



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RK v Canada Employment Insurance Commission*, 2020 SST 1024

Tribunal File Number: AD-20-709

BETWEEN:

R. K.

Appellant
(Claimant)

and

Canada Employment Insurance Commission

Respondent
(Commission)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: December 8, 2020

DECISION AND REASONS

DECISION

[1] R. K. is the Claimant in this case. I am allowing his appeal. The Commission overpaid the Claimant's Employment Insurance (EI) benefits by \$1,361. However, I am unable to determine the precise amount by which the Claimant's debt has since been reduced.

OVERVIEW

[2] After losing his job, the Claimant applied for EI regular benefits. The Commission determined that he was entitled to 19 weeks of benefits. The Claimant has never challenged that decision.

[3] After the Claimant started receiving benefits, his former employer paid him some additional monies, which he promptly reported to the Commission. The Commission decided that all those monies were earnings that affected the Claimant's EI benefits. The law describes how the Commission accounts for this type of earnings.¹ It is known as an allocation of earnings.

[4] The Commission allocated the Claimant's earnings and told him that it would "reset his claim".² So, the Commission asked the Claimant to repay the three weeks of benefits that it had already paid him and allowed him to claim a new 19 weeks of benefits. Based on this allocation, the Commission sent the Claimant a notice of debt for \$1,361.

[5] The Claimant asked the Commission to reconsider its decision. He argued that half of the monies that he had received from his former employer—settlement funds for relinquishing his right to reinstatement—were not earnings and that the Commission should remove that amount from the allocation. The Commission agreed and created a second notice of debt for \$562.

[6] The second notice of debt has caused much confusion. The Commission did not send the second notice of debt to the Claimant in a timely way, nor did it explain its relationship to the

¹ Section 35 of the *Employment Insurance Regulations* (EI Regulations) defines earnings. Section 36 of the EI Regulations describes how earnings are allocated.

² These are the words the Claimant used to describe his conversation with the Commission.

first notice of debt. This has led the Claimant to believe that the Commission never properly implemented its reconsideration decision.

[7] The Claimant appealed the amount of his debt to the General Division. The General Division tweaked several parts of the allocation but did not calculate the final amount of the Claimant's debt.

[8] The Claimant argues that the General Division acted unfairly, went beyond its powers, and failed to answer the main question in his appeal. For its part, the Commission argues that the General Division decision is legally sound and that there are no reasons for me to intervene in this case.

[9] I agree that the General Division made errors in this case. However, I have also concluded that the Commission overpaid the Claimant's EI benefits by \$1,361. The parties seem to agree that the amount of the Claimant's debt has since been reduced, but I am unable to determine by how much.

ISSUES

[10] I can intervene in this case only if the General Division made a relevant error. Here, I focused on whether the General Division:³

- a) provided a fair process; and
- b) decided all the questions that it had to decide, without deciding questions that it had no power to decide.

[11] As part of my decision, I considered the following issues:

- a) Are there documents that I cannot consider?
- b) Did the General Division commit relevant errors by ignoring the main issues that the Claimant had raised?

³ The precise errors, formally known as grounds of appeal, are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

- c) If so, what is the best way of fixing the General Division's error?
- d) By what amount did the Commission overpay the Claimant's EI benefits?
- e) Can I determine the remaining amount of the Claimant's debt?

ANALYSIS

Issue 1: There are documents that I cannot consider.

[12] As part of this decision, I did not consider:

- a) documents specifically created by the parties for the purpose of a case conference;
and
- b) new evidence that the Claimant submitted to the Appeal Division.

[13] The parties agreed that, as part of this decision, I should not consider documents that they had specifically submitted for the purpose of a case conference.⁴ I respected the parties' agreement and did not consider those documents when reaching this decision.

[14] I am also unable to consider any new evidence that the Claimant filed with the Appeal Division. New evidence is evidence that the General Division did not have in front of it when it made its decision. Examples of the Claimant's new evidence include updated notices and account statements,⁵ along with some internal communications between the Commission's agents.⁶

[15] The law limits the powers of the Appeal Division.⁷ It is not a place for appellants to reargue their case, filling in gaps in the evidence along the way. Instead, the Appeal Division's focus is on whether the General Division made a relevant error. In fairness, the Appeal Division bases its assessment on the information that the General Division had in front of it.

