



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. B. v Canada Employment Insurance Commission*, 2020 SST 61

Tribunal File Number: AD-19-777

BETWEEN:

V. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 24, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, V. B. (Claimant), worked as a truck driver for the employer until May 4, 2012. On April 19, 2017, the employer issued a Record of Employment indicating that the Claimant had received \$69,144 as a court-ordered settlement. The Canada Employment Insurance Commission (Commission) informed the Claimant that the \$59,908.95 received as lost wages and vacation pay from his employer was considered earnings and would be deducted from his benefits from August 19, 2012, to April 27, 2013. The application of these amounts resulted in an overpayment of \$11,522. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the money the Claimant received constituted earnings under section 35 of the *Employment Insurance Regulations* (EI Regulations) and that those earnings had been allocated according to the provisions set out in section 36 of the EI Regulations.

[4] The Claimant was granted leave to appeal. The Appeal Division allowed the appeal in part and returned the file to the General Division so that it could decide only on the issue the Claimant had raised concerning the application of section 46.01 of the *Employment Insurance Act* (EI Act).

[5] The General Division determined that the Commission had exercised its discretion judicially when it determined that the administrative cost of determining the repayment was less than the value of the repayment. It found that the Claimant did not meet the second criterion of section 46.01 of the EI Act and that he had to repay the benefits he had been overpaid.

[6] The Claimant was granted leave to appeal. He submits that the General Division erred in assuming that the Commission had exercised its discretion judicially and that it erred in its interpretation of section 46.01 of the EI Act.

[7] The Tribunal must decide whether the General Division erred in finding that the General Division had exercised its discretion judicially and in its interpretation of section 46.01 of the EI Act.

[8] The Tribunal dismisses the Claimant's appeal.

ISSUES

[9] Did the General err in finding that the Commission had exercised its discretion judicially?

[10] Did the General Division err in its interpretation of section 46.01 of the EI Act?

ANALYSIS

Appeal Division's Mandate

[11] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[12] 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.

[13] 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 finding that the Commission had exercised its discretion judicially?

Did the General Division err in its interpretation of section 46.01 of the EI Act?

[14] The Tribunal finds that the appeal is without merit.

[15] The Claimant submits that the General Division erred in assuming that the Commission had exercised its discretion judicially and in its interpretation of section 46.01 of the EI Act.

[16] The Commission is the subject of a number of criticisms from the Claimant, which are more fully detailed in his observations. The Claimant essentially argues that the Commission was negligent in the handling of his file, which caused him various inconveniences and damages. He submits that the Commission did not respect its own service standards, that is, to process his file within 30 days. He submits that the Commission did nothing before April 2017, when it was informed of the Administrative Labour Tribunal's decision in August 2016. He argues that the amount of \$346 used by the Commission does not account for the unreasonable delay and time invested by the Commission in the handling of his file.

[17] The Claimant submits that, given the material before it, the General Division erred in finding that the Commission had acted judicially and that the overpayment of benefits had to be repaid according to section 46.01 of the EI Act.

[18] The General Division had to decide whether the Commission had exercised its discretion judicially when it determined that the Claimant had to reimburse the overpayment of benefits according to the terms of section 46.01 of the EI Act.

[19] As noted by the General Division, section 46.01 of the EI Act provides that overpayments of benefits do not need to be repaid if the following two conditions are met:

- a) More than 36 months have elapsed since the Claimant's lay-off or separation from the employment in relation to which the earnings are paid or payable.

- b) According to the Commission, the administrative costs of determining the repayment would likely equal or exceed the amount of the repayment.

[20] The undisputed evidence before the General Division shows that more than 36 months had elapsed between the Claimant's lay-off or separation from the employment in relation to which the earnings were paid and the notice of debt was sent to the Claimant. The Claimant's employment ended in May 2012, and the Commission sent the first notice of debt to the Claimant in April 2017. The Claimant therefore meets the first criterion of section 46.01 of the EI Act.

[21] Following the settlement of the dispute with the former employer, the Commission advised the Claimant that the \$59,908.95 received as lost wages and vacation pay—\$58,436.42 as lost wages and \$1,472.53 as vacation pay—from his employer were considered earnings and would be deducted from his benefits from August 19, 2012, to April 27, 2013. The application of these amounts resulted in an overpayment of \$11,522.

[22] The Commission considered that the threshold amount for 2018 was \$346 according to the Labour Force Survey – Average hourly Wage – Permanent Employees (X). According to the Commission, the estimation of the overpayment was high enough to proceed with the application of the Claimant's earnings.

[23] The General Division considered that, based on section 46.01 of the EI Act, it is “the administrative costs of determining the repayment” and not the administrative costs associated with the handling of the file and recovery of the amounts in question that must be considered. The only thing that matters is the administrative cost of establishing what must be repaid.

[24] The General Division determined that the Commission uses a fairly simple rule to determine whether an amount has to be claimed: It considers a threshold amount of \$346, which corresponds to the general administrative costs associated with the determination of a repayment. If the amount to be repaid is greater than this, it proceeds with the repayment request. If not, the claimant is not asked to repay it.

[25] The General Division determined that the use of such a rule is justified since it is reasonable to think that the administrative costs of determining a repayment are about the same for every file like this, because the process is generally similar for each case: 1. The claimant receives Employment Insurance benefits. 2. A few years later, the claimant receives an amount of money from their former employer under a settlement. 3. The details of the settlement are presented to the Commission. 4. The amount of benefits to be repaid is calculated based on the amount of earnings paid to the claimant.

[26] The General Division considered that the Claimant's overpayment was relatively high and that the administrative cost of determining the repayment was lower than its value.

[27] The General Division found that the Commission had exercised its discretion judicially when it determined that the administrative cost of determining the repayment was less than the value of the repayment itself. Since the Claimant did not meet the two criteria provided by the EI Act, the General Division found that section 46.01 could not be applied, and the overpayment had to be reimbursed.

[28] The Tribunal finds that the General Division's decision was based on the evidence before it and that this decision complies with both legislation and case law.

[29] There is nothing to warrant the Tribunal's intervention.

[30] Based on the Claimant's submissions and verbal testimony during the hearing, the Tribunal would like to point out that it does not have the required jurisdiction to order compensation or write off an overpayment for the inconveniences and damages he claims he suffered following the Commission's handling of his file. That is an issue that must be debated in another forum.²

² *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.

CONCLUSION

[31] For the reasons stated above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	January 16, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. B., Appellant