



[TRANSLATION]

Citation: *CP v Canada Employment Insurance Commission*, 2023 SST 1657

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

Decision

Appellant: C. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (593462) dated June 27, 2023 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: In person
Hearing date: September 28, 2023
Hearing participant: Appellant
Decision date: October 6, 2023
File number: GE-23-2154

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant isn't entitled to receive benefits for the period from September 16, 2022, to November 18, 2022, that is, during the work stoppage attributable to a labour dispute.

Overview

[3] The Appellant applied for benefits after he stopped working because of a shortage of work, and a benefit period was established effective March 27, 2022. On September 15, 2022, he stopped working because of a lockout imposed by his employer, X.

[4] Under an agreement made and approved by the Canada Industrial Relations Board, the Appellant continued to work part-time from September 16, 2022, to maintain essential services.

[5] Between November 21, 2022, and December 12, 2022, the Appellant worked for the City of Lévis. He also kept his job with X.

[6] On January 14, 2023, the Appellant applied to renew his benefit period, which had been established effective March 27, 2022. It was renewed effective December 11, 2022.

[7] However, when he submitted his claim for benefits, the Appellant answered "no" to the question whether, since filing for Employment Insurance, he had worked for an employer for which he was on strike or lockout.¹

[8] On June 27, 2023, the Canada Employment Insurance Commission (Commission) told the Appellant that he wasn't entitled to benefits from September 16,

¹ See GD3-18.

2022, to November 18, 2022, because he had started a regular job on November 21, 2022.

[9] The Appellant disagrees with the Commission. He says there is an ongoing labour dispute at his workplace. He says he doesn't understand why the Commission made a decision about a period before his claim, when he started working for the City of Lévis on November 21, 2022. However, he says that this situation was resolved with the Commission as of November 21, 2022.

[10] On August 17, 2023, the Commission submitted arguments to the Tribunal. It said that it had made a decision indicating that it considered that the Appellant had become regularly employed on February 7, 2023, not on November 21, 2022. It also said that it wasn't sure whether the Appellant was claiming benefits for the period from September 16, 2022, to November 18, 2022.

[11] I have to decide whether the Appellant is entitled to receive benefits during the labour dispute at his workplace.

Matter I have to consider first

[12] Since the claim for benefits was renewed effective December 11, 2022, and since the Commission's reconsideration decision deals with the period from September 16, 2022, to November 18, 2022, the Commission should have made a decision about antedating the claim to September 16, 2022.

[13] However, so as not to unnecessarily complicate the process for the Appellant, I am taking the antedate issue under advisement.

[14] I understand that, on December 11, 2022, the Appellant stopped working for the City of Lévis because of a shortage of work. As I told him at the hearing, I will focus on the period that the Commission identified in its reconsideration decision. I also understand that the Appellant wants to find out whether it is possible to get benefits during an ongoing labour dispute.

[15] As stated at the hearing, the Tribunal's jurisdiction relates to the issue set out in the Commission's reconsideration decision: the disentitlement to benefits during the work stoppage attributable to a labour dispute for the period from September 16, 2022, to November 18, 2022.²

Issues

[16] To determine whether the Appellant is entitled to receive benefits during a labour dispute, I have to answer these questions:

[17] Did the Appellant participate in the dispute that caused the work stoppage?

[18] Did the Appellant finance it?

[19] Was he directly interested in the dispute?

Analysis

Labour dispute in the workplace

[20] The undisputed facts show that there is a labour dispute at the Appellant's workplace.³ The Federal Court of Appeal says that there is a labour dispute when the employer and employees are negotiating a collective agreement.⁴

[21] The Syndicat des débardeurs du port de Québec [Port of Québec longshore workers' union] [Union] (Local 1614 [sic]) and X were negotiating the renewal of a collective agreement when the employer declared a lockout on September 15, 2022. The lockout is still in place today.

[22] Section 36 of the *Employment Insurance Act* (Act) says that a claimant isn't entitled to receive benefits if they lose or are unable to resume employment because of a labour dispute.

² See sections 112 and 113 of the *Employment Insurance Act* (Act).

³ See GD3-34 *et seq.*

⁴ See *Gionest v Canada (Unemployment Insurance Commission)*, A-787-81; and *Canada (Attorney General) v Simoneau*, A-611-96.

[23] This provision also says that a worker in this situation isn't entitled to receive benefits until the earlier of the end of the work stoppage and the day they become regularly employed elsewhere in insurable employment.

[24] In addition, the Act says that the provision doesn't apply if a claimant proves the following three things:⁵

- They aren't participating in the labour dispute that caused the work stoppage.
- They aren't financing it.
- They aren't directly interested in it.

