Citation: *Canada Employment Insurance Commission v SL*, 2024 SST 213

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Gilles-Luc Bélanger
Respondent:	S. L.

Decision under appeal:	General Division decision dated July 18, 2023 (GE-23-616)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Teleconference
Hearing date:	January 25, 2024
Hearing participants:	Appellant's representative Respondent
Decision date:	March 5, 2024
File number:	AD-23-756

Decision

[1] The Canada Employment Insurance Commission (Commission) is the Appellant. I am allowing their appeal.

[2] The General Division made an error of law. I have fixed the error by giving the decision that the General Division should have given.

[3] S. L. is the Claimant and she isn’t entitled to EI benefits during her summer break.

Overview

[4] The Claimant is a teacher. She had a period of unemployment in the summer of 2022. She says she was between employment contracts and should be allowed to have EI benefits.

[5] The Claimant applied for EI benefits for the period between her two positions. The Commission denied the Claimant benefits. The Claimant appealed to the Social Security Tribunal (Tribunal) and the General Division agreed with her and found she was entitled to benefits.

[6] I find the General Division made an error of law. It didn't apply binding case law to the facts of the case. I have given the decision the General Division should have given.

[7] I am allowing the appeal. Under established case law the Claimant’s employment continued with her employer over her non-teaching period in the summer of 2022. That means the Claimant doesn’t qualify for EI benefits during the summer of 2022.

Preliminary Issue

[8] At the hearing, the Claimant read from a written document she had prepared. It was agreed, by the parties and myself, that she would send in the document after the hearing. This document was received and considered.[1] The Commission confirmed it had no reply to the document.

Issues

[9] The issues in this appeal are:

a) Did the General Division make an error of law by failing to apply binding case law that determines if a teacher's contract was terminated?

b) If so, how should the error be fixed?

Analysis

[10] I can only intervene (step in) if the General Division made an error. There are only certain errors I can consider. In this case, the Commission says the General Division made an error of fact or law.

[11] If there is an error in how the General Division applied the law I can intervene.[2]

The General Division didn't apply binding case law that shows the Claimant was a full-time teacher with continuity of employment

[12] There is a general rule that teachers can't get EI during non-teaching periods.[3] The summer period, when kids aren't in school, is considered a non-teaching period. It is settled law that teachers who aren't working during these non-teaching periods are **not** considered unemployed.[4]

---

[1] See AD3.
[2] See section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).
[3] See section 33 of the *Employment Insurance Regulations* (Regulations).
[4] See *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

[13] But there are exceptions to the general rule. The exception at issue in this case says that a teacher isn't disentitled to receive EI benefits if the teaching contract has ended.[5]

[14] The General Division decided this case was about whether or not the Claimant's teaching contract had ended.[6] The General Division found the Claimant's contract had ended and that she should be able to receive EI benefits.

[15] The Commission appealed the decision on the basis that the General Division erred in fact and law when it decided the Claimant's employment had ended. The Commission argued the General Division ignored case law that establishes when a teacher has a "veritable break" (an actual break) in their employment.[7]

[16] The case law in this area is clear. When looking at a full-time teacher from one school year to the next, it must be decided if there was a continuity in the employment relationship.[8] The case law calls an interruption in employment a "veritable break".

[17] The idea is that unless there is a veritable break in the employment, a teacher isn't entitled to benefits during non-teaching breaks.[9] The courts say this means there must be a severance in the relationship between the teacher and the employer.[10]

[18] Many cases have looked at the continuity of employment.[11] In this case, as in most of the cases at the Federal Court of Appeal, contracts were renewed prior to the expiry of the current contract or soon after.[12] The Federal Court of Appeal has

---

[5] See section 33(2)(a) of the Regulations.
[6] See the General Division decision at paragraph 18. See also section 33(1)(a) of the Regulations.
[7] See AD2-4.
[8] See *Côté v Canada (Employment and Social Development)*, 2017 FCA 28 at paragraph 4; *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 16; and *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 25.
[9] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 25.
[10] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 16.
[11] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 19 where the Federal Court of Appeal says that all of their decisions have found continuity except one case. The one case, *Ying v Canada (Attorney General)*, 1998 CanLII 8865 (FCA), where it was found not to be continuity because there was no contract in place. This case was explained in *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 52.
[12] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 20; see also *Bishop v Canada (Employment Insurance Commission)*, 2002 FCA 276.

consistently decided that teachers whose contracts finish in June and then are rehired for the next school year aren't entitled to EI benefits.[13] In this case, the Claimant had her new contract for the following school year before her current contract expired.

