



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. C. v Canada Employment Insurance Commission*, 2020 SST 178

Tribunal File Number: GE-20-246

BETWEEN:

A. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: February 19, 2020

DATE OF DECISION: February 19, 2020

DECISION

[1] The appeal is dismissed. I find that the Appellant's teaching employment did not terminate on June 28, 2018, and that she is not entitled to receive Employment Insurance benefits between July 3, 2018, and August 22, 2018.

OVERVIEW

[2] The Appellant is a secondary school teacher at the Commission scolaire de X [X school board]. The 2017–2018 school year ended on June 28, 2018. There was a demonstration lesson on July 3, 2018, and the Appellant received a conditional offer for the 2018–2019 school year, which was starting on August 22, 2018. She formally accepted that offer on August 16, 2018, at a placement session.

[3] On November 26, 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, 2018, to August 22, 2018. That decision created a \$3,555 overpayment of benefits. I must determine whether the Appellant was employed in teaching during that period.

ISSUES

[4] To determine whether the Appellant was employed in teaching during the non-teaching period, I must answer these questions:

- Did the Appellant's teaching employment contract terminate on June 28, 2018?
- Was the Appellant employed in teaching on a casual or substitute basis?
- Does the Appellant qualify to receive benefits in respect of employment in an occupation other than teaching?

ANALYSIS

[5] The non-teaching period occurs annually, at regular or irregular intervals, and no work is performed during that period by a significant number of people employed in teaching. Generally,

the school year runs from September to June, and July and August are the main non-teaching period.¹

[6] During a non-teaching period, a teacher is not entitled to receive benefits, other than certain special benefits, but, if one of the following conditions applies to a teacher's situation, they may receive Employment Insurance benefits:

- The teacher's employment contract had terminated;
- Their teaching employment was on a casual or substitute basis and/or during the qualifying period; or
- The employee accumulated enough insurable hours of employment in an occupation other than teaching to qualify to receive Employment Insurance benefits.

[7] Continuity of employment is the key element in determining whether an employment has ended.² Outside a genuine severance of the employment relationship, a teacher will not be entitled to receive benefits during the non-teaching period.³

[8] Teachers whose contracts are renewed for the following school year before the end of their teaching contracts, or shortly afterwards, maintain their employment relationship because there is a continuity of the employment relationship.⁴

Did the Appellant's teaching employment contract terminate on June 28, 2018?

[9] The employer's human resources coordinator stated that, at a demonstration lesson on July 3, 2018, an offer was made to the Appellant that corresponded to 100% of her teaching duties.

¹ *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Employment Insurance Regulations* (Regulations), s 33.

² *Stone v Canada (Attorney General)*, 2006 FCA 27.

³ *Giammatei et al*, A-664-01; *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Canada (Attorney General) v Robin*, 2006 FCA 175.

⁴ *Oliver v Canada (Attorney General)*, 2003 FCA 98.

[10] Given that there is a shortage in most teaching areas, the coordinator indicated that teachers who received a contract offer at the demonstration lesson are guaranteed to get a contract for the following school year. She explained that some adjustments may occur if, for example, some teachers are on sick leave or maternity leave.

[11] The coordinator also stated that the Appellant is on an employment priority list and that, on August 16, 2018, she was formally offered a contract corresponding to 100% of her teaching duties and running from August 23, 2018, to June 30, 2019.

[12] In addition, she indicated that the teacher accumulates her years of seniority and that she continues to receive group insurance and pension plan benefits during the non-teaching period.

[13] The Commission claims that the Appellant has not shown that her contract terminated on June 28, 2018, and that she will not return to work for the employer after the non-teaching period. It submits that, on July 3, 2018, the Appellant received an offer of employment and that the fact that the contract can be changed later does not mean that a contract was not offered. It argues that there is a continuity of the employment relationship between the Appellant and the Commission scolaire de X [X school board] during the non-teaching period.

[14] The Appellant states that she has been a teacher for the Commission scolaire de X [X school board] for many years and that she has been on the employer's employment priority list since 2013.

[15] She argues that her employment contract for the 2017–2018 school year terminated on June 27, 2018, and that there was no continuity of her employment relationship during the non-teaching period. She explains that the Commission scolaire de X [X school board] does not act as an employer to her during the non-teaching period and that she had no guarantee of getting a contract for the 2018–2019 school year.

[16] She says that if the employer held a demonstration lesson on July 3, 2018, to see how many teachers would return to work for the Commission scolaire de X [X school board] the following school year [*sic*]. She states that adjustments were made to the offers between the demonstration lesson and the placement session. She explains that there was no guarantee that

the offer made at the demonstration lesson would be the one formally made at the placement session in August because that offer can be changed for many reasons.

[17] The Appellant says that, since the contract offered at the July 3, 2018, demonstration lesson was different from the one offered at the August 16, 2018, placement session, the situation shows that the contract offered at the placement session provided no guarantee of being awarded as such and that she could have ended up without a contract.

