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

[TRANSLATION]

Citation: *E. C. v Canada Employment Insurance Commission*, 2020 SST 15

Tribunal File Number: AD-20-13

BETWEEN:

E. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 10, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, E. C. (Claimant), is a teacher for the X School Board. The 2018–2019 school year ended on June 23, 2019, and she attended a simulation session on July 3, 2019, for the 2019–2020 school year, which began on August 22, 2019. The Claimant officially accepted an offer of employment on August 14, 2019. The Canada Employment Insurance Commission (Commission) informed the Claimant that it could not pay her benefits during the non-teaching period from July 3, 2019, to August 21, 2019.

[3] The General Division determined that the Claimant's teaching contract had not ended on June 23, 2019, because there had not been a break in the employment relationship. It also determined that the Claimant's employment was not on a casual or substitute basis and that she had not qualified to receive Employment Insurance benefits for hours accumulated in an occupation other than teaching. The General Division found that the Claimant was therefore not entitled to receive benefits during the period from July 3, 2019, to August 21, 2019.

[4] The Claimant now seeks leave to appeal the General Division decision. She argues that the General Division decision is marred by an error of law and that the General Division 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.

[5] The Tribunal must determine whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] The Tribunal refuses leave to appeal to the Appeal Division.

ISSUE

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[10] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

Does the Claimant's appeal have a reasonable chance success based on a reviewable error the General Division may have made?

[12] In support of her application for leave to appeal, the Claimant argues that the General Division erred in finding that she had received an offer of employment on July 3, 2019. This is confirmed by the fact that she did not sign a contract within 30 days, as

specified in the collective agreement. She only attended a simulation session, which does not constitute a guarantee of employment.

[13] The Claimant also argues that her contract ended on June 28, 2019. The new contract was not awarded until August 16, 2018, after her contract ended. She was therefore not sure whether she would return to the X School Board. The Claimant argues that her record of employment confirms that her return was not planned.

[14] The Federal Court of Appeal has repeatedly affirmed the applicable legal standard: Unless there is a veritable break in the continuity of a teacher's employment, the teacher will not be entitled to benefits for the non-teaching period.[1]

[15] On reading the General Division's decision, it is clear that it questioned whether there had been a clear break in the continuity of the Claimant's employment so that she became unemployed according to the case law.

[16] The General Division considered both the Federal Court of Appeal case law and the legislative intent of section 33 of the *Employment Insurance Regulations* (EI Regulations.

[17] The Federal Court of Appeal has upheld the principle that the exemption provided by section 33(2)(a) of the EI Regulations is intended to provide relief to teachers when there has been a genuine severance of the employee-employer relationship after the teaching period. Teachers who have their contracts renewed for the new school year before the end of their teaching contracts, or shortly afterwards, are not unemployed and their employment continues, even if there is a break between contracts.

[18] Considering that the Claimant worked as teacher from August 23, 2018, to June 28, 2019, for the X School Board, considering that she attended a simulation session on July 3, 2019, and chose a teaching contract that corresponded to 100% of her duties and was offered by the same school board for the 2019–2020 school year, considering

[1] *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v Robin*, 2006 FCA 175.

that her choice of contract was not modified during the official assignment session on August 14, 2019, and considering that her seniority is recognized and her pension fund contributions continue from one year to another, the Tribunal cannot see how the General Division could have reasonably concluded that there had been a severance of the employment relationship between the Claimant and the school board.

[19] The Claimant also does not meet the definition of section 33(2)(b) of the EI Regulations, and she does not qualify to receive benefits for hours accumulated in an occupation other than teaching under section 33(2)(c) of the EI Regulations.

[20] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised an issue that could lead to the setting aside of the decision under review.

CONCLUSION

[21] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	E. C., self-represented