



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. L. v Canada Employment Insurance Commission*, 2019 SST 811

Tribunal File Number: GE-19-229

BETWEEN:

**M. L.**

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: Catherine Frenette

HEARD ON: April 26, 2019

DATE OF DECISION: May 28, 2019

## **DECISION**

[1] The appeal is allowed.

## **OVERVIEW**

[2] On June 28, 2018, the Appellant's teaching contract terminated, and she made an initial claim for and was granted regular Employment Insurance benefits.

[3] On August 9, 2018, the Appellant signed a new contract of employment for the 2018-2019 school year starting on August 23, 2018.

[4] Based on her status as a teacher, the Canada Employment Insurance Commission (Commission) found the Appellant to be disentitled from receiving benefits from August 9, 2018, to August 22, 2018.

[5] The Commission also denied the Appellant Employment Insurance benefits from December 24, 2018, to January 4, 2019, and from March 4, 2019, to March 8, 2019, for the non-teaching periods.

[6] The Tribunal must determine whether the Appellant was disentitled from receiving Employment Insurance benefits for all the specified periods.

## **PRELIMINARY MATTERS**

[7] At the hearing, the Appellant's representative explained that she was no longer disputing the periods of disentitlement from December 24, 2018, to January 4, 2019, and from March 4, 2019, to March 8, 2019. As a result, this appeal will concern only the disentitlement imposed from August 9, 2018, to August 22, 2018.

## **ISSUE**

[8] Was the Appellant entitled to receive benefits for the period of August 9, 2018, to August 22, 2018?

## ANALYSIS

[9] A claimant who was employed in teaching for any part of the claimant's qualifying period is disentitled from receiving Employment Insurance benefits for any week of unemployment that falls in any non-teaching period.<sup>1</sup>

[10] Teachers who do not work because of non-teaching periods that occur annually are not considered unemployed.<sup>2</sup>

[11] A non-teaching period means a period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching.<sup>3</sup>

[12] However, a claimant may rebut this presumption of disentitlement if their contract of employment has terminated, their employment in teaching was on a casual or substitute basis, or they qualify to receive benefits in respect of employment other than in teaching.

[13] Under section 33(2)(a) of the Regulations, the termination of the contract of employment means a severance of the employer and employee relationship.<sup>4</sup>

[14] The claimant has the burden of proving that they are entitled to receive benefits.<sup>5</sup>

### **Was the Appellant entitled to receive benefits for the period of August 9, 2018, to August 22, 2018?**

[15] The facts in this case are undisputed. The Appellant worked as a teacher during the qualifying period. On June 28, 2018, the Appellant's contract terminated, and the Commission found that the Appellant had rebutted the presumption of disentitlement as of that date (GD10).

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<sup>1</sup> *Employment Insurance Regulations* (Regulations), s 33(2).

<sup>2</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174; *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Stone*, *supra* note 2; *Bazinet*, *supra* note 2.

<sup>5</sup> *Stone*, *supra* note 2 at para 50.

[16] The Appellant also testified that she stopped contributing to the Québec Pension Plan, her pension fund, or Employment Insurance as of June 28, 2018. Furthermore, the Appellant was no longer covered by the employer's wage-loss insurance.

[17] On August 9, 2018, the Appellant applied to an employment pool, and she signed a contract with the employer for the 2018-2019 school year, which was to start on August 23, 2018.

[18] The evidence shows that the non-teaching period during the summer was from June 29, 2018, to August 22, 2018.

[19] Because of this, the Commission ended the rebuttal of the presumption on the day that it considered the Appellant's [translation] "termination of contract" condition to have ceased to exist, which was when the new contract was signed.

[20] The Commission is of the view that the Appellant has not proven that her contract of employment for teaching terminated on June 28, 2018, and that she would not be returning to work for her employer after the non-teaching period. According to the Commission, as of August 9, 2018, the Appellant has not established when her contract terminated because she accepted a contract during the non-teaching period starting on August 23, 2018. According to the Commission, the employment relationship with the employer continued when the Appellant entered into an agreement for the next teaching period.<sup>6</sup>

[21] The Appellant is of the view that she was entitled to receive benefits because her contract terminated on June 28, 2018.

[22] The Commission recognized that the Appellant's contract terminated on June 28, 2018. However, the Tribunal must determine whether the Commission can rely on the fact that the Appellant accepted a new contract to disentitle her from receiving benefits after finding earlier that the Appellant was entitled based on the fact that the contract for teaching carried out during her qualifying period had terminated.

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<sup>6</sup> *Oliver, supra note 2; Stone, supra note 2; Canada (Attorney General) v Robin*, 2006 FCA 175.

[23] The Tribunal is of the view that the Appellant was entitled to receive benefits between August 9, 2018, and August 22, 2018. The Tribunal disagrees with the Commission's reasoning.

[24] To begin with, by acknowledging that the first contract terminated, the Commission found that the employment relationship regarding teaching activities during the Appellant's reference period had been severed. Later, during the summer of 2018, when the Appellant accepted an offer from the employer through the employment pool on August 9, 2018, a new contract was established for teaching in the future starting August 23, 2018. Since the old contract had already terminated, according to the Commission's own assessment, the employer did not have her contract "renewed" as in *Stone*, *Bazinet*, and *Oliver*. Rather, the Appellant signed a new contract with the employer, which did not [translation] "revive" the old contract.

[25] Signing a new contract in August cannot be linked to the previous teaching that occurred earlier during the qualifying period and for which the Commission already determined that the contract had terminated in accordance with section 33 of the Regulations.

[26] Furthermore, Parliament has not provided for an endpoint to the entitlement set out in section 33(2)(a) of the Regulations, contrary to other provisions of the *Employment Insurance Act*.<sup>7</sup> For example, sections 31 and 32 of the Act state that a claimant is disentitled from receiving benefits until an event occurs that can end the disentitlement.

[27] Section 33(2) of the Regulations does not state that an event can end the entitlement gained by rebutting the presumption. Once the Commission recognized that the Appellant's contract terminated in June 2018, the Commission could no longer [translation] "revive" the teaching component because the only "teaching" that can lead to disentitlement, according to the clear wording of section 33(2) of the Regulations, is "[that which is performed] for any part of the claimant's qualifying period."

[28] As a result, the Tribunal cannot interpret there being an endpoint to the entitlement created by section 33(2) of the Regulations through the signing of a new teaching contract in this case, if Parliament itself has not expressly provided for it.

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<sup>7</sup> Act.

[29] This reasoning is consistent with Parliament's intention that the disentitlement set out in section 33(2) of the Regulations prevents teachers from double dipping during the non-teaching period.<sup>8</sup>

[30] The Tribunal is of the view that the Appellant has met her burden of proving, on a balance of probabilities, that she was entitled to receive benefits between August 9, 2018, and August 22, 2018, because the rebuttal of the presumption of disentitlement that the Commission recognized at the end of June 2018 still applied at the time.<sup>9</sup>

## CONCLUSION

[31] The appeal is allowed. The Appellant was entitled to receive benefits between August 9, 2018, and August 22, 2018.

Catherine Frenette  
Member, General Division – Employment Insurance Section

HEARD ON:	April 26, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. L., Appellant  Maude Lamontagne, Representative for the Appellant

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<sup>8</sup> *Stone, supra* note 2 at para 38; see also *Canada (Attorney General) v Partridge*, A-704-97.

<sup>9</sup> *Stone, supra* note 2 at para 50.