



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. S. v. Canada Employment Insurance Commission*, 2018 SST 1060

Tribunal File Number: GE-18-3039

BETWEEN:

**K. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Christopher Pike

HEARD ON: November 20, 2018

DATE OF DECISION: December 3, 2018

## **DECISION**

[1] The Appellant has established that she worked as a teacher on a call-in, casual basis at the end of the 2017-2018 school year and retained that status for the entire summer 2018 non-teaching period. She is therefore entitled to receive benefits for the entire summer 2018 non-teaching period. The appeal is allowed.

## **OVERVIEW**

[2] The Appellant worked as a classroom teacher from September 5, 2017 to March 29, 2018 and as a substitute teacher from April 9, 2018 to June 29, 2018, when the school year ended. On July 17, 2018 the Appellant accepted a contract for a fractional position which gave her a fixed three days schedule in a 14-day cycle at an intermediate school starting on September 4, 2018.

[3] The Commission determined that the Appellant was not entitled to benefits during the summer non-teaching period after she signed her contract for the 2018-2019 school year on July 17, 2018 because her teaching contract had not been terminated and because held full-time employment from September 5, 2017 until March 29, 2018. The Appellant says she was entitled to benefits for the entire summer 2018 non-teaching period and appealed to the Tribunal.

## **ISSUES**

[4] I must decide whether the Appellant was entitled to employment insurance benefits during the portion of the summer 2018 non-teaching period after July 17, 2018. To do so, I must consider the following questions:

- a) was the Appellant employed in teaching; and,
- b) if so, has the Appellant proven that she is entitled to receive benefits during that non-teaching period because:
  - i) her teaching employment contracted had terminated; or
  - ii) she was employed in teaching on a casual or substitute basis.

## **ANALYSIS**

[5] The purpose of the employment insurance regime is to pay benefits to individuals who are truly unemployed and seeking work. Teachers are not truly unemployed during school breaks, and so they are not entitled to benefits (*Oliver v. Canada (Attorney General)*, 2003 FCA 98). Thus, as a general rule, teachers are not entitled to receive benefits during the summer, winter, and spring non-teaching periods.

[6] However, a teacher is truly unemployed during a non-teaching period and may receive benefits if they meet one of the following conditions:

- a) their teaching employment contract has terminated;
- b) they were employed in teaching on a casual or substitute basis; or
- c) they qualify to receive benefits on the basis of hours accumulated in an occupation other than teaching

(subsection 33(2), *Employment Insurance Regulations* (Regulations)).

### **Was the Appellant employed in teaching?**

[7] For the purposes of the Regulations, “teaching” means working in the occupation of teaching in a pre-elementary, elementary, or secondary school (subsection 33(1), Regulations).

[8] The Appellant was employed in teaching.

[9] The Appellant’s employer identified her as a teacher in the two Records of Employment it issued to her for her employment during the 2017-2018 school year. She described herself as an intermediate school teacher in her testimony and said she had taught all Grade 7 subjects during the year. The Commission has assessed the Appellant’s claim on the basis that she was employed as a teacher to the end of the 2017-2018 school year.

**Is the Appellant entitled to benefits during the summer 2018 non-teaching period?**

[10] A “non-teaching period” is a period during the year when most teachers are not working (subsection 33(1), Regulations). In practice, this generally means the summer break, winter break, and spring break (*Canada (Attorney General) v. St-Coeur*, A-80-95).

[11] The Appellant applied for employment insurance benefits for the summer of 2018. The Commission stated that she established a claim for benefits starting July 1, 2018 and determined that she was not entitled to receive benefits once she signed her contract for the 2018-2019 school year on July 17, 2018.

[12] Neither the Appellant nor the Commission dispute that the period from July 17, 2018 to September 4, 2018 is within a non-teaching period, and so I find that the time in question is a non-teaching period.

[13] As noted above, the Appellant is entitled to receive employment insurance benefits during this non-teaching period, if she meets one of the exceptions set out in section 33 of the Regulations.

*Was the Appellant’s teaching employment contract terminated?*

[14] The Appellant’s teaching employment was terminated under paragraph 33(2)(a) of the Regulations if her circumstances indicate that she experienced a veritable break in her employment (*Olivier v. Canada (Attorney General)*, 2003 FCA 98). To establish if she experienced such a break, I must consider the understanding between the Appellant and her employer. The following factors may assist me in determining if the Appellant was truly unemployed:

- her efforts to find other employment, including opportunities outside of the teaching profession;
- the length of her teaching employment;
- the duration of the non-teaching period;
- customary practices in her teaching field;
- whether she received compensation during the non-teaching period;
- the terms of her written employment contract, if any;

- her employer's method of recalling her;
- the Record of Employment completed by her employer; and
- evidence of outward recognition by her employer

(*Stone v. The Attorney General of Canada*, 2006 FCA 27).