⁴ See, for example, documents AD1I, AD1J, AD1K, AD1L, AD1M, AD1N, AD2, and AD3. The parties' agreement was summarized in the Tribunal's letter dated September 3, 2020.

⁵ See, for example, pages AD3-12 to 14, AD5-23, AD12-3 to 6, AD26-12 to 14, AD27-4 to 5.

⁶ See, for example, pages AD26-10 to 11, AD12-7 to 8.

⁷ The Appeal Division's role is mostly defined by sections 58 and 59 of the DESD Act.

[16] Similarly, the Appeal Division's power is limited to making the decision that the General Division should have made.⁸ It does not take a fresh look at the case and come to its own conclusions based on new and updated information.

[17] There are exceptions to the general rule against considering new evidence.⁹ For example, I can consider new evidence if it provides general background information, highlights findings that the General Division made without supporting evidence, or reveals ways in which the General Division acted unfairly.

[18] None of those exceptions apply in this case. Instead, the Claimant's new evidence goes directly to the dispute between the parties. As a result, I have not considered the Claimant's new evidence.

Issue 2: The General Division committed relevant errors.

The General Division did not answer the main questions that the Claimant had raised.

[19] The law allows me to intervene in a case if the General Division fails to answer all the questions that it had to decide.¹⁰

[20] Indeed, the courts have recently stressed how tribunals should write reasons that respond to the issues raised by the parties.¹¹ This does not mean that the General Division needs to respond to every possible argument or make explicit findings on every element leading to its conclusion. However, it does need to "meaningfully grapple with key issues or central arguments raised by the parties."¹²

⁸ See section 59(1) of the DESD Act.

⁹ Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal listed in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and that the Federal Court listed in *Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 28.

¹⁰ This is known as an error of jurisdiction and falls under section 58(1)(a) of the DESD Act.

¹¹ The Supreme Court of Canada discussed the importance of responsive reasons in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 127 to 128. The Federal Court also discussed this topic in a decision that relates more directly to the work of this Tribunal: *Malonga v Canada (Attorney General)*, 2020 FC 913.

¹² *Vavilov* at para 128.

[21] Here are some of the main issues that the Claimant raised at the General Division level:¹³

- a) **The amount of EI benefits that he was overpaid.** The Claimant was unsure about whether the Commission was asking him to repay \$562, \$1,361, or the sum of the two. He seemed to accept that the Commission had overpaid his benefits by \$680.
- b) **The second notice of debt was invalid.** The Claimant argued that the second notice of debt was invalid because the Commission had never sent it to him and because the reason appearing on the notice was false.¹⁴
- c) **Credits to the Claimant's account reduced the amount of his debt.** The Claimant argued that his debt was reduced by payments that he had made and by a favourable decision in another Tribunal file.¹⁵

[22] Yet, the General Division did not decide any of these issues. Instead, the General Division tweaked the Claimant's allocation of earnings. Specifically, the General Division:

- a) increased the earnings that the Commission had included in the allocation;¹⁶
- b) changed the Claimant's week of separation from employment;¹⁷ and
- c) decreased the Claimant's normal weekly earnings.¹⁸

[23] The General Division then encouraged the Claimant to contact the Commission to learn how its decision affected the amount that he had been overpaid.¹⁹

¹³ The Claimant's notice of appeal is marked GD2.

¹⁴ The second argument was raised in document GD20.

¹⁵ On April 25, 2020, the General Division made its decision in file GE-20-973. In that decision, the General Division reduced a different notice of debt that the Commission had sent to the Claimant from \$599 to \$57. That General Division decision was not appealed and is not before me.

¹⁶ See paragraph 20 of the General Division decision.

¹⁷ See paragraph 23 of the General Division decision.

¹⁸ See paragraph 24 of the General Division decision.

¹⁹ See paragraph 27 of the General Division decision.

[24] The General Division relied on two court decisions to say that it had no power to adjust the amount of a person's debt.²⁰ I agree that the Tribunal has no power to review the Commission's discretionary power to write off some or all of a debt.²¹

[25] But the Claimant also challenged the Commission's calculations used to arrive at the amount of his overpayment. When making this argument, the Claimant was not relying on the Commission's discretionary powers but on the proper calculation of his overpayment.

[26] The Claimant correctly referred to two decisions confirming that notices of debt are Commission decisions that the Tribunal has the power to review.²² The amount that the Claimant had been overpaid was a question within the General Division's powers, but it did not answer it.

