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

Citation: *C. Z. v Canada Employment Insurance Commission*, 2020 SST 411

Tribunal File Number: GE-20-809

BETWEEN:

C. Z.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: March 31, 2020

DATE OF DECISION: April 1, 2020

Canada

DECISION

[1] The appeal is dismissed. The Appellant was unable to work between June 24, 2019 and October 11, 2019 due to a work stoppage that was attributable to a labour dispute. He had a direct interest in the labour dispute. Therefore, he is disentitled to EI benefits during this period.

OVERVIEW

[2] The Appellant renewed a claim for regular employment insurance benefits (EI benefits) on December 31, 2019. He was employed as a security guard with Canadian Corps of Commissionaires in a unionized position when his local, PSAC Local X, went on strike on June 24, 2019. The employer cancelled the Appellant's shifts and he was unable to work until the strike ended. His benefit period on the renewal claim ran out on October 12, 2019. The strike ended on 12, 2019, and he returned to his employment on November 18, 2019. The Respondent, the Canada Employment Insurance Commission (Commission), decided the Appellant was not entitled to benefits during the strike because his work stoppage was attributable to a labour dispute. The Appellant asked the Commission to reconsider this decision, arguing that he had no choice but to participate in the strike. The Commission maintained the disentitlement and the Appellant appealed to the Social Security Tribunal (Tribunal).

ISSUE

[3] Should the Appellant be disentitled to EI benefits from June 24, 2019 to October 11, 2019 because he lost his employment during this period due to a work stoppage attributable to a labour dispute?

ANALYSIS

[4] Section 2 of the Employment Insurance Act (EI Act) defines a "labour dispute" as a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons.

[5] Subsection 36(1) of the EI Act stipulates that subject to the *Employment Insurance Regulations* (EI Regulations), if a claimant loses an employment, or is unable to resume an

employment, because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which the claimant was employed, the claimant is not entitled to receive benefits until the earlier of:

(a) the end of the work stoppage, and

(b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment.

[6] Subsection 36(4) of the EI Act stipulates that this section does not apply if a claimant proves that the claimant is not participating in, financing or directly interested in the labour dispute that caused the stoppage of work.

[7] I must first decide if the Appellant lost his employment due to a work stoppage attributable to a labour dispute. If yes, I must then decide if he had a direct interest in the labour dispute.

Issue 1: Did the Appellant lose his employment due to a work stoppage attributable to a labour dispute within the meaning of subsection 36(1) of the EI Act?

[8] According to subsection 36(1) of the EI Act and subject to the Regulations, a claimant is not entitled to receive benefits if:

1. the claimant loses an employment, or is unable to resume an employment,
2. because of a work stoppage,
3. attributable to a labour dispute,
4. at the factory, workshop or other premises at which the claimant was employed.

[9] There is no dispute that the Appellant was unable to work as of the start of the strike on June 24, 2019. This is evidenced by the employer's E-mail to the Appellant on June 21, 2019 advising that, as soon as the strike started, he would "no longer be permitted to work on any base site" (at GD3-33). It is also supported by the Record of Employment issued due to the strike (at GD3-20). I find that the Appellant lost or was unable to resume his employment when the strike that started on June 24, 2019.

[10] I further find that the strike the Appellant was involved in was a work stoppage that was due to a labour dispute at his work site.

[11] The term "labour dispute" includes a dispute between employers and employees that is connected with the employment or the terms or conditions of employment of any person. The Federal Court of Appeal established that when employees and an employer are negotiating a collective agreement there is a labour dispute; and that the purpose of negotiations is to put an end to a disagreement where there is insistence of one party and resistance by the other regarding certain claims (*Gionest A-787-81*).

[12] Whether a labour dispute exists is a question of fact. The Appellant testified that the union and the employer had been in negotiations for a new collective agreement prior to the strike and had reached "an agreement-in-principal in May 2019". However, the union membership "turned it down" and elected to strike because they wanted more paid sick days and more money for a boot allowance. The employees went on strike and formed picket lines as of June 24, 2019.

[13] I find that there are key elements of a labour dispute evident in this case. There is evidence of insistence by one party and resistance by the other with respect to specific terms of their employment, there was an impasse in the negotiations, and the employees went on a legal strike. There is also evidence of a dispute between the employer and the employees in the Appellant's union that was connected with the terms and conditions of their employment. The strike the Appellant was involved in fits squarely within the definition of "labour dispute" set out in section 2 of the EI Act.

[14] There is also no dispute that the strike occurred at the premises where the Appellant was employed and was in effect when the Appellant's benefit period ran out on October 12, 2019.

[15] I therefore find there was a labour dispute in existence at the Appellant's work site at the time of the work stoppage on June 24, 2019.

[16] I further find that the work stoppage was due to the labour dispute.

[17] The Federal Court of Appeal has established that when there is a work stoppage during the negotiation of a new collective agreement, there is a clear causal connection between the labour dispute and the work stoppage (*Simoneau A-611-96, Dallaire et al. A-825-95*). In this case, the parties were negotiating a new collective agreement at the time that the said employees went on strike, and work stopped. There is a clear causal connection between the labour dispute in this case and the work stoppage that began on June 24, 2019.