[15] The Appellant's teaching employment contract was not terminated at the end of the 2017-2018 school year.

[16] The Appellant testified that having worked as a substitute teacher and a replacement teacher for several years, she had achieved a level of seniority that allowed her to compete for permanent positions with her employer. Even with her seniority, during the summer of 2018 she had to compete for a teaching position in following school year.

[17] The Appellant also testified that by taking a 0.23 fractional position for the 2018-2019 school year on July 17, 2018, she further increased her seniority and opportunities to compete for full-time permanent positions. She also said that she expected to receive replacement and substitute positions to augment the income from her fractional permanent position. As well, she said that some of her pension and benefit rights carried over between the 2017-2018 and 2018-2019 school years.

[18] The Appellant testified that she was not paid under the contract she signed on July 17, 2018 until she started her position on September 4, 2018. She also said that her employer did not change her status to that of a full-time employee until September 4, 2018.

[19] Considering this evidence and the principles laid out in *Stone*, I find that the Appellant's employer continued to recognize her as an employee during the summer 2018 non-teaching period and her employment was therefore not terminated at the end of the 2017-2018 school year. The Appellant has not shown that her teaching employment contract has terminated as required under paragraph 33(2)(a) of the Regulations.

*Was the Appellant employed in teaching on a casual or substitute basis?*

[20] Whether the Appellant's employer characterized her employment as casual or substitute does not determine her status under paragraph 33(2)(b) of the Regulations. I must assess the nature of her employment.

[21] In general principle, casual teaching means irregular, occasional or on-call teaching and teaching on a substitute basis means employment performing the duties of another teacher, temporarily, during leaves of absence, holidays or illness. I must examine the nature of the Appellant's contract and the relationship between her and her employer to establish whether she was employed in teaching on a casual or substitute basis (*Blanchet v. The Attorney General of Canada*), 2007 FCA 377).

[22] The Appellant was employed on a casual or substitute basis at the end of the 2017-2018 school year.

[23] The Appellant's employer issued two Records of Employment to the Appellant during the 2017-2018 school year. The first, dated April 27, 2018, covered a period during which she worked as a replacement for a teacher on maternity leave. The second, dated July 31, 2018, covered the period from April 9, 2018 to June 29, 2018 when the Appellant worked as a substitute teacher and did not set an expected recall date. The Appellant testified that as a substitute teacher, she was subject to daily call-in if her services were required.

[24] On July 17, 2018, the Appellant and her employer entered into an agreement under which she was to work in a full-time fractional position effective September 4, 2018. She testified that her employer did not treat her as a full-time, permanent employee until September 4, 2018. She also testified that she did not receive salary payments from her employer under her new contract until the 2018-2019 school year started.

[25] Considering this evidence and the principles laid out in *Blanchet*, I find that the Appellant has shown that she worked on a call-in, casual basis as required under paragraph 33(2)(a) of the Regulations at the end of the 2017-2018 school year and retained that status for the entire summer 2018 non-teaching period. The Appellant has shown that she was truly unemployed during the summer 2018 non-teaching period.

*Did the Appellant qualify to receive benefits on the basis of hours accumulated in an occupation other than teaching?*

[26] The circumstances set out in subsection 32(2) of the Regulations are not cumulative. Because the Appellant has proven that she worked on a call-in, casual basis as required under

paragraph 33(2)(a) of the Regulations, I need not consider whether this circumstance is engaged in the Appellant's claim.

**CONCLUSION**

[27] As noted above, the Appellant is entitled to receive employment insurance benefits during the summer 2018 non-teaching period if she establishes that she falls into one of the exceptions set out in subsection 33(2) of the Regulations. I find that the Appellant has established that she was employed as a teacher on a call-in, casual basis at the end of the 2017-2018 school year and retained that status for the entire summer 2018 non-teaching period and therefore meets the conditions set out as an exception in paragraph 33(2) of the Regulations. She is therefore entitled to receive benefits for the entire summer 2018 non-teaching period. The appeal is allowed.

Christopher Pike  
Member, General Division - Employment Insurance Section

HEARD ON:	November 20, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. S., Appellant