Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. S. v Canada Employment Insurance Commission*, 2019 SST 575

Tribunal File Number: GE-19-1282

BETWEEN:

G. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: N/A

DATE OF DECISION: May 31, 2019

Canada

DECISION

[1] The application is dismissed. The decision is Tribunal file no. GE-18-640 is not rescinded or amended. G. S. (the "Applicant") provided new information from her former employer and her Association counsel concerning a settlement sum of $34,000.00 received after termination by her employer. This information is not considered to be "new facts" because the settlement occurred prior to the Tribunal decision having being rendered in Tribunal file no. GE-18-640 and the new information could have been discovered by the Applicant acting diligently. Although the decision was made without knowledge of this information, the information also does not meet the materiality test.

OVERVIEW

[2] The Applicant worked for a municipal police department as an information and records clerk. On October 3, 2016, the Applicant's contract for "temporary as required services" which was scheduled to be completed on March 31, 2017, was terminated by her employer effective October 17, 2016 for reason that the Applicant's performance had not met the standards of service. The Applicant applied for regular Employment Insurance (EI) benefits on November 21, 2016. The Applicant later sought the antedating of her claim and her benefit period began on September 4, 2016.

[3] The Applicant believed her termination to be related to the voicing of a complaint about the employer's hiring practices and the filing of a harassment complaint against other staff. An investigator determined the Applicant had not been harassed but that there was a toxic work environment. Subsequent to receiving the investigation results, the Applicant, with the assistance of her union (Association), negotiated a settlement payment of $34,000.00 from her employer in September 2017. The employer noted the sum on the Record of Employment (ROE) as "retiring allowance" and characterized it to the Respondent as "severance".

[4] The Canada Employment Insurance Commission (the "Respondent") considered the entire $34,000.00 settlement payment to be "earnings" paid upon separation and allocated it to the Appellant's claim according to the Applicant's normal weekly earnings to the weeks of September 4, 2016 to March 25, 2017 with a balance of $58.00 applied to the week beginning

March 26, 2017. This created an overpayment of $15,631.00. The Respondent maintained this decision upon reconsideration. The Applicant appealed the Respondent's reconsideration decision to the Tribunal. On July 17, 2018, the Tribunal conducted a hearing. The Applicant argued that the sum was not earnings because it arose from a "negotiated settlement" that represented compensation to her for not filing a grievance or a Human Rights complaint against the employer and for reason that $29,000.00 of the sum had been paid into an R.R.S.P. She also argued she received the sum of money after her EI benefits had ended and so the sum should not have been allocated to her claim.

[5] On August 31, 2018 the Tribunal rendered a decision in Tribunal file no. GE-18-640 that the $34,000.00 was earnings and had been properly allocated by the Respondent. The Applicant sought leave to appeal that decision. On October 19, 2018 as part of the appeal proceedings, the Applicant submitted additional information in the form of a letter dated October 17, 2018 from her former employer now characterizing the $34,000 settlement funds as having been paid for the Appellant's agreement to relinquish her right of reinstatement and her comprehensive collective agreement rights. On March 11, 2019, the Applicant made an application to have the Tribunal's General Division's decision of August 31, 2018 rescinded or amended based on this letter. Her request for leave to appeal that decision was put on hold pending a decision in this application.

PRELIMINARY MATTERS

[6] The Applicant provided brief reasons for her application to rescind or amend the initial decision with her application. On March 14, 2019, the parties were advised they had 30 days to file any additional documents or submissions. On March 19, 2019, the Tribunal received Supplementary Representations from the Respondent. [1]. The Applicant did not provide any further submissions.

[7] The Tribunal proceeded with a written question and answer hearing as some of the information the Applicant provided in her application required clarification. [2] The Tribunal sent

[1] RAGD3-1 to RAGD3-3
[2] Subsection 48(b) of the *Social Security Tribunal Regulations* (SST Regulations)

the Applicant a list of questions on April 16, 2019, requesting a response by April 30, 2019. [3] On April 26, 2019, the Applicant requested an extension of time to respond, indicating she was unavailable from August 28, 2019 to May 5, 2019. On April 30, 2019, the Applicant clarified that she was out of the country until May 5, 2019 with only sporadic access to email. The Tribunal granted an extension until May 10, 2019 and the Applicant provided her responses on May 10, 2019. The Applicant provided her responses on May 10, 2019. [4] In addition to her responses, the Applicant also provided further new information in the form of email exchanges between herself and the Association's counsel regarding the employer's letter and the settlement negotiations. [5]

ISSUES

[8] Issue 1: Does the Applicant meet the preliminary conditions for proceeding with an application to amend or rescind a decision?