[27] In the circumstances, the General Division committed a relevant error by failing to decide the main issues that the Claimant had raised.

The General Division failed to provide a fair hearing.

[28] Viewing the problem from a different angle, I also find that the General Division failed to provide the Claimant with a fair hearing.²³

[29] The General Division member spent much of the hearing trying to resolve the confusion surrounding the two notices of debt.²⁴ Several times, she reassured the Claimant that the second notice of debt replaced the first one and that the Commission had already reduced his debt to \$562. Yet, the General Division made no similar findings in its decision.

[30] In addition, the General Division member did not discuss during the hearing those important findings that do feature in its decision.

²⁰ See paragraph 27 of the General Division decision. The first decision the General Division relied on is *Canada (Attorney General) v Mosher*, 2002 FCA 355. The General Division cited the second decision incorrectly in footnote 24 of its decision. The correct legal citation is *Prevost v Canada (Employment & Immigration Commission)* (1980), 36 (CBR) (NS) 103 (FCTD).

²¹ Section 56 of the EI Regulations gives the Commission this discretionary power.

²² The decisions relied on by the Claimant are *Braga v Canada (Attorney General)*, 2009 FCA 167 and *LS v Canada Employment Insurance Commission*, 2018 SST 566. See also *Prevost*, footnote 20, at paragraph 9.

²³ Issues of fairness (or natural justice) are also relevant errors under section 58(1)(a) of the DESD Act.

²⁴ The Commission did not clarify its position on this issue until it filed its Supplementary Representations after the hearing (see document GD14).

[31] In other words, the focus of the hearing did not match the focus of the decision. The confusion surrounding the two notices of debt created such a distraction that the Claimant had no way of knowing or responding to the factors that became important in the decision.

[32] In summary, the General Division made relevant errors that allow me to intervene in this case.

Issue 3: I will correct the General Division's errors.

[33] I will give the decision that the General Division should have given and determine the amount of EI benefits that the Commission overpaid to the Claimant because:²⁵

- a) The law requires that I decide appeals as informally and as quickly as possible.²⁶
- b) The Tribunal's General and Appeal Divisions have equal powers to decide the relevant issues in a case.²⁷
- c) I have all the facts needed to decide this issue.

Issue 4: The Commission overpaid the Claimant's EI benefits by \$1,361.

[34] At the hearing before me, the Claimant acknowledged that the Commission overpaid his EI benefits by \$680.²⁸ He stressed how, in its decision dated November 15, 2019, the Commission decided that the Claimant had received \$3,153.84 in earnings.²⁹ This led to an overpayment of \$1,361.³⁰

[35] Then, in its reconsideration decision dated March 10, 2020, the Commission determined that half of the \$3,153.84 was not earnings and that it would remove that amount from his

²⁵ Section 59(1) of the DESD Act sets out the powers that I have to try to fix an error made by the General Division.

²⁶ This requirement is set out in section 3(1)(a) of the *Social Security Tribunal Regulations*.

²⁷ Section 64(1) of the DESD Act gives me the power to decide questions of law and fact. The Federal Court of Appeal confirmed these powers in *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16 to 18.

²⁸ The Claimant's written arguments are less clear about the amount that his EI benefits were over or underpaid. See, for example, pages GD2-9 to 10, GD16-4, GD20-4, AD4, AD9-9 to 10, and AD12.

²⁹ The Commission's initial decision is on page GD3-77.

³⁰ See the Claimant's first notice of debt on page GD3-79.

allocation. This \$1,576.92 represented settlement funds that the Claimant had received from his former employer for relinquishing his right to reinstatement with that employer.

[36] Since the Commission reduced by half the earnings that created the original debt of \$1,361, the Claimant argued that the Commission should also reduce his debt by half (to \$680).

[37] Instead, the Commission issued a second notice of debt. And, for a long time, it remained unclear whether the Claimant's debt had gone up, down, or remained the same. Understandably, the Claimant asked the Commission to show how, precisely, it had calculated his debt. But the Commission has not been forthcoming with a clear answer.

[38] I share the Claimant's frustration. Despite my invitation in the leave to appeal decision, the Commission has not demonstrated how the General Division decision affected the Claimant's allocation either.