[19] The Federal Court of Appeal specifically says that unless there is a "veritable break in the continuity of a teacher's employment, the teacher will not be entitled to benefits of the non-teaching period."[14]

[20] The General Division made an error of law. It didn't apply the binding case law to the facts of the case. The General Division considered that the Claimant's one contract ended on June 30, 2022.[15] The General Division didn't take into account that the Claimant had a contract for the following school year before that contract ended. The General Division also didn't consider that the Claimant was still linked to her employer through benefits.

Remedy

[21] The parties agreed that, if I found an error, I should give the decision the General Division should have given. There is no suggestion by either party that they didn't present all of their evidence to the General Division.

[22] I find this means I can give the decision that the General Division should have given. That includes deciding whether the Claimant is entitled to EI benefits during her summer break.[16]

The Claimant isn't entitled to EI benefits because she had continuity in her relationship with her employer

[23] It isn't disputed that the Claimant was a qualified full-time elementary school teacher who was on contract for the school year from September 2021 to June 2022. In

---

[13] See, for example, *Bishop v Canada (Employment Insurance Commission)*, 2002 FCA 276; *Canada (Attorney General) v Partridge* (1999), 245 N.R. 163 (FCA); *Gauthier v Canada (Employment and Immigration Commission)*, [1995] F.C.J. no. 1350 (C.A.); and *Canada (Attorney General) v Hann*, [1997] F.C.J. no. 1641 (C.A.).
[14] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 27.
[15] See the General Division decision at paragraph 20.
[16] Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

June 2022, the Claimant was offered, and she accepted, full-time permanent employment for the following school year.[17] The Claimant agrees she accepted the permanent employment for the following school year before her current contract ended.[18] The new contract started on August 25, 2022.[19]

[24] The law says teachers aren't entitled to benefits during non-teaching periods.[20] It is an exception if the claimant's contract of employment for teaching has terminated.

[25] The Claimant says her contract was terminated. She says she wasn't getting paid in the summer of 2022. The Claimant argued that she had a "veritable break" in her employment because anything could have happened during the summer.[21] Except, it is known that the Claimant did start her employment, as per her contract, in August 2022.[22]

[26] The Claimant acknowledges she had benefits through her employer over the summer. The Claimant also acknowledges that her pension contributions and her previous teaching seniority continued to be recognized in her permanent contract.[23]

[27] The Claimant argues she received no funds from her employer over the summer and therefore there was a break. She says her employer noted this in an email to her where it said, "Your contract ended on June 30th, 2022 and whatever the end result of your pay has already occurred. You do not get paid over the summer until you've completed your first year as a FT teacher and accumulated your 10-month adjustment".[24]

[28] The law is clear that a number of factors need to be considered when deciding if there is a veritable break in employment. Unfortunately, not receiving payment through

---

[17] Listen to the General Division hearing recording at 00:17:54
[18] Listen to the General Division hearing recording at 00:18:18.
[19] See GD3-20.
[20] See section 33(2)(a) of the Regulations.
[21] Listen to the General Division hearing recording at 00:25:17.
[22] See GD3-19.
[23] The Claimant agreed this was the case during the hearing and it was noted in GD3-7 and GD3-22.
[24] See GD3-20.

the non-teaching period isn't a deciding factor.[25] There have been a number of cases where the courts have found that even though a claimant didn't receive payment during a non-teaching period, there still wasn't a termination of their contract.[26] That means the claimants weren't entitled to EI benefits.

[29] It is established law that when teachers have a new contract before their old one ends, there isn't a veritable break in employment.[27] The Claimant said she told the General Division that she was offered, and accepted, a permanent job placement in June 2022.[28] She said she was given an oral offer of a contract through a Zoom call in which she was able to choose her placement. During this call, she chose a placement at her current school. This was her acceptance. This means there was a contract of employment. The fact that she never signed anything doesn't mean she didn't have a contract.

