



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 1316

Tribunal File Number: GE-19-3326

BETWEEN:

D. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: October 11, 2019

DATE OF DECISION: October 11, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant was in a non-teaching period from July 3, 2018, to August 22, 2018, and that his contract did not end on June 28, 2018.

OVERVIEW

[2] The Appellant is a teacher for the X school board. The 2017/2018 school year ended on June 28, 2018, and an assignment simulation for the school year beginning on August 23, 2018, was completed on July 3, 2018. The Appellant officially accepted that offer on August 16, 2018, and he signed his contract on September 4, 2018. On August 26, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay him benefits during the non-teaching period from July 3, 2018, to August 22, 2018. That decision created an overpayment of \$3,074. I must determine whether the Appellant was employed in teaching from July 3, 2018, to August 22, 2018.

ISSUES

[3] Did the Appellant's contract of employment for teaching terminate on June 28, 2018?

[4] Was the Appellant's employment in teaching on a casual or substitute basis?

[5] Does the Appellant qualify to receive benefits in respect of employment in an occupation other than teaching?

ANALYSIS

Did the Appellant's contract of employment for teaching terminate on June 28, 2018?

[6] The non-teaching period is the period that occurs annually at regular or irregular intervals during which no work is performed by a significant number of people employed in teaching. Generally, the school year is from September to June, and July and August make up the main non-teaching period.

[7] A teacher is not entitled to benefits, other than maternity or parental benefits, during a non-teaching period, unless one of the following conditions is met:

- the claimant's contract of employment for teaching had terminated;
- the claimant's employment in teaching was on a casual or substitute basis; or
- the worker has accumulated enough hours of insurable employment in an occupation other than teaching to qualify to receive Employment Insurance benefits.

[8] I note that teachers whose contracts are renewed for the new school year before the end of their teaching contracts or shortly afterwards maintain an employment relationship because there is therefore continuity of employment.¹

[9] Continuity of employment is the key factor when finding whether employment has ended.² Apart from a genuine severance of the employment relationship, a teacher will not be entitled to receive benefits during the non-teaching period.³

[10] Concerning the employment relationship, the employer's human resources coordinator told the Commission that the summer non-teaching period was from June 29, 2018, to August 23, 2018, and that an assignment simulation was completed on July 3, 2018. She submits that, at that time, the teachers received a contract guarantee for the new school year. She explained that there was a placement session on August 16, 2018, and that there was little chance of a teacher who was offered a conditional contract during the simulation session having their contract withdrawn and that, if that was the case, another assignment would be offered to them, hence the contract guarantee.

[11] The human resources employee clarified that permanent full-time teachers and teachers who have a teaching contract that is at least two months long are entitled to employee benefits

¹ *Employment Insurance Regulations* (Regulations), s 33.

² *Stone v Canada (Attorney General)*, 2006 FCA 27.

³ *Freddy Giammatei et al*, A-664-01; *Charlotte Oliver et al v Canada (Attorney General)*, 2003 FCA 98, *Canada (Attorney General) v Robin*, 2006 FCA 175.

during the summer. Pension contributions accumulate with each contract, teachers pay premiums for group insurance, and teachers remain covered during the summer non-teaching period.

[12] She also explained that the school board offered the Appellant a position for the school year from August 23, 2018, to June 27, 2019, which corresponds to 100% of his teaching assignment in physical education. The Appellant has been on the employer's priority list since 2014, and, in accordance with the collective agreement, a teacher does not need to sign the contract to accept the assignment.

[13] The Commission claims that the Appellant entered a new contract on July 3, 2018, for the 2018/2019 school year and that the employment relationship continued during the Appellant's non-teaching period.

[14] The Appellant confirmed that he received a conditional offer corresponding to 83.33% of teaching duties on July 3, 2018, and he told the Commission that he did not indicate it when applying for benefits because he did not remember. He explained that, during the July 3, 2018, simulation session, he was given no guarantee of employment and that, if the school board had intended to offer him a contract, it should have had him sign it within 30 days of July 3, 2018, in keeping with the collective agreement. The Appellant states that he contacted the Employment Insurance Commission on July 19, 2018, and received the information that he was entitled to Employment Insurance benefits. He explained that he signed the contract only on September 4, 2018.

[15] The Appellant's teaching contract was officially renewed on August 16, 2018, shortly after the school year ended on June 28, 2018. On July 3, 2018, an assignment simulation for the following school year was completed, and an informal offer was made to the Appellant, who has been on the employer's priority list since 2014. Although the Appellant uses his spouse's group insurance, he received employee benefits from the employer during the non-teaching period. For these reasons, I am of the view that the Appellant's situation shows continuity of the employment relationship.⁴

⁴ *Oliver*, 2003 FCA 98.

[16] I understand that the simulation session was an informal offer. However, the facts show that the Appellant was offered an assignment on July 3, 2018, and that a formal offer was made to him on August 16, 2018. The Appellant was able to receive all employee benefits during the 2018 summer period, and the employment relationship was not severed.

[17] I find that the Appellant's teaching contract did not end on June 28, 2018.⁵

Was the Appellant's employment in teaching on a casual or substitute basis?

[18] The appellant argues that he was employed on a casual basis because his contract was scheduled to end on June 28, 2018. He explains that his employment is precarious.

[19] However, the Appellant has been on the employer's priority list since 2014, and the file does not show that his employment was on a casual or substitute basis.

[20] The Appellant's employment in teaching is regular during the school year, and although his contract was interrupted by a non-teaching period, the work period is predetermined.⁶

[21] I find that the Appellant's employment was continuous and predetermined and that it is not considered employment on a casual or substitute basis.⁷

Does the Appellant qualify to receive Employment Insurance benefits for an occupation other than teaching?

[22] The Appellant reported no hours of insurable employment in another profession.

[23] The Appellant failed to prove that he had accumulated enough insurable hours of employment in an occupation other than teaching.

[24] I find that the Appellant was employed in teaching from July 3, 2018, to August 22, 2018, because of continuity of employment. For that reason, he is not entitled to benefits during that period.

⁵ Regulations, s 33.

⁶ Regulations, s 33(2)(b) and *Arkininstall v Canada (Attorney General)*, 2009 FCA 313.

⁷ *Arkininstall, supra*, and *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

CONCLUSION

[25] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	October 11, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. H., Appellant