



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. T. v. Canada Employment Insurance Commission*, 2018 SST 1299

Tribunal File Number: AD-18-397

BETWEEN:

R. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: December 19, 2018

DECISION AND REASONS

DECISION

[1] The Social Security Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, R. T. (Claimant), worked as a forestry worker for the X and the X. According to the [Respondent,] the Canada Employment Insurance Commission [(Commission)], the Claimant did not declare all of the income that he received during his Employment Insurance benefit periods. As a result, he made false reports to the Commission for five (5) benefit periods between 1999 and 2004. The Commission requested repayment of the excess payments and imposed a penalty on the Claimant.

[3] The Claimant requested a reconsideration of this decision on the grounds that the Commission based its claim that he had made false statements on erroneous information and that it erred in its calculation of his income during the period in question. The Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division found that the Claimant's undeclared income during the periods in question constituted income under section 35(2) of the *Employment Insurance Regulations* (Regulations) and that the Commission had allocated his earnings correctly under section 36(4) of the Regulations. It also found that the Claimant had knowingly made false reports during the benefit weeks and that the Commission had exercised its discretionary power judicially.

[5] The Tribunal granted leave to appeal. The Claimant argues that the General Division erred by not considering the context of the Claimant's initial statement, as case law requires it to do. He also submits that the General Division based its decision on facts that the Commission did not put into evidence and that it ignored some of the Commission's admissions that were favourable to the Claimant. Finally, he argued that the General Division erred in fact or in law regarding the allocation of the earnings and the issue of the penalty.

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

ISSUES

[7] Did the General Division err by failing to consider the context of the Claimant's initial statement?

[8] Did the General Division make its decision on facts that the Commission did not put into evidence?

[9] Did the General Division err by finding that the Commission had allocated the Claimant's earnings correctly?

[10] Did the General Division ignore some of the Commission's admissions that were favourable to the Claimant?

[11] Did the General Division err by maintaining the penalty on the Claimant?

ANALYSIS

Appeal Division's Mandate

[12] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

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

[14] 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.

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

Issue 1: Did the General Division err by failing to consider the context of the Claimant's initial statement?

Issue 2: Did the General Division make its decision on facts that the Commission did not put into evidence?

[15] These grounds of appeal are without merit.

[16] In an initial statement, the Claimant admitted that he worked while he was unemployed without declaring it and that his earnings were deposited into the bank. He stated that he did so to make sure that his unemployment benefits were not cut off and that he knew that he was making false Employment Insurance reports when he filled out his reports.²

[17] The Claimant argues that the General Division did not consider the context of his initial declaration, more specifically that he did not have his glasses to read the declaration; that the investigator, who was in a position of authority, made him feel stressed; and that he was illiterate.

[18] The Tribunal is of the opinion that the General Division decision clearly shows that the General Division considered the context of the Claimant's declaration.

[19] In spite of the Claimant's explanations regarding his glasses, his difficulty reading, and the stressful circumstances of the meeting, the General Division accepted the evidence that the investigator had read the declaration to the Claimant and that he then decided to sign it.

[20] The General Division also noted that the Claimant admitted to freely signing—without threats or promises—the declaration that the investigator had prepared.

[21] The Claimant criticizes the General Division for finding, in the absence of evidence, that agents had read the Claimant's initial declaration before he signed it.

[22] However, the Tribunal noted that the declaration that the Claimant signed indicates that the investigator had read it to the Claimant before he signed it.³

² AD2-69.

³ AD2-69.

[23] Furthermore, the Tribunal listened carefully to the recording of the General Division hearing. When the Commission's representative cross-examined him, the Claimant confirmed that the investigators read the declaration to him before he signed it.⁴

[24] The General Division therefore based its decision on the material before it.

[25] The Claimant submits that the employer's foreman gave his declaration after he left the company when he did not have the authority to speak on behalf of the company and that this declaration was meant as revenge against the employer after he was dismissed.

[26] The Claimant also argues that the informant's statement has no value or credibility because the facts that they provided make no sense. Among other things, he argues that an employer in the field of forestry would never agree to pay for 40 hours per week for 25 to 30 hours of work that was actually done.

[27] The Tribunal notes that there is no evidence that supports the Claimant's affirmation that the foreman acted in revenge. Furthermore, the Tribunal is of the opinion that there is no need to set aside the foreman's statement just because he was no longer working for the employer when he made the statement. The evidence shows that he was a foreman for the employer during the period in question and that he knew about the bank of undeclared work hours.

[28] The Tribunal also finds that it is not very important that the investigation was initiated by the statement of an anonymous informant that the Claimant does not find credible.