[9] Issue 2: If so, should the decision in Tribunal file no. GE-18- 640 be rescinded or amended?

ANALYSIS

[10] In order to proceed with an application to rescind or amend a Tribunal decision, the Applicant must show she meets some preliminary requirements. An application to rescind or amend a decision must be made within one year after the day on which the decision is communicated to the applicant. Each person who is the subject of a decision can only make one application to rescind or amend that decision and a decision must be rescinded or amended by the same division of the Tribunal that made the decision. [6]

[11] An application to rescind or amend a decision is not an opportunity to argue or reargue the merits of the issue under appeal. The Tribunal may rescind or amend a decision given by it in respect of any particular application if in the case of a decision relating to the *Employment*

[3] RAGD1-1 to RAGD1-4
[4] RAGD7-1 to RAGD7-10
[5] RAGD7-6 to RAGD7-10
[6] Subsections 66(2) to 66(4) of the *Department of Employment and Social Development Act* (DESD Act)

Insurance Act (Act), new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to some material fact. [7]

Issue 1: Does the Applicant meet the preliminary conditions for proceeding with an application to amend or rescind a decision?

[12] Yes. The Applicant meets the preliminary conditions for proceeding with an application to amend or rescind the Tribunal's August 31, 2018 decision.

[13] I find the Applicant filed her application to rescind or amend within one year of the initial decision being communicated to her. Although she noted in her application to rescind or amend that she received the Tribunal's August 31, 2018 decision on February 21, 2019, she appears to be referencing a communication from the Tribunal's appeal division as she also refers to an appeal file number. The Tribunal records show that the August 31, 2018 decision was mailed to the Applicant on September 4, 2018. The decision is deemed to have been communicated to the Applicant 10 days after it was mailed to her. [8], which would be September 14, 2018. The Applicant filed her application to rescind or amend that decision on March 11, 2019, within the one-year period. There is no evidence in the Tribunal record of any other application to rescind or amend the decision in Tribunal file no. GE 18-640 by the Applicant. I am satisfied this is the first application. The Applicant's application to rescind or amend is to the same Tribunal division that rendered the initial decision, being the General Division.

Issue 2: Should the decision in Tribunal file no. GE-18-640 be rescinded or amended?

[14] No. I find that the test for rescission or amendment has not been met.

Is the employer's letter of October 17, 2018 or the email documentation from the Association counsel about the settlement consistent with "new facts"?

[15] No. This information is not considered to be "new facts" because the settlement between the Applicant and her former employer occurred before the Tribunal's August 31, 2018 decision.

[7] Paragraph 66(1)(a) of the DESD Act
[8] Section 19 of the SST Regulations

The letter and the email information from the Association counsel could have been discovered by the Applicant acting diligently.

[16] In order for facts to be considered "new facts", they must have happened after the decision was rendered or happened prior to the decision being rendered but could not have been discovered by the Appellant acting diligently. Additionally, the new facts must be decisive of the issue. [9]

(i) When did the facts happen?

[17] The fact of the settlement occurred prior to the Tribunal's August 31, 2018 decision in September 2017.

[18] The new employer's letter of October 17, 2018 provides that the Applicant was under contract from September 13, 2013 until her employment was terminated on October 17, 2016. The letter states that the Applicant grieved the validity of her termination and it was resolved shortly thereafter. A revised Record of Employment (ROE) was issued upon the settlement. The letter provides that the $34,000.00 paid to the Applicant as a retirement allowance in 2017 was paid in accordance with a settlement agreement and was paid in respect of her agreement to relinquish her right of reinstatement and her comprehensive collective agreement rights. [10]

[19] While the employer's letter was written after the Tribunal's August 31, 2018 decision, the fact of the settlement occurred prior to the Tribunal's August 31, 2018 decision. The employer's letter does not provide an exact date of the settlement but indicates the revised Record of Employment (ROE) was issued upon the settlement. The revised ROE noting the "retiring allowance of $34,000.00" is dated September 20, 2017. Accordingly, I find that the settlement occurred on or about September 20, 2017 and therefore prior to the Tribunal's August 31, 2018 decision.