[39] Unfortunately for the Claimant, I am unable to accept his calculations, even if they show logic and appeal. Rather than focusing on the allocation of earnings, I prefer to focus on the number of weeks of benefits that the Claimant has received.

[40] On or around October 21, 2019, the Commission paid the Claimant \$1,361 (minus deductions) in EI benefits. These benefits were for the weeks starting on the following days:³¹

1. September 29, 2019
2. October 6, 2019
3. October 13, 2019

[41] Specifically, the Commission paid \$237 to the Claimant for the week starting September 29, 2019. The Commission's initial allocation of the Claimant's vacation pay reduced the amount that he could receive in the first week of his claim. The Commission paid the Claimant \$562 for the next two weeks. That is the maximum amount that the Claimant could receive in any week that he was entitled to benefits.

³¹ The Claimant has never denied receiving EI benefits during these three weeks: See paragraph 8 on page GD7-6 and paragraph 18 on page AD1D-15). See also pages GD3-17 and GD10-6.

[42] On November 1, 2019, the Claimant reported additional monies received from his former employer. The Commission then performed a second allocation, using additional earnings of \$3,153.84.³²

[43] The effect of the second allocation was to delay the start of the Claimant's EI benefits by three weeks. This is when the Commission effectively reset the Claimant's claim. This means that the Commission created a debt for the three weeks of benefits that it had already paid to the Claimant and allowed him to claim an **additional** 19 weeks of benefits.

[44] The Claimant asked the Commission to reconsider the amount it had included in the second allocation. But, by the time of the Commission's reconsideration decision on March 10, 2020—when the Commission agreed not to consider the settlement funds as earnings—the Commission had already paid the Claimant the extra 19 weeks of benefits. Specifically, the Commission paid EI benefits to the Claimant for the weeks starting on the following dates:³³

- | | |
|-----------------------|-----------------------|
| 4. October 20, 2019 | 14. December 29, 2019 |
| 5. October 27, 2019 | 15. January 5, 2020 |
| 6. November 3, 2019 | 16. January 12, 2020 |
| 7. November 10, 2019 | 17. January 19, 2020 |
| 8. November 17, 2019 | 18. January 26, 2020 |
| 9. November 24, 2019 | 19. February 2, 2020 |
| 10. December 1, 2019 | 20. February 9, 2020 |
| 11. December 8, 2019 | 21. February 16, 2020 |
| 12. December 15, 2019 | 22. February 23, 2020 |
| 13. December 22, 2019 | |

³² The Commission's initial decision is on page GD3-77.

³³ I am satisfied that these amounts were paid to the Claimant, with the Commission approving the final amount on or around March 8, 2020: See the purple entries on pages GD10-5 to 6 and the items processed between November 15, 2019, and March 6, 2020, on page GD3-17.

[45] The Commission acknowledges that removing the settlement funds from the Claimant's earnings affected his allocation. Because of the new allocation, the Claimant became eligible to receive EI benefits one week earlier: the week starting October 13, 2019, instead of the week starting October 20, 2019 (week 3 instead of week 4).

[46] However, this change also meant that the Claimant exhausted his 19 weeks of benefits one week earlier (the end of week 21). As a result, the Claimant was no longer entitled to receive benefits for the week starting February 23, 2020 (week 22). This is not because the Claimant had earnings during that week, but because he had already used up all his benefits in the previous 19 weeks.

[47] In this case, shifting the weeks of benefit eligibility by one week had no impact on the Claimant's overpayment. This is because the Claimant was entitled to the same amount of benefits during the weeks of October 13, 2019, and February 23, 2020 (\$562).

[48] Nevertheless, the Commission created the second notice of debt to cover the week of February 23, 2020. As a result, it must also reduce the first notice of debt to reflect the Claimant's eligibility for benefits during the week of October 13, 2019: $\$1,361 - \$562 = \$799$.

[49] The net effect of these changes is zero, but together they ensure that the Claimant receives just the 19 weeks of EI benefits to which he was entitled.

[50] To summarize:

- a) The \$1,576.92 that the Claimant received as settlement funds for relinquishing the right to reinstatement with his former employer is not earnings that the Commission needs to consider as part of the Claimant's allocation.
- b) The first notice of debt is reduced from \$1,361 to \$799.
- c) The second notice of debt for \$562 reflects the fact that the Claimant used up his 19 weeks of benefits in the weeks before February 23, 2020.
- d) The Commission is entitled to recover the benefits it paid to the Claimant for weeks 1, 2, and 22 above.

