



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. D. v Canada Employment Insurance Commission*, 2019 SST 1524

Tribunal File Number: GE-19-3696

BETWEEN:

**R. D.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

DECISION BY: Mark Leonard

HEARD ON: December 12, 2019

DATE OF DECISION: December 16, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant has not shown that her teaching contract terminated. This means that the Claimant is disentitled from being paid benefits.

## **OVERVIEW**

[2] The Claimant was working as a grade one teacher from February 11, 2019, to June 28, 2019. During the school break (non-teaching period) from the end of June to the beginning of September, she wanted to be paid employment insurance (EI) benefits. The Canada Employment Insurance Commission decided that the Claimant could not be paid benefits because her teaching contract continued over the course of the school break.

[3] The Claimant says that she was a Long-Term Occasional (LTO) teacher. She says that a LTO is similar to substitute teaching. There is no contract. When her assignment ended June 28, 2019, she stopped being paid. This situation is no different than when a trade person is laid off and receives EI benefits. She is asking the Tribunal to grant her EI benefits.

[4] The Commission disagrees and says that the Claimant had a teaching contract that ended June 28, 2019. But, she received an offer of another LTO assignment in September 2019. It claims that because she had another assignment for the fall of 2019 that the employment relationship with the school board continued and therefore she is not entitled to receive benefits.

## **ISSUE**

[5] Had the Claimant's teaching contract terminated at the time that she wanted to get EI benefits?

## **ANALYSIS**

[6] The general rule is that teachers<sup>1</sup> cannot be paid EI benefits during any non-teaching period of the year.<sup>2</sup> Non-teaching periods are those periods that occur annually when most

---

<sup>1</sup> Subsection 33(2) of the *Employment Insurance Regulations* refers to a "claimant who was employed in teaching"; subsection 33(1) of the Regulations defines "teaching" as "the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school."

<sup>2</sup> Section 33 of the *Employment Insurance Regulations*.

people employed in teaching do not work<sup>3</sup>. These periods include the summer break, semester breaks, etc.<sup>4</sup> Although teachers are not working during a non-teaching period, they are not considered to be unemployed during these periods.<sup>5</sup> Not working is different from being unemployed.<sup>6</sup>

[7] There are a few exceptions to this general rule.<sup>7</sup> One exception says that claimants whose teaching contract<sup>8</sup> has terminated are not disentitled from being paid benefits.<sup>9</sup> This is the exception that the parties' dispute in this appeal. The Claimant has to prove that it is more likely than not<sup>10</sup> that the exception applies to her.<sup>11</sup>

[8] I have to look at more than just the beginning and end dates of contracts to decide whether the Claimant's teaching contract terminated.<sup>12</sup> Similarly, the fact that the Claimant was not being paid during the period in question is not itself enough for me to find that the contract terminated.<sup>13</sup> Rather, I have to look at all of the Claimant's circumstances, including things like her employment record, customs and practices of the teaching field I issue, the Employer's method of recalling an employee evidence of outward recognition by the Employer.<sup>14</sup>

[9] The Claimant has to show that there was a clear break in the continuity of her employment.<sup>15</sup> There has to be a genuine severance of the relationship between the Employer and the Claimant.<sup>16</sup>

---

<sup>3</sup> Subsection 33(1) of the *Employment Insurance Regulations*.

<sup>4</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>5</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>6</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>7</sup> Subsection 33(2) of the *Employment Insurance Regulations*.

<sup>8</sup> Specifically, subsection 33(2) of the *Employment Insurance Regulations* asks whether the Claimant's "contract of employment for teaching" has terminated.

<sup>9</sup> Paragraph 33(2)(a) of the *Employment Insurance Regulations*.

<sup>10</sup> The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

<sup>11</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>12</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>13</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>14</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>15</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>16</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

**Was the Claimant teaching?**

[10] I find that the Claimant is a teacher. The Claimant testified that she held two LTO teaching assignments. The first was from September 2018 to December 2018 when she was teaching a Kindergarten class. Her next LTO assignment from February 2019 to June 2019 was with the same district school board teaching a Grade One class. She was offered another assignment in the fall of 2019 to teach a Grade Four class. There is no dispute that the Claimant was teaching. I am satisfied that she is a teacher and was employed as such during the qualifying period. There is no evidence that would lead me to a different conclusion.

**Had the Claimant's teaching contract terminated at the time that she wanted to receive EI benefits?**

[11] I find that the Claimant had not shown that she fits within the defined end of contract exception <sup>17</sup>in order to qualify to receive E.I. Benefits.

[12] The Claimant says that the exception applies because in the spring of 2019, she was working as a Long-Term Occasional (LTO) teacher teaching a Grade One class. She explained that a LTO teacher is called upon when needed, similar to substitute teaching. Usually the "assignments" are for a longer period of time filling in for an absent teacher. There is no set contract establishing a start or end date or other terms. There is no guarantee how long the assignment may last as the absent teacher may return at any time and the LTO would end.

[13] The Claimant told me that she has worked for the same school board for 5 years in various capacities including as a casual and substitute teacher. In the fall of 2018, she accepted her first LTO assignment teaching a Grade One class. In spring 2019, she accepted her second assignment with the same school board teaching a Grade Two class. On June 28, 2019, her second assignment ended. She stated that she does not get paid over the summer break. None of her benefits carry over from one assignment to another save for her seniority and pension contributions. As of June 28, 2019, she had no teaching assignment for the fall of 2019.

---

<sup>17</sup> Section 33(2)(a), Employment Insurance Regulations.