[20] The email documentation between the Applicant and the Association Counsel has various dates subsequent to the Tribunal's August 31, 2018 decision. However, the emails are

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[9] *Canada (A.G.) v. Chan*, A-185-94
[10] AD1C - 2

referencing the Applicant's settlement, the fact of which occurred prior to the August 31, 2018 decision. [11]

[21] There is a difference between new facts and new evidence supporting facts already known. "A different version of facts already known to the claimant, mere afterthoughts or the sudden realization of the consequences of acts done in the past are not new facts." [12] I find the employer's letter and the email information from the Association counsel are not new facts, but rather new evidence supporting facts already known concerning the settlement.

(ii) Could the employer's letter and email documentation from the Association counsel have been discovered by the Applicant acting diligently?

[22] Yes. I find the employer's letter and the email documentation between the Applicant and her Association counsel could have been discovered by the Applicant acting diligently.

[23] The Applicant advised the Tribunal that she had requested the letter from her employer early August, 2018 and it was sent to her on October 18, 2018. She provided it the Tribunal on October 19, 2018. [13]

[24] The Applicant advised the Tribunal that she did not seek out the information from her former employer prior to her initial hearing on July 17, 2018 because she "spoke to the Association's Counsel about the matter and she advised me of the definitions to use that she indicated would have cleared up any misunderstanding. I was not aware that the Tribunal would have required further information beyond what my Association advised would be sufficient." [14]

[25] The Applicant also explained to the Tribunal that she did not seek out and provide the letter within the extra time subsequent to her hearing given to her by the Tribunal member to provide further information because she had advised the Tribunal member she would not be in a position to contact the Association until after her exams after July 29, 2018. She did so promptly after her exams but was advised the Association's counsel was away until mid August. The

[11] RAGD7-6 to RAGD7-10
[12] *Chan, supra*
[13] RAGD7-2, Response to Question 1, Response to Question 2
[14] RAGD7-2, Response to Question 3

Applicant goes on to explain that the Association's counsel informed her upon her return she would follow up on her request. She explains that on August 23, 2018 the Association's counsel advised the Applicant that she had spoken to the Association 's external counsel and that the change on the ROE from terminated to resigned should not have resulted in an overpayment against her and that Association counsel would speak to the employer to see if this could be resolved. [15]

[26] The Applicant provided some email exchanges between herself and her Association's counsel regarding the obtaining of the employer's letter. An undated email sent by the Association counsel to the Applicant notes the counsel has been "back and forth" with the employer on this matter and then sets out the position the counsel took with the employer and advises that the employer was considering whether to issue a letter. [16] The Applicant then sent an email to the Association counsel on September 12, 2018 enquiring about the letter and on October 18, 2018 the counsel responded, "Attached is the letter from the employer that we discussed. I have confirmed the wording with external counsel and am advised that this is what Service Canada needs to have confirmed." [17]

[27] The Applicant argues the Tribunal member did ask about sharing a copy of the settlement and she expressed her concern about sharing a document that she had agreed to keep confidential. She asserts the employer did not give her permission to discuss the settlement and that she actively contacted the Association counsel in early August after her exams as she indicated she would. She relates she answered questions about the settlement to the best of her ability during the hearing. She submits that is was not reasonable for her to contact the employer as she experiences anxiety each time she thinks of contacting the employer. She points out that she contacts the employer though the Association counsel, which in itself is stressful.

[28] The Respondent argues the facts on file indicate the settlement was reached around the time the amended ROE was issued. The Applicant was in receipt of the written information to indicate how the settlement was reached and not prevented from providing such information to the Tribunal member during the appeal process. The Respondent argues further that as the

[15] RAGD7-2, Response to Question 4
[16] RAGD7 - 7
[17] RAGD7 – 6

Applicant was able to provide the employer's letter a couple of months after the member dismissed her appeal, it is reasonable to conclude that she was able to contact the employer and request written clarification of the separation monies. She also could have contacted the Tribunal Member and requested more time. The Respondent submits that as the Applicant was employed by a law enforcement institution, it would make sense that she would have a written settlement, copy of the investigation, or a statement from her grievance. She only provided the letter from her employer, once her appeal was dismissed. The Respondent maintains that letter does not constitute "new facts". The Applicant could have presented those facts during initial fact-finding if she had acted diligently. The employer's letter is not a "new fact" but is only "additional facts".

