



Citation: *RD v Canada Employment Insurance Commission*, 2022 SST 676

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellants:** R. D. and B. D.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Julie Villeneuve

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**Decision under appeal:** General Division decision dated February 2, 2022  
(GE-22-58 and GD-22-63)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference

**Hearing date:** June 16, 2022

**Hearing participants:** Appellants  
Respondent's representative

**Decision date:** June 22, 2022

**File number:** AD-22-116 and AD-22-117

## **Decision**

[1] The appeal is dismissed.

## **Overview**

[2] The Appellants (Claimants) applied for Employment Insurance (EI) fishers benefits on October 13, 2021. The Respondent (Commission) determined that the Claimants did not have sufficient fishing earnings to establish a claim. They needed \$2,500.00 each and they only had \$2,018.00 and \$2,131.70 respectively. Upon reconsideration, the Commission maintained its initial decision. The Claimants appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimants did not meet the requirements of the law and therefore did not qualify for EI fishers benefits.

[4] The Appeal Division granted the Claimants leave to appeal on the basis that the General Division might not have addressed whether the Claimants could benefit from the temporary rules to help fishers have access to benefits during the pandemic.

[5] I am dismissing the Claimants appeal.

## **Issue**

[6] Did the General Division make an error when it concluded that the Claimants did not meet the requirements of the law and therefore did not qualify for EI fisher benefits?

## **Analysis**

### **Appeal Division's mandate**

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.<sup>2</sup>

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

**Did the General Division make an error when it concluded that the Claimants did not meet the requirements of the law and therefore did not qualify for EI fisher benefits?**

[10] In support of their appeal, the Claimants submit that the General Division's decision is unfair. They gave their best to reach the \$2,500 goal. They made over \$2000 each during hard times caused by the pandemic. The refusal to give them benefits prevented them from getting their equipment ready for the upcoming fishing season.

[11] During the General Division hearing, the Claimants confirmed that their fishing earnings were respectively \$2,018.18 and \$2,131.70.

[12] To qualify when fishing, you need to show you do not qualify for benefits under the regular EI rules and that you have earned at least \$2,500 of insurable earnings from fishing alone.<sup>3</sup>

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

<sup>3</sup> See section 8(2) of the *Employment Insurance (Fishing) Regulations*.

[13] The General Division correctly concluded that the Claimants could not qualify for benefits under the regular EI rules and establish a claim in October 2021 based on their fishing earnings.

[14] I must now decide whether the General Division addressed in its decision whether the Claimants could benefit from the temporary rules to help fishers have access to benefits during the pandemic.

[15] The General Division does mention in its decision that it has reviewed the law, including special measures in place to facilitate access to benefits for fishers affected by the COVID-19 pandemic. However, it seems to refer to the special measures just to validate the established qualifying period.<sup>4</sup> It does not appear to decide whether the Claimants can in fact receive fishing benefits under these temporary rules.<sup>5</sup>

[16] I find that the General Division decision is not transparent, intelligible and justified. I also find that it did not decide an issue that it should have decided.

[17] I am therefore justified to intervene.

## **Remedy**

[18] I am of the view that the parties had the opportunity to present their case to the General Division. I therefore will render the decision that should have been rendered by the General Division.<sup>6</sup>

[19] The Commission puts forward that the Claimants benefited from the special measures to establish a claim in October 2020 and that fishers may only benefit from this measure once for a summer claim.

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<sup>4</sup> See General Division decision, par. 11.

<sup>5</sup> See sections 153.1922, 153.1923 and 153.196 of the *Employment Insurance Act*.

<sup>6</sup> In accordance with the powers given to the Appeal Division under section 59(1) of the DESD Act.

[20] During the General Division hearing, the Claimants acknowledged that they did not have sufficient earnings to establish a claim in October 2020, and that they nonetheless received benefits.

[21] Unfortunately, for the Claimants, the law only allows fishers to benefit from this special measure once for a summer claim.<sup>7</sup> This limit applies even though the special measures were extended until December 18, 2021.<sup>8</sup>

[22] I understand that the Claimants have suffered significant economic losses due to the pandemic. The fact remains that neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

[23] I have therefore no choice but to dismiss the appeal.

## **Conclusion**

[24] The appeal is dismissed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>7</sup> See section 153.1923(2) of the EI Act.

<sup>8</sup> See section 153.196(3) of the EI Act.