



Citation: *SH v Canada Employment Insurance Commission*, 2022 SST 508

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

Decision

Appellant: S. H.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (441860) dated January 20, 2022
(issued by Service Canada)

Tribunal member: Paul Dusome
Type of hearing: Teleconference
Hearing date: March 28, 2022
Hearing participant: Appellant
Decision date: March 29, 2022
File number: GE-22-513

DECISION

[1] The appeal is dismissed. The Tribunal does not agree with the Claimant.

OVERVIEW

[2] The Claimant applied for regular employment insurance (EI) benefits on January 10, 2021, after a temporary lay-off by her employer. She returned to work on January 30, 2021. The Claimant was a member of a union. The union started strike action on May 1, 2021. The Claimant was on vacation at the time. The strike ended on May 19, 2021. The Claimant returned to work on May 25, 2021. The Commission decided that it should not have paid EI benefits during the strike, as the Claimant lost her work because of a labour dispute. The disentitlement began on May 3, 2021, and ended on June 18, 2021.

[3] The Commission says that the Claimant was not entitled to receive EI benefits, because she was off work due to a strike. She did not qualify for an exemption from the rule.

[4] The Claimant says that she did not know that she was not eligible for EI benefits because of the strike. That is not fair. The government should support the workers during a strike. She is a single mother and cannot afford to repay the benefits she did receive. She has paid into EI, and paid taxes, over the years.

ISSUES

[5] Was the Claimant disentitled from receiving EI benefits because of a strike?

[6] Was the Claimant exempted from the disentitlement?

[7] Was the disentitlement suspended?

[8] Can the Claimant win this appeal based on her reasons for appealing?

ANALYSIS

[9] The Commission can impose a disentitlement on a claimant if four conditions are met. They are: 1) loss of, or inability to return to, employment; 2) due to a work stoppage; 3) that is attributable to a labour dispute; and 4) at the premises at which the claimant was employed. The term 'labour dispute' includes strikes and lockdowns. The disentitlement lasts until the end of the work stoppage, or when the claimant works elsewhere in insurable employment.¹ The work stoppage ends when two conditions are met. First, the workforce at the factory reaches 85% of its normal level. Second, the production at the factory reaches 85% of its normal level.² This Regulation is valid, and allows the Commission to assess when the work stoppage ended.³

[10] There is an exemption from the disentitlement. A claimant must prove that she "is not participating in, financing or directly interested in the labour dispute that caused the stoppage of work."⁴ In order to qualify for this exemption, the Appellant must show that she is not doing any of those three things: participating, financing or being directly interested in the labour dispute.⁵

[11] The disentitlement can be suspended in limited circumstances.⁶ The suspension only applies if the claimant meets two conditions. First, the claimant is otherwise entitled to special benefits (such as sickness benefits) or to training benefits while taking a course approved by the Commission. Second, before the strike, the claimant anticipated being away from work because of the special or training benefits, and had begun making arrangements for being away. The suspension only lasts while the claimant continues to meet both conditions.

¹ *Employment Insurance Act*, section 36(1).

² *Employment Insurance Regulations*, section 53(1).

³ *Oakes-Pepin v Canada (Attorney General)*, A-38-96.

⁴ *Employment Insurance Act*, section 36(4).

⁵ *Hills v. Canada (Attorney General)*, [1988] 1 SCR 513.

⁶ *Employment Insurance Act*, section 36(3).

Was the Claimant disentitled from receiving EI benefits because of a strike?

[12] The Claimant was disentitled from receiving EI benefits because she was on strike.

[13] The Claimant worked full-time in a confectionery factory. She was a member of the union representing her and other employees. She paid union dues, deducted from her pay cheque.

[14] The union gave a strike notice to the employer. The strike started on Saturday, May 1, 2021. Because of this, the Claimant and her co-workers stopped working at the employer's facility. The employer and the union reached a tentative agreement on May 19, 2021. The union membership ratified the agreement the next day. Work resumed on Monday, May 24, 2021. The Claimant returned to work on May 25, 2021. Eighty-five percent of the striking employees had returned to work by June 8, 2021. The employer reached 85% of the pre-strike production on June 19, 2021.

[15] I find that the Commission has shown that the Claimant was off work due to a work stoppage, a strike. She was therefore disentitled from receiving EI benefits. The Commission has proven the four conditions to support that conclusion. First, the Claimant was unable to resume work from Monday, May 3 to Friday, June 18, 2021 (see the next paragraph for an explanation of the June 18th date). Second, she was unable to resume work because of a work stoppage, a strike. Third, the work stoppage was attributable to a labour dispute, a strike. Fourth, the work stoppage occurred at the factory where the Claimant worked.

