



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *NT v Canada Employment Insurance Commission*, 2020 SST 1053

Tribunal File Number: GE-20-1702

BETWEEN:

**N. T.**

Claimant

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: Gary Conrad

HEARD ON: September 3, 2020

DATE OF DECISION: September 5, 2020

## **DECISION**

[1] The appeal is allowed. The Claimant's positions of Deputy Chairperson and International Student Commissioner are not employment, therefore, the payments she received from those two positions are not income arising from employment and thus are not earnings.

## **OVERVIEW**

[2] The Claimant held two positions, the Deputy Chairperson for the National Graduate Caucus for the Canadian Federation of Students, and International Student Commissioner. She received a payment for each of the positions. One payment of \$6,300.00 for her role as Deputy Chairperson and one payment of \$250.00 for her role as International Student Commissioner.

[3] The Claimant applied for Employment Insurance (EI) benefits and told the Commission about the payments she received for her role as Deputy Chairperson and International Student Commissioner.

[4] The Commission initially determined the \$6,300.00 and the \$250.00 were earnings and allocated the payments resulting in the Claimant owing the Commission money.

[5] The Claimant requested the Commission reconsider their decision that her payments were earnings.

[6] After reviewing their decision the Commission did alter it, but not in the way the Claimant wished. They upheld the determination of the \$6,300.00 payment as earnings and its allocation, and upheld the \$250.00 payment as earnings but changed the way it was allocated.

[7] The Claimant then appealed to the General Division of the Social Security Tribunal (Tribunal) arguing that her payments were not earnings as her position as Deputy Chairperson does not meet the definition for employment and earnings must come from employment; since her position was not employment, the payments cannot be earnings.

[8] The Claimant was not successful at the General Division. The General Division determined the Claimant's positions were employment and thus the payments were earnings as they arose from her positions of Deputy Chairperson and International Student Commissioner.

The General Division also determined the Commission had correctly allocated the Claimant's payments.

[9] The Claimant then appealed the decision of the General Division to the Appeal Division of the Tribunal.

[10] The Appeal Division determined the General Division had erred in law when they made the determination the Claimant's positions were employment as the General Division failed to consider all the factors necessary under the law to make that determination, specifically whether the Claimant was entitled to any fixed or ascertainable stipend or remuneration<sup>1</sup>.

[11] The Appeal Division referred the matter back to the General Division to redetermine the matter.

## **ISSUE**

[12] I have to decide:

1. Are the payments the Claimant received earnings?
2. If they are earnings, did the Commission allocate them correctly?

## **ANALYSIS**

### **1. Are the payments the Claimant received earnings?**

[13] No, the payments are not earnings, as the Claimant's positions were not employment. As her positions were not employment that means the payments were not income arising from employment and therefore are not earnings. My reasons for deciding this are explained below.

[14] The law says that earnings are the entire income of the Claimant arising out of any employment.<sup>2</sup> The law defines both "income" and "employment." "Income" includes any income the Claimant did or will get from an employer or any other person, whether it is in the

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<sup>1</sup> *N. T. v Canada Employment Insurance Commission*, 2020 SST 568

<sup>2</sup> Subsection 35(2) of the *Employment Insurance Regulations*.

form of money or something else.<sup>3</sup> “Employment” includes any employment under any kind of contract of service or employment.<sup>4</sup>

[15] The Commission submits the payments the Claimant received of \$6,300.00 and \$250.00 are earnings.

[16] The Commission submits the Claimant had an implied contract of service in her position as Deputy Chairperson. The Commission submits employment includes any employment under any kind of contract.

[17] The Commission submits the Claimant was serving as the Deputy Chairperson and certain duties and services were provided by the Claimant and she received honorariums for the services provided.

[18] The Claimant testified that in the case of both the Deputy Chairperson position and the International Student Commissioner position they were volunteer positions. The Claimant testified that both positions were selected through an election process. She was at a meeting of the Canadian Federation of Students and it was stated they were looking for volunteers for those positions. The Claimant says she was the only person who volunteered, so she was given the position by acclamation, but there would have been a vote if someone else had thrown their hat into the ring in order to give everyone a fair chance at the position.

