



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. T. v Canada Employment Insurance Commission*, 2020 SST 568

Tribunal File Number: AD-20-626

BETWEEN:

**N. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Janet Lew

DATE OF DECISION: June 30, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed. The matter is returned to the General Division so it can decide the matter again.

### **OVERVIEW**

[2] The Appellant, N. T., is appealing the General Division's decision.

[3] The Claimant received honorariums from her volunteer work with the Canadian Federation of Students. The General Division found that the honorariums constituted earnings under the *Employment Insurance Regulations* (Regulations). The General Division also decided that these earnings had to be allocated. This led to an overpayment of Employment Insurance benefits. The Claimant must repay this overpayment.

[4] The Claimant argues that the General Division made a legal error when it determined that the honorariums were earnings. The Respondent, the Canada Employment Insurance Commission (Commission), agrees that the General Division made a legal error. It did not fully analyze whether the honorariums were income "arising out of any employment."

[5] Both parties ask that the appeal be allowed. They ask me to return the matter to the General Division for a redetermination. It is appropriate, given the gaps in the evidence, to return the matter to the General Division for a redetermination.

### **ISSUE**

[6] The issue is: Did the General Division make a legal error when it concluded that honorariums that the Claimant received were earnings?

### **ANALYSIS**

[7] The Claimant argues that the General Division misinterpreted the definition of earnings under section 35(2) of the Regulations. She denies that the honorariums constitute earnings that

are subject to allocation. She denies that she has received any overpayment of Employment Insurance benefits, or that she owes any repayment.

[8] Section 35(2) of the Regulations defines earnings. They include the entire income of a claimant arising out of any employment. Section 35(1) of the Regulations defines employment. It includes the tenure of an office as defined by section 2(1) of the *Canada Pension Plan*.

[9] Under section 2(1) of the *Canada Pension Plan*, “office” is defined as:

... the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes ... any other office the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity ...

[10] The General Division considered whether the Claimant’s volunteer work met the definition of office under section 2(1) of the *Canada Pension Plan*. If the Claimant’s volunteer work fell within section 2(1) of the *Canada Pension Plan*, then she had income arising of her employment. This income would be subject to allocation.

[11] The General Division found that the Claimant’s volunteer work was an “office” under section 2(1) of the *Canada Pension Plan*. The General Division came to this conclusion because the Claimant confirmed that she had been appointed to these positions under a voting process at the annual general meetings.<sup>1</sup> She also confirmed that the money she received was “labelled as an honorarium given directly to her use, as she wanted to.”<sup>2</sup> The General Division also found that the honorariums related to “service performed.”<sup>3</sup>

[12] The General Division cited section 2(1) of the *Canada Pension Plan* and 35(1)(c) of the Regulations. It relied on these sections to conclude that an honorarium paid to a person who is “elected by popular vote or is elected or appointed in a representative capacity,”<sup>4</sup> is earnings.

[13] However, section 2(1) of the *Canada Pension Plan* also requires the position of an individual to be “[entitled] to a fixed or ascertainable stipend or remuneration...” The General

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<sup>1</sup> See General Division decision, at para. 22.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

Division focused on whether the Claimant was elected or appointed in a representative capacity. But, it did not examine whether the Claimant was also entitled to a “fixed or ascertainable stipend or remuneration.”

[14] Simply, the General Division’s analysis was incomplete. It had to decide the entitlement issue first before it could decide whether any payments were earnings.

[15] The General Division concluded that the Claimant had earnings from employment because she was elected to her positions with the student federation.<sup>5</sup> The Commission agrees that before the General Division could decide whether the Claimant had any earnings, it had to also examine whether she was entitled to a fixed or ascertainable stipend or remuneration. It did not do this. The Commission agrees that this represents a legal error.

[16] The Commission argues that “entitlement” under section 2(1) of the *Canada Pension Plan* only requires an applicant to expect that payments will be made and received.<sup>6</sup>

[17] However, the Commission notes that there was no evidence to show what the Claimant’s expectations were regarding any payments. So, the General Division could not have made any conclusions under section 2(1) of the *Canada Pension Plan* anyway.

## **REMEDY**

[18] Under section 59(2) of the *Department of Employment and Social Development Act*, I have the authority to dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration, or confirm, rescind or vary the General Division’s decision in whole or in part.

[19] As the Commission notes, the General Division did not have any evidence that showed what the Claimant’s expectations were regarding any payments. As well, the hearing file does not appear to include the copy of any agreement involving the Claimant.

[20] The Commission asks that I return the matter to the General Division so that it may consider the matter again. The Claimant agrees with the Commission’s request.

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<sup>5</sup> See Commission’s representations to the Social Security Tribunal, dated June 19, 2020, at AD3-3.

<sup>6</sup> *Doblej v Canada (Attorney General)*, 2004 FCA 19, and at AD3-5 to AD3-12.

[21] Given the parties' positions and the gaps in the evidence, it is appropriate to return the matter to the General Division.

**CONCLUSION**

[22] The General Division made a legal error. It decided that the Claimant had earnings from her volunteer positions without determining whether she was entitled to a "fixed or ascertainable stipend or remuneration."

[23] I am allowing the appeal. I am returning the matter to the General Division for a redetermination.

Janet Lew  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	Mariam Gagi (law student) and Yavar Hameed (counsel), Representatives for the Appellant  Josée Lachance, Representative for the Respondent