[18] The Appellant does not dispute that the work stoppage was due to the strike – or that the strike constitutes a labour dispute. Rather, he submits it was the employer who took away his right to work and caused the work stoppage. I do not find this argument to be persuasive because subsection 36(1) EI Act is applicable to all work stoppages – regardless of whether they are imposed by the employer in the form of a lock-out or by the union as a strike. In this case, there was a "work stoppage" that was causally connected to the labour dispute in effect as of the start of the strike on June 24, 2019, and this satisfies the condition in subsection 36(1) of the EI Act.

[19] I therefore find that the disentitlement provided for in subsection 36(1) of the EI Act applies to the Appellant's claim from June 24, 2019 until October 11, 2019 because, during this period, he lost or was unable to continue his employment because of a work stoppage that was attributable to a labour dispute.

Issue 2: Does the Appellant qualify for an exemption to the disentitlement pursuant to subsection 36(4) of the EI Act because he was not directly interested in the labour dispute?

[20] According to subsection 36(1) of the EI Act, a claimant is disentitled to benefits until the earlier of (a) the end of the work stoppage and (b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment. Neither of these two conditions were met in the Appellant's case because his benefit period ended before the work stoppage, and he did not start a new job between June 24, 2019 and October 11, 2019.

[21] I then considered whether the Appellant could be re-entitled to benefits by meeting the requirements in subsection 36(4) of the EI Act. Under that provision, the disentitlement in subsection 36(1) of the EI Act does not apply if the Appellant can prove that he is not

participating in, financing or is directly interested in the labour dispute that caused the stoppage of work.

[22] The Appellant testified as follows:

- The employer operated both unionized sites and non-unionized job sites.
- He had worked on the non-unionized sites before.
- But prior to the strike, he was assigned to work at a unionized job site. He had no choice in this assignment, he was a member of the union "whether I liked it or not", and he was "forced" to pay union dues as a result.
- At the time of the strike, he was a member of the union that was negotiating the collective agreement and the terms of this agreement would apply to his employment.
- He had "no options". He was a member of the union, the strike "was going ahead", and he had to be part of it.
- He accepted the $75/day strike pay and walked the picket line during the strike, although this did not come close to covering his expenses.
- He thought the strike would be over quickly, so he could return to work.
- It was always his intention to return to work for this employer. He had been with them for a long time and, at 81 years old, did not think he would easily find other employment.
- He returned to work after the strike ended, but was assigned to a non-unionized job site.

[23] The Appellant referred me to the 2001 decision in *CUB 51543* as authority for the proposition that a claimant is not participating in the labour dispute if there was no work for them if they crossed the picket line or if the employer informed them they were not needed. The Appellant asserts it was the employer who cancelled his shifts as soon as the strike started and declared there would be no work at any of the base sites. The Appellant testified that he might have crossed the picket line if there was work for him, but this option was taken away from him by the employer. As the strike wore on, he did see people crossing the picket line, so he believes the employer's position must have changed at some point. But he himself never crossed the picket line because he was collecting strike pay.

[24] Unfortunately for the Appellant, the decision in *CUB 51543* does not assist him. His union membership, participation in the picket line and acceptance of strike pay are all evidence of participating in the labour dispute. The Appellant also had a 'direct interest' in the labour dispute because he had something to gain from the outcome of that dispute – regardless of whether the issues were important to the Appellant personally (*Black 2001 FCA 255*). And there is no evidence of a permanent severance of his relationship with the employer and the union, which is required to meet the conditions under subsection 36(4) of the EI Act (*Canada (AG) v. Hurren, A-942-85*).

[25] I therefore find that the Appellant has not met the conditions for re-entitlement pursuant to subsection 36(4) of the EI Act.

[26] As a final matter, I acknowledge the Appellant's disappointment in not receiving EI benefits during the strike, and his belief that the decision to disentitle him was "not fair" because he was caught up in the strike and unable to work through no fault of his own. While the Appellant stated he was hoping I could find "some way to turn this around" for him, I have no jurisdiction to waive the labour dispute disentitlement that has been imposed on his claim. Since the work stoppage was attributable to the labour dispute, and since the Appellant has not proven he should be re-entitled to benefits under subsection 36(4) of the EI Act, he is disentitled to benefits from June 24, 2019 to October 11, 2019.

CONCLUSION

[27] The Appellant is disentitled to EI benefits pursuant to subsection 36(1) of the EI Act from June 24, 2019 until October 11, 2019 because, during this period, he lost or was unable to continue his employment because of a work stoppage that was attributable to a labour dispute.

[28] The Appellant does not qualify for re-entitlement pursuant to subsection 36(4) of the EI Act because he participated in and had a direct interest in that labour dispute.

[29] The appeal is dismissed.

Teresa M. Day

Member, General Division - Employment Insurance Section

HEARD ON:	March 31, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. Z., Appellant