[29] I agree with the Respondent that the new information provided are not "new facts". "A different version of facts already known to the claimant, mere afterthoughts or the sudden realization of the consequences of acts done in the past are not "new facts". [18] The question is not whether the Applicant was aware that the new evidence had to be produced at the General Division hearing but whether the Applicant acting diligently could have produced this evidence. [19]

[30] I find the facts surrounding the Applicant's settlement agreement and what the sums represented were within the personal knowledge of the Applicant at the time of the initial hearing. The employer's letter of October 17, 2018 and the email exchanges between the Appellant and the Association counsel are not "new facts". They are instead a different version of facts already known to the Applicant.

[31] The Applicant attended the hearing before the General Division, and she had full opportunity to present the facts of her case and file any documentation in support of her case. I find that by acting diligently the Applicant could have obtained both the letter and information from the Association counsel about the settlement earlier. The employer's characterization of the settlement as a "severance" payment was in the Tribunal docket. While I appreciate that contacting the employer directly caused her stress, the Applicant could have contacted her

[18] *Chan, supra*
[19] *Canada (AG) v. Hines* 2011 FCA 252

Association counsel prior to the hearing to obtain any information she wished to clarify the employer's characterization of the settlement. In that regard, the appeal docket sent to the Applicant on April 30, 2018 contained the ROE dated September 20, 2017 noting the $34,000 payment and characterizing it as "Retiring allowance / Retirement leave credits". [20] The docket also contained notes from a conversation between the Respondent and the employer on February 26, 2018 in which the employer advised that the Retiring allowance/retirement leave credit was a "severance payment." [21] The Applicant had ample time to seek out a letter from the employer to correct the information on file from the employer or to obtain information from the Association counsel regarding the settlement prior to the hearing.

[32] The Applicant was also given time after the hearing until August 3, 2018 to provide further documentation concerning the settlement. She provided information on August 7, 2018 outside that period, which the Tribunal accepted. Although the Applicant mentioned in her documentation of August 7, 2018 that the Association counsel was away until August 13, 2018, no request for an extension of time was made by the Applicant, nor was any further documentation provided to the Tribunal prior to the decision being issued on August 31, 2018.

[33] I find that the Applicant's application and enclosures are an attempt to re-argue her case based on facts that existed at the time of the hearing before the General Division with different evidence. The fact of the settlement and what it represented was in existence before the Tribunal hearing. The Applicant was a party to that settlement. She could have, by acting diligently, contacted the Association counsel in advance of the hearing to seek out clarification from the employer and to seek further information from the Association's counsel regarding the settlement.

Issue 2: Was the decision made without knowledge of or was based on a mistake as to some material fact?

[34] No. The decision was not made without knowledge of or based on a mistake as to some material fact.

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[20] GD3-28
[21] GD3-29

[35] In order for me to rescind or amend my decision on this ground, I would have to be satisfied that I did not know about or made a mistake as to some fact that was significant to my decision.

[36] A material fact is a fact that alone or in combination with the other evidence could reasonably be expected to establish that the $34,000.00 or some part of it was not “earnings”.

[37] I did not make my decision based on a mistake of a material fact in the evidence that was before me when I made my decision. My decision of August 31, 2018 was made without the employer’s letter of October 17, 2018 and without the email information from the Association counsel because the Applicant did not provide it, not due to a mistake.

[38] I do not find this new information to be material facts because this information, alone, or in combination with the other evidence does not impact the decision I rendered in Tribunal file no. GE-18-640 that the $34,000.00 was earnings.

[39] The issue considered in Tribunal file no. GE-18-640 was whether the $34,000.00 in settlement monies were “earnings” under section 35 of the EI Regulations and if so, how that sum should be allocated under section 36 of the EI Regulations. The new information provided by the Applicant is relevant to the issue of whether the $34,000.00 is earnings.

[40] The Applicant argues in her application to rescind or amend the initial decision that the employer’s letter validates the information she originally provided to Service Canada and that the original decision was made based on assumptions in the absence of verification from the employer.

[41] The Respondent argues that it contacted the employer to verify the monies on separation. The Respondent states that on October 30, 2017, the Respondent had contacted the employer and clarified that the $34,000.00 in retirement allowance or retirement leave credits on the Amended Record of Employment was a severance payment. The Respondent points out that the Applicant had advised the Respondent that $29,000.00 of the $34,000.00 was made to her Registered Retirement Savings Plan.

