



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v D. B.*, 2020 SST 574

Tribunal File Number: AD-20-602

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

D. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 3, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, D. B (Claimant), applied for Employment Insurance benefits on June 25, 2017, and June 24, 2018. He started receiving a pension from the Québec Pension Plan (QPP) in January 2018. The Appellant, the Employment Insurance Commission (Commission), determined that the amounts received from the QPP are earnings. Therefore, the Commission allocated the amounts to each of the weeks, which created an overpayment of \$1,440. The Claimant requested a reconsideration of the Commission's decision, but the Commission upheld its initial decision. The Claimant appealed to the General Division.

[3] The General Division found that the pension received from the QPP constitutes earnings. It also found that the allocation of earnings should be made for the weeks of June 24, 2018, to October 27, 2018, as indicated in the Commission's initial decision.

[4] The Commission was granted leave to appeal. It argues that the General Division made an error of law in its interpretation of section 36(14) of the *Employment Insurance Regulations* (EI Regulations). The Claimant was also granted leave to appeal the General Division decision. He argues that the General Division failed to observe a principle of natural justice.

[5] The Tribunal must decide whether the General Division made an error of law and whether it failed to observe a principle of natural justice.

[6] The Tribunal allows the appeal.

ISSUES

[7] Is there an arguable case that the General Division failed to observe a principle of natural justice?

[8] Did the General Division make an error of law in its interpretation of section 36(14) of the EI Regulations?

ANALYSIS

Appeal Division's Mandate

[9] 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*.¹

[10] 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.²

[11] 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.

Is there an arguable case that the General Division failed to observe a principle of natural justice?

Did the General Division make an error of law in its interpretation of section 36(14) of the EI Regulations?

[12] The Claimant argues that the General Division failed to observe a principle of natural justice because, despite his specific request, he never received the information

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

² *Ibid.*

about the overpayment calculation. The Commission acknowledges that the Claimant did not have the information requested before the General Division hearing.

[13] The Tribunal is of the view that there has been a breach of natural justice because the Claimant did not have the opportunity to defend himself properly before the General Division.

[14] The Commission in turn argues that the General Division made an error of law by not finding that the allocation of earnings should be made starting from January 1, 2018—that is, the period for which they were payable, in accordance with section 36(14) of the EI Regulations.

[15] Before the General Division, the Claimant confirmed that he has received a pension of \$1,073.53 per month from the QPP since January 2018. However, the reconsideration decision before the General Division is about the June 24, 2018, claim for benefits only and not the June 25, 2017, one. Yet, the overpayment is calculated based on the two benefit periods. This had the effect of causing confusion about the General Division's jurisdiction to decide on the benefit period before June 24, 2018. Because of this, the General Division therefore did not have the opportunity to decide on the issue as a whole.

[16] For the reasons mentioned above, the Tribunal allows the appeal and sends the file back to the General Division for reconsideration.

CONCLUSION

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

[18] The Tribunal notes the Commission's commitment to make its file ready to be brought before the General Division.

[19] The Tribunal notes the Commission's commitment to provide the Claimant with a full and detailed explanation of the allocation of earnings that gave rise to the overpayment.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Rachel Paquette, Representative for the Appellant D. B., Respondent