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

[TRANSLATION]

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 73

Tribunal File Number: GE-18-3444

BETWEEN:

**G. M.**

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: Yoan Marier

HEARD ON: January 3, 2019

DATE OF DECISION: January 10, 2019

Canada

## DECISION

[1] The appeal is dismissed.

## OVERVIEW

[2] The Appellant worked as a crane operator for the company X and is a member of the Conseil provincial du Québec des métiers de la construction (Local 905), a union with part of the province's crane operators. The Appellant did not work between June 18 and June 25, 2018, because his construction site was closed due to a dispute between the crane operators and the Québec government.

[3] The Canada Employment Insurance Commission (Commission) determined that the Appellant was disentitled from receiving benefits during this period since he was unable to resume his employment because of a work stoppage attributable to a labour dispute.

[4] The Appellant is challenging the Commission's decision. He maintains that he did not participate in the dispute between the crane operators and the government, that he had no interest in that dispute, that he did not finance it, and that he was simply waiting to be called back to work during that period.

## PRELIMINARY MATTERS

[5] The Appellant did not attend the hearing. The Tribunal is satisfied that the Appellant received notice of the hearing because he confirmed by email that he had received the notice of hearing. In accordance with section 12(1) of the *Social Security Tribunal Regulations*, the Tribunal decided to hold the hearing in the Appellant's absence.

## ISSUE

[6] Is the Appellant disentitled from receiving benefits between June 18 and June 25, 2018, because of a work stoppage attributable to a labour dispute?

## ANALYSIS

### Is the Appellant disentitled from receiving benefits between June 18 and June 25, 2018, because of a work stoppage attributable to a labour dispute?

[7] The Tribunal finds that the Appellant is not entitled to receive benefits for the period in question for the following reasons.

[8] A claimant who loses or is unable to resume an employment because of a work stoppage attributable to a labour dispute where they work is not entitled to receive Employment Insurance benefits during the work stoppage. However, a claimant who is not participating in, financing, or directly interested in the labour dispute that caused the stoppage of work is not subject to disentitlement (section 36 of the *Employment Insurance Act* (Act)).

[9] Starting June 14, 2018, a number of Québec crane operators went on an illegal strike to protest a new government rule allowing apprentices to perform certain task previously reserved for more experienced crane operators.

[10] On June 21, 2018, the Administrative Labour Tribunal issued a temporary order to force the crane operators from different unions (including the Appellant's union) to return to work (GD3-43 to 48). Despite this, the dispute continued until Tuesday, June 26, which is when most of the crane operators returned to work following calls from their central labour bodies (GD3-49).

[11] The Appellant worked until June 15. He was expected to return to work on June 18, but the employer decided to close the construction site for fear of strike-related vandalism (one of their cranes had been vandalized a few days before (GD3-73 and 74)). The Appellant therefore returned to work only on June 26, once the strike was over (GD3-58).

[12] The term "labour dispute" is defined in the legislation as a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons (section 2 of the Act).

[13] When a work stoppage arises during a labour dispute, there is a causal relationship between the dispute and the work stoppage (*Canada (Attorney General) v Simoneau*, A-611-96).

[14] The newspaper articles on file show that the disagreement was caused by the crane operators' dissatisfaction with the way the government was implementing the new rules for mandatory training. There was first a strike concerning overtime then a full stoppage of work on a large number of construction sites. In the Tribunal's view, this undeniably constitutes a labour dispute within the meaning of the Act.

[15] In the construction industry, the Québec government is responsible for regulating labour relations, vocational training, and workforce management through Act R-20.[1] The Tribunal therefore finds that the provincial government may be involved in a labour dispute with employees, just as these employees' regular employer may be, when there is dissatisfaction with the provisions or with the application of the act because the legislation in this case directly affects the employment and the terms and conditions of employment for the employees in this industry.

[16] The evidence on file also shows that it is the effects of this illegal strike that prevented the Appellant from returning to work as planned. Even though it appears that the Appellant was not personally opposed to returning to work, the employer had to close the construction site because of legitimate fears of vandalism if the construction site continued to operate during the strike. Since the employer was impacted by the strike and had to temporarily stop operating the construction site where the Appellant worked for this reason, the Tribunal finds that the work stoppage connected with the labour dispute specifically happened where the Appellant was employed.

