



[TRANSLATION]

Citation: *GB v Canada Employment Insurance Commission*, 2023 SST 1425

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

**Decision**

**Appellant:** G. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (564043) dated February 22, 2023 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Teleconference  
**Hearing date:** July 28, 2023  
**Hearing participant:** Appellant  
**Decision date:** July 31, 2023  
**File number:** GE-23-830

## Decision

[1] The appeal is dismissed.

[2] I find that the Appellant's teaching job didn't end on June 28, 2022, and that she isn't entitled to benefits between June 29, 2022, and August 22, 2022.

## Overview

[3] The Appellant is a high school teacher at the Chic-Chocs school service centre. She got a teaching contract for the 2021–2022 school year. On July 1, 2022, the employer offered her a contract for the 2022–2023 school year. The Appellant accepted this offer the same day.

[4] On February 22, 2023, the Canada Employment Insurance Commission (Commission) told the Appellant that it could not pay her benefits during the non-teaching period from June 29, 2022, to August 22, 2022.

[5] The Appellant argues that she is being penalized because, if the employer had offered her a position in mid-July, she could have received benefits. She says that she didn't receive any earnings during that period.

[6] I have to decide whether the Appellant was employed in teaching between June 29, 2022, and August 22, 2022.

## Issues

[7] To determine whether the Appellant was employed in teaching during the non-teaching period, I must answer these questions:

- Did the Appellant's teaching contract end on June 28, 2022?
- Was the Appellant teaching on a casual or substitute basis?
- Does the Appellant qualify for benefits for employment in a profession other than teaching?

## Analysis

### Did the Appellant's teaching contract end on June 28, 2022?

[8] The non-teaching period occurs annually, at regular or irregular intervals, and no work is performed during this period by a significant number of people employed in teaching. Generally, the school year runs from September to June, and July and August are the main non-teaching periods.

[9] During a non-teaching period, a teacher isn't entitled to benefits, other than maternity or parental benefits. But, if one of the following conditions applies to a teacher's situation, they may receive Employment Insurance (EI) benefits:

- The teacher's employment contract has ended.
- Their teaching was on a casual or substitute basis and/or during the qualifying period.
- The employee had enough hours of insurable employment in a profession other than teaching to qualify for EI benefits.

[10] I note that teachers whose contracts are renewed for the next school year before the end of their teaching contracts, or shortly after, maintain their employment relationship because their employment continues.<sup>1</sup>

[11] Continuity of employment is the key factor in determining whether a job has ended.<sup>2</sup> Short of a genuine break in the employment relationship, a teacher won't be entitled to benefits during the non-teaching period.<sup>3</sup>

[12] The Commission says that the employment relationship continued when the Appellant accepted the employer's offer on July 1, 2022. It argues that the Federal Court of Appeal has confirmed the principle that teachers whose contracts are renewed

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<sup>1</sup> *Oliver* 2003 FCA 98 and section 33 of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> *Stone v Attorney General of Canada* 2006 FCA 27.

<sup>3</sup> *Freddy Giammatei et al. A-664-01; Charlotte Oliver et al. v Attorney General of Canada* 2003 FCA 98; *Attorney General of Canada v Robin* 2006 FCA 175.

at the end of the school year, or shortly after, aren't unemployed because the employment relationship continues.

[13] The employer's head of human resources told a Commission employee that contracts were awarded based on seniority. She explained that teachers accumulate their years of experience from one contract to another, that pension contributions also accumulate from one contract to another, and that teachers remain covered by the group insurance plan during the summer.

[14] Given some of the information allegedly provided to her by a Commission employee, the Appellant believes that, if the employer's job offer had occurred on July 18, 2022, instead of July 1, 2022, she would have been entitled to benefits. She feels penalized because of this, especially since she received no earnings during the summer break.

[15] In addition, the Appellant argues that a colleague in a similar situation to hers was allegedly entitled to benefits during the summer break.

[16] Since the Appellant knew that she would go back to her job on August 22, 2022, she hasn't shown that she made efforts to find a job from June 28, 2022.

