



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RH v Canada Employment Insurance Commission*, 2019 SST 1701

Tribunal File Number: GE-18-3213

BETWEEN:

**R. H.**

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: Gerry McCarthy

HEARD ON: January 10, 2019

DATE OF DECISION: January 11, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant established a claim for regular Employment Insurance benefits (EI benefits) on July 1, 2018. The Appellant worked as a secondary school teacher for the “X” and had two teaching contracts for the 2017-2018 school year. The Appellant’s first contract (designated as .17) involved teaching the same class one-hour each school day from November 6, 2017, to February 2, 2018. The Appellant also had Long-Term Occasional contract (designated .67) from February 2, 2018, to June 29, 2018. The Appellant’s first contract (designated as .17) was transferred to her full-time contract which started September 4, 2018. The Appellant accepted her full-time permanent teaching contract for the school year 2018-2019 on June 20, 2018. The Respondent determined that the Appellant was employed in teaching and was not entitled to EI benefits during the summer non-teaching period and imposed a disentitlement from July 2, 2018, to August 31, 2018. The Appellant submitted that her teaching was on casual basis for the school year 2017-2018 and she should be eligible for EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018. I find the Appellant was not entitled to EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018.

## **ISSUES**

[3] The Tribunal must decide the following issues

- a) Was the Appellant employed in the occupation of teaching?
- b) Was the Appellant entitled to receive EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018?

## **ANALYSIS**

[4] Section 33(1) of the *Employment Insurance Regulations* (EI Regulations) defines teaching as the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school. A teacher, as defined by EI Regulation 33(1), is not

entitled to EI benefits other than maternity or parental benefits, during a non-teaching period, unless one of the following exempting conditions specified in EI Regulation 33(2) has been met:

- (a) the contract of employment for teaching has terminated;
- (b) the claimant's employment in teaching was on a casual or substitute basis; or
- (c) during the qualifying period, the claimant accumulated enough insured hours in an occupation other than teaching to qualify to receive employment insurance benefits

**Was the Appellant employed in the occupation of teaching?**

[5] I find the Appellant was employed in the occupation of teaching, because she confirmed during the hearing she was a teacher. Furthermore, the Appellant's employer (S. G./Payroll Supervisor) confirmed the Appellant performed work as a teacher for the school board (Exhibit GD3-25).

**Was the Appellant entitled to EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018?**

[6] I find the Appellant was not entitled to EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018, for the following reasons. First: The Appellant's employment in teaching had not been terminated by the employer. Specifically, the Appellant had a part-time contract (designated as .17) which was transferred to her full-time teaching contract that commenced September 4, 2018. Furthermore, the Appellant accepted her full-time permanent teaching contract on June 20, 2018, which was before the end of the school year on June 29, 2018. I realize the Appellant submitted that she agreed to the part-time teaching contract (designated as .17) in order to qualify for a full-time teaching position on September 4, 2018. However, this would demonstrate the Appellant's teaching contract was not terminated because

the seniority she accumulated on the part-time contract carried forward to when she secured her full-time teaching position with the same employer which commenced September 4, 2018.

[7] Second: The Appellant's employment in teaching during the school-year 2017-2018 was not on a casual or substitute basis. Specifically, the Appellant had two teaching contracts during the school year which were both pre-determined and continuous. In other words: The Appellant's two contracts did not involve "on-call" teaching where she would not know what class she would be teaching one day to the next. Instead, the Appellant's two teaching contracts were pre-determined and continuous. On this matter, I would rely on the Federal Court of Appeal which explained that teachers employed in a continuous and pre-determined way could not be considered performing casual or substitute teaching (*Arkinstall v. Attorney of Canada*, 2009 FCA 313). I realize the Appellant submitted that her teaching contracts for the school year 2017-2018 were on a casual basis. However, the Appellant's contracts were continuous and pre-determined and would not meet the exempting condition of teaching defined as casual or substitute.

[8] Third: The Appellant confirmed during the hearing that she did not accumulate any insurable hours in an occupation other than teaching to qualify to receive EI benefits.

[9] As cited above, I find the Appellant's teaching contract with the employer was not terminated and she would not meet the exempting condition specifically listed in section 33(2)(a) of the EI Regulations. On this matter, I do wish to emphasize the Federal Court of Appeal has affirmed that unless there was a "veritable break" in the continuity of a teacher's employment the teacher was not entitled to EI benefits for the non-teaching period (*Oliver et al v. Attorney General of Canada*, 2003 FCA 98; *Stone v. Attorney General of Canada*, 2006 FCA 27, *Robin v. Attorney General of Canada*, 2006 FCA 175). In the Appellant's case, there was no veritable break in the continuity of her employment as a teacher because she accepted a full-time teaching contract on June 20, 2018, before the end of the school year on June 29, 2018.

[10] I certainly recognize the Appellant wrote in her Notice of Appeal (Exhibit GD2-2) that she did not work and was not paid for the period of July 2, 2018 to August 31, 2018. The Appellant

was understandably disappointed she did not qualify for EI benefits during the non-teaching period. Nevertheless, I must apply the EI Regulations to the evidence. In short: I cannot ignore, re-fashion, circumvent or re-write the EI Act and EI Regulations even in the interest of fairness and compassion (*Knee v. Attorney General of Canada*, 2011 FCA 301).

[11] In summary: I find the Appellant was not entitled to EI benefits during the non-teaching period from July 2, 2018, to August 31, 2018, because she did not meet any of the exempting conditions listed under section 33(2) of the EI Regulations.

**CONCLUSION**

[12] The appeal is dismissed.

*Gerry McCarthy*

Member, General Division - Employment Insurance Section

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| METHOD OF PROCEEDING: | Teleconference   |
| APPEARANCES:          | R. H., Appellant |