[30] The Claimant's employer sent an email to all staff that confirmed the Claimant was the successful candidate for the teaching position on June 28, 2022.[29] The Claimant clarified for the General Division that the Zoom call occurred a few days before the June 28, 2022, email was sent out to all staff.[30] I find this means she accepted the offer of employment in June 2022. The next employment contract that was going to start on August 25, 2022.

[31] The Claimant, prior to the end of her current contract, was offered and she accepted a permanent job for the next school year. This means she wasn't truly "unemployed" as defined by case law.[31] To be truly unemployed means that the teacher

---

[25] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 52.
[26] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 54.
[27] See, for example, *Stone v Canada (Attorney General)*, 2006 FCA; *Bishop v Canada (Employment Insurance Commission)*, 2002 FCA 276; *Canada (Attorney General) v Partridge* (1999), 245 N.R. 163 (FCA); *Gauthier v Canada (Employment and Immigration Commission)*, [1995] F.C.J. no. 1350 (C.A.); and *Canada (Attorney General) v Hann*, [1997] F.C.J. no. 1641 (C.A.).
[28] Listen to the General Division hearing recording at 00:18:18 to 00:19:27.
[29] See GD3-20.
[30] Listen to the General Division hearing recording at 00:20:19.
[31] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 48 where the court recognized that "unemployed" is not synonymous with "not working". See also *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 16.

had a “genuine severance” in the employer-employee relationship.[32] So, for example, if a teacher is “truly unemployed” it means that they are looking for and able to accept a suitable offer of employment.[33] Here, the Claimant already had a permanent contract that was to start in August 2022.

[32] Case law has looked at whether or not a claimant truly believed their employment was at an end. It is noted that where a teacher truly believed they were unemployed they would have been searching for a job.[34] Here there isn’t evidence the Claimant was searching for work. This is likely because she knew she had a full-time job that was starting in August 2022.

[33] The Claimant argues she wasn’t a permanent teacher during the 2021-2022 school year. But I don’t find this means that she had a veritable break in her employment. The Federal Court of Appeal has noted that severance “does not mean a change in one’s employment status from a probationary teacher to a teacher with a continuous contract.”[35]

[34] The Federal Court of Appeal specifically says that unless there is a “veritable break in the continuity of a teacher’s employment, the teacher will not be entitled to benefits of the non-teaching period.”[36]

[35] The courts have also said that it isn’t just the start and end dates of the contract that are important.[37] There has to be a full break in the employer-employee relationship. The Claimant acknowledges she had benefits, her pension and her seniority between the two contracts. This means there was an ongoing employer-employee relationship.

[36] I find this means that the Claimant didn’t have a veritable break in her employment. Put another way, there was continuity in her employment relationship with

---

[32] See *Canada (Attorney General) v Robin*, 2006 FCA 175 at paragraph 30.
[33] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 41.
[34] See *Stone v Canada (Attorney General)*, 2006 FCA 27 at paragraph 88.
[35] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 16.
[36] See *Oliver v Canada (Attorney General)*, 2003 FCA 98 at paragraph 27.
[37] See *Canada (Attorney General) v Robin*, 2006 FCA 175 at paragraph 32.

her employer. That means she doesn't fall under the exception in the law and isn't entitled to benefits for the 2022 summer break.

[37] So, because there was continuity in the employer-employee relationship it means the Claimant doesn't qualify for benefits.

I can't consider financial hardship in reaching my decision

[38] The Claimant asked me to consider that she had financial hardship during the summer of 2022 and is still trying to recover.[38] I empathize with the Claimant's situation. Unfortunately, I must follow the law and it is clear. I can't make a finding that the Claimant is entitled to benefits when she doesn't meet the legal test for the exception.

Conclusion

[39] The appeal is allowed.

[40] The General Division made an error of law. It didn't consider all of the factors when deciding if the Claimant was in a continuing relationship with her employer.

[41] I have fixed the errors by giving the decision the General Division should have given. The Claimant isn't entitled to benefits for the summer break period of 2022.

Elizabeth Usprich
Member, Appeal Division

[38] See AD3-4.