[17] While they alone can't establish continuity of employment, the continuation of seniority and the benefits offered by a teacher's employer during the non-teaching period are factors establishing continuity of the employment relationship.<sup>4</sup>

[18] The facts show that the Appellant is a teacher and that she was offered a contract for the 2022–2023 school year shortly after the 2021–2022 school year ended. As she indicated, there was no break in the employment relationship with the employer during the summer of 2022. On July 1, 2022, she was told that she could return to her job when the school break ended. The 2022-23 school year began on August 22, 2022.

[19] There was no break in the employment relationship between the Appellant and the Chic-Chocs school service centre. I find that the Appellant's teaching contract didn't

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<sup>4</sup> *Oliver* 2003 FCA 98.

end on June 28, 2022, and that the employment relationship continued during the non-teaching period.<sup>5</sup>

### **Was the Appellant's teaching on a casual or substitute basis?**

[20] The Appellant said that she was a teacher and had casual status.

[21] The Commission says that the Appellant's job was sufficiently regular, continuous, and predetermined, as the Record of Employment shows. For this reason, her job doesn't meet the definition of casual or substitute employment within the meaning of section 33(2)(b) of the *Employment Insurance Regulations* (Regulations).

[22] The Commission says that, as the Court of Appeal has indicated, when determining whether employment in teaching is on a casual or substitute basis within the meaning of the Regulations, it is necessary to focus on the performance of the employment and not on the status of the teacher who holds it.<sup>6</sup>

[23] So, I have to decide whether the Appellant's teaching was on a casual or substitute basis within the meaning of the Regulations.

[24] As the Commission argues, the test for determining whether employment is on a casual or substitute basis is continuity of employment. At the hearing, the Appellant confirmed that, on July 1, 2022, she accepted a full-time job for the 2022–2023 school year.

[25] The facts of the case show that the Appellant's teaching job was regular during the school period and, although her contract was interrupted by non-teaching periods, her periods of work were determined.<sup>7</sup>

[26] Although the Appellant may not have the same status as other teachers her employer's view, within the meaning of the Regulations, she wasn't working on a casual or substitute basis. When she stopped working for the non-teaching period on June 28,

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<sup>5</sup> Section 33 of the Regulations.

<sup>6</sup> *Arkininstall v Canada (AG)*, 2009 FCA 313; *Attorney General of Canada v Blanchet*, 2007 FCA 377.

<sup>7</sup> Section 33(2)(b) of the Regulations and *Arkininstall v Attorney General of Canada* 2009 FCA 313.

2022, the Appellant knew (or she knew a few days later) that she was still employed and would go back to work on August 22, 2022. Between June 29, 2022, and August 22, 2022, there was no break in the employment relationship. The Appellant was employed on a regular basis within the meaning of the Regulations.

[27] I understand the Appellant's explanation that she received no earnings during that period. But the facts presented show that her job was performed on a regular basis for the period for which she claimed benefits. The Appellant worked on a regular and continuous basis, and there was no break in the employment relationship during the non-teaching period in question.

[28] However, the Appellant is entitled to benefits for other non-teaching periods if she proves that she was teaching on a casual or substitute basis and that there was a break in the employment relationship during other non-teaching periods.

[29] As for the non-teaching period in question, I find that the Appellant's teaching job was regular and, although her contract was interrupted by a non-teaching period, the periods of work were determined.<sup>8</sup>

[30] I find that the Appellant wasn't teaching on a casual or substitute basis between June 29, 2022, and August 22, 2022.<sup>9</sup>

### **Does the Appellant qualify for EI benefits in a profession other than teaching?**

[31] The Appellant hasn't reported any hours of insurable employment in another profession. So, she hasn't proven that she has enough insurable hours in a job other than teaching.

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<sup>8</sup> Section 33(2)(b) of the Regulations and *Arkininstall v Attorney General of Canada* 2009 FCA 313.

<sup>9</sup> *Arkininstall*, above, and *Attorney General of Canada v Blanchet*, 2007 FCA 377.

## **Conclusion**

[32] I find that there was continuity of the employment relationship during the non-teaching period. The Appellant isn't entitled to EI benefits between June 28, 2022, and August 22, 2022.

[33] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section