



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v Canada Employment Insurance Commission*, 2020 SST 294

Tribunal File Number: AD-19-342
AD-19-343

BETWEEN:

L. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: April 7, 2020

DECISION AND REASONS

DECISION

[1] I am allowing these appeals and sending them back to the General Division for reconsideration on all issues by a different member.

OVERVIEW

[2] The Claimant, L. M., is a union member who works according to the terms of a collective agreement. Her employer lays off much of its staff over the summer months. Under the terms of the collective agreement, layoffs normally start with the most junior employees. However, the collective agreement has a special provision for temporary layoffs of less than five months. In those cases, the collective agreement gives senior employees the chance to be laid off first.

[3] That Claimant says that she—and nearly all her co-workers who can do so—have exercised this option for years. They volunteer to be laid off over the summer, and collect Employment Insurance (EI) regular benefits during that time.

[4] In 2018, the Commission started an investigation into the Claimant's EI benefits. Ultimately, the Commission concluded that the Claimant was not entitled to the benefits that she received in the summers of 2017 and 2018.¹ As a result, the Commission told the Claimant that she needed to repay about \$8,200 in EI benefits.

[5] The Claimant challenged the initial decision, but the Commission upheld it on reconsideration. The Claimant then appealed the Commission's reconsideration decision to the Tribunal's General Division, but it dismissed her appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[6] The parties agree that the Claimant raised issues under the *Canadian Charter of Rights and Freedoms* (Charter), but the General Division overlooked those issues. The parties also agree that I should return the files to the General Division for reconsideration.

¹ The Commission's decision is based on section 32 of the *Employment Insurance Act*.

[7] There is just one issue outstanding: Should the General Division reconsider all the issues in the case or just the Charter issues?

[8] I decided that the General Division should reconsider all the issues in the case. These are the reasons for my decision.

ISSUE

[9] What is the best remedy in this case?

ANALYSIS

[10] In her written documents and at the hearing, the Claimant referred to the Charter several times.² However, the General Division made no mention of these arguments. As a result, the parties agree that the General Division committed an error: it failed to consider all the issues that it had in front of it.³

[11] The parties also agree that I should return these files to the General Division for reconsideration. The remaining question to decide is whether I should limit the issues that the General Division needs to reconsider.

[12] The Commission argues that I should limit the General Division's reconsideration to just the Charter issues. In addition, I should suspend the Appeal Division's files until the General Division makes its new decision on the Charter issues.⁴

[13] I appreciate the Commission's attempt to narrow the issues that the General Division needs to reconsider. However, I have decided against this approach for the following reasons:

- a) Section 59(1) of the *Department of Employment and Social Development Act* establishes the powers that I have to try to fix the General Division's error. However, I am not convinced that the Commission's recommendation falls within those powers

² See, for example, page GD2-7 and the audio recording of the General Division hearing at approximately 23:10 to 26:45.

³ This error (or ground of appeal) falls under section 58(1)(a) of the *Department of Employment and Social Development Act*.

⁴ Page AD11-1.

- (which would involve isolating certain issues in the Claimant's case and having files open at the Tribunal's General and Appeal Divisions at the same time);
- b) It is difficult to predict how the second General Division decision might impact these appeals; and
 - c) The General Division has a process that it follows in cases involving Charter issues.⁵ The Claimant was denied that process initially. And going through that process now could lead to the Claimant's case developing differently. It is better if one member decides all issues based on a complete record rather than to have different members deciding different issues based on different evidence.

[14] I also considered ruling on the disentitlement issue and sending just the Charter issues back to the General Division for reconsideration. However, I worried that such an approach could cause confusion and risk inconsistent judgments from the Tribunal's General and Appeal Divisions.

[15] All things considered, therefore, I decided to return these files to the General Division for reconsideration on all issues by a different member.

CONCLUSION

[16] The General Division committed an error in this case by not considering the Charter issues that the Claimant had raised. As a result, I am setting aside the General Division decision. I am also returning the files to the General Division for reconsideration on all issues by a different member.

⁵ The General Division's process is guided by section 20 of the *Social Security Tribunal Regulations*.

[17] The appeals are allowed.

Jude Samson
Member, Appeal Division

HEARD ON:	March 19, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. M., Appellant S. Prud'Homme, Representative for the Respondent