



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. T. v Canada Employment Insurance Commission*, 2019 SST 1427

Tribunal File Number: GE-19-3240

BETWEEN:

E. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: November 21, 2019

DATE OF DECISION: November 23, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant's teaching employment did not end on July 4, 2018, and that she is not entitled to receive benefits.

OVERVIEW

[2] The Appellant is a teacher at X. Her contract for the 2017–2018 school year ended on July 4, 2018, and on May 31, 2018, she received a proposal of tasks for the 2018–2019 school year starting on August 24, 2018. The Appellant accepted this offer on August 16, 2018. On August 15, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay her benefits during the non-teaching period from July 2, 2018, to August 23, 2018. I must determine whether the Appellant was employed in teaching during that period.

ISSUES

[3] Had the Appellant's teaching employment contract ended?

[4] Was the Appellant employed in teaching on a casual or substitute basis?

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

ANALYSIS

Had the Appellant's teaching employment contract ended?

[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 runs from September to June, and the main holiday is July and August.

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

- The claimant's teaching employment contract has ended;
- Their employment in teaching was on a casual or substitute basis and/or during the qualifying period;
- The employee 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 following school year before the end of their teaching contracts, or shortly afterwards, maintain an employment relationship since there is then continuity of employment.¹

[9] Continuity of employment is the key element in determining whether an employment has ended.² Apart from a veritable break in the employment relationship, teachers are not entitled to benefits during the non-teaching period.³

[10] Regarding the employment relationship, an employee told the Commission that the summer break was from June 28, 2018, to August 23, 2018.

[11] The employee explained that schedules for the 2018–2019 school year had been made since May 31, 2018, and that the Appellant had been informed of the possibility of a contract on that date. A conditional offer had been sent to her following this tentative schedule on May 31, 2018, but the Appellant had not responded to this conditional offer. The employer sent the formal offer to the Appellant on August 16, 2018.

[12] The employee specified that when teachers receive an offer for the following school year, seniority accumulates from one contract to another, pension contributions accumulate with each contract, and group insurance premiums are paid by the teacher and they remain covered during the summer non-teaching period.

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.

[13] The Commission claims that her teaching contract had not ended and that the Appellant did not show that she would not return to work for her employer at the end of the summer non-teaching period.

[14] The Appellant explained that she had returned to work on November 6, 2017, after the 2017 summer break. She worked from November 6, 2017, to July 4, 2018. She explained that she had contributed to insurance during the summer non-teaching period, but that it was voluntary and that she had paid the premium, not the employer. She also argues that even though she received a conditional offer on May 31, 2018, that offer was only provisional; she did not have to respond to it, and she did not accept the offer until August 16, 2018. For these reasons, she submits that there was a break in the employment relationship. The Appellant confirmed that she was second on the employer's callback list.

[15] The Appellant also points to a decision given by the Tribunal's General Division, which concerns the teaching contract of a teacher with the same school board.⁴ She asks that the present decision apply the eligibility criteria in the same way since, in that case, the appellant had a successful outcome. In that decision, it was determined that the payment of the insurance premium by the Appellant and not the employer, as well as the provisional and unofficial nature of the offer made before the end of the school year, created a suspensive condition and that there had been a break in the employment relationship.

[16] However, I am of the view that the benefits offered by the school board during the summer non-teaching period show the continuity of the employment relationship.⁵ The important thing to understand is that this fact alone cannot establish the continuity of the Appellant's employment.

[17] Furthermore, I understand that the informal offer that was made to the Appellant on May 31, 2018, was conditional and was not formal. However, the facts show that a proposal of tasks was made to the Appellant on May 31, 2018, and that a formal offer was sent to her on August 16, 2018, soon after her contract ended on July 4, 2018. The Appellant had benefits

⁴ *M. P. v Canada Employment Insurance Commission*, GE-16-3460.

⁵ *Oliver v Canada (Attorney General)*, 2003 FCA 98.

during the summer non-teaching period and there was no break in the employment relationship. The teaching contract did not end during the non-teaching period, and there was continuity of the employment relationship.⁶

[18] Regarding the decision of the Tribunal's General Division filed by the Appellant, I note that the employee's contract had ended in June 2016 due to illness. When a proposal of tasks is made to a teacher who is on the employer's callback list, even if that offer is conditional, there is not necessarily a break in the employment relationship. On the contrary, teachers' contracts are generally determined based on their seniority and their collective agreement. Even if, in this case, the General Division found that the provisional aspect of the offer did not constitute a contract and that the employee had not been paid during the non-teaching period, the Appellant must show that there was a veritable break in the continuity of her employment. For this criterion to apply, a veritable break in employment—therefore beyond doubt—must be established. In this case, the Appellant was on the employer's callback list and she had been made a conditional offer, in accordance with her collective agreement.⁷ There is no veritable or absolute break in her teaching contract since it was officially renewed shortly after the end of her contract for the 2017–2018 school year.

[19] Furthermore, each employee's file is assessed based on their specific situation and it is possible that certain colleagues placed in a different situation from the Appellant's would be entitled to receive benefits.

[20] In this case, I find that the Appellant's teaching contract did not end on July 4, 2018.

Was the Appellant employed in teaching on a casual or substitute basis?

[21] The Commission submits that the Appellant's employment took place on an ongoing and determined basis and cannot be considered casual or substitute.

⁶ Regulations, s 33.

⁷ *Oliver, supra.*

[22] Even though the Appellant argues that the renewal of her contract was not certain and that, in 2017, she went back to work on November 6, 2017, after the non-teaching period, these facts are not sufficient to find that her employment was on a casual basis. In reality, the Appellant was employed on a regular and continuous basis from November 6, 2017, to July 4, 2018.

[23] I find that the Appellant's employment in teaching was regular during the school year and, even though her contract was punctuated by a non-teaching period, the work periods were determined.⁸

[24] I find that the Appellant was employed on a continuous and determined basis and not on a casual or substitute basis.⁹

Does the Appellant meet the requirements in an occupation other than teaching to receive Employment Insurance benefits?

[25] The Appellant reported no hours of insurable employment in another occupation.

[26] The Commission also submits that there is no evidence showing that the Appellant was entitled to benefits for employment in an occupation other than teaching. Therefore, section 33(2)(c) of the Regulations does not apply.

[27] The Appellant cannot be exempted from the imposition of a period of disentitlement because of this criterion since she did not show that she had accumulated a sufficient number of hours of insurable employment in an occupation other than teaching.

[28] Therefore, a conditional offer was made to the Appellant on May 31, 2018, before her contract for the 2017–2018 school year ended on July 4, 2018. The Appellant accepted that offer on August 16, 2018, shortly after July 4, 2018. The Appellant was in a non-teaching period from July 4, 2018, to August 23, 2018. There was no absolute break in her teaching contract.

[29] For this reason, the Appellant was still employed in teaching during that period.

⁸ Regulations, s 33(2)(b) and *Arkininstall v Canada (Attorney General)*, 2009 FCA 313.

⁹*Arkininstall, supra* and *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

CONCLUSION

[30] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	November 21, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCE:	E. T., Appellant France Simard, Mouvement Action Chômage, Representative for the Appellant