



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v Canada Employment Insurance Commission*, 2019 SST 1429

Tribunal File Number: GE-19-3502

BETWEEN:

**D. S.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Linda Bell

HEARD ON: November 12, 2019

DATE OF DECISION: November 25, 2019

## **DECISION**

[1] The Claimant applied for regular Employment Insurance (EI) benefits. The Commission refused to pay him. The Claimant appeals to the General Division of the Social Security Tribunal.

[2] I am allowing the appeal. I have decided that the Claimant did not lose his employment due to a labour dispute. This means he is not subject to a stop payment (disentitlement) for this reason.

## **OVERVIEW**

### **Facts agreed on**

[3] There are some facts I can simply accept because they are set out in the file and the Claimant and the Commission agree on them.

[4] The Claimant was working full-time at a local mill. He was a member of the union and was working under the terms of a collective agreement. The employer laid him off effective June 14, 2019. The collective agreement expired at midnight on June 14, 2019, after the Claimant was laid off.

[5] As a laid-off employee, the Claimant had the option to call in and request casual weekend work. The Claimant worked casual shifts on June 23, 2019, June 24, 2019, June 29, 2019, and June 30, 2019.

[6] On June 28, 2019, the union issued the employer 72-hour strike notice. Strike action commenced on July 1, 2019.

### **Issues in this appeal**

[7] The Commission determined the Claimant lost his employment due to a labour dispute that started on July 1, 2019.

[8] The Claimant disagrees. He says he lost his employment on June 14, 2019, due to a shortage of work. He argues that he was not part of the labour dispute because he only did casual work after he was laid off.

### **What I must decide**

[9] The law states that a claimant is disentitled from regular EI benefits if they lose their job or is unable to return to work because of a labour dispute or strike.<sup>1</sup>

[10] Claimants who are laid off prior to the expiration of the collective agreement cannot lose their job again in the event of a labour dispute. This means they are not subject to the disentitlement.<sup>2</sup> A casual employee does not lose their employment because of a labour dispute or strike if they only had an expectation of work.<sup>3</sup>

[11] I must decide whether the Commission has shown that the Claimant lost his employment due to a work stoppage related to a labour dispute. When I decide this, I have to determine whether the Claimant had employment to lose.

### **The Claimant did not lose his employment due to a labour dispute**

[12] I find the Claimant lost his employment on June 14, 2019, due to a shortage of work. This occurred prior to the expiration of the collective agreement and the July 1, 2019, strike. This is supported by the Record of Employment (ROE) issued on June 27, 2019, and the amended ROE issued on September 4, 2019. Both ROEs list “A,” for shortage of work.

[13] Although the Claimant worked some casual shifts until June 30, 2019, this is not sufficient to prove he lost his employment due to the labour dispute. The Claimant confirms he

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<sup>1</sup> Subsection 36(1) of the *Employment Insurance Act*

<sup>2</sup> *Gionest v. Unemployment Insurance Commission (Attorney General)* [1983] 1 F.C. 832

<sup>3</sup> *Morissette v. Canada Employment and Immigration Commission (Attorney General)*, A-692-90; CUB 62156

worked four casual shifts. His last casual shift was on June 30, 2019, and the strike started on July 1, 2019. As stated above, a casual employee does not lose their employment because of a labour dispute or strike if they only had an expectation of work.<sup>4</sup>

[14] The Claimant states his employer called him into a meeting on June 11, 2019. The employer told him he was being laid off on June 14, 2019. The employer gave him a document that provided instructions for casual work. I gave the Claimant permission to submit this document after the hearing. This document states that laid off employees can call in and ask for casual weekend clean-up work. The employer assigns this casual work based on the seniority level of those who called in.

[15] The Claimant told me he is fifth from the bottom of the seniority list. He says he has less seniority than 50 to 55 other employees who were laid off on the same date he was. I believe him when he states he was not guaranteed the casual work because he was so low on the seniority list. The senior employees would be given the casual work if they called and requested the work. This means the casual work was not the Claimant's work. He only had an expectation of work when the senior employees did not call in.

[16] The Claimant disputes the Commission's submission that the employer "recalled" him to work for June 22, 23, 29, and 30<sup>th</sup>. He states his employer never recalled him. He chose to call in and request the casual shifts. The Claimant argues that it is unfair to disentitle him from EI benefits when he made himself available to do casual work when the senior employees did not.

[17] The Claimant says his union told him that he could not work the picket line and he was not entitled to strike pay because he was laid off. I find this is further evidence that the Claimant is not subject to a disentitlement because he was not allowed to participate in the labour dispute.<sup>5</sup>

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<sup>4</sup> *Morissette v. Canada Employment and Immigration Commission (Attorney General)*, A-692-90; CUB 62156

<sup>5</sup> Subsection 36(4) of the *Act* states subsection 36(1) of the *Act* does not apply if a claimant proves that they are not participating in, financing, or directly interested in the labour dispute that caused the stoppage of work.

**CONCLUSION**

[18] For these reasons, I allow the appeal. The Claimant did not lose his employment due to a labour dispute. So, he is not subject to a disentitlement for this reason.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	November 12, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	D. S., Appellant (Claimant)