[19] The Claimant testified that she did not sign any contract or documents for either position, nor was she ever told what expectations they had for her or any duties she had to do for either position. The Claimant said she was never told to record her hours or submit any documentation about what she was doing or that she had anyone she had to report to regarding her activities in either position.

[20] The Claimant testified it was her understanding she would do what she could when her schedule allowed it and there was no penalty for not doing something since there were no set expectations on what she had to do for either position.

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<sup>3</sup> Subsection 35(1) of the *Employment Insurance Regulations*.

<sup>4</sup> Subsection 35(1) of the *Employment Insurance Regulations*.

[21] The Claimant says when she was given the roles she was not entirely sure what she was going to do in the positions. In a conference call she had with the Chairperson regarding her role as Deputy Chairperson, she says the Chairperson told her what the Chairperson was doing and the Claimant asked if she could help in any way. The Chairperson told the Claimant if she wanted to she could look up some mental health service providers that could help students.

[22] The Claimant says in her time as Deputy Chair she put in about 10 hours of her time towards the position, being in it for approximately a year and approximately 10-15 hours of her time towards the position of International Student Commissioner, which she also held for approximately a year.

[23] The Claimant testified she was never told there was any money tied to either role.

[24] The Claimant says it was not until near the end of her time as Deputy Chairperson that she found out there was a payment she could obtain for it as the Secretary Treasurer mentioned it to her when speaking to her about the upcoming General Meeting of the Canadian Federation of Students. The Claimant says she asked if she could get the payment at the General Meeting and was told she could be given a cheque there. The Claimant says she was never told of the amount of the payment or that she had to submit anything on her end to get the payment.

[25] The Claimant says that due to the business of getting ready for the General Meeting the Secretary Treasurer neglected to prepare the cheque, so it was not ready for her at the General Meeting. The Claimant says in March 2019, she emailed the Secretary Treasurer to ask about the cheque<sup>5</sup>. The Claimant says she might have never gotten the payment had she not sent the follow-up email.

[26] The Claimant testified that in the case of both payments the, \$6,300.00 and the \$250.00 she was never aware she was going to get them when she took the positions.

[27] The Claimant's Representative submits the two payments received by the Claimant of \$6,300.00 and \$250.00, are not earnings arising out of employment of an office. The Representative submits the payments do not meet the conditions to be earnings as they were not

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<sup>5</sup> RGD3-49

fixed or determined stipends comparable to earnings but instead were gifts given to the Claimant<sup>6</sup>.

[28] The Claimant's Representative submits that as per CUB 57001, all the circumstances surrounding the payments must be examined to determine whether the payments are truly gifts<sup>7</sup> and in the Claimant's case looking at all of those circumstances shows the payments are gifts.

[29] The Claimant's Representative submits there is no indication the payments are compensation for hours worked as there is no accounting of hours. The Representative submits the Claimant worked discretionarily and the hours worked of approximately 10 hours as Deputy Chairperson is out of proportion to the amount of the payment to the Claimant of \$6,300.00. Further, the Claimant was not aware there was any payment and had to seek it out; the payments were not specific to any performance or hours worked; and there was no contractual meeting of the minds<sup>8</sup>.

[30] The Claimant's Representative further submits the payments were not fixed or ascertainable remuneration as required for the Claimant's position to be determined as an 'office' under the law. The Representative submits for the payments to have been fixed or determined the Claimant had to have known about them before she took the position and could not have been something derived after the fact; in her situation she could not have known in advance the amount of remuneration she would get for the positions<sup>9</sup>.

[31] I find there is insufficient evidence to show the Claimant ever had any written contract of employment or any written expectations for work duties. I note no party has argued as such, thus I find she was not working under a written i.e. express contract of employment or service.

[32] I further find I disagree with the submission of the Commission the Claimant's positions were employment as there was an implied contract of employment. I find there is insufficient evidence to support an implied contract. I accept the Claimant's testimony that her actions in the positions were entirely discretionary, as she was not given any assigned duties, nor any

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<sup>6</sup> RGD3-52

<sup>7</sup> RGD3-54

<sup>8</sup> RGD3-56

<sup>9</sup> RGD3-57

expectations as to hours she must work or tasks to perform; I find there is insufficient evidence to support otherwise. I further highlight her testimony she was not even sure what she was to be doing in the positions during her conference call with the Chairperson to support a lack of defined duties or expectations.