[25] The facts show the following:

- On June 30, 2022, X entered into an agreement with the Union to maintain essential services.
- On July 14, 2022, the Canada Industrial Relations Board accepted this agreement.
- On September 15, 2022, X declared a lockout.
- Under the agreement, the Appellant had to be available for work to maintain essential services. Given the situation, he was working part-time, and his weekly hours varied.
- On November 21, 2022, the Appellant started working elsewhere.

– **Did the Appellant participate in the dispute that caused the work stoppage?**

[26] At the hearing, the Appellant said that, before the employer declared a lockout, the Union was negotiating with the employer to renew the collective agreement to improve his working conditions.

[27] On April 13, 2023, the Appellant told a Commission employee that there was a picket line at his workplace and that he was paid for each day he was on the picket line.

⁵ See section 36(4) of the Act.

[28] As the Tribunal's Appeal Division has already determined, the word "participating" implies that the employee is "involved" in the labour dispute.⁶

[29] This means that, by participating in a picket line, the Appellant was involved in the dispute.

[30] Given the agreement to maintain essential services, the Appellant explains that he had to worked [*sic*] part-time and that he had to remain available for the employer. He says that this situation was financially difficult, and he started a full-time job with the City of Lévis on November 21, 2022, to support himself.

[31] While I understand that the labour dispute is ongoing and that this situation has significant repercussions for him, the facts show that the Appellant participated in the dispute that caused the work stoppage and that he is involved in the labour dispute.

[32] I find that the Appellant participated in the dispute that caused the work stoppage.

– **Did the Appellant finance the labour dispute?**

[33] The Appellant is a longshore worker. The facts show that he is a member of the Union, Local 2614.

[34] At the hearing, he said that, as a Union member, he paid dues.

[35] On April 13, 2023, he explained to a Commission employee that the Union had used part of his union dues to pay him financial compensation. He said that he had received \$400 in compensation.

[36] These facts show that, as a Union member, the Appellant was involved in financing the dispute.

⁶ See *PM v Canada Employment Insurance Commission*, AD-20-627.

– **Was the Appellant directly interested in the dispute?**

[37] At the hearing, the Appellant said that the Union was asking the employer for improvements to his working conditions as part of negotiations to renew the longshore workers' collective agreement. He explained that the Union's demands were particularly about hours worked and pay.

[38] This means that, by negotiating a work schedule or a pay increase, the Appellant, as a unionized worker, is directly interested in the dispute.

[39] He is directly interested in the dispute because the goals of the Union's demands, as well as the results of the negotiations, directly concern his status as a worker.

[40] Given that the union representing him is negotiating changes to longshore workers' working conditions that will improve his situation, I can't find that he wasn't directly interested in the labour dispute that occurred during the work stoppage.

[41] However, I understand very well the Appellant's explanations that the labour dispute is ongoing and that such a situation has significant repercussions for him. Unfortunately, under the Act, when an employee temporarily stops working because of a labour dispute that they are directly interested in, they can't get benefits.

[42] I find that the Appellant was directly interested in the dispute.

– **Is the Appellant entitled to receive benefits?**

[43] I find that the Appellant isn't entitled to receive benefits under section 36(1)(a) of the Act for the period from September 16, 2022, to November 18, 2022.

[44] I understand that this situation is disappointing or worrisome, especially since the labour dispute is still going on today. However, labour relations matters are for another forum. My role is simply to determine whether the Appellant is entitled to receive benefits during the work stoppage attributable to the labour dispute.

[45] While I understand that a lockout is in place and that this situation is difficult, under the Act, the Appellant isn't entitled to receive benefits for the period from September 16, 2022, to November 18, 2022.

[46] On this point, in the Appellant's case, he worked a few hours part-time to provide essential services, but that doesn't entitle him to benefits either.

[47] Under section 36(1)(a) of the Act, the Appellant isn't entitled to receive benefits during a work stoppage attributable to a labour dispute. Although the Commission indicated in its decision that he wasn't entitled to benefits during that period because he had started insurable employment elsewhere, I find that the Appellant isn't entitled to benefits during the work stoppage due to a labour dispute.

[48] The Appellant hasn't shown that he didn't participate in or finance the labour dispute that caused the work stoppage on September 15, 2022. He also hasn't shown that he wasn't directly interested in the labour dispute. This means that section 36(1) of the Act applies.

Conclusion

[49] The Appellant wasn't entitled to receive benefits during the work stoppage attributable to a labour dispute from September 16, 2022, to November 18, 2022.

[50] This means that the appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section