Why should the Claimant accept this approach?

[51] This approach works because the Commission is not arguing that the final allocation reduces the Claimant's benefits in any given week. Instead, the only question is which three weeks of benefits the Claimant has to repay.

[52] Importantly for the Claimant, this approach also means that he receives very close to the maximum amount of EI benefits available over the 19 weeks of his claim. Specifically:

- The maximum amount of EI benefits the Claimant could have possibly received is \$10,678 ($\$562/\text{week} \times 19 \text{ weeks}$).
- The amount of EI benefits the Claimant was entitled to receive is \$10,060 ($\$562/\text{week} \times 17 \text{ weeks} + \$408 + \$98$).

[53] The only weeks in which the Commission paid the Claimant less than \$562 (before deductions) are the ones starting January 26, 2020, and February 2, 2020.³⁴ The Claimant admits that he had earnings during those weeks and is not challenging those amounts.³⁵

[54] According to the evidence, however, the Commission paid the Claimant \$11,421 in EI benefits.³⁶ Therefore, the Commission overpaid the Claimant by \$1,361 ($\$11,421 - \$10,060$).

[55] If I accepted the Claimant's arguments and reduced his debt to \$680, I would be allowing him to keep \$10,741 in EI benefits ($\$11,421 - \680). This is more than the maximum amount of EI benefits that he could have possibly received over 19 weeks ($\$10,678$).

I am unable to accept any of the Claimant's additional arguments.

[56] In the paragraphs above, I decided the main argument that the Claimant raised in his appeal. However, the Claimant raised many other arguments that I must consider too.

³⁴ The Commission paid the Claimant \$408 for week 18 and \$98 for week 19. See page GD3-17.

³⁵ Those earnings are shown on page GD3-17.

³⁶ See the items processed from October 21, 2019, to March 6, 2020, on page GD3-17 ($\$562 \times 19 \text{ weeks} + \$237 + \$98 + 408 = \$11,421$).

[57] First, the Claimant argued at the hearing before me that he has collected EI benefits many times before and that the Commission has never processed or reset his claim in this way.

[58] I do not have enough information about the Claimant's other claims to know how they compare to this one. However, the Claimant has not pointed to anything in the law that prevents the Commission from processing his claim in the way that it did here.

[59] Certainly, the Commission could have processed the Claimant's claim differently. But at the end of the day, the Commission paid 22 weeks of EI benefits to the Claimant and is now entitled to ask for three of those weeks to be repaid.

[60] Second, the Claimant strongly argued that the Commission made a mistake in its initial decision. That is when the Commission considered the Claimant's settlement monies as earnings that it needed to allocate. Given the Commission's error, the Claimant argued that it should apply its discretion to write off some or all of his debt.³⁷

[61] Only the Commission has the discretionary power to write off some or all of a debt.³⁸ The Tribunal cannot order the Commission to use that power. Similarly, the Tribunal cannot review a decision in which the Commission uses, or refuses to use, its power.

[62] Third, the Claimant argued that the second notice of debt was invalid because:

- a) the Commission did not send it to him, as required under section 52 of the *Employment Insurance Act* (EI Act); and
- b) the explanation written on the notice is incorrect.

[63] The Commission was not reconsidering the Claimant's case under section 52 of the EI Act. As a result, the requirements of that section do not apply here.³⁹

[64] Here, the Claimant provided new information to the Commission about monies that he had received from his former employer. The Commission had to determine whether any of those

³⁷ This discretionary power is described in section 17.3.2.2. of the *Digest of Benefit Entitlement Principles*.

³⁸ See the Federal Court of Appeal's decision in *Mosher*, above at footnote 20.

³⁹ This is the result reached by the Federal Court of Appeal in *Blais v Canada (Attorney General)*, 2011 FCA 320 at paras 45 to 48.

amounts were earnings. If so, the Commission then had to add those amounts to the Claimant's previous earnings and work out a revised allocation.⁴⁰

[65] In any event, I note that section 52 does not specify how the Commission has to provide notice of a debt and that the Claimant did eventually become aware of the second notice of debt. It is what prompted him to file his appeal.⁴¹ The Commission's reconsideration file, which the Tribunal provided to the Claimant, also includes a copy of the second notice of debt.⁴²

[66] As for the accuracy of the second notice of debt, the Commission wrote that it had created the overpayment because of earnings it had not deducted. As mentioned, the Commission maintains that the second notice of debt concerns the week starting February 23, 2020. However, the Claimant had no new earnings in that week.

