



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *GB v Canada Employment Insurance Commission*, 2020 SST 1012

Tribunal File Number: GE-20-2023

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: October 29, 2020

DATE OF DECISION: November 6, 2020

Decision

[1] The appeal is dismissed. I find that the decision of the Canada Employment Insurance Commission (Commission) to pay the Appellant Employment Insurance benefits at the weekly rate set out for the Employment Insurance Emergency Response Benefit (EI ERB)¹ is justified.²

Overview

[2] From November 20, 1993, to May 1, 2020, inclusive, the Appellant worked as a [translation] “long-haul driver” for the employer X (X or employer) and stopped working for it for medical reasons.

[3] On May 1, 2020, he made an initial claim for benefits (sickness benefits). A benefit period was established effective May 3, 2020.

[4] On October 1, 2020, following a reconsideration request, the Commission informed him that it was upholding the decision made on June 1, 2020, regarding his weekly benefit rate.³

[5] The Commission says that claims for regular or sickness benefits for which the start date falls in the period from March 15, 2020, to September 26, 2020, inclusive, are considered claims for benefits under the EI ERB. It explains that the rate or the amount paid for this type of benefit, that is, \$500.00 per week, cannot be changed.⁴

[6] The Appellant says that he applied for Employment Insurance sickness benefits (special benefits). Instead, he received the EI ERB. According to him, as a result, he received a lower amount of benefits than if he had been paid the sickness benefits (special benefits) he had claimed. He argues that he was penalized. He points out that he stopped working for medical reasons, not because of the COVID-19 pandemic.⁵ On October 12, 2020, the Appellant

¹ This type of benefit is also known as the Canada Emergency Response Benefit (CERB).

² See Part VIII.4 of the *Employment Insurance Act* (Act).

³ See GD2-2, GD3-21, and GD3-22.

⁴ See GD4-2.

⁵ Coronavirus disease 2019.

challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[7] I must determine whether the Commission's decision to pay the Appellant the EI ERB instead of sickness benefits is justified.⁶

Analysis

[8] Because of COVID-19, changes were made to the *Employment Insurance Act*, which included the creation of the EI ERB. People can become EI ERB claimants for different reasons. This type of benefit is not just for those who have stopped working for reasons related to COVID-19.

[9] A claimant can receive the EI ERB if, for example, their benefit period could have been established for sickness benefits (special benefits), among other things, during the period from March 15, 2020, to September 26, 2020, inclusive.⁷ However, during that period, no benefit period is to be established with respect to sickness benefits (special benefits).⁸

[10] The amount of the EI ERB is \$500.00 per week.⁹

[11] The Appellant says that he made a claim for Employment Insurance benefits to receive sickness benefits (special benefits). Following this claim, he received the EI ERB from the week beginning May 3, 2020, until he returned to work for his employer on October 5, 2020.

[12] The Appellant explains that he objects to receiving the EI ERB, since he made a claim to get sickness benefits (special benefits). He wants to receive sickness benefits (special benefits) at the related weekly benefit rate (ex., 55% of weekly insurable earnings).¹⁰

⁶ See Part VIII.4 of the Act.

⁷ See section 153.5(2)(b) of the Act.

⁸ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

⁹ See section 153.10(1) of Part VIII.4 of the Act.

¹⁰ See section 14(1) of the Act.

[13] The Appellant disagrees with the fact that the amount of benefits he received was established at \$500.00 per week, given that this is the amount in place for the EI ERB.¹¹

[14] The Appellant argues that, if he had been paid sickness benefits (special benefits), he would have received \$573.00 on a weekly basis. He estimates that this amounts to a weekly shortfall of \$73.00.¹²

[15] The Appellant submits that he was penalized by getting the EI ERB instead of sickness benefits.¹³

[16] The Appellant notes that, if he had received sickness benefits, the tax would have been paid when the amounts were paid.

[17] The Commission, in turn, indicates that the Appellant meets the conditions to qualify for the EI ERB.¹⁴

[18] The Commission explains that the Appellant's claim for benefits must be established for the EI ERB rather than sickness benefits (special benefits).¹⁵

[19] The Commission specifies that the amount of the EI ERB for a week is \$500.00 and that this is a fixed amount that cannot be changed.¹⁶

[20] Despite the Appellant's arguments in favour of paying him sickness benefits, the provisions of the Act related to the COVID-19 pandemic do not allow him to receive such benefits.¹⁷

[21] It is not disputed that the Appellant could have had a benefit period established for sickness benefits as of May 3, 2020, which falls in the period from March 15, 2020, to

¹¹ See GD2-8, GD2-10, and GD3-18 to GD3-20.

¹² See GD2-8, GD2-10, GD3-18, and GD3-19.

¹³ See GD3-18 and GD3-19.

¹⁴ See GD4-2.

¹⁵ See GD4-2.

¹⁶ See GD4-2.

¹⁷ See section 153.8(5) of the Act.

September 26, 2020, inclusive. As a result, the Appellant is a “claimant” for the purposes of the EI ERB.¹⁸

[22] This means that the Appellant cannot have a benefit period established for sickness benefits (special benefits).¹⁹

[23] The Act gives him no choice. The Appellant cannot receive sickness benefits (special benefits).²⁰

[24] The amount the Appellant can receive under the Employment Insurance Emergency Response Benefit is \$500.00 per week.²¹

[25] This amount cannot be established using the weekly benefit rate specified in the part of the Act that sets out the rate for sickness benefits,²² even if, with this rate, the calculation of this amount yields a higher result than with the EI ERB.

[26] In short, the benefits to which the Appellant is entitled are those under the EI ERB, at the established rate of \$500.00 per week. The Appellant cannot qualify for sickness benefits (special benefits).

[27] While sympathetic to the Appellant’s case, the Federal Court of Appeal (Court) tells us that adjudicators, which include the Tribunal, are not permitted to rewrite legislation or to interpret it in a manner that is contrary to its plain meaning.²³

¹⁸ See section 153.5(2) of the Act.

¹⁹ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

²⁰ See section 21 of the Act as well as sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

²¹ See section 153.10(1) of Part VIII.4 of the Act.

²² See section 14(1) of the Act.

²³ The Court established this principle in *Knee*, 2011 FCA 301.

Conclusion

[28] I find that the Commission's decision to pay the Appellant Employment Insurance benefits at the weekly rate set out for the EI ERB is justified.

[29] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	October 29, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	G. B., Appellant