



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v Canada Employment Insurance Commission*, 2020 SST 772

Tribunal File Number: GE-20-736

BETWEEN:

**D. S.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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INTERLOCUTORY DECISION BY: Solange Losier

DATE OF INTERLOCUTORY DECISION: July 9, 2020

## OVERVIEW

[1] The Claimant filed a Notice of Appeal to the Social Security Tribunal (Tribunal) appealing the Commission's reconsideration decision on the issue of voluntary leave and availability for work (GD2-1 to GD2-20).

[2] The Commission's reconsideration decision determined that the Claimant voluntarily left his employment without just cause, that he was not available for work and a monetary penalty was reduced to warning letter (GD2-19 to GD2-20; GD3B-64 to GD3B-65).<sup>1</sup>

[3] The merit hearing was scheduled for March 31, 2020 (GD1; GD8). At the hearing, the Claimant raised constitutional arguments based on the *Canadian Charter of Rights and Freedoms* (Charter).<sup>2</sup> As a result, the hearing was adjourned and a pre-hearing teleconference was held with another Tribunal Member on April 14, 2020 (GD12A-1 to GD12A-4). The Claimant, his representative and the Commission's representative attended to discuss next steps and timelines for filing his notice of constitutional issue (GD15; GD16; GD17; GD18).<sup>3</sup>

## ISSUE

[4] I must decide if the Claimant's appeal raises a constitutional issue that meets the requirements of subsection 20(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations).

## ANALYSIS

[5] The Tribunal cannot decide Charter issues without a proper understanding of the factual context which led to the alleged breach or infringement of a claimant's rights and a focus on the specific part of the legislation which caused it.<sup>4</sup> For this reason, claimants who intend to raise Charter issues in their appeals have to file a notice with the Tribunal stating the section of the

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<sup>1</sup> The Commission's reconsideration decision dated February 5, 2020.

<sup>2</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11.

<sup>3</sup> Subsection 20(1)(a) of the *Social Security Tribunal Regulations*

<sup>4</sup> The Supreme Court of Canada explained this general principle in *Mackay v Manitoba*, [1989] 2 SCR 357.

legislation at issue and brief submissions in support of the issue raised.<sup>5</sup> If the Tribunal is satisfied that a claimant has laid this foundation, they then must then file a more detailed document (the “record”) which includes the evidence, submissions, and authorities that they intend to rely on.

[6] Subsection 20(1)(a) of the SST Regulations does not impose an unduly high burden on claimants who seek to challenge the constitutionality of some aspect of benefits-conferring legislation.<sup>6</sup> However, the Tribunal must reject a claimant’s notice if they do not identify the law they intend to put at issue or if they do not outline a constitutional argument.<sup>7</sup> It is not sufficient for the Claimant to make indirect generalized references to the Charter without further clarification.<sup>8</sup> A claimant’s submissions must be sufficiently specific to permit a decision-maker to at least see the outline of a Charter argument.<sup>9</sup>

#### **The Claimant’s Amended Notice of Appeal and section 20 notice of SST Regulations**

[7] On May 21, 2020, the Claimant filed a combined Amended Notice of Appeal and “section 20 notice” to the Tribunal (GD19-1 to GD19-75).<sup>10</sup>

[8] On his section 20 notice form, the Claimant wrote that section 125 of the *Employment Insurance Act* and section 32 of the *Employment Insurance Regulations* infringe the Charter, specifically sections 1, 7, 10, 11, 15, 24 (GD19-75).

[9] To support his position, the Claimant references the entire contents of his Amended Notice of Appeal dated May 21, 2020 (GD19-1 to GD19-75). He alleges that the process followed by the Commission included specific acts and omissions that offend the Charter sections noted above.

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<sup>5</sup> Subsection 20(1)(a) of the *Social Security Tribunal Regulations*.

<sup>6</sup> *R. S. v Minister of Employment and Social Development*, 2017 CanLII 84970.

<sup>7</sup> *Canada (Attorney General) v Stewart*, 2018 FC 768.

