



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. M. v Canada Employment Insurance Commission*, 2019 SST 222

Tribunal File Number: GE-18-2535

BETWEEN:

**J. 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: Angela Ryan Bourgeois

HEARD ON: November 9, 2018 and January 4, 2019

DATE OF DECISION: January 18, 2019

## **DECISION**

[1] The appeal is allowed.

## **OVERVIEW**

[2] The Appellant (Claimant) worked as a full-time teacher in Nunavut. He resigned his position, but taught until the last day of school in June<sup>1</sup>. He received payment for the amount owing under his employment contract before his last teaching day.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to receive benefits until after his employment contract ended on August 15.

[4] The Claimant appealed the Commission's decision to the Tribunal. He argues that his employment contract ended on June 13.

## **ISSUE**

[5] Did the Claimant's employment contract end on June 13?

## **ANALYSIS**

[6] A claimant who is employed in teaching for any part of their qualifying period is only entitled to receive benefits for a week of unemployment that falls within a non-teaching period if they prove, on a balance of probabilities, that they fall within one of these exceptions:

- (a) their contract of employment for teaching has terminated;
- (b) their employment in teaching was on a casual or substitute basis; or
- (c) they qualify to receive benefits in respect to non-teaching employment.<sup>2</sup>

[7] There is no dispute that:

- (a) the Claimant worked as a teacher during his qualifying period;
- (b) his contract of employment has ended;

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<sup>1</sup> In this decision, all references to dates are to the year 2014, unless stated otherwise.

<sup>2</sup> Section 33(2) of the Employment Insurance Regulations

(c) he was employed on a full-time basis, and therefore, he was not teaching on a casual or substitute basis; and

(d) he did not qualify to receive benefits with respect to non-teaching employment.

[8] The issue is *when* the Claimant's contract of employment ended. The Claimant argues that his employment contract ended on June 13, which was the last day he taught, and the Commission argues that it ended on August 15. As such, the period in dispute is from June 15 (the start of the Claimant's benefit period), to August 15. There is no dispute this period is a non-teaching period.

[9] Therefore, to receive regular benefits during this non-teaching period, the Claimant must prove that it is more likely than not that his contract of employment for teaching ended before August 15.

[10] The exemptions to the general rule that teachers are not entitled to benefits during non-teaching periods are meant to provide relief to teachers whose employment contracts end such that there is a genuine termination of the employment relationship. In other words, the exemption provides relief to those teachers who are, in the true sense of the word, "unemployed," which is not synonymous with "not working." The test is whether there is a veritable break in the continuity of the claimant's employment.<sup>3</sup>

### **Did the Claimant's employment contract end on June 13?**

[11] Yes. I find that the Claimant has proven that it is more likely than not that his contract of employment ended on June 13, when he finished teaching his last day of school.

[12] The Claimant was employed full-time as a teacher. He was paid an annual salary from August 19, 2013, to August 15, 2014. He resigned his position in February, stating that he would not be returning for the 2014-2015 school year.

[13] The Claimant's record of employment shows he received pay until August 15. However, I accept the Claimant's testimony, which is supported by his bank statement, that he received the balance of his salary owing under his employment contract before June 13. This was a common

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<sup>3</sup> *Bazinet v. Canada (Attorney General)* 2006 FCA 174, specifically paragraphs 44 and 51, and *Oliver v. (Canada) Attorney General*, 2003 FCA 98.

practice, and the Claimant could have received his salary in a lump sum whether he was continuing in his employment or not.

[14] I find that there was a veritable break in the continuity of the Claimant's employment on June 14, and that his employment contract was at an end, because as of June 14 there were no outstanding obligations owing by either party to the other. The Claimant had taught all of the required teaching days, and the employer had paid the Claimant in full under the terms of the contract. The Claimant had resigned his position, thereby ending the continuity of his employment. He was not returning to work for the employer.

[15] The Commission argued that the Claimant's contract ended on August 15, the date shown on his record of employment, because he was paid a salary until then. They argue that the fact that it was paid to him earlier does not change the end date of the contract.

[16] The issue is not how or when the Claimant was paid, but when the employment contract ended and the Claimant was truly unemployed.<sup>4</sup> I find that the Claimant was truly unemployed when he finished his last teaching day, because, as I stated, the evidence shows that on that date all the terms and conditions of employment had been completed. There was nothing further either party had to do to complete the contract. At that point, the Claimant was truly unemployed.

[17] Because the Claimant has proven that it is more likely than not that his teaching contract ended on June 13, he is not disentitled from receiving benefits under subsection 33 of the *Employment Insurance Regulations*.

## **CONCLUSION**

[18] The appeal is allowed.

Angela Ryan Bourgeois  
Member, General Division - Employment Insurance Section

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<sup>4</sup> *Oliver, supra*

HEARD ON:	November 9, 2018, and January 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. M., Appellant