



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. R. v. Canada Employment Insurance Commission*, 2018 SST 1129

Tribunal File Number: AD-18-546

BETWEEN:

R. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 1, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, R. R. (Claimant), was an assistant coach with a professional sports team from February 2015 to December 2017, before he was released from the team in January 2018. He applied for Employment Insurance regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that he was disentitled from receiving Employment Insurance benefits because he did not have a work permit at that point and therefore was unable to prove his availability for work.¹ The Claimant requested a reconsideration, insisting that he was available for work and had work prospects with other teams.² The Commission maintained its position.³

[3] The Claimant appealed the Commission's reconsideration decision to the General Division, explaining that he was actively seeking employment and would be able to obtain a work permit once he secured employment. He also argued that he should be eligible for Employment Insurance benefits because he had paid into the Employment Insurance program. The General Division found that the Claimant had not proven his availability and he was therefore not entitled to receive any benefits, regardless of whether he had paid premiums. The Claimant is now seeking leave to appeal the General Division's decision on the ground that the General Division failed to observe a principle of natural justice. I must now determine whether there is an arguable case that the General Division failed to observe a principle of natural justice.

¹ Commission's letter dated January 30, 2018, at GD3-19. N.B. the Commission's representations at GD4 note that there was a clerical error in the letter and that it should have indicated that it was unable to pay Employment Insurance benefits from February 1, 2018, because his authorization to work in Canada ended on January 31, 2018 and his Social Insurance Number was no longer valid as of that date.

² Request for Reconsideration, at GD3-27 to GD3-28.

³ Commission's reconsideration decision dated March 13, 2018, at GD3-30 to GD3-31.

ISSUE

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice?

ANALYSIS

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[6] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General)*.⁴

Is there an arguable case that the General Division failed to observe a principle of natural justice?

[7] No. I am not satisfied that there is an arguable case that the General Division failed to observe a principle of natural justice.

[8] The Claimant argues that he should be entitled to receive Employment Insurance benefits because he paid premiums throughout the three years that he worked as an assistant coach. He

⁴ *Joseph v. Canada (Attorney General)*, 2017 FC 391.

argues that denying him benefits amounts to an injustice and that it is absurd that he needs an active work permit to claim benefits, when he had one during the three years that he worked for the sports team.

[9] Natural justice is concerned with ensuring that claimants have a fair opportunity to present their case and that the proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than the impact of a decision on a claimant, however unfair it may seem. The Claimant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. The Claimant has not pointed to or provided any evidence—nor do I see any evidence—to suggest that the General Division might have deprived him of an opportunity to fully and fairly present his case or that it exhibited any bias against him. As a result, I am not satisfied that the appeal has a reasonable chance of success on this ground.

[10] Finally, I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the key evidence before it. The General Division was bound to follow the provisions under ss. 18(1), 49(1), and 50 of the *Employment Insurance Act*. I do not see that it erred in its application of these provisions.

CONCLUSION

[11] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPEARANCES:	R. R., self-represented
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