[42] The Respondent argues that once the Tribunal dismissed the Applicant's appeal, the Applicant then provided a letter from her employer saying the sum was paid to the Applicant in respect of her agreement to relinquish her right of reinstatement and her comprehensive collective agreement rights. The Respondent asserts the Applicant has provided conflicting information in regards to the separation monies.

[43] I found in Tribunal file no. GE-18-640 that the $34, 000.00 in settlement monies was "earnings" under section 35(2) of the EI Regulations. I found that none of the exceptions in subsection 35(7) applied. I found the income arose from employment, as there was a sufficient connection between the loss of the Applicant's employment and the sum received. I also found that the Applicant had not proven that special circumstances existed such that $34,000.00 or any part of it represented anything other than a loss of revenue arising from the loss of her employment. [22]

[44] If an individual claims that the amounts received from his or her employer or former employer were paid out for reasons other than the loss of revenue arising from employment, in the case of a settlement or agreement based upon a lawsuit, a complaint or a claim because of a dismissal, it is up to the individual to demonstrate that due to "special circumstances" some portion of it should be regarded as compensation for some other expense or loss other than the loss of revenue arising from employment. [23]

[45] Money that is paid for the relinquishment of reinstatement rights is not considered earnings for Employment Insurance purposes and is not allocated. However, three conditions must be in place, namely, the right to reinstatement exists, reinstatement has been sought, and the money is paid in exchange for the relinquishment of that right. [24]

[46] I found as a fact in the August 31, 2018 decision that the Applicant did not seek reinstatement as part of her settlement negotiations and as such, the $34,000.00 sum did not represent a relinquishment of that right. That finding was based on the Applicant's testimony that she did not file a grievance and did not seek reinstatement [25]along with a written statement

[22] General Division decision, paragraphs 15 and 16
[23] *Canada (A.G.) v. Radigan*, A-567-99; *Bourgeois v. Canada (A.G.)*, 2004 FCA 117
[24] *Canada (Attorney General) v Warren*, 2012 FCA 74
[25] General Division decision, paragraph 29

to the Tribunal in that regard. [26] She testified that she believed the $34,000.00 payment was noted in the settlement agreement as a retirement allowance. She testified further that it was a term of the agreement that she not pursue a grievance or file a Human Rights complaint and to her the $34,000.00 represented compensation for not filing those complaints.

[47] Notwithstanding the letter from the employer, the Applicant has provided indicating that the sum or money is for her agreement to relinquish her right of reinstatement and her comprehensive collective agreement rights, the Applicant continues to assert in the materials filed in support of this application that she did not file a grievance and did not seek reinstatement. She advises that she agreed to the settlement instead of filing a grievance. [27] She specifically states, "I was not offered reinstatement nor did I seek reinstatement. In the settlement agreement, there was a clause included that I agree to relinquish my right for future reinstatement." [28]

[48] Contrary to the Applicant's own assertion, the Association counsel indicates in the new email information that a verbal grievance was filed in accordance with the collective agreement and reinstatement was sought as part of that grievance. [29]

[49] According to the Association counsel's email, in all discussions, the Association always took the position that: a. (the Applicant's) termination was an unfair, unjust or discriminatory discharge without reasonable cause; b. (the Applicant's) work performance had not been properly managed; c. The training {the Applicant) received was deficient or insufficient; d. Attendance management was not administered fairly; e. (the Applicant) was targeted, bullied and harassed by her co-workers and subjected to a generally toxic and poisoned work environment; f. The (employer) failed to provide (the Applicant) with a discrimination-free workplace. [30]

[50] The Association's counsel explains that the Association always took the position that the following remedies were required to correct the situation: a. Declarations that the Applicant's position was true; b. An order reinstating the Applicant with compensation for all lost wages,

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[26] GD5-10, number 6
[27] RAGD7-2
[28] RAGD7-3, Response to question 6
[29] RAGD7 - 9
[30] RAGD7-9

benefits and any other rights and benefits under the Collective Agreement; c. Damages for both harassment/toxic work environment and racial discrimination; and d. Protective remedies (keep (her) away from harassers, etc.) She goes on to explain that based on the employer's understanding that a grievance was forthcoming and that discussions were being initiated in accordance with the grievance procedure, no grievance letter was ever sent. She asserts that the payment was paid in settlement of a grievance. She refers to section 7.02(a) of the Collective Agreement which allows for a verbal grievance. This provision sets out the grievance procedure and provides that when a member has a complaint or alleges there has been a violation of the collective agreement, the facts of the complaint are to be conveyed to the member`s supervisor, orally or in writing. [31]