[14] On July 4, 2019, the Claimant received an e-mail from a representative of the school board offering her another LTO for the fall of 2019. In the offer she was informed of the start date, the school location and that she would be teaching a split Grade 4-5 class. She says that she did not accept this offer at the time. Further, there was no guarantee the offer would result in an assignment because things such as student enrollment numbers could change. She added that, in fact, there was a change that resulted in her teaching a full Grade Four class. Unless she was notified otherwise, she was expected to show up at the assigned school on the first day of classes and start her assignment.

[15] In support of her statements, she pointed out that a school board human resources representative told the Commission on July 31, 2019, that the Claimant had not been given a verbal or written offer of employment for the fall of 2019.

[16] The Claimant asserted that she was not working under a contract. She has paid into E.I. and believes she qualifies to receive benefits. She compared herself to trades workers who get laid off. She claims that the two situations are the same.

[17] The Commission says that the Claimant's employment contract had not terminated, because she was employed long-term with the school board. While her assignment may have ended on June 28, 2019, she employment relationship with the school board did not. She was offered and accepted a new contract with the same school board on July 4, 2019, to teach in September 2019. The employment relationship continued when she entered into an agreement with the Employer for the fall. The Commission submits that the Claimant does not meet the exception under paragraph 33(2)(a) of the *Regulations* and is not entitled to benefits.

[18] I find that the Claimant has not proven that there was a clear break in the continuity of her employment, because there was an ongoing employment relationship between the Employer and the Claimant. There was no genuine severance in the Claimant's relationship with her Employer.

[19] The Claimant says that her LTO assignment did not constitute an employment contract. However, there was a long-term employment relationship with the same school board reaching back for 5 years. While there may not have been a physical document one could call a contract,

the employment relationship existed. The Claimant had clearly been on-boarded to the school board as a qualified teacher. At one time she must have applied for a position that ultimately resulted in her being qualified on a list of available teachers for LTO assignments. When her assignment ended in June 2019, her employment relationship did not. She continued to be on the list of available teachers eligible for LTO assignments to that school board. Six days after her assignment ended she was offered an LTO assignment with the same school board. She accepted this offer. Both the Employer and the Claimant anticipated a work relationship greater than that of casual or substitute teaching. While not written, an employment contract was established.

[20] The Claimant stated that there was no verbal or written offer of employment for the fall of 2019. She supports this statement with reference to the responses of the school board human resources representative to the Commission who said there was no verbal or written offer of employment for the fall in the computer. I discount the statement of the human resources representative. The Claimant stated that she received an e-mail offer from an LTO assignment for the same school board. The Claimant noted in her initial claim for benefits dated July 7, 2019, that she had received a written offer with the same school board and had accepted it. I put greater weight on this assertion because it coincides with and supports the Claimant's statements that she received an e-mail offer of a new assignment on July 4, 2019, for the fall of 2019.

[21] Regardless of whether anything was recorded by the school board, the Claimant received an offer which she accepted. While true that the assignment could have been terminated if circumstances changed, it is reasonable to conclude that the school board was confident that the assignment would exist when it made the offer. It demonstrates a significant degree of Employer/Employee familiarity when assignment offers are made and accepted by e-mail. It also shows that these offers are not consistent with rehiring someone with whom the Employer had severed the previous employment relationship. No new offer of employment was signed by the Claimant. She simply resumed teaching when she showed up at the assigned school in the fall.

[22] When asked if she had looked for other teaching work during the summer, the Claimant at first said yes. She said that she searched on-line sites such as "Indeed" for job postings. She said that she had not maintained any records of her job search. She clarified that she had not actually applied for any teaching jobs because there had not been any jobs posted for an

elementary school teacher. I find that the Claimant placed restrictions on the type of teaching jobs she would accept. She was only focused on finding teaching jobs that were equivalent to, or better than what she had already been offered. I find that the Claimant did not conduct a fulsome job search consistent with someone who was truly severed from employment.

[23] The Claimant stated that she was no different from a trades person in that she had been laid off when there was no work. She was recalled in the fall when there was. She was not paid during the summer. She believes she should be paid EI benefits the same as a trades person who is laid off.

[24] The Federal Court of Appeal has distinguished teachers from other professions. When a teacher stops teaching during a non-teaching period, it is not a severance of the employment relationship. Specifically, the Court had held that where a teacher's contract terminates at the end of June and they are "rehire" in the fall, they are not entitled to EI benefits during July and August<sup>18</sup>. There must be a true severance of the employment relationship.

[25] The Claimant has not proven that her teaching contract terminated within the meaning of the exception. There was no true severance of the employment relationship.

**Was the Claimant teaching on a casual or substitute basis<sup>19</sup>?**

[26] I find that the claimant was not employed on a casual or substitute basis. LTO assignments are by nature for an anticipated period longer than a casual or short term substitution. She testified that she taught every day during the assignment in the spring of 2019 and also when she started her assignment in the fall of 2019. Her long-term teaching assignments had a degree of regularity inconsistent with the definition of casual or substitute teaching. No evidence was presented that would lead me to a different conclusion.

---

<sup>18</sup> *(Canada (Attorney General) v Blanchet, 2007 FCA 377)*

<sup>19</sup> Section 33(2)(b), Employment Insurance Regulations.

**Was the Claimant entitled to benefits based on another employment other than teaching<sup>20</sup>?**

[27] I find that the Claimant did not hold any employment other than teaching during the qualifying period. No evidence was presented that the Claimant held another employment other than teaching that would qualify her to receive benefits.

**CONCLUSION**

[28] The appeal is dismissed. The Claimant is disentitled from being paid benefits for the non-teaching period.

Mark Leonard

Member, General Division - Employment Insurance Section

|                       |                   |
|-----------------------|-------------------|
| HEARD ON:             | December 12, 2019 |
| METHOD OF PROCEEDING: | Teleconference    |
| APPEARANCES:          | R. D., Appellant  |

---

<sup>20</sup> Section 33(2)(c), Employment Insurance Regulations.