



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v B. B.*, 2020 SST 549

Tribunal File Number: AD-20-592

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**B. B.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 25, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal. The file is returned to the General Division for reconsideration.

### **OVERVIEW**

[2] The Respondent, B. B. (Claimant), worked as a sailor on a schedule of 35 days of work followed by 35 days of leave. He applied for Employment Insurance benefits during his period of leave because he was not a permanent employee and did not have the assurance of returning to work at the end of his period of leave.

[3] The Commission determined that the Claimant is disentitled from Employment Insurance benefits as of June 3, 2019, because he has not shown that he was unemployed during the periods of leave set out in his employment since they are part of his work schedule. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant was not unemployed as of May 30, 2019, because those weeks correspond to weeks of leave. However, it found that the Claimant was entitled as of July 3, 2019—that is, after the 35 days of leave set out by the employer.

[5] The Commission was granted leave to appeal the General Division decision. It argues that the General Division made an error by failing to consider the Claimant's unemployment status for the entire period after July 3, 2019, and by failing to explain on what evidence it based its finding that the Claimant was unemployed after that date.

[6] The Tribunal allows the Commission's appeal.

## ISSUE

[7] Did the General Division make an error by overlooking some of the evidence and by finding that the Claimant was entitled to benefits starting July 3, 2019?

## ANALYSIS

### **Appeal Division's Mandate**

[8] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.<sup>1</sup>

[9] 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.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of 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.

### **Did the General Division make an error by overlooking some of the evidence and by finding that the Claimant was entitled to benefits starting July 3?**

[11] The Commission argues that the General Division made an error in law by failing to consider the Claimant's unemployment status for the entire period after July 3, 2019, which is part of his benefit period, and by failing to explain on what evidence it based its finding that the Claimant was unemployed after that date.

[12] The Tribunal listened to the recording of the General Division hearing.

[13] At the General Division, the Claimant testified that he had worked for his employer from November 14, 2019, to February 28, 2020.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[14] During the Appeal Division hearing, the Claimant also mentioned that he worked from September 4 to October 10, 2019.

[15] The Tribunal is of the view that the General Division made an error of law when it found that the disentitlement should end on July 3, 2019, by failing to consider the Claimant's unemployment status after July 3, 2019, since that period is part of the benefit period. It also made an error of law by failing to explain on what evidence it based its finding that the Claimant was unemployed after that date.

[16] Since the record is incomplete, the Tribunal is returning the file to the General Division for reconsideration.

### **CONCLUSION**

[17] The appeal is allowed. The file is returned to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	June 23, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Angèle Fricker, Representative for the Appellant B. B., Respondent