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

[TRANSLATION]

Citation: *N. C. v Canada Employment Insurance Commission*, 2019 SST 630

Tribunal File Number: AD-18-800

BETWEEN:

N. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 8, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, N. C. (Claimant), made an initial claim for benefits after her employment with X ended. The Commission informed the Claimant that, following an agreement with her previous employer, X, $22,000 had to be allocated to her benefit period, for an amount of $217 per week.

[3] The Claimant argued that the $22,000 does not apply to her claim, which was based on the insurable hours accumulated at her last employer, X. 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 $22,000 the Claimant's previous employer, X, paid her as severance pay constitutes earnings within the meaning of section 35(2) of the *Employment Insurance Regulations* (EI Regulations) and that those amounts must be allocated as of the week of the Claimant's separation from employment in accordance with section 36(9) of the EI Regulations.

[5] The Tribunal granted leave to appeal. The Claimant argues that the General Division did not consider all the evidence and that it erred in its interpretation of sections 35 and 36 of the EI Regulations. The Claimant submits that the General Division erred by holding a hearing by teleconference given the complexity of the file.

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

ISSUES

[7] Did the General Division err by finding that the Claimant's earnings from a previous employer had to be allocated to her claim based on the insurable hours accumulated at her last employer?

[8] Did the General Division fail to observe a principle of natural justice by proceeding with a teleconference hearing?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[10] 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.

[11] 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 Claimant's earnings from a previous employer had to be allocated to her claim based on the insurable hours accumulated at her last employer?

[12] The Tribunal finds that this ground of appeal is without merit.

[13] The Claimant argues that there is no reason to consider sums her previous employer, X, paid her because she did not file an Employment Insurance claim after leaving her employment

---

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

there. She maintains that, while working for her last employer, X, she accumulated the required number of hours of insurable employment to be entitled to benefits. There is therefore no need to allocate sums received from her previous employer.

[14] Section 36(9) of the EI Regulations states the following:

> 36 (9) Subject to subsections (10) and (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the nature of the earnings or the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.

[15] The section in question does not state that allocation should not be done in the event of new entitlement. The Federal Court of Appeal and the arbitral jurisprudence decided that the establishment of a new benefit period based on subsequent employment had no effect on the allocation of earnings arising out of earlier employment.[2]

[16] There is a consistent line of authority to the effect that all earnings from employment must be allocated until the sum is completely exhausted before a claimant is entitled to receive benefits.

[17] Based on the above, the Tribunal finds that the General Division correctly deemed the $22,000 that the Claimant's previous employer, X, paid her as severance pay to be earnings within the meaning of section 35(2) of the EI Regulations. The General Division was also correct when it found that those amounts must be allocated as of the week of the Claimant's separation from her employment with the employer X. on May 8, 2017, in accordance with section 36(9) of the EI Regulations.

---

[2] *Staikos v Canada (Attorney General)*, 2014 FCA 31; CUB 80192A; CUB 60262; and CUB 16144.

Issue 2: Did the General Division fail to observe a principle of natural justice by proceeding with a teleconference hearing?

[18] The Tribunal finds that this ground of appeal is without merit.

[19] The facts on file are simple and undisputed. There was no question of credibility for the General Division to resolve. It had to interpret sections 35 and 36 of the EI Regulations. Furthermore, the Claimant had an opportunity to present her arguments, which appear in the General Division decision, and to respond to the Commission's arguments.

[20] The Tribunal is of the view that the General Division exercised its discretion judicially when it decided to hold a teleconference hearing. It did not breach a principle of natural justice.

CONCLUSION

[21] For the reasons stated above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 25, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	Martin Savoie (counsel), Representative for the Appellant N. C., Appellant