[67] This has led the Claimant to believe that the Commission is trying to conceal its error and maintain the amount of his debt by shifting earnings from the start of his claim to the end. If the message on the second notice of debt is wrong, then the Claimant argues that the entire notice must be invalid.

[68] As mentioned above, the second notice of debt does not arise because of earnings allocated to the week of February 23, 2020. Instead, the second notice of debt arises because the Claimant used up all his benefits in the weeks before February 23, 2020.

[69] Nevertheless, an earnings and allocation issue caused the Commission to shift the weeks for which the Claimant was eligible for EI benefits. As a result, the second notice of debt is correct in the sense that a continuation of the earnings and allocation issue required its creation.

[70] For all these reasons, I cannot find that the second notice of debt is invalid.

[71] Fourth, the Claimant argues that his debt remained at \$1,361 because the Commission double counted the amount of earnings that he received as vacation pay. I disagree. Even if the

⁴⁰ Section 36(10) of the EI Regulations sets out the Commission's obligation to add all the earnings together and do a revised allocation.

⁴¹ See, for example, page GD2-4, 9, and 12.

⁴² The second notice of debt is at page GD3-226. And, while it is not evidence that I am considering as part of this decision, I note that the second notice of debt also appears in document AD27.

Commission had already allocated the Claimant's vacation pay, it remained relevant because the Commission needed to use the sum of all his earnings when revising his allocation.⁴³

[72] In any event, The Claimant's debt remained at \$1,361 because he was entitled to 19 weeks of benefits, but the Commission paid him for 22 weeks. The revised allocation changed only the particular weeks of benefits that the Commission is asking the Claimant to repay (weeks 1, 2, and 22 instead of weeks 1, 2, and 3).

Issue 5: I cannot determine the remaining amount of the Claimant's debt.

[73] The Claimant argues that his total debt has been reduced by payments to his account of \$85 and \$51. In addition, the positive result that he received in another Tribunal decision should reduce his debt by a further \$542 (\$599 - \$57).⁴⁴

[74] Regrettably, I do not have the authority to decide this issue.

[75] The Commission's reconsideration decision limits the scope of the Tribunal's powers.⁴⁵ Yet that decision, and the related notice of debt, deal only with the amount of EI benefits that the Commission had overpaid to the Claimant.⁴⁶ The reconsideration decision is about the monies that the Claimant received from his former employer, and whether the Commission should consider some or all of those monies as earnings that need to be included in his allocation.

[76] The Commission has not reconsidered how the amount of the Claimant's overpayment has since been reduced. That step is required before the Tribunal can consider weighing in on the issue.

[77] In any event, I hope that the parties will be able to resolve this issue between themselves and that it need not become the subject of a further appeal.

⁴³ See footnote 40 above.

⁴⁴ See footnote 15 above.

⁴⁵ This conclusion flows from sections 112 and 113 of the EI Act.

⁴⁶ The Claimant's reconsideration request is on pages GD3-80 to 81 and GD3-86 to 88. The Commission's reconsideration decision is on pages GD3-224 to 225.

CONCLUSION

[78] I am allowing the Claimant's appeal. The General Division failed to decide all the questions it had to decide and failed to provide the Claimant with a fair hearing. As a result, I am able to intervene in this case. I have decided that the Commission overpaid the Claimant's EI benefits by \$1,361.

[79] The parties seem to agree that the amount of the Claimant's debt has since been reduced, but I am unable to determine the exact amount of that reduction.

[80] In closing, I note that the Commission sent the Claimant a third notice of debt after the Appeal Division hearing.⁴⁷ The third notice of debt was for \$1,923 (\$1,361 + \$562). I cannot consider this new evidence as part of my decision. I understand, however, that the third notice of debt is the sum of the first two notices and this decision explains why the Commission must reduce the first notice of debt to \$799.

[81] Finally, I regret the confusion that has reigned throughout this case. It has understandably caused the Claimant much frustration.

Jude Samson
Member, Appeal Division

HEARD ON:	November 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. K., Appellant S. Prud'Homme, Representative for the Respondent

⁴⁷ See document AD27.