



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. C. v Canada Employment Insurance Commission*, 2019 SST 201

Tribunal File Number: AD-18-673

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 14, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, D. C. (Claimant), worked for X. After losing his employment, he sent his former employer a formal notice and demanded that he be reinstated and given financial compensation. This led to discussions between the parties and an out-of-court settlement to have a total gross amount of \$25,000 paid to the Claimant.

[3] The Canada Employment Insurance Commission determined that \$20,000 of that amount was earnings. It then allocated this amount, which resulted in an overpayment that the former employer paid back to the Commission out of the amount owed to the Claimant. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division determined that the Claimant did not meet two of the three criteria established by case law for determining whether an amount can be considered compensation for relinquishment of the right to be reinstated. Therefore, it found that the amount of \$20,000 should not have been considered compensation for relinquishment of the right to be reinstated according to the sense the case law gives the expression. It also found that there was no indication in the Claimant's testimony or in the settlement that the employer agreed to pay any amount for psychological harassment.

[5] The Tribunal granted leave to appeal. The Claimant argues that the amount received is not earnings within the meaning of section 35 of the *Employment Insurance Regulations* (EI Regulations) and that, for this reason, it does not have to be allocated under section 36 of the EI Regulations. He submits that the General Division erred because it made a decision without considering the evidence before it.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUE

[7] Did the General Division err by finding that the compensation the Claimant received had not been paid in consideration for the Claimant relinquishing his right to be reinstated and as compensation for psychological harassment?

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* (DESD Act).¹

[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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue 1: Did the General Division err by finding that the compensation the Claimant received had not been paid in consideration for the Claimant relinquishing his right to be reinstated and as compensation for psychological harassment?

[11] The Tribunal listened carefully to the recording of the General Division hearing. The Tribunal is of the view that the appeal is without merit.

[12] The Claimant argues that the \$20,000 amount received was paid for relinquishing his right to be reinstated and as compensation for psychological harassment. He submits

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

that the amount received is not earnings within the meaning of section 35 of the EI Regulations and that, for this reason, it does not have to be allocated under section 36 of the EI Regulations.

[13] As the General Division pointed out, an amount received in consideration for relinquishing the right to be reinstated is not considered earnings for EI purposes and is not allocated. However, three conditions must be met, namely, the right to reinstatement exists, reinstatement has been sought, and the amount is paid to compensate for relinquishment of that right.²

[14] The Claimant stated on appeal that he received the amount in consideration for relinquishment of the right to be reinstated and that he did ask to be reinstated.

[15] The General Division found that the amount the Claimant received had not been paid for the Claimant's relinquishing of his right to be reinstated within the case-law sense. In particular, it determined that the Claimant had not demonstrated his right to reinstatement because he was a senior executive.

[16] The General Division also found that the Claimant had failed to show that the amount of \$20,000 had been paid by his employer to compensate him for psychological harassment. It noted that there was no mention of the issue of psychological harassment in the file and, most notably, in the agreement between the parties. The General Division also pointed out that the Claimant's testimony at the hearing had not convinced it of the merits of his claim.

[17] In light of the above, the Tribunal finds that the General Division correctly found from the evidence that the amount of \$20,000 had not been paid to the Claimant for relinquishing his right to have his employment reinstated and that it had not been paid as compensation for psychological harassment.³

² *Canada (Attorney General) v Warren*, 2012 FCA 74.

³ *Canada v Plasse*, A-693-99.

CONCLUSION

[18] The Tribunal finds that the General Division's decision on the issue of the allocation of the Claimant's earnings was made based on the evidence before it and that this decision complies with the legislative provisions and case law.

[19] For the reasons mentioned above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. C., Appellant Manon Richardson, Representative for the Respondent