



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. S. v Canada Employment Insurance Commission*, 2019 SST 74

Tribunal File Number: AD-19-10

BETWEEN:

**M. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 1, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal and sends the case back to the Appeal Division for reconsideration.

### **OVERVIEW**

[2] The Appellant, M. S. (Claimant), established a claim for benefits. The Commission informed the Claimant that he had failed to report a portion of his income from wages for the period between February 26, 2017, and April 15, 2017. The Commission found that the Claimant had made three false or misleading statements, it issued a notice of violation, and it imposed a penalty on him. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision.

[3] In its decision, the General Division found that the penalty was justified because the Claimant had knowingly made false statements to the Commission. It found that the Commission had exercised its discretion judiciously by imposing the penalty and by issuing the notice of violation.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division proceeded in his absence while he was out of the country. He submits that he did not have the opportunity to be heard by the General Division.

[5] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

[6] The Tribunal allows the Claimant's appeal and sends the case back to the General Division.

### **ISSUE**

[7] Did the General Division fail to observe a principle of natural justice?

## ANALYSIS

### **Appeal Division's Mandate**

[8] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA).<sup>1</sup>

[9] 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.

[10] 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.

### **Issue: Did the General Division fail to observe a principle of natural justice?**

[11] The Tribunal is of the opinion that it is appropriate to allow the Claimant's appeal and to send the case back to the General Division.

[12] In his application for leave for appeal, the Claimant cited section 58(1)(a) of the DESDA.

[13] The Claimant argues that the General Division proceeded in his absence while he was out of the country. He submits that he did not have the opportunity to be heard by the General Division.

[14] The Tribunal notes that, according to the file, the Claimant never received the notice of hearing dated September 27, 2018. It was returned to the Tribunal on October 29, 2018.

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

[15] The Commission respectfully recommends that the case be sent back to the General Division because there was a failure to observe a rule of natural justice.

[16] For the reasons mentioned above, the appeal should be allowed.

**CONCLUSION**

[17] The appeal is allowed, and the file is sent back to the General Division for reconsideration.

Pierre Lafontaine

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	M. S., Appellant  Manon Richardson, Representative for the Respondent