



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. C. v Canada Employment Insurance Commission*, 2019 SST 1488

Tribunal File Number: GE-19-3735

BETWEEN:

E. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: December 5, 2019

DATE OF DECISION: December 5, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant's teaching employment did not end on June 23, 2019, and that she is not entitled to receive benefits.

OVERVIEW

[2] The Appellant is a teacher for the X School Board. The 2018–2019 school year ended on June 23, 2019, and she received a provisional offer on July 3, 2019, for the 2019–2020 school year, which began on August 22, 2019. The Appellant officially accepted that offer on August 14, 2019. On October 3, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay her benefits during the non-teaching period from July 3, 2019, to August 21, 2019. I must determine whether the Appellant was employed in teaching during that period.

ISSUES

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

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

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

ANALYSIS

Had the Appellant's teaching employment contract terminated?

[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 applies:

- The claimant's contract of employment for teaching has terminated;
- 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 who have their contracts renewed for the new 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] The employer's human resources coordinator specified that on July 3, 2019, during the simulation session, an offer was made to the Appellant that corresponded to 100% of her teaching duties. She confirmed that teachers who receive a proposal at this time are guaranteed a contract for the next school year since there are more contracts than there are teachers on the priority list.

[11] The Commission claims that the continuity of the Appellant's employment is established because she is on the employer's priority list. The Commission argues that the Appellant did not show that her employment had ended and that she would not return to work for that employer after the summer non-teaching period. The Commission submits that section 33(2)(a) of the Regulations supports teachers who experience a veritable break in their employment relationship and that that is not the Appellant's case. It adds that teachers who have their contracts renewed

¹ *Oliver v Canada (Attorney General)*, 2003 FCA 98 and *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.

for the new school year before the end of their teaching contracts, or shortly afterwards, are not unemployed because there is continuity of employment.

[12] The Appellant argues that there was a clear break in her employment relationship.

[13] The Appellant says that she received a provisional offer on July 3, 2019, when her contract ended and that she was unemployed. She argues that she was not sure whether her contract would be renewed in August 2019 and that she did not accept an official contract until August 14, 2019. The Appellant is on the employer's priority list, and she says that, in 2016, she was in the same situation and received benefits.

[14] The Appellant argues that being part of a union cannot be a criterion for showing continuity of employment since all teachers in Québec are covered by a union. She notes that the same applies to leave without pay. Regarding group insurance, the Appellant says that even though she was covered by that insurance in July and August 2019, that benefit was related to the contract that ended on June 23, 2019.

[15] The Appellant therefore argues that the continuation of her group insurance, the recognition of her seniority, and the carry-over of contributions to her pension fund are benefits that are independent of the existence of an employment relationship with the employer and are not reflective of the continuity of her employment because it had ended.

[16] However, I am of the view that the benefits offered by the school board during the summer non-teaching period are reflective of the continuity of the employment relationship.⁴ What must be understood is that this relationship alone cannot establish the continuity of the Appellant's employment.

[17] The Appellant also submits that her efforts to find employment during the summer non-teaching period show the lack of guaranteed employment for the next school year.⁵ Even though she says there is a shortage in her field of employment, she argues that it was impossible for her

⁴ *Oliver, supra.*

⁵ GD7.

to know, before the assignment period on August 14, 2019, whether she would have employment for the next school year.

[18] While I understand that the Appellant finds this situation stressful and that it is commendable that she is looking for work during the summer break, this fact alone cannot show a veritable break in the employment relationship with the X School Board. Although the Appellant submits that there was a clear break in her employment relationship since she only verbally accepted a new contract on August 14, 2019, and she did not sign that contract until October 10, 2019, the Appellant is on the employer's priority list. She admits that the priority list is a method through which the employer offers contracts, but she argues that being on this list is not a guarantee that the employer will offer her a job and that during the simulation session on July 3, 2019, a teacher found himself without an offer.

[19] I understand that the proposal that was made to the Appellant on July 3, 2019 was conditional and informal. However, the facts show that the Appellant was on the employer's priority list, which is a callback list, and that a provisional offer was made to her on July 3, 2019, during the employer's simulation session. She received a formal offer on August 14, 2019, after the employer's assignment session. The Appellant's benefits continued during the summer break, and the facts do not show that there was a clear break in the employment relationship solely because the Appellant was not working during the summer and because she did not formally accept a new offer until August 14, 2019. The Appellant's teaching contract did not end during the summer non-teaching period, and there was continuity of the employment relationship.⁶

[20] The Appellant must show that there was a clear break in the continuity of her employment. However, that is not the case. The Appellant admits that the employer recognizes her seniority, particularly for the purpose of calculating her salary. While the Appellant argues that, on July 3, 2019, the offer she was made was not a promise of employment, the Appellant is on the employer's priority list, and a provisional offer, in accordance with her collective agreement, was made to her shortly after June 23, 2019, even though she did not officially accept that offer until August 14, 2019.⁷ There is no clear or absolute break in the employment

⁶ Regulations, s 33.

⁷ *Oliver, supra.*

relationship since her contract was officially renewed shortly after her contract for the 2018–2019 school year ended, on August 14, 2019.

[21] I find that the Appellant’s teaching contract did not end on June 23, 2019.

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

[22] The Commission submits that the Appellant’s employment was performed on a continuous and determined basis and that it cannot be considered casual or substitute employment.

[23] Although the Appellant argues that the renewal of her contract was not certain on July 3, 2019, and that it was not formalized until August 14, 2019, this fact is not sufficient to find that her employment was on a casual basis. In reality, the Appellant performed her employment on a regular and continuous basis from August 23, 2018, to June 27, 2019.

[24] I find that the Appellant’s employment in teaching was regular during the school year and, although her contract was punctuated by a non-teaching period, the work periods are determined.⁸

[25] 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 qualify to receive Employment Insurance benefits in respect of employment in an occupation other than teaching?

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

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

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.

[28] The Appellant cannot be exempt from the imposition of a disentitlement period 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.

[29] Therefore, a conditional offer was made to the Appellant on July 3, 2019. The Appellant accepted that offer on August 14, 2019, shortly after June 23, 2019. The Appellant was in a non-teaching period from June 24, 2019, to August 21, 2019, and there was no absolute break in her teaching contract.

[30] For this reason, the Appellant was still employed in teaching during the 2019 summer break.

CONCLUSION

[31] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	December 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	E. C., Appellant Kevin Forget, witness