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

Citation: *C. Z. v Canada Employment Insurance Commission*, 2020 SST 403

Tribunal File Number: AD-20-594

BETWEEN:

C. Z.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: May 12, 2020

Canada

DECISION AND REASONS

DECISION

[1] I am refusing the Claimant's request for leave to appeal.

OVERVIEW

[2] C. Z. is the Claimant in this case. The Canada Employment Insurance Commission refused his application for Employment Insurance (EI) regular benefit. Specifically, the Commission decided that the Claimant was disentitled from receiving EI benefits while his union was striking and his employer had cancelled his shifts.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal. The Claimant now argues that the General Division made important errors regarding the facts of his case. He wants to appeal the General Division decision to the Tribunal's Appeal Division. For the file to move forward, however, he needs leave to appeal.

[4] Unfortunately for the Claimant, I have concluded that his appeal has no reasonable chance of success. As a result, I must refuse leave to appeal.

ISSUE

[5] Did the General Division base its decision on an error of fact when it concluded that the Claimant was disentitled from receiving EI regular benefits?

ANALYSIS

[6] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, this appeal is following a two-step process: the leave to appeal stage and the merits stage.

[7] The legal test that the Claimant needs to meet at the leave to appeal stage is a low one: Is there any arguable ground on which the appeal might succeed?[1] To decide this question, I must

[1] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

focus on whether the General Division could have committed any relevant errors. In simple terms, the relevant errors concern whether the General Division:[2]

a) acted unfairly;

b) exercised all its powers, without going beyond the limit of its powers;

c) applied the law incorrectly; or

d) based its decision on an important error concerning the facts of the case.

The General Division did not base its decision on an important error concerning the facts of the case

[8] Section 36(1) of the *Employment Insurance Act* (EI Act) disentitles a person from receiving EI benefits if a labour dispute causes a work stoppage and prevents them from working. However, there is an exception to section 36(1): a person can receive EI benefits if they did not participate in, finance, or have a direct interested in the labour dispute.[3]

[9] At the General Division level, the Claimant argued that he got caught up in a labour dispute and that his employer denied him his right to continue working. The Claimant explained that his employer assigned him to unionized and non-unionized worksites. At the time of the strike vote, the Claimant had just recently become a union member, so was not familiar with the relevant issues. He also pointed out that any gains achieved because of the strike were minimal and applied to union and non-union members alike. Finally, once the strike was over, the Claimant was reassigned to a non-union worksite.

[10] However, the Claimant also acknowledged that he participated in union votes, walked the picket line, and received strike pay for doing so.

[11] The General Division appears to have accepted the Claimant's evidence. Nevertheless, it concluded that section 36(1) applied to the Claimant's work stoppage, regardless of how it came

[2] The precise errors, formally known as grounds of appeal, are listed under section 58(1) of the DESD Act.
[3] This exception to section 36(1) of the EI Act appears in section 36(4) of the EI Act.

about. In addition, it found that the Claimant did not meet the exception in section 36(4) of the EI Act because he had participated, and had a direct interest, in the labour dispute.

[12] The Claimant now argues that the General Division was wrong about two of the dates in paragraph 2 of its decision.[4] While those errors are unfortunate, they did not affect the outcome of the decision. When viewed as a whole, the General Division clearly understood the relevant timeline of events. As a result, those errors do not provide me with a basis for intervening in this case.

[13] The rest of the Claimant's arguments do not point to errors in the General Division decision. Instead, the Claimant is essentially restating points that he made at the General Division level, and asking for further clarifications of the General Division decision. Unfortunately, the Appeal Division is unable to intervene based on this type of argument.

[14] The Claimant also seems to suggest that the General Division made an error by not following the Board of Referees' decision in CUB 51543.

[15] Decisions from the Board of Referees may be persuasive, but the General Division is not obliged to follow them. In any event, the General Division considered that decision, but explained why it did not help the Claimant. Indeed, an important distinction between the two cases is that, in CUB 51543, the claimants were not members of the union that was on strike. Instead, they were members of a different union that chose to voluntarily honour the picket lines.

[16] For all these reasons, I was unable to find that the Claimant's arguments amount to an arguable ground on which the appeal might succeed.

[17] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the decision under appeal. In short, the General Division set out the correct legal test and decided that section 36(1) of the EI Act disentitled the Claimant from receiving EI benefits.

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[4] The Claimant's arguments are set out in document AD1B.

[18] The evidence supports the General Division's decision. In addition, my review of the file did not reveal relevant evidence that the General Division might have ignored or misinterpreted.[5] Finally, the Claimant has not argued that the General Division acted unfairly in any way.

[19] As a result, the Claimant's appeal has no reasonable chance of success.

CONCLUSION

[20] I sympathize with the Claimant's circumstances. Nevertheless, I have concluded that his appeal has no reasonable chance of success. I have no choice, then, but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	C. Z., self-represented

[5] Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 say that I should normally grant leave to appeal if the General Division might have ignored or misinterpreted relevant evidence. This is true even if there are problems with the claimant's written documents.