[33] I find that in a situation such as the Claimant's, that being a volunteer position, I note no party has disputed the position was volunteer, without any assigned duties or expectations, with totally discretionary work hours and activities, there was no implied contract of employment or service.

[34] However, employment also includes the tenure of an office,<sup>10</sup> an 'office' being defined in part as the position of an individual entitling him to a fixed or ascertainable stipend or remuneration elected by popular vote or is elected and appointed in a representative capacity<sup>11</sup>.

[35] I find the Claimant was elected to both positions, those of Deputy Chairperson and International Student Commissioner, as she testified people put their name forward who wanted the position and voting was the process that was used to select someone, although she had no opposition, thus it was an acclamation, the process of selection was still by popular vote, it was just that there was only one candidate to vote for.

[36] I further find the Claimant's positions, those of Deputy Chairperson and International Student Commissioner do not meet the definition of 'office' as there was no fixed or ascertainable stipend or remuneration.

[37] I find there was no fixed remuneration or stipend for either of the Claimant's positions as there is insufficient evidence to support there was ever set out information showing what amount would be paid to the Claimant either in total or per actions performed or hours worked either before, or at the time, she accepted the positions or to demonstrate the amounts paid to her were anything other than arbitrary.

[38] In considering the case law submitted by the Claimant's Representative I find the reasoning set forth in *Real Estate Council of Alberta v M.N.R.*, 2011 TCC 5, on a 'fixed or

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<sup>10</sup> Paragraph 35(1)(c) of the *Employment Insurance Regulations*.

<sup>11</sup> Subsection 2(1) of the *Canada Pension Plan*

ascertainable stipend or remuneration' persuasive where it states "...when remuneration is not fixed then the ascertainable aspect must be a priori, meaning formed or conceived beforehand, relating to or derived by reasoning from a self-evident proposition, and not a posteriori, meaning relating to or derived by reasoning from observed facts."<sup>12</sup>

[39] I find there is insufficient evidence to support there was any information related to a stipend or remuneration for either position available to the Claimant or told to the Claimant before, or at the time, she accepted the positions; no payment schedule, or reimbursement information or even information there was money attached to the positions at all, that would allow her to ascertain what her remuneration would be; nothing that would have allowed her to know or determine the amount of her payment in advance of taking the positions.

[40] I find that as the Claimant's positions of Deputy Chairperson and International Student Commissioner did not have a fixed or ascertainable stipend or remuneration the positions do not meet the definition of 'office' under the law<sup>13</sup>.

[41] As I have previously found the Claimant did not have a contract or implied contract of employment and have found the positions do not meet the definition of 'office' I therefore find her positions are not employment under the law<sup>14</sup>.

[42] Since her positions are not employment, then the payments of \$6,300.00 and \$250.00 are not earnings as earnings are income arising out of employment<sup>15</sup>, if there is no employment the payments cannot be income arising from employment.

## **2. Did the Commission allocate the earnings correctly?**

[43] I find I do not need to consider this as only earnings are allocated under the law<sup>16</sup> and I have determined the payments to the Claimant are not earnings.

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<sup>12</sup> *Real Estate Council of Alberta v M.N.R.*, 2011 TCC 5, para. 41

<sup>13</sup> Subsection 2(1) of the *Canada Pension Plan*.

<sup>14</sup> Subsection 35(1) of the *Employment Insurance Regulations*.

<sup>15</sup> Subsection 35(2) of the *Employment Insurance Regulations*

<sup>16</sup> Section 36 of the *Employment Insurance Regulations*



**CONCLUSION**

[44] The appeal is allowed. I find the Claimant’s positions of Deputy Chairperson and International Student Commissioner are not employment as she did not have a contract of employment or an implied contract of employment and the positions do not meet the definition of ‘office’ under the law as her positions did not have fixed or ascertainable stipends or remuneration.

[45] As her positions are not employment, the payments arising from those positions of \$6,300.00 and \$250.00, are therefore not earnings, as earnings arise from employment, and since only earnings are allocated under the law, the payments cannot be allocated.

Gary Conrad

Member, General Division - Employment Insurance Section

HEARD ON:	September 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. T., Claimant  Yavar Hameed, Representative for the Claimant