Bourgeois v. Canada (Attorney General)*, 2004 FCA 117.

[20] The Tribunal is of the opinion that the General Division should have looked beyond the terms of the settlement agreement to the authenticity of the facts. Other oral and documentary evidence supports the Claimant's position that she received the amount as compensation for something other than the loss of wages.

[21] On March 25, 2016, the Claimant filed a two-part claim against her former employer. One part of the claim was for unpaid wages in the amount of \$4,290.00. The other part of the claim was for general damages in the amount of \$10,000.00 for the bad faith in the way her employer terminated her employment.

[22] It is worth quoting an excerpt from the settlement agreement reached between the parties:

We have agreed to settle this action on the following terms:

1. Defendant shall pay to Plaintiff the sum of 2,500.00\$ as follows as full and final settlement of the claim, inclusive of interest and costs.

- \$2,500 to be payable to the Plaintiff, as general damages, within 30 days;

- All matters resolved between both parties.

[23] It is true that the amount of \$2,500.00 mentioned in the settlement agreement is simply referred to as general damages, but that was specifically one part of her claim against the employer. The settlement agreement does not identify the amount received as compensation for loss of wages, which was the other part of her claim.

[24] Furthermore, the employer did not provide any evidence whatsoever demonstrating that the payment was based on past services. In its letter addressed to the Commission, accompanied by a copy of the cheque in the amount of \$2,500.00, the employer never qualified the amount received by the Claimant as loss of wages. No statutory deductions were withheld from this amount, either. The Commission also never interviewed the employer to obtain precisions on the reasons for the payment.

[25] The Tribunal listened attentively to the hearing before the General Division, particularly the Claimant's testimony.

[26] The Claimant testified that the settlement was for the bad treatment she received from the employer, who had terminated her for exercising her rights. The Claimant testified that the amount she received was not for unpaid wages. She had already received a four-week working notice of termination from her employer, as required under the *Employment Standards Act, 2000*. The Claimant's credibility was never put in doubt by the General Division.

[27] The Claimant's description of the events leading up to the agreement support her position that the amount was paid to compensate her for damages unrelated to her employment in exchange for the withdrawal of her claim.

[28] Considering the evidence before it, the General Division could not speculate that because the settlement amount was less than the claim for unpaid wages, it might have been solely for the common law notice period and therefore constituted earnings.

[29] The General Division could also not speculate, in order to dismiss the Claimant's testimony, that because the claim had a stronger basis for unpaid wages than for general damages for other matters, the amount was actually paid by the employer for unpaid wages. The General Division also could not speculate on the Claimant's chances to succeed on her claim for bad faith termination by the employer so that it could determine if the employer had in fact paid the amount for that reason.

[30] The General Division had to render its decision based on the evidence before it.

[31] The Claimant had the burden of proving before the General Division, on a balance of probabilities, that the settlement amount constituted something other than compensation for the loss of wages or other employment benefits.

[32] Applying the instructions of the Federal Court of Appeal to the facts of this case, the Tribunal finds that the Claimant met the burden of proving that due to "special circumstances," the \$2,500.00 should be regarded as compensation for some other expense of loss and not as compensation for the loss of wages or other employment benefits.

[33] Therefore, this amount does not constitute earnings within the meaning of s. 35 of the Regulations and should not be allocated.

CONCLUSION

[34] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 3, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. P., Appellant Bryan DeLorenzi, Representative for the Appellant