[TRANSLATION]

Citation: *BK v Canada Employment Insurance Commission*, 2021 SST 200

Tribunal File Number: AD-20-866

BETWEEN:

B. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 14, 2021

DECISION AND REASONS

DECISION

[1]   The Claimant's appeal is allowed. The matter is referred back to the General Division for reconsideration of the Claimant's availability for work only for the period from May 8 to August 3, 2019.

OVERVIEW

[2]   The Appellant (Claimant) works as a French as a second language instructor. He made a renewal claim for benefits on June 6, 2019, and it was made effective on May 12, 2019. The Respondent, the Canada Employment Insurance Commission (Commission), informed him that it was unable to pay him Employment Insurance benefits from December 20, 2018, because he had an expired work permit after that date.

[3]   On reconsideration, the Commission informed him that it was unable to pay him Employment Insurance benefits, since his new work permit was valid only from September 17, 2019, to September 17, 2020, when his claim for benefits ended on August 3, 2019. It reiterated that it was unable to pay him benefits from December 20, 2018, without a valid work permit. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4]   The General Division allowed the Claimant's appeal in part. It found that the Claimant had shown his availability for work for the period from December 20, 2018, to May 7, 2019, inclusive, but not from May 8, 2019, to August 3, 2019, when his benefit period ended.

[5]   The Claimant was granted leave to appeal the General Division decision. He argues that the General Division failed to observe a principle of natural justice.

[6]   I have to decide whether the General Division failed to observe a principle of natural justice.

[7]   I am allowing the Claimant's appeal. The matter is referred back to the General Division for reconsideration of the Claimant's availability for work only for the period from May 8 to August 3, 2019.

ISSUE

[8]   Did the General Division fail to observe a principle of natural justice?

ANALYSIS

Appeal Division's Mandate

[9]   The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[10]   The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11]   Therefore, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Did the General Division fail to observe a principle of natural justice?

[12]   The Claimant submits that the General Division failed to observe a principle of natural justice because he did not have the opportunity to prepare and present complete evidence concerning his availability for work from May 8 to August 3, 2019.

[13]   The Claimant argues that the General Division hearing focused instead on whether he had implied status given the expiry of his work permit. As a result, he did not

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

have the opportunity to respond to some of the General Division's findings and therefore prove his availability for work throughout the benefit period.

[14]   I am of the view that the Claimant's position is supported by the Commission's representations before the General Division which are focused on the Claimant's ability to work without a work permit. The Commission submitted that the Claimant's inability to work meant that he had to be considered unavailable for work under section 18(1)(a) of the *Employment Insurance Act* (EI Act).

[15]   The General Division acknowledged that the Commission had argued before the hearing that the Claimant was unable to work without a work permit.[2]

[16]   The Claimant clearly prepared for the General Division hearing with the objective of showing that he had implied status despite the expiry of his work permit and, as a result, that he was capable of work within the meaning of the EI Act.

[17]   It is well established that the concept of "natural justice" includes a claimant's right to a fair hearing. A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party, and the opportunity to answer those allegations.

[18]   I agree that the General Division could also consider the Claimant's not having a work permit against the factors in *Faucher*.[3] However, the Claimant was entitled to know the allegations against him **before the hearing** and the opportunity to prepare to answer those allegations.

[19]   For these reasons, I am of the view that the General Division failed to observe a principle of natural justice. Since the Claimant did not have every opportunity to present his case, the appropriate remedy is to refer the matter back to the General Division for

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[2] General Division decision, paras 14 and 65.
[3] *Faucher*, A-56-96.

reconsideration of the Claimant's availability for the period from May 8 to August 3, 2019.

CONCLUSION

[20]   The Claimant's appeal is allowed. The matter is referred back to the General Division for reconsideration of the issue of the Claimant's availability for work only for the period from May 8 to August 3, 2019.

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Pierre Lafontaine
Member, Appeal Division

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HEARD ON:	May 3, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. K., Appellant Manon Richardson, Representative for the Respondent