



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. Y. v Canada Employment Insurance Commission*, 2019 SST 740

Tribunal File Number: GE-19-1940

BETWEEN:

**M. Y.**

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: Christopher Pike

HEARD ON: July 22, 2019

DATE OF DECISION: July 26, 2019

## **DECISION**

[1] I refer to the Appellant as the Claimant in this decision. His appeal is allowed. The result is that the Claimant qualifies for benefits in the weeks he did not work offshore between July 18, 2018 and December 11, 2018 because he has proven that he was unemployed in those weeks. These reasons explain why.

## **OVERVIEW**

[2] The Claimant worked for a company that provides temporary workers to the offshore industry. His employer assigned him to work on a rig operated by one its clients in May 2018 and with another client from July 18, 2018 until December 11, 2018. During the assignment that started in July, he worked a 21 day on, 21 day off rotation. While offshore the Claimant worked 12 hours out of 24 each of the 21 days.

[3] The Claimant believed he was unemployed during the 21-day periods when he was onshore between July 18, 2018 and December 11, 2018 because he was not certain he would return to the client's rig at the end of those periods. He claimed employment insurance benefits during the weeks he did not work and the Commission paid them. On March 21, 2019 the Commission decided he was employed during those weeks and claimed an overpayment from the Claimant.

[4] The Commission upheld this decision on reconsideration. The Appellant appealed to the Tribunal.

## **PRELIMINARY MATTER**

[5] On March 21, 2019 the Commission also imposed a penalty and violation because it believed the Claimant knowingly misrepresented his employment status. The penalty and violation were rescinded on reconsideration. This leaves only the Commission's determination that the Claimant was not unemployed between July 18, 2018 and December 11, 2018 to consider in this appeal.

## ISSUE

[6] Was the Claimant unemployed during the weeks he did not work offshore between July 18, 2018 and December 11, 2018?

## ANALYSIS

[7] Employment insurance pays benefits to individuals who are involuntarily separated from employment and who are without work.<sup>1</sup> Benefits are only payable to qualified claimants, for each week of unemployment that falls in their benefit period.<sup>2</sup> A claimant is treated as if they worked during each week or part week that falls in a period of leave if

- a) in each week they regularly worked a greater number of hours, days or shifts than are normally worked in a week by persons employed in full-time employment; and
- b) they are entitled to the period of leave under an employment agreement to compensate for the extra time worked.<sup>3</sup>

[8] Thus, a claimant on leave for overtime already worked does not suffer a loss of income, regardless of whether they are paid during their leave. This is because their employment has not been interrupted and they maintain a bond on a schedule rotating between periods of work.<sup>4</sup>

[9] The Claimant was unemployed during the weeks he did not work offshore between July 18, 2018 and December 11, 2018.

[10] The Claimant and his employer entered an employment contract on May 20, 2018. The contract said he might be assigned to work a rotation of 21 days on a client's rig followed by 21 days off. It also required him to work 12-hour days. The compensation and benefits portion of the contract was changed on June 2, 2018 when the Claimant was assigned to a new client. As a result of this change, he would be paid weekly "only when working".

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<sup>1</sup> *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle. The law requires me to apply the principles set by courts. I refer to other cases that explain the *Employment Insurance Act* this decision.

<sup>2</sup> *Employment Insurance Act*, section 9.

<sup>3</sup> *Employment Insurance Act*, section 11(4).

<sup>4</sup> *Canada (AG) v. Jean*, 2015 FCA 242 explains this principle at paragraph 21.

[11] The Claimant testified that he did not work a full 21-day rotation with the first client to which he was assigned. He said he worked a 21 day on, 21 day off rotation with the second client until December 11, 2018, but did not know until a few days before a shift began if he would return for another rotation.

[12] A Commission agent interviewed the employer about the Claimant's employment on March 6, 2019. The employer said that the Claimant was laid off at the end of each rotation with his first placement because he did not know how long he would be off. The employer stated that when he started his second placement on June 6, 2018, the Claimant was still considered a temporary employee and had no assurance of being called back for another rotation.

[13] The employer gave the Commission an email that it sent to the Claimant on July 3, 2018 stating that the client wanted him to return for a rotation starting July 18, 2018 but was not assigning anyone to full-time status because its contract was coming to an end. The employer also said, "Once there is more information on the rig's future after this contract, if there's something else signed and you continue to work in that rotation, they will consider you for a full-time/permanent position."

[14] The employer said the Claimant was informed by email on July 6, 2018 that he would work a regular rotation until December 2018 and would be laid off then. The Claimant says he did not receive an email on July 6, 2018 informing him that he was on a regular rotation. Even though the employer told the Commission they would provide a copy of that email, it is not included in the evidence I have been given.

[15] On August 10, 2018 the Claimant asked his employer to confirm his employment status to support his application for a car loan. The employer responding on August 13, 2018, "I can say you are working full-time hours in a regular rotation, but ... you are considered temporary."

[16] The Claimant's Record of Employment shows that he was laid off effective December 11, 2018. The Claimant testified that he expected to be hired by ("signed over" to) the client he worked for from July to December 2018 in early January 2019. He testified that the email he and his employer exchanged on December 27, 2018 in which he said he expected to return on January 2, 2019 is a part of that sign-over discussion.

[17] This evidence shows that it is more probable than not that the Claimant was not certain he would return for another rotation because he had to wait for his employer's client to confirm he would be needed. This evidence also shows that it is more probable than not that the Claimant remained a temporary employee even though he worked full-time hours on regular rotation of 21 days on and 21 days off from July 18, 2018 to December 11, 2018.

[18] The fact that the Claimant had to wait to be called back shows that the bond between him and his employment was broken each time he left the client's rig.<sup>5</sup> This means that he became unemployed each time he rotated off the rig between July 18, 2018 and December 11, 2018.

### CONCLUSION

[19] The appeal is allowed.

Christopher Pike

Member, General Division - Employment Insurance Section

HEARD ON:	July 22, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. Y., Appellant Tom Osborne, M.H.A., Representative for the Appellant

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<sup>5</sup> See the discussion of *Canada (AG) v. Jean* at footnote 4.