[29] The General Division could not simply ignore that the Claimant's statement that the investigator obtained on April 14, 2005, is similar to the informant's declaration and that it corroborates the statement from the employer's foreman obtained on April 22, 2005, that hours were accumulated to help employees collect Employment Insurance.

[30] For the above-mentioned reasons, there is no basis to find that the General Division erred by failing to consider the context of the Claimant's initial declaration or that the General Division made its decision based on facts that the Commission had not put into evidence.

⁴ At 27:30 of the audio recording of the General Division hearing.

Issue 3: Did the General Division err by finding that the Commission had allocated the Claimant's earnings correctly?

Issue 4: Did the General Division ignore some of the Commission's admissions that were favourable to the Claimant?

[31] These grounds of appeal are without merit.

[32] The Claimant submits that the General Division erred by finding that it was reasonable to use the [translation] "Wage Calculation" document, the source of the amounts that the Commission identified, to calculate earnings.

[33] According to the Claimant, the "Wage Calculation" sheets do not relate to the salary that was paid to him at all, but rather to weeks of tree-felling, the quantity of measured wood, the per-metre purchasing rate, the source of the wood, the weekly weight cost, the total weight, and the pay for the period in question.

[34] The Commission, however, argues that the "Wage Calculation" sheets show that the Claimant received a salary during the Employment Insurance periods. The Commission bases its argument on the Claimant's solemn declaration made on April 14, 2005, before a Commission investigator that confirms the weeks the Claimant worked and the amounts the Claimant received.⁵

[35] The General Division found that the Claimant's explanations at the hearing did not allow it to ignore the Claimant's initial declaration because he admitted that he did not declare all of his income and that he worked during the periods in question. It also found that it was not necessary for the Claimant to collect earnings during the benefits periods because it was sufficient that the earnings be payable under a contract of employment for the performance of services.

[36] The Claimant criticizes the General Division for not taking into consideration a Board of Referees decision that decided, in favour of the employer, that the pay statements were accurate. He argues that the Commission backed out of his appeal before the umpire and therefore accepted the facts as the Claimant stated them.

⁵ AD2-68, AD2-69.

[37] The Tribunal finds that the General Division was in no way bound by the Board of Referees decision. The evidence before that board was obviously different. Furthermore, the Commission's withdrawal in this file could have been motivated by various reasons unknown to the General Division. This does not imply that the Commission accepted the facts on record.

[38] It was open to the General Division to verify and interpret the facts and to assess the issue under appeal that was before it. It therefore did not ignore some of the Commission's admissions that were favourable to the Claimant.

[39] As the General Division emphasized in its decision, the Tribunal noted during the appeal hearing that the calculation method that the Claimant presented was not convincing. It did not actually make it possible to determine with accuracy the wages that the Claimant received and the weeks he worked during the periods in question.

[40] At the appeal hearing, when the Tribunal highlighted the lack of clarity in the Claimant's calculations, he argued that it was up to the Commission to do the calculations using precise, exact information.

[41] However, the Federal Court of Appeal has determined that the burden of proof to dispute the earnings established by the Commission is on the claimant and that simple allegations aiming to create doubt are insufficient.⁶

[42] It is therefore not sufficient for a claimant to merely cast doubt on the veracity of the earnings established by the Commission. They must provide countering evidence before the General Division to meet this burden of proof, which the Claimant has not successfully done.

[43] The Tribunal finds that, based on the evidence at its disposal, the General Division could not have arrived at a different conclusion from the one that it reached on the issue of earnings.

Issue 5: Did the General Division err by maintaining the penalty on the Claimant?

[44] This ground of appeal is without merit.

⁶ *Dery v Canada (Attorney General)*, 2008 FCA 291.

[45] The General Division also had to determine whether there was reason to impose a penalty on the Claimant under section 38 of the *Employment Insurance Act*. The only thing that Parliament requires for a decision-maker to impose a penalty is that the person knowingly—meaning being in full possession of the facts—made a false or misleading statement.⁷

[46] The General Division noted Claimant’s statement in which he admitted to making false declarations to the Commission when he made his applications [translation] “so his unemployment wouldn’t be cut off.”

[47] The employer’s foreman corroborated this statement, declaring that hours were accumulated to help employees, including the Claimant, collect Employment Insurance.

[48] The Tribunal finds that the General Division, in light of the elements before it, did not err by finding that the Claimant had knowingly made false statements by failing to declare his work and his earnings to the Commission.

[49] There is therefore no need for the Tribunal to intervene on the issue of the penalty.

⁷ *Canada (Attorney General) v Bellil*, 2017 FCA 104.

CONCLUSION

[50] For the reasons outlined above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	December 7, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	R. T., Appellant Sylvain Bergeron, L.A.S.T.U.S.E. du Saguenay, Representative for the Appellant Stéphanie Yung-Hing, Representative for the Respondent