



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. R. v Canada Employment Insurance Commission*, 2019 SST 704

Tribunal File Number: AD-19-221

BETWEEN:

**P. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

DECISION BY: Pierre Lafontaine

DATE OF DECISION: August 7, 2019

## DECISION AND REASONS

### DECISION

[1] The Tribunal allows the appeal.

### OVERVIEW

[2] The Appellant, P. R. (Claimant), sued his former employer seeking various types of damages. His settlement covered loss of earnings and general damages, legal fees and any interest. The Respondent, the Canada Employment Insurance Commission (Commission), allocated the loss of earnings award against his benefit claim. It found that the general damages award was also earnings and allocated it as well, which led to an overpayment of benefits. It did not allocate the legal fees as earnings. On reconsideration, it maintained these findings. The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal.

[3] The General Division concluded that the Claimant's suit against his employer had been settled through payment of general damages. It found that the Claimant had met his burden of proof to show that these damages were not earnings under section 35 of the *Employment Insurance Regulations* (EI Regulations) since they compensated him for emotional distress and harm to his professional reputation rather than loss of income. The General Division however refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement. This adjustment would have reduced the value of the award for loss of earnings.

[4] The Claimant was granted leave to appeal. He argues that the General Division made a perverse finding to conclude that he did not incur legal expenses to obtain pay in lieu of notice damages from the employer.

[5] The Tribunal must decide whether the General Division erred when it refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement that included general damages and pay in lieu of notice.

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

## ISSUE

[7] Did the General Division err when it refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement that included general damages and pay in lieu of notice?

## ANALYSIS

### Appeal Division's mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[9] 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.<sup>2</sup>

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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: Did the General Division err when it refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement that included general damages and pay in lieu of notice?**

[11] The appeal is allowed.

[12] The General Division found that the Claimant had met his burden of proof to show that the general damages were not earnings under section 35 of the EI Regulations

---

<sup>1</sup> *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274 (CanLII).

<sup>2</sup> *Idem*.

since they compensated him for emotional distress and harm to his professional reputation rather than loss of income.

[13] However, the General Division refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement that included general damages and pay in lieu of notice. This adjustment would have reduced the value of the award for loss of earnings.

[14] The Claimant submits that the General Division erroneously concluded that because general damages and legal fees were lumped together in the Minutes of Settlement, the legal fees could not be attributed to any extent to the pay in lieu of notice or "earnings" component.

[15] The Claimant puts forward that there is no statement in the Minutes of Settlement to the effect that he did not incur legal expense to obtain pay in lieu of notice damages from the employer. He argues that the General Division made a perverse finding to conclude that he did not incur legal expense to obtain pay in lieu of notice damages from the employer.

[16] The General Division refused the Claimant's request that his legal fees be pro-rated between the two parts of his settlement because it found that the Minutes of Settlement awarded the Claimant the exact figure of \$9,999 to cover loss of earnings, with no deduction for legal fees. It noted that the Minutes of Settlement made a separate award for general damages and legal fees combined.

[17] The Tribunal is of the opinion that the General Division should have looked beyond the terms of the settlement agreement. Other oral and documentary evidence support the Claimant's position that he incurred the legal fees for both parts of his claim against the employer. To conclude that no legal fees were incurred to obtain the pay in lieu of notice claim is a finding of fact made in a perverse or capricious manner.

[18] The Tribunal is therefore justified to intervene and to render the decision that the General Division should have rendered.

[19] In this case, the General Division overlooked the Claimant's Amended Statement of Claim that includes a claim for Negligent Misrepresentations and a claim for Breach of Contract, in which he alleges that he was terminated without cause and without reasonable notice.<sup>3</sup> The invoice for legal fees clearly refers to the entire claim against the employer.<sup>4</sup> It was also issued the day the settlement was signed by the parties.

[20] For the Tribunal, the Minutes of settlement manifestly distinguished the pay in lieu of notice with the general damages and legal fees to avoid any confusion as to the part to be considered earnings and subject to statutory deductions, and not to exclude the legal fees from both parts of the claim.

[21] Furthermore, the Tribunal listened attentively to the hearing before the General Division, particularly the Claimant's testimony, regarding the history of his claim. The General Division never put his credibility in doubt.

[22] The Tribunal finds that the evidence supports the Claimant's position that the legal fees were incurred for both parts of his claim against the employer. It is therefore appropriate to deduct legal fees incurred to obtain a settlement whereby a claimant received monies as income replacement.<sup>5</sup>

[23] The issue now is how much of the legal fees paid should be deducted.

[24] The sum of \$9,999 for pay in lieu of notice represents 40.53% of the total settlement of \$24,671.48 payable to him after legal costs. The Commission agrees that when awarding the total settlement amount of \$45,000, including legal costs, the employer was indicating that he was taking into account the legal costs; otherwise, he would have given less.<sup>6</sup>

[25] Applying that percentage of 40.53% against the Claimant's total legal invoice of \$20,328.52 = \$8,239.15. Applying said legal fees to the income portion of the settlement

---

<sup>3</sup> GD3-36 to GD3-

<sup>4</sup> GD3-23 to GD3-25.

<sup>5</sup> CUB 34664.

<sup>6</sup> AD3-4.

leads to a reduction of the value of the award for loss of earnings of \$9,999-\$8,239.15 = \$1,759.85.

**CONCLUSION**

[26] The Tribunal allows the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	August 1, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	P. R., appellant  A. M., representative of the Appellant