[51] I am satisfied, based on the information from the Association counsel and the provision of the Collective Agreement cited, that a verbal grievance was filed on behalf of the Applicant and that pursuant to the collective agreement, the right to reinstatement existed. The fact a grievance was filed is corroborated by the employer`s October 17, 2018 letter. I am also satisfied that, through the Association counsel, the Applicant requested that she be reinstated in her employment. I acknowledge the Applicant`s own insistence that no grievance was filed and reinstatement was not sought. However, as negotiations were being conducted on her behalf by the Association counsel, the Applicant may not have been aware of all the details of the negotiations. I do accept that a request for reinstatement was made on her behalf. I am satisfied, therefore, that the claimant meets the first two conditions under which an amount paid following a termination of employment may be considered compensation for relinquishing the right to reinstatement, namely that she had a right to reinstatement and reinstatement was requested.

[52] However, I am not satisfied regarding the third condition. While I accept that some part of the settlement sum of $34,000.00 represented compensation for the relinquishment of the right to reinstatement, the Applicant has not proven, having consideration to all the evidence, including the new information, that the entire sum was paid as compensation for relinquishing the right to reinstatement or what portion of the settlement was paid for compensation for relinquishing that right.

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[31] RAGD7-9

[53] The employer`s letter of October 17, 2018 notes that more than just compensation for the relinquishment of the right to reinstatement was being compensated in the settlement. In that regard, the employer notes: "that $34,000 paid to Ms. Spaulding as a retiring allowance in 2017 was paid in accordance with a settlement agreement and was paid in respect of her agreement to relinquish her right of reinstatement and her comprehensive collective agreement rights".

[54] The Association counsel`s information also makes clear that multiple claims were being made on behalf of the Applicant and the $34,000.00 was a global settlement for all the claims made in the grievance including the Applicant's right to forgoe future employment and consideration for confidentiality. [32]These claims included: "An order re instating the Applicant with compensation for all lost wages, benefits and any other rights and benefits under the Collective Agreement and damages for both harassment/toxic work environment and racial discrimination." [33]

[55] In other words, the remedies being sought by the Association counsel on behalf of the Appellant included both earnings and non-earnings related components. However, I have no evidence before me in the employer's letter or in the Association counsel's information or in any of the evidence identifying how the sum of $34,000.00 was determined and what amount of that sum represents compensation for each of the purported claims. "In each case it is a matter of fact for the Board to determine on the evidence before it as to the various components of the settlement."[34]

[56] It is up to the Applicant to demonstrate that due to "special circumstances" what portion of the payment should be regarded as compensation for some other expense or loss other than the loss of revenue arising from employment. [35] The new information, even when considered with the totality of the evidence, provides no guidance as to how the sum of $34,000.00 was determined and what portion of that $34,000.00 represents earnings such as lost wages and earnings related benefits and what portion represents non-earnings related compensation for the relinquishment of the right to reinstatement, or damages for harassment and discrimination. I

[32] RAGD7-7
[33] RAGD7-9
[34] *The Attorney General of Canada v. Dunn*, A-231-95
[35] *Canada (A.G.) v. Radigan*, A-567-99; *Bourgeois v. Canada (A.G.)*, 2004 FCA 117

am not satisfied that the entire sum represents non-earnings related compensation, given a claim was being asserted for lost wages.

[57] I am not aware of any authority that allows me to simply estimate these amounts. The onus is on the Applicant to prove what portion of the $34,000.00 should be regarded as compensation for some other expense or loss other than the loss of revenue arising from employment. Therefore, I find that the employer's letter and the information from the Association counsel, while certainly relevant information, are not material facts. They do not persuade me to change my decision that the entire sum of $34,000.00 is "earnings" because the Applicant has not shown special circumstances to show what portion of the global settlement of $34,000.00 should be regarded as compensation for some other expense or loss other than the loss of revenue arising from employment.

[58] I find that the Applicant has not met the test set out in paragraph 66(1)(a) of the DESD Act to rescind or amend the Tribunal's decision of August 31, 2018 rendered in Tribunal file no. GE-18-640.

CONCLUSION

[59] The application is dismissed.

Charlotte McQuade
Member, General Division - Employment Insurance Section

HEARD ON:	N/A
METHOD OF PROCEEDING:	Questions and answers
APPEARANCES:	N/A