



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. B. v Canada Employment Insurance Commission*, 2019 SST 945

Tribunal File Number: GE-19-2335

BETWEEN:

M. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: July 29, 2019

DATE OF DECISION: August 6, 2019

DECISION

[1] The appeal is dismissed. I find that the Claimant cannot be paid benefits for the non-teaching period from December 24, 2018, to January 4, 2019.

OVERVIEW

[2] The Claimant worked as a teacher on a part-time long-term occasional contract from September 4, 2018, until the end of the semester on January 31, 2019. She applied for benefits for the non-teaching period from December 24, 2018, to January 4, 2019. She says that her teaching position was casual or substitute work, since she was only filling in for absent staff.

[3] I must decide whether she can be paid benefits for the non-teaching period from December 24, 2018, to January 4, 2019. The Commission says that it cannot pay her benefits for the winter break because she worked under a teaching contract that continued throughout the semester. Although she had an occasional contract, her employment cannot be considered as casual or substitute work.

[4] The Commission decided that she does not fall within any of the exceptions in s 33 of the *Employment Insurance Regulations* (Regulations). The Claimant now appeals to the Social Security Tribunal. She argues that it was casual or substitute work since she was not paid for the non-teaching period and her contract could have been terminated at any time.

ISSUE

[5] I have to decide whether the Claimant can receive benefits during the non-teaching period from December 24, 2018, to January 4, 2019.

ANALYSIS

[6] A claimant who works as a teacher for any part of their qualifying period can only receive benefits for a non-teaching period if they prove, on a balance of probabilities, that they fall within one of these exceptions:

- a) Their contract of employment for teaching has ended;

- b) Their employment in teaching was on a casual or substitute basis; or
- c) They qualify to receive benefits in respect to non-teaching employment.¹

[7] Even if a contract of employment is temporary and could be terminated at any time, if it is continuous and predetermined it is not considered “casual or substitute” within the meaning of the Regulations.²

[8] The parties agree that the Claimant’s contract continued over the non-teaching period in question, and that she had no insurable hours from non-teaching employment.

[9] The only issue I have to decide is whether her contract employment in teaching was on a casual or substitute basis.

Was the Claimant’s employment in teaching on a casual or substitute basis?

[10] No. I find that the Claimant’s half-time contract as a teacher was not casual or substitute employment within the meaning of the Regulations.³

[11] The Claimant testified that she started a half-time contract on September 4, 2018. The arrangement began as a verbal agreement and she later signed a written contract. The contract lasted until the end of the semester on January 31, 2019.

[12] She argues that she was still an occasional teacher because she was not paid on a year-round basis. She agrees that her contract was a regular contract in some respects, but that she was only substituting for regular staff. As a result, her employment could not be guaranteed. If permanent staff returned to work, her employment could be terminated right away. This meant that her position was precarious, and she was essentially still working on a casual or substitute basis.

¹ This rule is set out in s 33(2) of the *Employment Insurance Regulations* (Regulations).

² *Arkininstall v Canada (Attorney General)*, 2009 FCA 313. The Federal Court of Appeal held that even though a contract of employment may be temporary and precarious, if employment as a teacher is exercised in a continuous and predetermined way throughout the school year, it is not occasional or substitute within the meaning of the Regulations.

³ This is the exception set out in s 33(2)(b) of the Regulations.

[13] The Claimant's employment contract was a long-term occasional contract. It had a start date, but no end date. She said that she received no pay on holidays or during the non-teaching periods. Although her employment was more regular than occasional teaching, the pay was not enough for her to survive with two unpaid weeks over the winter break.

[14] The Commission says that the Claimant's employment was sufficiently regular, continuous and predetermined that it does not meet the definition of casual or substitute teaching within the meaning of s 33(2)(b) of the Regulations. Since she did not fall under the other exceptions in s 33(2) of the Regulations, the Commission argues that she cannot receive benefits during the non-teaching period.

[15] The parties do not dispute that the Claimant worked under a teaching contract that lasted from September 4, 2018, to January 31, 2019. I acknowledge that the Claimant's contract was only half-time and she was mostly working as a substitute teacher for the remainder of the day. However, the Regulations apply to any teaching contract, whether or not it is full or part-time.

[16] I find that the Claimant was under contract during the relevant non-teaching period and her employment in teaching was continuous throughout the semester.

[17] The courts have found that teachers who work under a contract, even part-time, are not substitute teachers for the purposes of their contract employment.⁴ Although the Claimant's contract for the semester was precarious since it could have been terminated at any time, I find that it does not fall within the meaning of teaching on a casual or substitute basis under s 33(2)(b) of the Regulations.

[18] I sympathize with the Claimant, but have no choice but to apply the law and conclude that she does not fall under any of the exceptions set out in s 33(2) of the Regulations.

⁴ The Federal Court of Appeal in *Canada (A.G.) v Blanchet*, 2007 FCA 377, held that a teacher may have substitute status, and also work in a full or part-time contract during their qualifying period. A teacher who works in a contract, even part-time, is not a substitute teacher for the purposes of the part-time employment they contracted. In such a case, the teacher does not meet the conditions of the exception under s 33(2)(b).

CONCLUSION

[19] The appeal is dismissed. This means that the Claimant cannot be paid benefits for the non-teaching period from December 24, 2018, to January 4, 2019.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	July 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. B., Appellant