Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v M. P.*, 2019 SST 1459

Tribunal File Number: AD-19-555

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

M. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: December 23, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Respondent, M. P. (Claimant), applied for Employment Insurance benefits. She was a school bus driver for X and, in 2017, was part of a collective agreement that expired. There were bargaining meetings, but the bargaining ended on October 4, 2017. A mediator was appointed, and meetings took place between November 8, 2017, and November 13, 2018. Strike notices were also issued by the union. On November 2, 2018, the employer decided on a lock-out. After a week of lock-out, the school board decided to terminate the school transport contract with X. Ultimately, on November 26, 2018, the Claimant received a notice of termination.

[3] The Appellant, the Canada Employment Insurance Commission (Commission), refused the application because the Claimant had lost her employment due to a labour dispute. According to the Commission, the labour dispute is not over despite the termination letter. The Claimant requested a reconsideration of this decision, and the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant was entitled to receive Employment Insurance benefits as of November 26, 2018, because the work stoppage due to the labour dispute ended on that date.

[5] The Tribunal granted leave to appeal. The Commission submits that the General Division erred in law in making its decision and based its decision on an important error concerning the facts in the file.

[6] The Tribunal must determine whether the General Division erred in law and based its decision on an important error concerning the facts in the file.

[7] The Tribunal dismisses the Commission’s appeal.

ISSUES

[8] Did the General Division err in law when it failed to mention or refer to section 53(2) of the *Employment Insurance Regulations* (EI Regulations) to determine the end of the work stoppage?

[9] Did the General Division base its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in determining that the termination date was November 26, 2018?

ANALYSIS

Appeal Division's Mandate

[10] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[11] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[12] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

Did the General Division err in law when it failed to mention or refer to section 53(2) of the EI Regulations to determine the end of the work stoppage?

[13] This ground of appeal is without merit.

[14] The Commission submits that the General Division erred in law when it failed to refer to section 53(2) of the EI Regulations to determine the end of the work stoppage.

[15] According to the terms of section 36(1) of the EI Act, a claimant who loses "an employment" or "is unable to resume an employment" due to a labour dispute is not entitled to receive benefits until the end of the work stoppage.

[16] Section 53(2) of the EI Regulations states that the end of the work stoppage occurs particularly in the case of a discontinuance of business.

[17] The General Division determined that, after declaring a lock-out on November 2, 2018, the employer had lost its school transport contract soon afterwards. It then sent a notice of termination to employees on November 26, 2018. The General Division found that the employer had discontinued its activities and laid off its employees after the loss of its only transport contract. It confirmed to the Commission that a return to work was not possible for the laid-off employees.

[18] It is true that the General Division does not refer specifically to section 53(2) of the EI Regulations. However, it is clear from the General Division decision that it considered the requirements of that section, specifically the discontinuance of the business' activities, to determine whether the work stoppage had ended.

[19] There is therefore no reason to retain this ground of appeal.

Did the General Division base its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it in determining that the termination date was November 26, 2018?

[20] This ground of appeal is without merit.

[21] The Commission argues that the General Division erred in finding that the Claimant was entitled to Employment Insurance benefits as of November 26, 2018. It submits that the employer's November 26, 2018, letter confirms the Claimant's termination on January 18, 2019. The Commission submits that, as of January 18, 2019, the Claimant is no longer disentitled because of the labour dispute.

[22] The Tribunal is of the view that the General Division did not err in finding from the evidence that the Claimant was entitled to receive Employment Insurance benefits as of November 26, 2018.

[23] When the employer discontinued operations following the loss of its only transport contract and sent a notice of termination to employees on November 26, 2018, to meet its obligation under the *Act respecting labour standards*, the labour dispute ended. As of that date, there was no possibility of contracts and no longer any hope of returning to work for the employees.

[24] There is therefore no reason to retain this ground of appeal.

CONCLUSION

[25] For the reasons mentioned above, it is appropriate to dismiss the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	December 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Rachel Paquette, Representative for the Appellant Jérémie Dhavernas, Representative for the Respondent M. P., Respondent