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

[TRANSLATION]

Citation: *L. H. v Canada Employment Insurance Commission*, 2018 SST 1331

Tribunal File Number: GE-18-3263

BETWEEN:

L. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: December 11, 2018

DATE OF DECISION: December 20, 2018

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant works as a X teacher for the Commission scolaire X. At the end of the last school year, on June 29, 2018, the Appellant applied for Employment Insurance benefits, and a benefit period was established effective July 1, 2018.

[3] The Canada Employment Insurance Commission (Commission) denied the Appellant benefits between July 2 and August 10, 2018, because of the specific terms of the *Employment Insurance Regulations* (Regulations) that apply to people working in the field of teaching. Specifically, the Commission determined that the Appellant did not qualify for any of the three scenarios that allow Employment Insurance benefits to be paid to a teacher during a non-teaching period.

[4] The Appellant disputes the Commission's decision. He submits that his status is precarious, his teaching contract must be renewed each year, and he was not working during the summer of 2018 because of the end of his teaching contract.

ISSUE

[5] Was the Appellant entitled, as a teacher, to receive Employment Insurance benefits between July 2 and August 10, 2018?

ANALYSIS

Was the Appellant entitled, as a teacher, to Employment Insurance benefits between July 2 and August 10, 2018?

[6] The Tribunal deems that the Appellant was not entitled to receive Employment Insurance benefits during the period in question for the following reasons.

[7] Section 33(1) of the Regulations defines "teaching" as the occupation of teaching in a pre-elementary, an elementary, or a secondary school, including a technical or vocational school.

[8] The Appellant has taught X for the Commission scolaire X for more than 20 years. His position is located at X in X, but he has been on assignment at X (associated with another school board) for a number of years.

[9] In the Tribunal's view, it is therefore clear that the Appellant is indeed a teacher, according to the meaning that the Regulations give that term.

[10] Section 33(2) of the Regulations establishes that a teacher is normally not entitled to receive Employment Insurance benefits for any week of unemployment that falls in any non-teaching period unless

> a) the claimant's contract of employment for teaching has terminated;
>
> b) the claimant's employment in teaching was on a casual or substitute basis; or
>
> c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

[11] Therefore, to determine whether the Appellant was entitled, as a teacher, to Employment Insurance benefits between July 2 and August 10, 2018, the Tribunal must assess whether he showed that his case falls within one of the three exceptions.

<u>First exception: Had the contract of employment for teaching terminated? (Section 33(2)(a))</u>

[12] The Federal Court of Appeal has addressed the legislative provisions affecting teachers on numerous occasions.

[13] It appears that the exception under section 33(2)(a) of the Regulations is intended to provide relief to teachers when there has been a genuine severance of the employee-employer relationship after the teaching period and they are unemployed. Therefore, unless there has been a genuine severance of the continuity of a teacher's employment, the teacher will not be entitled to benefits for the non-teaching period (*Oliver v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v Robin*, 2006 FCA 175).

[14] When a teacher's contract of employment finishes at the end of June and they are rehired for the following school year before the end of their contract or shortly after, the teacher is not entitled to Employment Insurance for the months of July and August because there has not been a veritable break in the continuity of their employment (*Bishop v Canada (Employment Insurance Commission)*, 2002 FCA 276; *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Canada (Attorney General) v Robin*, 2006 FCA 175; *Bazinet v Canada (Attorney General)*, 2006 FCA 174).

[15] The Appellant has had the same employment for a bit more than 20 years and holds a contract position that must be renewed each year. He had a 100% workload during the 2017/2018 school year, from August 21, 2017, to June 29, 2018 (GD2-8), and again this year, has taught with a 100% workload since August 13, 2018 (GD2-9 and GD3-26).

[16] According to the employer, the Appellant is first on the seniority list, which ensures him a new employment contract year after year, failing exceptional circumstances. Furthermore, the employer knew that the number of students enrolled in the X program was enough to start a new cohort for the 2018/2019 year as of March or April 2018 (GD3-20).

[17] The Appellant confirms that he was informed verbally in June 2018 of the probable renewal of his contract for the 2018/2019 school year, before his contract for the 2017/2018 year ended (on June 29). Incidentally, the Appellant also admits that he left his effects in his office at the training centre over the summer (GD3-26).

[18] For the Tribunal, the fact that the Appellant knew, even before the end of his teaching contract for the 2017/2018 year, that he was almost definitely returning to teach the following year clearly confirms the continuity of his employment with the Commission scolaire X, even though the employer's offer in June 2018 was verbal and subject to change if the program's enrolment numbers fluctuated.

[19] Furthermore, the Record of Employment the employer issued on July 9, 2018, clearly states that the Appellant had to return to work on August 13, 2018 (GD3-17).

[20] Therefore, since the Appellant had been informed in June 2018 that he would obtain a new teaching contract as of August 2018, the Tribunal finds that there was not a veritable break in the continuity of the Appellant's employment with the Commission scolaire X.

[21] The mere existence of an interval between the two teaching contracts, during which the Appellant was not under contract, does not mean that there has automatically been a genuine severance of the relationship between the Appellant and his employer, because the Appellant's return to work, even though it was not guaranteed, was practically certain at the end of the summer school break (*Canada (Attorney General) v Robin*, 2006 FCA 175).

[22] The Appellant is first on the seniority list and has worked continuously for the same employer for the last 20 years; his situation is therefore not as precarious as he submits, even though the facts are that his contract of employment finishes at the end of each school year. According to the employer, barring special circumstances, the Appellant must return to work each year and he knows it (GD3-20).

[23] After reviewing factors retained by the Federal Court of Appeal to decide on the application of this exception (especially *Stone* cited above), it is clear to the Tribunal that the employment relationship between the Appellant and his employer continued from the moment the Appellant reached a verbal agreement with his employer to work during the school year after the end of his contract.

[24] Consequently, the Appellant does not meet the first exception in the Regulations.

Second exception: Was the Appellant's employment on a casual or substitute basis? (Section 33(2)(b))

[25] During the 2017/2018 school year, from August 21, 2017, to June 29, 2018, the Appellant had a teaching schedule that kept him busy full-time because he had 100% of the normal workload assigned to a teacher (GD2-8).

[26] Even though the Appellant's teaching contract had an end date, the fact remains that the Appellant was not replacing anyone and had a regular schedule and a full workload throughout the year. The Federal Court of Appeal has clearly established that teachers who work on contract

regularly during a school year do not meet the definition of "casual" or "substitute" teaching within the meaning of section 33(2)(b) of the Regulations (*Arkinstall v Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v Blanchet*, 2007 FCA 377).

[27] Consequently, the Appellant does not meet the second exception in the Regulations.

Third exception: Did the Appellant qualify to receive benefits in respect of employment in an occupation other than teaching? (Section 33(2)(c))

[28] There is no evidence in this case that the Appellant meets the conditions required to receive benefits in respect of employment in an occupation other than teaching. Consequently, the Appellant does not meet the third exception in the Regulations.

[29] In light of the case law principles mentioned earlier, the Tribunal finds that the Appellant failed to show that he was entitled, as a teacher, to receive Employment Insurance benefits during the summer school break because he does not meet any of the three exceptions in section 33(2) of the Regulations.

CONCLUSION

[30] The appeal is dismissed, and the Commission's decision is upheld.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	December 11, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. H., Appellant