<sup>8</sup> *Langlois v Canada (Attorney General)*, 2018 FC 1108.

<sup>9</sup> *Law v. Canada (Minister of Employment and Immigration)* [1999] 1. S.C.R. 497.

<sup>10</sup> Section 113 of the *Employment Insurance Act*.

### **The Commission's response**

[10] In response to the Claimant's Amended Notice of Appeal and section 20 notice, the Commission submits that the legal and factual issues are unclear and not sufficiently precise to allow them to understand the arguments or respond by the deadline (GD3-20 to GD3-28).<sup>11</sup>

[11] The Commission also submits that there are jurisdictional issues and the provision under issue, specifically section 125 (14) of the *Employment Insurance Act* is not relevant because it is not a criminal matter.

### **Jurisdictional issues**

[12] I find that the Claimant's Amended Notice of Appeal includes new issues that the Tribunal does not have jurisdiction to address. I cannot consider these new issues because there is no reconsideration decision made by the Commission on the issue earnings, allocation, misrepresentation and violation.<sup>12</sup>

[13] My jurisdiction comes from the legislation<sup>13</sup> which provides that "a party who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*".

[14] The Claimant submits that the Tribunal can vary or dispense with the requirement to obtain a reconsideration decision on the new issues raised. However, I disagree because my jurisdiction is limited to the issues that are properly before the Tribunal.

[15] I find that the only issues that are properly before the Tribunal are the following: voluntary leave, availability for work and a monetary penalty that was reduced to a warning letter (GD3B-64 to GD3B-65). The Commission has rendered a reconsideration decision as

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<sup>11</sup> The deadline was extended to July 6, 2020 (GD18-1 to GD18-3).

<sup>12</sup> The Commission has only made an initial decision on the issues of earnings, allocation, misrepresentation and violation<sup>12</sup> (GD3B-53 to GD3B-55). The monetary penalty was changed to a warning letter on reconsideration (GD3B-64 to GD3B-65).

<sup>13</sup> Subsection 113 of the *Employment Insurance Act*.

required under section 112 of the *Employment Insurance Act* and the Claimant appealed the issue of voluntary leave and availability for work to the Tribunal (GD2-3).

[16] I agree that the Tribunal must conduct proceedings informally and quickly as the circumstances and considerations of fairness and natural justice permit, and may, if there are special circumstances, vary a provision of the SST.<sup>14</sup> However, I cannot vary or dispense with jurisdiction because it would be an error of law.

[17] The Commission has already noted that they will consider allowing the Claimant extra time to request reconsideration if he has a reasonable explanation for the delay and can demonstrate a continuing intention to request a reconsideration (GD20-1).<sup>15</sup>

[18] If the Claimant chooses to proceed and request a reconsideration decision on the issue of earnings, allocation, misrepresentation and violation, then this file will be put in abeyance until a reconsideration decision had been made. If the Claimant is unsatisfied with the reconsideration decision, then it can be appealed to the Tribunal and the files may be joined.<sup>16</sup>

#### **Subsection 20(1)(a) of the SST Regulations - Notice of Constitutional Argument**

[19] I am deferring my decision on whether the Claimant has complied with subsection 20(1)(a) of the SST Regulations until all issues are either properly before the Tribunal, or until the Claimant advises that he is prepared to proceed only on the issues of voluntary leave, availability for work and a monetary penalty that was reduced to a warning letter.

#### **CONCLUSION**

[20] The Claimant must advise the Tribunal by July 31, 2020 whether he is proceeding to request a reconsideration decision from the Commission on the new issues he raised in his Amended Notice of Appeal.

Solange Losier  
Member, General Division – Employment Insurance

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<sup>14</sup> Subsection 3(1) of the *Social Security Tribunal Regulations*.

<sup>15</sup> Subsection 112(1) of the *Employment Insurance Act*; Subsection 1(1) of the *Reconsideration Request Regulations*.

<sup>16</sup> Subsection 13 of the *Social Security Tribunal Regulations*.