



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. B. v Canada Employment Insurance Commission*, 2019 SST 1419

Tribunal File Number: GE-19-3362

BETWEEN:

T. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: October 22, 2019

DATE OF DECISION: November 6, 2019

DECISION

[1] I dismiss the appeal. The Claimant, T. B., is not entitled to benefits during the non-teaching period of July 1, 2019 to August 30, 2019.

OVERVIEW

[2] The Claimant is a teacher. He applied for employment insurance regular benefits for the summer non-teaching period. As a teacher, the Claimant is not entitled to receive benefits during any non-teaching periods unless he meets one of the exceptions in the legislation.¹ The Canada Employment Insurance Commission (Commission) says that the Claimant is not entitled to benefits during the summer non-teaching period because he has not shown that he meets one of the exceptions.

[3] The Claimant asked the Commission to reconsider its decision. He said that he met two of the exceptions. First, his contract of employment for teaching was terminated. Second, his employment was on a casual or substitute basis. The Commission however, disagreed and maintained its initial decision.

What I must decide

[4] Is the Claimant entitled to benefits during the summer non-teaching period? I will look at the exceptions provided in the Regulations and decide if the Claimant meets any one of them.

ANALYSIS

[5] A claimant, who was employed in teaching for any part of their qualifying period, is not entitled to benefits during a non-teaching period. However, there are three exceptions to this rule. A claimant is entitled to benefits during a non-teaching period if:

¹ Section 33(2) of the *Employment Insurance Regulations* (Regulations) states that a claimant who was employed in teaching for any part of the claimant's qualifying period is not entitled to receive benefits for any non-teaching period unless they meet one of three exceptions. I will explain each of the exceptions in this decision.

- the claimant's contract of employment for teaching was terminated;
- the claimant's employment in teaching was on a casual or substitute basis; or,
- the claimant qualifies to receive benefits because of employment in another occupation.

[6] In order to receive benefits, the Claimant must show that he meets one of these exceptions. I will next explain why I find that the Claimant did not meet any of the exceptions. He is therefore not entitled to benefits during the non-teaching period from July 1, 2019 to August 30, 2019.

The Claimant's contract of employment for teaching was not terminated.

[7] The Claimant was employed as a teacher on a Long Term Occasional (LTO) contract from February 5, 2019 until June 28, 2019 (GD2-10 and GD3-18). The Claimant testified that in June he competed and interviewed for another LTO position at the same school. On June 26, 2019, the employer verbally offered him the position, which he accepted. He started working on September 3, 2019. The Claimant argues however, that he did not formally sign the contract until September 6, 2019 (GD5-2). He therefore did not have any guarantees or links to the employer until he signed the contract. The Claimant also said that he was covering for a different teacher and is now working part-time hours i.e. it was a different contract. Moreover, although his seniority carries over from year to year, it is based on when he was hired at the school board. His pension contributions also carry over but they do so even if he does not work or works on a casual basis.

[8] I understand that one LTO contract ended and another, different, contract started. I also understand that there was a possibility that the employer could have reneged on the second contract before it was signed. However, there was a commitment nonetheless, a continued relationship. There was a "contract of employment" in place as of June 26, 2019.

[9] I also note that the employer honoured the verbal contract even prior to the formal signing of it. The Claimant started working on September 3, 2019 and the contract was signed on September 6, 2019. Further, even though the hours changed under the new contract, the

general employment terms remained the same, under the same collective agreement, seniority and pension terms. I therefore find that when the Claimant accepted the employer's offer of employment on June 26, 2019, the employer/employee relationship continued. There was not a complete severance of employment.

[10] I find that there was not a veritable break in the Claimant's employment i.e. there was not a genuine severance or "termination" of the employer/employee relationship at the end of the school year.² The Claimant therefore does not meet the exception of paragraph 33(2)(a) of the Regulations.

The Claimant's employment in teaching was not on a casual or substitute basis.

[11] In order to decide if the Claimant can benefit from the exception in section 33(2)(b) of the Regulations, the Claimant's employment in teaching during the qualifying period must be considered.³

[12] The Claimant submits that he was employed on a casual or substitute basis. He explained that from September 3, 2018 until January 31, 2019, he worked on an on-call basis at various schools within the school board. Teachers called him, or he received automated calls the night before or in the morning, for work that day. From February 5, 2019 until June 28, 2019, he worked as an LTO teacher covering for an absent teacher at one school. He had a predictable, fixed schedule every day. The Claimant argues however that he replaced the absent teacher on a temporary, short-term basis that could have ended at any time without notice. He noted that when he initially signed the LTO contract, the end date was "undetermined" (GD2-10). Further, although he was now an LTO teacher, he has a different collective agreement than that of full-time, permanent teachers (GD2-11).

[13] I understand the Claimant's argument that his status as an LTO teacher in the school board is different from that of a permanent teacher. I also acknowledge that his LTO contract could have ended without notice if the absent teacher returned to work. Having a "supply" or "substitute" teacher status is an important factor to consider, however; it is not necessarily

² The concept that there has to be genuine severance of the employer/employee relationship is explained in decision from the Federal Court of Appeal, such as *Oliver*, A-811-00; *Robin*, A-261-05 and *Dupuis*, A-510-14.

³ This is explained in the Federal Court of Appeal decision, *Blanchet* A-103-06.

determinative of whether he is working on a casual or substitute basis.⁴ For instance, a claimant that holds a substitute teacher status and/or works part-time, but is employed in a regular, continuous and predetermined way, cannot be considered to be employed in casual or substitute teaching within the meaning of paragraph 33(2)(b) of the Regulations.⁵

[14] Such is the case here. I considered how the Claimant performed his job, not just his title and status with the school board. During his qualifying period, the Claimant was on a full-time LTO assignment working every day, covering for a specific teacher on a regular, continuous and predetermined schedule. I find that although the Claimant may have initially had some casual employment in his qualifying period, his employment changed to that of being regular, continuous and predetermined. His employment therefore during the qualifying period is not on a casual or substitute basis. The Claimant therefore did not meet the exception of paragraph 33(2)(b) of the Regulations.

The Claimant does not qualify to receive benefits because of employment in another occupation.

[15] The Claimant confirmed that he only worked in the occupation of teaching during his qualifying period. He agrees therefore that he does not meet the exemption of paragraph 33(2)(c) of the Regulations.

CONCLUSION

[16] The Claimant did not meet any of the conditions in section 33 of the Regulations. He is therefore not entitled to benefits for the non-teaching period of July 1, 2019 to August 30, 2019.

[17] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section

⁴ Blanchet A-103-06; Stephens A-457-02

⁵ Arkinstall A-26-09, Blanchet A-103-06; Bernier A-110-06; Pelletier A-111-06

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| HEARD ON: | October 22, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | T. B., Appellant |