



Citation: *KL v Canada Employment Insurance Commission*, 2022 SST 272

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

# **Decision**

**Appellant:** K. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (437966) dated November 10, 2021 (issued by Service Canada)

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**Tribunal member:** Leanne Bourassa

**Type of hearing:** Teleconference

**Hearing date:** January 19, 2022

**Hearing participants:** Appellant

**Decision date:** January 27, 2022

**File number:** GE-21-2460

## Decision

[1] The appeal is dismissed. The Claimant received earnings. And the Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right time period.

## Overview

[2] After being unfairly dismissed by his employer, the Claimant accepted a settlement offer from the employer. As part of this settlement, he signed a Memorandum of Agreement saying he would continue to be paid, take a period of leave of absence and then agree to retire and start receiving his pension when he turned 55 in September 2021.

[3] During the summer of 2021, the Claimant had a temporary job. When the job came to an end, he applied for Employment Insurance (EI) benefits. The Commission advised him that the payments he was receiving from his pension would be applied against his claim for EI benefits. Because of this, he would not be paid any benefits.

[4] The Claimant started receiving money from his pension plan with his former employer. The Commission decided that the money is “earnings” under the law because it is paid as a pension.

[5] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.<sup>1</sup>

[6] The Commission allocated the earnings starting the week of September 12, 2021. This is the week that the Commission said that the money the Claimant was receiving was paid. The Commission said that the Claimant’s employment was why he Claimant received the earnings.

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<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

[7] The Claimant disagrees with the Commission. The Claimant says the money should not be considered earnings from a pension, because it was actually paid to him because of a lay-off or separation from his employment.

## Issues

[8] I have to decide the following two issues:

- a) Is the money that the Claimant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

## Analysis

### Is the money that the Claimant received earnings?

[9] Yes, the pension payments that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[10] The law says that earnings are the entire income that you get from any employment.<sup>2</sup> The law defines both “income” and “employment.”

[11] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.<sup>3</sup> Pensions paid to a person are included in the income of a claimant.<sup>4</sup>

[12] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>5</sup>

[13] The Claimant's former employer began paying out the Claimant's pension in September 2021. The Commission decided that this money was income. So, it said that the money is earnings under the law.

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<sup>2</sup> See section 35(2) of the EI Regulations.

<sup>3</sup> See section 35(1) of the EI Regulations.

<sup>4</sup> See subsection 35(2)(e) of the EI Regulations.

<sup>5</sup> See section 35(1) of the EI Regulations.

[14] The Claimant doesn't agree. He says that the money should not be considered as earnings from a pension but should be subject to an exception under the law because it was payable to him because of his separation from employment.<sup>6</sup> He says that since the agreement with his employer forced him to retire and take the pension at a specific date, it should not be considered as earnings.

[15] The Claimant has to prove that the money is **not** earnings. The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that the money isn't earnings.

[16] I find that the payments made to the Claimant under the pension plan are earnings.

[17] The Claimant argues that the agreement he reached with his former employer forced him to sign the document that employees submit confirming their retirement. This document also starts the payment of pension benefits. Usually, an employee can choose when to submit this document, and it may be some time after they actually stop working.

[18] Since the agreement ending his employment with his former employer forced the Claimant to start taking his pension at a certain date, he argues that the money should be considered as earnings paid because of his separation from employment.

[19] The Commission argues that the pension was linked to the Claimant's employment and was therefore considered earnings for benefit purposes. They say that the pension became payable not when the Claimant's employment came to an end, but when he turned 55.

[20] I understand that the Claimant feels he did not have the choice other employees had to defer the taking of his pension until a later date. If he had had that option, he may have been able to put off receiving his pension until he had received his EI benefits.

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<sup>6</sup> He is basing this argument on section 35(7)(e) of the EI Regulations.

[21] The Commission has supplied a screen shot of information about the Claimant's pension plan. It says that the members of the plan can retire with an unreduced pension at the age of 55 if they have 30 years of paid service. The Claimant agrees with this information.

[22] When the Claimant signed his agreement with his employer, the employer agreed to continue paying him for two years, then to consider him on an unpaid leave of absence until his 55<sup>th</sup> birthday.

[23] The Claimant and the employer could have ended his employment at an earlier date. The Claimant's salary continuance period ended on July 25, 2021. The Claimant testified that when he was presented with this date he argued with his employer to extend the agreement further. So why did the agreement have to continue until the Claimant's 55<sup>th</sup> birthday? Because that was when the Claimant's pension could become payable at an unreduced rate.<sup>7</sup>

[24] The Claimant stopped being paid a salary July 25, 2021. If he had taken his pension then, he would have only had access to a 'reduced' pension. But he would still have been eligible for payments from the pension plan. That was because he had worked for his employer and there was a direct link between his employment and his pension plan. It was only the amount of the pension that was affected by his turning 55.

[25] Since there was a direct link between the pension plan and the Claimant's employment, the money he received would be considered earnings unless he can prove that he falls within one of the exceptions under the law.

[26] The Claimant claims the earnings were payable only because of his separation from his employment. I disagree.

[27] The Claimant argues that he was forced to sign the Notice of Intent to Resign, effective on his 55<sup>th</sup> birthday, as part of the settlement agreement with his employer.

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<sup>7</sup> The plan also required 30 years of service to access the unreduced pension, but that is not an issue in this case.

Since this was part of the termination of his employment, the pension was payable by reason of a separation from employment.

[28] There are two reasons why I don't accept this argument. First, the last day that the Claimant actually received a salary was July 25, 2021. So that would be his day of separation from employment. His pension payments didn't begin until he turned 55, several weeks later.

[29] Second, the Claimant had had a choice of when to start receiving his pension benefits. He made the choice several years ago when he agreed to the terms of the Memorandum of Agreement with his employer that would end his employment. He had the choice of accepting the offer made to him or not. He negotiated to extend his relationship with his employer until his 55<sup>th</sup> birthday to qualify for an unreduced pension.

[30] I acknowledge that there would have been consequences to refusing a settlement with his employer. That does not change the fact that the Claimant did provide the instruction for the employer to start paying out the unreduced pension benefits he was entitled to because he had worked for them.

### **Did the Commission allocate the earnings correctly?**

[31] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.<sup>8</sup>

[32] The Claimant's earnings are moneys paid to the Claimant on account of a pension. The Claimant's employer gave the Claimant those earnings because the Claimant provided them with a Notice of Intention to Retire when he signed the Memorandum of Agreement.

[33] The law says that the earnings you get for a pension have to be allocated to the weeks that they are paid or payable. It doesn't matter when you actually receive those earnings.<sup>9</sup>

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<sup>8</sup> See section 36 of the EI Regulations.

<sup>9</sup> See section 36(14) of the EI Regulations.

[34] I find that the Claimant's pension was payable to him starting the week of September 12, 2021. I find this because this is the first week after he started receiving his unreduced pension payments.

[35] The amount of money to be allocated starting that week is \$1,305.00. This is because the Claimant was receiving \$5,654.56 in monthly pension earnings. The parties don't dispute this amount, and I accept it as fact. This means that starting the week of September 12, 2021, \$1,305.00 is allocated to each week.

## **Conclusion**

[36] The appeal is dismissed.

[37] The Claimant's pension payments must be considered as earnings and allocated against his claim for EI benefits.

Leanne Bourassa  
Member, General Division – Employment Insurance Section