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

[TRANSLATION]

Citation: *M. P. v Canada Employment Insurance Commission*, 2019 SST 1673

Tribunal File Number: GE-19-1996

BETWEEN:

M. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: June 27, 2019

DATE OF DECISION: July 18, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] M. P., the Appellant, was a school bus driver for X, which provided service to the Commission scolaire des X [X school board]. The Appellant was assigned to route 222. She is a union member and leader for the union Service Employees Union, Local 800.

[3] The collective agreement ended on July 31, 2017. The employer requested negotiation meetings on May 31, 2017. On October 4, 2017, there was a breakdown in the negotiations. A conciliator was appointed, and meetings took place several times between November 8, 2017, and November 13, 2018. The union also issued strike notices. On November 2, 2018, the employer decided on a lockout. After a week-long lockout, the Commission scolaire des X [X school board] decided to terminate the school transportation contract with X. In the end, the Appellant received a lay-off notice on November 26, 2018.

[4] The Appellant filed a claim for Employment Insurance benefits. The Commission refused to pay her Employment Insurance benefits from November 5, 2018, because she lost her employment because of a labour dispute.

[5] In the Commission's view, the labour dispute did not end despite the termination letter. Moreover, route 222 was not affected by the lockout because it did not belong to the company. As a result, the Appellant could have kept her route by working for X. Furthermore, the Appellant still has an interest in the dispute.

[6] In the Appellant's view, she was laid off, and she is therefore entitled to receive benefits. Since being laid off, she has no longer been directly interested in the labour dispute, she has not financed it, and she has not participated in it.

ISSUE

Is the Appellant disentitled from receiving benefits from November 5, 2018, because of a labour dispute as defined in section 36(1) of the *Employment Insurance Act* (Act)?

ANALYSIS

[7] The Tribunal must determine whether the Appellant should be disentitled under section 36(1) of the Act.

[8] According to section 36(1) of the Act:

> Subject to the regulations, if a claimant loses an employment, or is unable to resume an employment, because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which the claimant was employed, the claimant is not entitled to receive benefits until the earlier of
>
> **(a)** the end of the work stoppage, and
>
> **(b)** the day on which the claimant becomes regularly engaged elsewhere in insurable employment.

[9] Section 36(4) of the Act states that this principle does not apply if the claimant—in this case, the Appellant—proves that they are not participating in, financing, or directly interested in the labour dispute that caused the stoppage of work.

[10] The purpose of the Act is to allow people who involuntarily lose their employment to receive Employment Insurance benefits. Benefits must not be used to finances labour disputes.[1]

[11] It is the Commission that has to show, on a balance of probabilities, that the Appellant is not entitled to receive benefits[2] because there was a work stoppage due to a labour dispute.

[12] It is undisputed that there was a labour dispute during the negotiation of a collective agreement. It is undisputed that the Appellant was not entitled to receive Employment Insurance benefits before she was laid off[3]—from November 5, 2018, until she was laid off.

[13] The background to this is that the collective agreement expired on July 31, 2017. The employer requested meetings to negotiate on May 31, 2017. On October 4, 2018, there was a

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[1] *Canada (Attorney General) v Hurren*, A-942-85.
[2] *Canada (Attorney General) v Benedetti*, 2009 FCA 283 (CanLII).
[3] *Canada (Attorney General) v Simoneau*, A-611-96.

breakdown in negotiations. The employees walked off the job for a few days. A conciliator was appointed, and meetings took place several times between November 8, 2018, and November 13, 2018.

[14] On November 2, 2018, X locked the employees out. On November 13, 2018, the school board terminated X's exclusive transportation contract because it had not provided transportation for seven consecutive days. On November 26, 2018, X laid off the Appellant.

[15] In the Commission's view, even though the Appellant was laid off, the labour dispute was not resolved. The Appellant has an interest in the dispute. She is not entitled to receive Employment Insurance benefits from November 5, 2018.

[16] In addition, the Commission submits that the Appellant could have continued to work because route 222 was not affected by the lockout. According to the employer, the Appellant could have continued to work for the subsidiary X. Moreover, a position as a school bus driver was posted in February 2019. The Appellant could have also applied for that.

[17] Furthermore, X did not shut down, and there was no restructuring of the company. Therefore, the work stoppage owing to the labour dispute did not end.

[18] In the Appellant's view, as soon as she was laid off, the work stoppage owing to the labour dispute ended.

[19] I note that, starting in 2006, the Appellant worked as a school bus driver for X, which is a subsidiary of the X group. In fact, the X group has several subsidiaries, including X and X.

