



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. M. v Canada Employment Insurance Commission*, 2019 SST 224

Tribunal File Number: GE-18-3148

BETWEEN:

**M. 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: Melanie Petrunia

HEARD ON: December 6, 2018

DATE OF DECISION: January 22, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant was employed as a long term occasional teacher (“LTO”) on a contract from November 20, 2017 to June 29, 2018. When his contract ended he applied for benefits and a renewal claim was established effective July 1, 2018. The Appellant began a new contract for teaching commencing on September 1, 2018. The Respondent (Commission) determined that the Appellant was employed in teaching and was not entitled to benefits during a non-teaching period as he accepted a verbal offer for the new contract on July 11, 2018. The Respondent imposed a disentitlement pursuant to section 33 of the *Employment Insurance Regulations* (the “Regulations”). The Appellant argues that he did not have a new teaching contract until August 27, 2018 and that Regulation 33 does not apply to his situation.

## **ISSUES**

[3] The Tribunal must determine the following issues:

- a) Was the Appellant employed in the occupation of teaching?
- b) Was the Appellant entitled to receive benefits during the non-teaching period from July 11, 2018 to August 31, 2018?

## **PRELIMINARY MATTERS**

[4] In its submissions, the Respondent asks that the Tribunal dismiss the appeal and send the matter back to the Commission to amend the commencement date of the disentitlement from July 2, 2018 to July 11, 2018 on the basis that the Appellant did not verbally accept the new contract until July 11, 2018 and was therefore entitled to benefits from July 2 to 10, 2018.

## **ANALYSIS**

[5] 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. A teacher, as defined by the Regulations, is not entitled to EI benefits, other than maternity or parental benefits, during a non-teaching period unless one of the following exemptions set out in Regulation 33(2) apply:

- (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?**

[6] Yes, the Tribunal finds that the Appellant was employed in the occupation of teaching during his qualifying period. Subsection 33(1) of the Regulations defines "teaching" as the occupation of teaching in a pre-elementary, an elementary or secondary school, including a technical or vocational school.

[7] The Appellant was employed as a LTO pursuant to a contract. He was teaching a Grade 7/8 class as a replacement during a maternity leave. The Appellant had no employment other than teaching for which he could qualify for EI benefits.

### **Was the Appellant entitled to EI benefits during the non-teaching period from July 11, 2018 to August 31, 2018?**

[8] Subsection 33(1) of the EI Regulations defines "non-teaching period" as the period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching. There is no dispute that the Appellant was

seeking to receive EI benefits during a non-teaching period, over the summer months of July and August.

**Had the Appellant's contract of employment terminated?**

[9] In order to qualify for receipt of EI benefits in a non-teaching period under paragraph 33(2)(a) of the Regulations, the onus is on the Appellant to prove that there was a veritable break in the continuity of his employment such that his employment terminated on June 29, 2018, the last day for which he was paid (see *Stone*, 2006 FCA 27, *Bazinet*, 2006 FCA 174, *Robin*, 2006 FCA 174, *Oliver*, 2003 FCA 98).

[10] The Appellant argued that this contract had terminated on June 29, 2018 allowing him to receive benefits pursuant to subsection 33(2)(a) of the Regulations. The Respondent takes the position that the Appellant verbally accepted an offer of employment on July 11, 2018 and is not entitled to receive benefits after this date.

[11] The Appellant testified that his contract with the employer terminated on June 29<sup>th</sup> when he completed the assignment for maternity leave cover. He stated that there was no expected date of recall and the record of employment also states "unknown" for date of recall. He states that he did not receive any income or pension amount, or medical and dental benefits, during the period from when this contract terminated until his new contract commenced.

[12] The Appellant submitted his application for benefits online on July 6, 2018. In the application he indicates he will be returning to his prior employment and provides a date of return of September 4, 2018. When asked about this, the Appellant responded that he has stated this every year that he has applied for benefits as he knew that, once the school year started, he would be working with that employer.

[13] The Appellant testified that he advised the Principal at the school he worked at that he would only be interested in a full time position in the Fall. The Principal was able to make arrangements for the following year to make the position that the Appellant had been teaching in as a LTO available as a full time permanent position and approached the School Board for approval. The Appellant stated that he received a phone call from the Board on July 11<sup>th</sup> asking if he was interested in this position and extending a verbal offer of employment. The Appellant

answered that he was interested and accepted the verbal offer. He testified that the parties still needed to work out a time for him to come in and sign the contract, which occurred on August 27<sup>th</sup>.

[14] The Appellant testified that there was no binding agreement until August 27<sup>th</sup> when the new contract was signed. He states that he was unemployed between the end of the former contract and the commencement of the new contract, receiving no pay or benefits. Under the new agreement, the Appellant was a full time teacher and no longer an LTO. The Appellant did carry forward seniority and pension contributions.

[15] The Tribunal finds that the Appellant verbally accepted a new contract offer on July 11, 2018 and, as of this date, there was continuity of employment such that the exemption in subsection 33(2)(a) of the *Act* did not apply to his situation. As in the Appellant's circumstances, there may be a gap between two contracts resulting in a period during which a teacher is not under contract; however, this does not result in a severance of the teacher-employer relationship (*Robin*, 2006 FCA 174).

**Was the Appellant's employment in teaching on a casual or substitute basis?**

[16] When considering whether a teaching employment was on a casual or substitute basis, it is necessary to consider the nature of the teaching employment itself, not the teacher's status with the school board. The terms "casual" or "substitute" should be given their ordinary meaning and should not be interpreted in a complex or philosophical way (*Blanchet*, 2007 FCA 377). A teacher who works in a continuous and predetermined teaching role is not a casual or substitute teacher (*Dupuis-Johnson*, A-511-95).

[17] At the hearing, the Appellant argued that both 33(2)(a) and (2)(b) were applicable to his situation. He stated that he was a casual teacher pursuant to (2)(b). The Appellant testified that his temporary contract covered a maternity leave and involved the full time teaching of a Grade 7/8 classroom. In the circumstances, I find that the Appellant's employment teaching from November 20, 2017 to June 29, 2018, was sufficiently regular, continuous and pre-determined and not on a casual or substitute basis.

[18] The Appellant argues that the Respondent's decision is inconsistent with other teachers that he knows in similar circumstances and with his own past applications for benefits. The Tribunal is sympathetic to the Appellant's situation and understands his frustration; however it can only consider the circumstances before it in this appeal.

[19] The Tribunal finds that the Appellant is disentitled to EI benefits for failing to prove that, as a teacher, he was entitled to receive EI benefits during a non-teaching period pursuant to subsection 33(2) of the *Act*.

### CONCLUSION

[20] The Commission argues that the disentitlement should only apply from July 11 when the Appellant verbally accepted the offer of the new employment and asks that the appeal be dismissed and the matter referred back so that it may amend the date of disentitlement.

[21] The appeal is dismissed. The Tribunal refers the matter back to the Commission to amend the date of disentitlement.

Melanie Petrunia

Member, General Division - Employment Insurance Section

HEARD ON:	December 6, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. M., Appellant  No one appeared for the Respondent