[16] The Commission disentitled the Claimant from receiving EI benefits from May 3 to June 18, 2021. That latter date was based on the employer attaining 85% of its normal production the next day. The Claimant, among other employees, did return to work on earlier dates. The Claimant returned on May 25, 2021. Her return to work on that date did not end the disentitlement. That is because of the wording of section 36(1) of the EI Act. A claimant is not entitled to receive EI benefits until the earlier of the end of the work stoppage, or the claimant starting a job elsewhere. The Claimant did not

start a job elsewhere while off work on strike. She returned to her full-time job with the employer. The disentitlement therefore did not end until the work stoppage was ended by the employer attaining 85% of its normal production.⁷

Was the Claimant exempted from the disentitlement?

[17] The Claimant has to prove that she was not “participating in, financing, or directly interested in the labour dispute that caused the work shortage.”⁸ In this appeal, the Claimant had a direct financial interest in the strike. The issues in the strike were wages, benefits and pensions. A claimant has a direct interest in the labour dispute if she has something to gain or fear from that dispute.⁹ The Claimant stood to gain financially if the union obtained increases in those areas. She also had something to fear: she stood to suffer financially if the employer obtained decreases in those areas. Since the Claimant cannot prove that she did not have a direct financial interest in the strike, she does not qualify for this exemption.

Was the disentitlement suspended?

[18] The Claimant does not meet the requirements to have the disentitlement suspended. During the period of the disentitlement, May 3 to June 18, 2021, the Claimant was on vacation from April 24 to May 16, 2021. She returned to full-time work on May 25, 2021, and worked thereafter. The Claimant did not meet the first requirement of the suspension. She did not take a Commission-approved training course during the disentitlement. Nor did she show entitlement to receive special benefits (including sickness benefits) during that time. The Claimant also did not meet the second requirement that she anticipated before the strike that she would be absent from work related to special benefits or a training course, and had begun making arrangements for the absence.

⁷ *Employment Insurance Regulations*, section 53(1).

⁸ *Employment Insurance Act*, section 36(4).

⁹ *Hills v. Canada (Attorney General)*, [1988] 1 SCR 513.

Can the Claimant win this appeal based on her reasons for appealing?

[19] The Claimant says that she did not know that she was not eligible for EI benefits because of the strike. That is not fair. The government should support the workers during a strike. She is a single mother and cannot afford to repay the benefits she did receive. She has paid into EI, and paid taxes, over the years.

[20] The Claimant finds herself required to repay EI benefits. Her circumstances are very sympathetic. She made a mistake, not knowing that she was not entitled to receive EI benefits. She is a single mother, supporting herself and children. As the Federal Court of Appeal has said, however tempting it may be in such cases, adjudicators are not permitted to rewrite legislation. They are also not permitted to interpret the law in a manner that is contrary to its plain meaning.¹⁰ In another decision, the court ruled that such a case does not permit the Tribunal to refuse to apply the law, even on the grounds of equity, or fairness.¹¹ The end result is that I must apply the law as set out above to reach the conclusion in this case.

[21] The government has made a policy decision not to support either side in a labour dispute, neither employers nor employees. That decision is the reason for section 36 of the EI Act. I cannot rewrite the Act to give effect to the Claimant's statement that the government should support the workers during a strike.

[22] The Claimant also raised as a ground of appeal that she had paid into the EI scheme for years, and was therefore entitled to receive EI benefits. That is not a correct statement of the law. The EI scheme is not like a pension scheme, such as the Canada Pension Plan (CPP) retirement pension. Under the CPP retirement scheme, a contributor pays in over their working life, and on retirement is entitled to receive a monthly pension based on the contributions made over the years. The EI scheme does not provide automatic entitlement to EI benefits to a person who has contributed to the scheme and who has become unemployed. Under the EI scheme, the claimant must prove that she meets a number of qualification criteria. If she does not do that, she is

¹⁰ *Canada (Attorney General) v Knee*, 2011 FCA 301.

¹¹ *Nadji v Canada (Attorney General)*, 2016 FC 885 (CanLII).

not entitled to receive EI benefits. Being on strike or being locked out in a labour dispute means that a claimant is not entitled to receive EI benefits. That is the Claimant's situation. I must apply the law, not ignore it.

CONCLUSION

[23] I find that the Claimant is disqualified from receiving benefits. This means that the appeal is dismissed.

Paul Dusome
Member, General Division - Employment Insurance Section