



[TRANSLATION]

Citation: *JL v Canada Employment Insurance Commission*, 2022 SST 427

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. L.

Respondent: Canada Employment Insurance Commission
Representative: Angèle Fricker

Decision under appeal: General Division decision dated
September 29, 2021 (GE-21-1009)

Tribunal member: Jude Samson

Type of hearing: Videoconference

Hearing date: May 5, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: May 30, 2022

File number: AD-21-370

Decision

[1] I am allowing the appeal, in line with the agreement between the parties.

Overview

[2] J. L. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) paid him Employment Insurance benefits during two benefit periods. The first benefit period was established in December 2013. The second benefit period was established in April 2015.

[3] A few years later, the Claimant told the Commission that he had received money under an agreement with his former employer. The Claimant acknowledged that, because of this, the Commission had to recalculate what was owed in benefits. But, he said that only some of the money was earnings and that his earnings needed to be allocated to the period for which they had been paid to him under the agreement with his former employer.

[4] The amount to be allocated is no longer in dispute. The issue before me is the period that this amount has to be allocated to.

[5] Initially, the Commission found that the earnings had to be allocated from the date of the Claimant's dismissal, in November 2013.¹ This Tribunal's General Division reached the same conclusion.

[6] The parties agree that the General Division made a relevant error and that I have to intervene in this case. I find that I should respect the agreement between the parties.

¹ The Commission based its decision on sections 36(9) and 36(10) of *the Employment Insurance Regulations*.

The parties agree on the outcome of the appeal

[7] At the hearing and in post-hearing communications, the parties agreed on the outcome of the appeal.²

[8] In summary, the parties agree as follows:

- The General Division based its decision on an important error of fact.
- In the circumstances, I should allow the appeal and give the decision the General Division should have given.
- The amounts that were paid to the Claimant for the loss of the flexible allowance and as compensation for wages lost have to be allocated to the period for which they are payable.

I accept the proposed outcome

[9] In its decision, the General Division found that the Claimant had been dismissed in November 2013.³ In making that finding, the General Division relied on a document entitled [translation] “Settlement and Release,” signed in September 2020.⁴

[10] But that same document says that the Administrative Labour Tribunal later rescinded the Claimant’s dismissal and ordered his former employer to reinstate him, which happened in May 2019.⁵

[11] This means that the General Division based its decision on an important error of fact⁶ when it found that the Claimant had been dismissed in November 2013. This error allows me to give the decision that the General Division should have given.⁷

² See AD9, AD10, AD13, and AD14, which provide some clarification on the agreement between the parties.

³ See, for example, paragraphs 83 and 84 of the General Division decision.

⁴ This document begins at GD3-18 in the appeal record.

⁵ See GD3-18 in the record.

⁶ This error is set out in section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ Section 59(1) of the DESD Act gives me this power.

[12] Given that the Claimant was reinstated retroactively to November 2013, the parties agree that the amounts paid to him for the loss of the flexible allowance and as compensation for wages lost are earnings that are payable under a contract of employment without the performance of services.⁸ So, these amounts have to be allocated to the period for which they are payable. Specifically:

- The \$52,766 paid as compensation for wages lost for the period from January 1 to December 31, 2016, has to be allocated to that period.
- The \$29,496 paid to compensate for the loss of the flexible allowance has to be allocated from November 19, 2013, to December 31, 2019.

[13] Because of this change, the Commission has to reimburse the Claimant \$2,306, less certain tax deductions.⁹

[14] In his last communication with the Tribunal, the Claimant asked to be reimbursed by cheque. The Commission has already explained to him that he can change his preferred payment method either by telephone or online.¹⁰

[15] In addition, the Claimant seeks interest from the Commission on the amounts owed to him, as of January 1, 2020. I can't make such an order, since the Tribunal hasn't been given the authority to award interest.¹¹

Conclusion

[16] Based on the information available to me, I am allowing the appeal in line with the agreement outlined above.

Jude Samson
Member, Appeal Division

⁸ See section 36(5) of *the Employment Insurance Regulations*.

⁹ See AD9 and AD13 for the Commission's calculations.

¹⁰ See AD13-2 in the appeal record.

¹¹ See *YC v Minister of Employment and Social Development*, 2019 SST 1054 at paragraph 10.