



Citation: *AC v Canada Employment Insurance Commission*, 2021 SST 838

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: A. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (432303) dated September 7, 2021 (issued by Service Canada)

Tribunal member: Solange Losier
Type of hearing: Teleconference
Hearing date: November 24, 2021
Hearing participant: Appellant
Decision date: November 25, 2021
File number: GE-21-1853

Decision

[1] The appeal is dismissed. This means that the Claimant is disentitled from receiving Employment Insurance (EI) benefits from June 7, 2021.

Overview

[2] The Claimant stopped working due to a strike at his workplace. The union membership went on strike effective June 1, 2021 because their contract expired and they were negotiating a new collective agreement.

[3] The Commission decided that the Claimant was not entitled to receive EI benefits because he was unable to resume his employment due to a labour dispute at work.¹

[4] The Claimant disagrees and says that he should be entitled EI benefits for the period he was on strike because many of his coworkers were entitled to EI benefits and not required to pay them back.² He says it is unfair that he cannot get EI benefits.

Issue

[5] Has the Commission proven that the Claimant was unable to resume employment because of a work stoppage due to a labour dispute at his work?

Analysis

[6] A “labour dispute” is defined as a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons.³

[7] The law says that a Claimant is not entitled to receive EI benefits if the claimant has:

- a) lost an employment or is unable to resume an employment;

¹ See supplementary record of claim at GD3-38 and reconsideration decision dated September 7, 2021 at GD3-43 to GD3-44.

² See Claimant’s appeal forms at GD2-1 to GD2-16.

³ Subsection 2(1) of the *Employment Insurance Act* (Act).

- b) because of a work stoppage;
- c) attributable to a labour dispute;
- d) at the factory, workshop or other premises at which the claimant was employed.⁴

[8] There are some exceptions in law that set out the reasons where a disentitlement in a labour dispute can be suspended or would not apply.⁵

[9] The Claimant testified that he works at a mine as millwright. He is a union member and pays due. The union membership went on strike on June 1, 2021 and it lasted until August 9, 2021.

[10] The Claimant explained that Service Canada initiated a meeting with the union membership on two separate dates via zoom encouraging them to apply for EI benefits.⁶ The Claimant says many of his colleagues applied for and received EI benefits.

[11] The Claimant said that the Commission then denied his claim for EI benefits. When he returned to work, he discovered that many of his colleagues received EI benefits and were not required to pay them back because of some temporary changes in law.

[12] The Claimant's main argument is that his colleagues received EI benefits that he did not receive. He is not disputing the validity of the law. He understands that EI cannot be paid during a labour dispute, however he argues that it was applied unfairly resulting in many of his colleagues receiving EI benefits.

[13] The Claimant relies on survey results that he obtained after consulting with a firm that suggest the Commission may have paid EI benefits to around 36.4% of the union membership.⁷ He noted that the Commission did not answer the questions he asked as

⁴ See subsection 36(1) of the Act.

⁵ See subsections 36(3) and subsection 36(4) of the Act.

⁶ See zoom invitations at GD2-12 to GD2-13.

⁷ See survey summary at GD6-1 to GD6-5.

requested in his letter.⁸ I wrote to the Commission and offered them an opportunity to reply to the Claimant's questions, but they replied that "every claim is different and the decision was based on the claimant's circumstances, not claimant's co-worker's circumstances."⁹ At the hearing, I told the Claimant that I did not have the authority to compel or require the Commission to answer his specific questions.

[14] I find that the Claimant was unable to resume an employment because of a work stoppage on June 1, 2021 due to a labour dispute at his workplace. These facts are not disputed by the Claimant.

[15] The Court has said that the onus is on the claimant to prove that he had not participated in a labour dispute and was not directly interested in it.¹⁰ None of the exceptions apply in this case because the Claimant had a direct interest in the labour dispute. There was no evidence to suggest that had intended to receive special EI benefits and be absent prior to the work stoppage.

[16] I acknowledge the Claimant's argument that the Commission did not apply the law in an equitable manner. However, I have no discretion or authority to change the law, or grant him EI benefits on the basis that some of his colleagues received EI payments. Even if the Claimant was provided misinformation by Service Canada the Court has established that any commitment made by Canada Employment Insurance Commission or by its representatives, whether it is in good or bad faith, and if it to act in a way other than that which is prescribed by the Act, is null and void.¹¹

⁸ See GD6-2 for Claimant's questions to the Commission.

⁹ See section 32 of the *Social Security Tribunal Regulations* and GD7-1 to GD7-2; GD8-1.

¹⁰ *Black v Canada (Employment Insurance Commission)*, 2002 FCA 255.

¹¹ *Granger v Canada Employment and Immigration Commission*, [1986] 3 FC 70.

Conclusion

[17] The appeal is dismissed. The Claimant remains disentitled to EI benefits.

Solange Losier

Member, General Division – Employment Insurance Section