



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *BB v Canada Employment Insurance Commission*, 2020 SST 1107

Tribunal File Number: GE-20-1681

BETWEEN:

**B. B.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Josée Langlois

HEARD ON: August 12, 2020

DATE OF DECISION: August 13, 2020

## **DECISION**

[1] The appeal is dismissed.

[2] I find that the Appellant was not unemployed as of June 3, 2019, because his leave periods were part of his work schedule.

## **OVERVIEW**

[3] The Appellant works as a deckhand at X. He does not have permanent worker status, but his work schedule calls for 35 days of work followed by 35 days of leave.<sup>1</sup>

[4] On November 19, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay him benefits as of June 3, 2019, because the period when the Appellant does not work is part of his work schedule.

[5] The Appellant challenged this decision before the Tribunal. On March 12, 2020, the Tribunal's General Division found that the Appellant was not unemployed on May 30, 2019, but that he was unemployed after a leave period ending July 3, 2019.

[6] The Commission challenged this decision before the Tribunal's Appeal Division. It argued that the Appellant said that he had worked from June 23, 2019, to July 27, 2019, and from September 8, 2019, to October 19, 2019, and that the employment relationship was not severed.

[7] The Tribunal's Appeal Division found that the General Division had made an error in law when it found that the disentitlement period had to end on July 3, 2019, because it had not looked at the Appellant's alternating work and leave periods for his entire benefit period. The Appeal Division returned the file to the General Division so that it could be reconsidered.

[8] I have to determine whether the Appellant was unemployed as of June 3, 2019.

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<sup>1</sup> Appellant's statement at GD3-32.

## ISSUE

[9] Was the Appellant unemployed as of June 3, 2019?

## ANALYSIS

### **Was the Appellant unemployed as of June 3, 2019?**

[10] When a worker qualifies under the Act, a benefit period can be established, and benefits can be paid for each week of unemployment that falls in the benefit period.<sup>2</sup>

[11] A week of unemployment for a claimant is a week in which the claimant does not work a full working week.<sup>3</sup>

[12] A scheduled period of leave must be considered as a full working week in the case where a work contract provides for periods of leave for people who regularly work a higher than normal number of hours.<sup>4</sup>

[13] The Commission submits that, after June 3, 2019, the Appellant was on leave because he went back to work on June 23, 2019. It relies on the Appellant's statements and indicates that his work periods are determined in the collective agreement.<sup>5</sup> The Appellant's job is temporary, but the job is guaranteed as long as the boat is making the X/X trip.

[14] The Commission argues that the Appellant receives higher earnings because of the number of hours worked during his work periods. It submits that the Appellant was called back after each leave period and that he said that he had worked from June 23, 2019, to July 27, 2019, and from September 8, 2019, to October 19, 2019.

[15] At the hearing, the Appellant confirmed his work periods. He also indicated that he had agreed to work on the boat for three months and three weeks from November 2019 to

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<sup>2</sup> Sections 7 and 9 of the *Employment Insurance Act* (Act).

<sup>3</sup> Section 11(1) of the Act.

<sup>4</sup> Section 11(4) of the Act.

<sup>5</sup> Appellant's statement at GD3-34.

February 28, 2020. After a leave period, the Appellant went back to work for two months and two weeks from March or April 2020 to June 18, 2020.

[16] The Commission's file shows that the employer issued a Record of Employment indicating that the Appellant had stopped working on May 28, 2019, because of a shortage of work. The Record of Employment states that the return-to-work date is unknown.

[17] When he applied for benefits on June 4, 2019, the Appellant said that he would go back to work for the employer, but that the date was unknown.<sup>6</sup> He explained at the hearing that, after a four-month leave period, the employer called him back. He then worked on the boat for a 35-day period, from June 23, 2019, to July 27, 2019. He explained that the normal schedule on the boat was 35 days followed by 35 days of leave. Because he does not have permanent employee status, he argues that he is never certain whether he will go back to work after his leave period. For example, he explains that, in November 2019, he agreed to work on the boat for an extended period, and again in March 2020.