[17] Given that the Appellant would have likely worked during this period if there had not been a strike and that he did not work specifically because of the strike (GD3-58), the Tribunal can reasonably find that the Appellant was in fact unable to return to work because of a work stoppage attributable to a labour dispute where he was employed.

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[1] *An Act respecting labour relations, vocational training and workforce management in the construction industry*.

[18] Therefore, the Appellant was not entitled to receive benefits during the work stoppage unless he can show that he was not participating in, financing, or directly interested in the labour dispute that caused the stoppage of work (section 36(4) of the Act).

[19] The Appellant has the burden of proving that he was not participating in, financing, or directly interested in the labour dispute (*Black v Canada (Employment Insurance Commission)*, 2001 FCA 255).

[20] **Participation:** The Appellant submits that Québec's construction industry commission, CCQ, has not been shown that there was an illegal strike during the period in question (GD2-10). He also argues that he did not participate in the dispute because he was against the unlawful actions and intimidation. Furthermore, he did not picket and did not demonstrate. He submits that he did not want to be off work during the period in question; rather, it is his employer who decided to suspend work on the construction site.

[21] The work stoppages caused by the labour dispute received a lot of media attention when they occurred, especially on the Champlain Bridge construction site. Furthermore, inspectors from Québec's construction industry commission, Commission de la Construction du Québec, found that crane operators were not at work on a large number of construction sites (GD3-44 and 46). In the Tribunal's view, there is sufficient evidence that there was a coordinated work stoppage.

[22] The Appellant was a member of Conseil provincial du Québec des métiers de la construction (Local 905), one of two unions with most of Québec's crane operators. The union leadership had taken a position against the illegal strike. Still, it appears that a significant portion of individual members of this union participated in the work stoppage because crane workers were not present on several construction sites throughout the province (GD3-46).

[23] If a union has been actively involved in events leading up to a labour dispute, its members cannot later claim that they are entitled to Employment Insurance benefits because they were not personally participating in the dispute, regardless of the degree of the union's involvement or the union's interest in the dispute, and of all the other surrounding circumstances (*Black, supra*).

[24] In this case, the Tribunal finds that the union was involved in the events surrounding the labour dispute and in the concerted efforts its members took, regardless of the official position of the organization's leadership. The union representing the Appellant confirmed that it was against the new government rule about training that was behind the labour dispute (GD2-6). Furthermore, the union members were identified as a party in the dispute in some newspaper articles (GD3-38 and GD2-6), and the organization was subject to the order issued by the Administrative Labour Tribunal.

[25] Therefore, the Appellant participated in the labour dispute according to the sense the case law gives the expression, even though he did not personally choose to stop working during the period in question.

[26] **Financing:** The Tribunal agrees with the Respondent that there is no evidence to establish that the Appellant participated in financing the labour dispute according to the sense *Hills v Canada (Attorney General)*, 1988 1 SCR 513, gives the expression.

[27] **Direct Interest:** A claimant will be considered "directly interested" in a labour dispute if they have something to gain or fear from the outcome of the dispute (*Black, supra*).

[28] As mentioned earlier, the event behind the labour dispute was the implementation of a new rule allowing apprentices to perform tasks previously reserved for professional crane operators. In the Tribunal's view, the outcome of the dispute had a potential impact on the tasks of all crane operators, including the Appellant, and on their future terms and conditions of employment.

[29] Furthermore, according to the unions, the new rules put in place by the government could compromise safety on construction sites (GD3-42). If crane operators' concerns on this point were significant enough for a large number of them to decide to stop working for this reason, then it goes without saying that the outcome of the dispute had to have interested them. Even though the Appellant argues that he did not have any particular opinion about the strike and that he just wanted to return to work, the fact remains that he was part of a group of workers directly interested (or that considered itself directly interested) in the outcome of the dispute. The Tribunal finds that the Appellant had a direct interest in the outcome of the dispute.

[30] The Tribunal finds that the Appellant could not resume his employment because of a work stoppage attributable to a labour dispute where he was employed. He failed to prove that he did not participate in and that he was not directly interested in the labour dispute that caused the work stoppage. Therefore, the Appellant was not entitled to Employment Insurance benefits from June 18 to June 25, 2018.

**CONCLUSION**

[31] The appeal is dismissed.

Yoan Marier
Member, General Division – Employment Insurance Section

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| HEARD ON: | January 3, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | Hearing held in the parties' absence |