[18] She explains that, because of the shortage of teachers in some areas, the Commission scolaire de X [X school board] can change the way it assigns contracts according to the resources available and the teachers' availability. The Appellant explains that she accepted a position corresponding to 100% of her duties but that that position used to be filled by a teacher who accepted a position in administration.⁵

[19] In addition, she states that there are contradictions in what the employer says about the employment guarantee it offered when, instead, it had told the teachers that the lesson did not formally guarantee them any contract. In the face of contradictions, the Appellant argues that her version of events should be accepted. She has also submitted a Tribunal decision that granted Employment Insurance benefits to one of her colleagues working for the same school board, and she indicates that she does not understand why, being in the same situation, she is not entitled to receive Employment Insurance benefits during the non-teaching period, despite the fact that her contract did terminate on June 28, 2018.⁶

[20] She also explains that maintaining her group insurance during the summer is tied to her contract that was ending on June 28, 2018, and does not demonstrate the continuity of her employment relationship during the non-teaching period. As for her seniority, she explains that, even though her employer acknowledges her pay scale over the non-teaching period, if she did not accept a contract for the following school year, she would lose that privilege.

⁵ GD2-5 to GD2-24.

⁶ GD2-25 to GD2-35.

[21] Even though it is not enough on its own to establish the continuity of the employment relationship, maintaining employment benefits the school board offers during the non-teaching period is one of the elements for establishing the continuity of the employment relationship, along with the duration of the non-teaching period.⁷

[22] The length of the employment record is also a criterion for establishing the continuity of the employment relationship between the employer and a teacher.⁸

[23] The facts show that the Appellant has been on the employer's priority employment list for several years. The employer set up that recall list for awarding teaching contracts. On July 3, 2018, the Appellant received a contract offer corresponding to 100% of her teaching duties, and she was formally offered a contract at the August 16, 2018, placement session. She accepted the final offer corresponding to 100% of her teaching duties.

[24] The facts do not show that there was a veritable break in the employment relationship simply because the Appellant did not work during the summer and because she formally accepted a new offer only on August 16, 2018. The term "unemployed" is not synonymous with "not working."⁹

[25] Although I understand that this way of awarding contracts by the employer may create some uncertainty for the Appellant, who does not know the exact percentage of her teaching duties or other aspects of her teaching duties before the following school year, in reality, she is on the employer's employment priority list. An offer was made to her shortly after the end of the 2017–2018 school year, and she formally accepted an offer on August 16, 2018.

[26] Regarding the Tribunal decision made in the file of one of her colleagues, I would point out that the files of every appellant are assessed according to the employee's specific situation, and it is possible that some colleagues in a situation different from that of the Appellant are entitled to receive benefits.

⁷ *Oliver v Canada (Attorney General)*, 2003 FCA 98.

⁸ These criteria are set out in *Stone v Canada (Attorney General)*, 2006 FCA 27.

⁹ *Stone v Canada (Attorney General)*, 2006 FCA 27.

[27] Based on the facts submitted, I cannot find that, in the Appellant's case, there was a break in the employment relationship with the Commission scolaire de X [X school board] between July 3, 2018, and August 22, 2018. Of course, the situation of teachers is specific to this field of employment, but the length of a teacher's employment record is one of the determining criteria for finding that there was a continuity of a teacher's employment relationship during the non-teaching period. In her case, the Appellant has taught for the Commission scolaire de X [X school board] for several years and has been on the employer's employment priority list since 2013.

[28] Although I understand that the Appellant was paid benefits when she had reported a shortage of work on June 28, 2018, and that the overpayment to repay is a significant amount for the Appellant, I cannot exclude her from the scope of the Act.

[29] I find that the Appellant's teaching contract did not terminate on June 28, 2018, because there was a continuity of the employment relationship during the non-teaching period.¹⁰

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

[30] The Commission argues that the Appellant was offered a contract corresponding to 100% of her teaching duties for the school year from August 24, 2017, to June 28, 2018, that the employment was continuous and specified, and that it was not on a casual or substitute basis.

[31] Although the Appellant argues that she became unemployed on June 28, 2018, and that her contract for the 2018–2019 school year was not formalized until August 16, 2018, this fact does not prove that she was employed on a casual basis. In reality, the Appellant was employed on a regular and continuous basis from August 24, 2017, to June 28, 2018.

[32] The Appellant was employed in teaching regularly during the teaching period and, even though her contract was punctuated by a non-teaching period, the work periods are determined.¹¹

[33] I find that the Appellant was not employed on a casual or substitute basis.¹²

¹⁰ Regulations, s 33.

¹¹ Regulations, s 33(2)(b); *Arkinstall v Canada (Attorney General)*, 2009 FCA 313.

¹² *Arkinstall v Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

Does the Appellant qualify to receive benefits in respect of employment in an occupation other than teaching?

[34] The Appellant has not reported any hours of insurable employment in another occupation, and she has not proven that she had accumulated enough insurable hours of employment in an occupation other than teaching.

[35] Therefore, the Appellant's teaching employment did not terminate during the non-teaching period from July 3, 2018, to August 22, 2018.

CONCLUSION

[36] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	February 19, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. C., Appellant