[18] The Appellant's job is governed by the collective agreement concluded between the X and his employer X.<sup>7</sup>

[19] As section 9 of this agreement shows, and as the Appellant explained at the hearing, shifts are assigned based on seniority. The collective agreement indicates that an employee is not on the employees' seniority list until they have completed 120 days of work for the company. During this 120-day probationary period, an employee can be dismissed without being able to turn to the union. The Appellant confirmed at the hearing that he was on the employees' seniority list and that the head of the union assigns the employees their shifts.

[20] The collective agreement also states that all employees, including probationary employees, have to accept the work schedule alternating between work and leave periods. It states that this schedule can be modified at the employer's discretion.

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<sup>6</sup> Appellant's statement at GD3-7.

<sup>7</sup> GD3-36 to GD3-89.

[21] The Appellant submits that his work schedule is not regular and that, when he finishes a work period, he does not know his return-to-work date. He argues that, for this reason, the union representative told him that he could receive benefits during his leave periods.

[22] Despite this, the Commission's file shows that there is no severance of the employment relationship during the Appellant's leave periods. On November 8, 2019, the Appellant explained to the Commission agent that his work schedule was made up of 35 days of work followed by 35 days of leave and that this was a normal schedule for employees working on boats. The Appellant indicated that the work periods were governed by the collective agreement and that the employer called him back a few days before the next departure. He explained at the hearing that, because he has experience and is a good worker, the employer always calls him back.<sup>8</sup>

[23] When contacted by the Commission, the manager confirmed that the Appellant's schedule alternated between 35 days of work and 35 days of leave. He explained that the Appellant had a temporary position because he works on the boat trips between X and X. For example, if the boat had to go to the United States, the Appellant would not go on the trip. He confirmed that the Appellant's job was unionized.

[24] The Appellant's benefit period was established on June 6, 2019. The facts show that the Appellant worked until May 28, 2019. After a leave period, he worked from June 23, 2019, to July 27, 2019. After a leave period, he worked from September 8, 2019, to October 19, 2019. After a leave period, he worked on the boat for three months and three weeks, from November 12, 2019, to February 28, 2020. At that time, the employer issued a new Record of Employment. The Appellant testified that, after a leave period, he worked from March or April 2020 to June 18, 2020.

[25] Even though I understand that, while he is on leave, the Appellant does not know the exact return-to-work date, there is no severance of the employment relationship during the leave periods. They are scheduled after a long period of work on the boat to give the workers a break.

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<sup>8</sup> Appellant's statement at GD3-34.

[26] Only workers whose work is interrupted can receive temporary benefits, and a worker who is on leave for overtime already worked does not suffer a loss of income, regardless of whether they receive pay during this leave. During a leave period, the worker's work has not been interrupted because they keep the employment relationship with their employer.<sup>9</sup>

[27] The Commission's file shows that the leave periods are part of the Appellant's work schedule and that, during these leave periods, the employment relationship with the employer remains intact. When he applied for benefits on June 4, 2019, the Appellant even indicated that he would return to work for his employer. The Appellant is represented by a union that is responsible for assigning shifts.

[28] Given the evidence presented, I am of the view that the Appellant was not unemployed during his leave periods after June 3, 2019.

[29] The Appellant does not stop working because of a shortage of work each time he is on leave. When he finishes a work period, the relationship with the employer remains. The Appellant's leave periods are part of his work schedule and, each time, the Appellant is reinstated to his job for the next work period. Even though the Appellant has temporary employee status because he works on a boat making the X/X trip, the fact is that, when he finishes a work period, the employment relationship remains intact.

[30] For these reasons, I am of the view that the Appellant was employed and not unemployed for every week of leave during his benefit period.

[31] I heard the Appellant's arguments and, because this situation resulted in an overpayment of benefits, I understand his disappointment. Unfortunately, I cannot exempt him from the application of the Act.

[32] I find that the Appellant was not unemployed as of June 3, 2019, because the employment relationship was not severed during his leave periods.

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<sup>9</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242.

**CONCLUSION**

[33] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section

HEARD ON:	August 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	B. B., Appellant