[20] The Appellant testified that she was assigned route 222 starting in 2013. Route 222 does not belong to X. S. G. from the X group asked the Appellant to cover the transportation for route 222. The route consists of specialized transportation for people with disabilities. The route belongs to X, which is a subsidiary of the X group. She contacted the union president at X to make sure there was no problem.

[21] When she took over the specialized transportation bus, she noticed that the bus was identified with and registered to X's name.

[22] On the first day of the strike, the Appellant's bus did not go out to cover the transportation for route 222. The next day, the employer took a bus out to keep route 222 running. That is when the Appellant objected to taking the bus out. The police intervened. The Service Employees Union, Local 800, asked the Ministère du Travail, de l'Emploi et de la Solidarité sociale [Québec's ministry of labour, employment, and social solidarity] to investigate the possibility that X failed to comply with the anti-strike-breaking provisions. The investigator found that the anti-strike-breaking provisions were apparently not followed. However, it is up to the Administrative Labour Tribunal to decide on that matter.

[23] Following the lockout, a representative from the X group came to take possession of the Appellant's school bus. He informed the Appellant that there was no longer any contract, and he took the bus back. She did not receive a request from the X group's representative to keep route 222 running.

[24] The Appellant also testified that she has not been participating in, financing, or directly interested in the labour dispute since being laid off because she does not have the right to be recalled.

[25] In the Appellant's view, her employment relationship is not with route 222, as the Commission argues, but with X. She has provided her pay stubs to show this. Furthermore, she was laid off like the other employees of X.

[26] I note that the Appellant's testimony is credible and that her explanations are plausible and supported by the evidence.

[27] I find that the Appellant's employment relationship is with X. She carries out the tasks that X assigns her. That is what she did when she was asked to cover the transportation for route 222. I give little weight to the information the Commission obtained from various people at the X group. I give more weight to the Appellant's honest and direct testimony from the hearing. In addition, she submitted the bus checklists for route 222, which are under the name of X, and her pay stubs issued by X.

[28] I am of the view that the Appellant's lay-off on November 26, 2018, ended the work stoppage owing to a labour dispute. The employer itself stated that returning to work was not possible. After all, since they were laid off, they had no recall right. Even though the employer stated that the company was not shut down, it still ceased operations and laid off its employees.

[29] I am of the view that the Commission based its findings on guesswork rather than the facts. Based on the facts, the Appellant is an employee of X. The collective agreement expired on July 31, 2017. The negotiations between the parties did not work. There were several days of strikes. On November 2, 2018, the employer locked the employees out. A little while later, the Commission scolaire des X [X school board] terminated the transportation contract with X because it had not provided transportation service for seven consecutive days. On November 26, 2018, the employer decided to lay off the employees of X.

[30] What happens next is guesswork: Will X get a new contract with the school board in two years? Will the issue be sorted out? No one is able to answer these questions. The evidence shows that the Appellant was laid off on November 26, 2018, with no possibility of a return to work and that there were no longer any operations at X. I find that the purpose of the Act is not to keep workers disentitled from receiving benefits, when they were laid off with no possibility of a return to work and when they are not participating in the dispute, are no longer directly interested in it, and are not financing it,[4] just because the company did not shut down, even though it ceased operations.

[31] I am also of the view that, since being laid off, the Appellant is no longer directly interested in the dispute. Moreover, contrary to the Commission's assertions in its submissions, the employer stated that the employees have no right to be recalled because they were laid off. Furthermore, since being laid off, the Appellant has no longer been participating in the dispute or financing it.

[32] Therefore, being laid off is independent of the Appellant's intent.[5] The Act is intended to help workers who find themselves unemployed through no fault of their own.

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[4] *Black v Canada (Employment Insurance Commission)*, 2001 FCA 255.
[5] *Caron v Canada (Employment and Immigration Commission)*, [1991] 1 SCR 48.

[33] However, I am of the view that the end of the work stoppage did not end on November 13, 2018, as the Appellant argues. The termination of the transportation contract is the reason for the lay-off, but the Appellant was laid off on November 26, 2018.

[34] In this context, I am of the view that the Commission has not shown that the Appellant is disentitled from receiving Employment Insurance benefits from November 26, 2018, because she lost her employment because of a labour dispute. The Appellant lost her employment on November 26, 2018, because of a lay-off.

CONCLUSION

[35] I find that the Appellant is entitled to receive Employment Insurance benefits from November 26, 2019, because the work stoppage owing to the labour dispute ended. In addition, since being laid off, the Appellant has not participated in the labour dispute, has not financed it, and has not been directly interested in it.

[36] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	June 27, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. P., Appellant Jérémie Dhavernas, Representative for the Appellant