Citation: *RR v Canada Employment Insurance Commission*, 2022 SST 38

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. R.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (436704) dated October 14, 2021 (issued by Service Canada)

Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Teleconference
Hearing date:	December 16, 2021
Hearing participant:	Appellant
Decision date:	January 11, 2022
File number:	GE-21-2206

Decision

[1] The appeal is allowed. The Claimant's disentitlement ended on June 21, 2021, when he became regularly engaged in other insurable employment.

Overview

[2] The Claimant worked at X. He lost his job on June 1, 2021, because of a labour dispute.

[3] The Claimant then found a three-week position operating a car detailing business. When this position ended, he applied for regular employment insurance benefits (EI benefits).

[4] The Canada Employment Insurance Commission (Commission) disentitled the Claimant from receiving EI benefits as he lost his job because of a labour dispute.[1]

[5] The Claimant doesn't dispute that he lost his job because of a labour dispute. He argues that he should be entitled to EI benefits because since losing his job with X, he has accumulated enough hours of insurable employment to qualify for EI benefits.

[6] But the issue before me isn't whether the Claimant has enough hours of insurable employment to qualify for EI benefits. The question is whether the Claimant's work at the car detailer can end his disentitlement.[2]

Issue

[7] I have to decide if the Claimant's disentitlement ended when he started working at the car detailer.

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[1] The Commission started the disentitlement on August 2, 2021. It explains why it didn't make the disentitlement retroactive in GD9.
[2] The Commission says the work stoppage ended on November 1, 2021. The Claimant thinks the work stoppage ended before then, when he returned to work. At the hearing, the Claimant confirmed that he wasn't appealing the Commission's decision about when the work stoppage ended. So when the work stoppage ended isn't an issue before me.

Analysis

– The disentitlement and how it ends

[8] When a claimant loses his or her job because of a work stoppage caused by a labour dispute where he or she works, the Commission can't pay the claimant EI benefits.[3] The claimant is said to be disentitled from receiving EI benefits.

[9] The disentitlement continues until the earlier of:

- The end of the work stoppage, or
- The day on which the claimant becomes regularly engaged elsewhere in insurable employment.[4]

– Having enough hours to qualify for EI benefits doesn't end the disentitlement

[10] The Claimant agrees that he wasn't entitled to EI benefits because of the work stoppage. He argues that he was entitled to EI benefits because he had enough hours of insurable employment from the car-detailing job to qualify for EI benefits.

[11] I find that having enough insurable hours from other work doesn't end the disentitlement. The law is clear that the disentitlement only ends with the work stoppage, or when the Claimant becomes regularly engaged elsewhere in insurable employment.

[12] In the Appellant's case, the issue isn't when the work stoppage ended, but whether the Claimant became regularly engaged elsewhere in insurable employment. So that is what I'll look at next.

– What "regularly engaged" means

[13] Case law says that the three criteria that have to be considered when deciding if a claimant is regularly engaged elsewhere in insurable employment are:

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[3] The onus is on the Commission to prove this on a balance of probabilities. See section 36 of the *Employment Insurance Act*.
[4] See section 36(1) of the *Employment Insurance Act*.

- The employment must be firm, serious and genuine.
- There must be continuity in time.
- The work schedule must be regular.[5]

[14] The Commission says the Claimant doesn't meet these criteria because he was hired for a short period of three weeks.[6]

[15] But case law tells me that the requirement for re-entitlement to benefits by new employment isn't about the duration of the new job. Being "regularly engaged" is about the regularity of the work schedule that shows a fixed pattern of employment. The Supreme Court of Canada says the duration of the employment doesn't have to be long-term. The job may only be for the duration of the strike, as long as it is regular while it is ongoing.[7]

– **The Claimant was regularly engaged**

[16] I find the Claimant became regularly engaged elsewhere in insurable employment on June 21, 2021. This is why:

- There is no dispute that he started working at the car detailer on June 21, 2021. This is what his Record of Employment shows and what he said in his application form.[8]
- The parties agree that the employment was insurable employment.[9]
- I find the employment was firm, serious and genuine. There is no evidence that his job was a token or a sham. The owner hired the Claimant to operate his business while he was away. The Claimant explained that the owner was having

[5] See *Canada (A.G.) v McKenzie*, A-1460-92.
[6] See the Commission's arguments on page GD4-5.
[7] See *Abrahams v Attorney General of Canada*, [1983] 1 S.C.R. 2 and *Canada (A.G.) v McKenzie*, A-1460-92.
[8] The Record of Employment is on page GD3-18. See application form on page GD3-6.
[9] Revenue Canada decides whether employment is insurable, not the Tribunal or the Commission.

personal issues and needed a break. There is no evidence to suggest that the Claimant didn't work the three weeks he claims to have worked.

- The employment was continuous. It wasn't casual or intermittent.
- The work schedule was regular. He worked Monday to Friday, 9 a.m. to 5 p.m. There is no dispute that he worked this schedule. He was operating a business with set hours of operation. The insurable hours shown on his Record of Employment prove that he worked 40 hours a week for three weeks.

[17] I know the Claimant's job was only for the three weeks the owner was away. But the short duration of his job doesn't mean that he wasn't regularly engaged in insurable employment, which is what he had to show to end his disentitlement.

Conclusion

[18] The Claimant has shown that he became regularly engaged elsewhere in insurable employment on June 21, 2021. This means his disentitlement ends on June 21, 2021.

[19] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section