



Citation: *SL v Canada Employment Insurance Commission*, 2023 SST 2046

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

Decision

Appellant: S. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (544970) dated February 7, 2023 (issued by Service Canada)

Tribunal member: Jean Yves Bastien

Type of hearing: Videoconference

Hearing date: July 18, 2023

Hearing participant: Appellant

Decision date: July 18, 2023

File number: GE-23-616

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The assumption that teachers work 10 months, but are paid for 12, does not apply to the Appellant. As a term employee, the Appellant did not qualify for “summer pay”¹. Therefore, she has proven that, even though she has the occupation of teaching, she was entitled to receive Employment Insurance (EI) benefits during the summer non-teaching period.

[3] The Appellant’s contract as a term employee came to an end on June 30, 2022. Because of this, the *Employment Insurance Regulations (Regulations)* say that the Appellant is entitled to benefits because “the claimant’s contract of employment for teaching [had] terminated”.

[4] This means that the Appellant isn’t disentitled from receiving EI benefits.

Overview

[5] Because most teachers are employed for 10 months, but paid for 12, most teachers do not qualify for EI during the “non-teaching” periods because they continue to receive income.

[6] The Appellant is a teacher with X. She was on a 10-month term contract for the 2021 – 2022 school year. Her last day of work was June 29, 2022, and then the next day, her term contract ended.

[7] The Appellant was verbally offered a permanent contract on June 28, 2022. This contract was effective August 25, 2022. But the Appellant did not formally accept this contract until she started working at the end of August.

¹ The employer uses the term “accumulated 10-month adjustment”. Whatever it’s named, this is an arrangement that ensures teachers are paid over the entire 12-months of the year.

[8] The Appellant says that because she was not a permanent employee, she received no income during the summer period. So, she made an initial claim for regular EI benefits on July 1, 2022.

[9] The Commission says that they decided to disentitle the Appellant from receiving benefits under section 33 of the *Regulations* because they said that she failed to prove that, as a teacher, she was entitled to receive employment insurance benefits during a non-teaching period.”²

[10] I have to decide if the Appellant was entitled to receive EI benefits in July and August 2022.

[11] Therefore, I have to consider the following issues:

- Was the Appellant employed in teaching?
- Was the Appellant teaching on a casual or substitute basis?
- Does the Appellant qualify for benefits for a job in an occupation other than teaching?
- Did the Appellant’s term contract end?
- Was the Appellant paid during the summer non-teaching period?

Analysis

[12] *Regulation* 33 is based on the assumption that teachers work for 10 months but are paid for 12. “Teachers receive special treatment in the *Act* and *Regulations* because they work for 10 months, but have contracts that provide for an annual salary.”³

² See page GD4-1 of the appeal record.

³ See CUBs 18606, 16066A, 17053 as quoted by T. Steven Lavender. *The 2023 Annotated Employment Insurance Act*, Thomson Reuters Canada, p.739.

[13] The intent of *Regulation 33* is to prevent teachers from collecting benefits during the non-teaching period when earnings are payable to the claimant pursuant to the teaching contract.⁴

Was the Appellant employed in teaching?

[14] The Appellant stated on her initial application that she was an elementary school teacher. She is licensed teacher in the Province of Quebec. So, she is “employed in teaching” and Regulation 33 applies to her.

Was the Appellant teaching on a casual or substitute basis?

[15] The Appellant said that she was working on a full-time basis during the 2021-2022 school year.⁵ So, she was **not** teaching on a casual or substitute basis.

Does the Appellant qualify for benefits for a job in an occupation other than teaching?

[16] The Appellant worked solely as a teacher during her qualification period. Therefore, she does **not** qualify for benefits in another occupation.

Did the Appellant’s employment as a teacher continue?

[17] 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.⁶ Generally, the school year runs from September to June. July and August are the main non-teaching periods.

[18] During a non-teaching period, a teacher usually isn’t entitled to receive benefits, other than maternity or parental benefits. This is because most teachers are paid for all 12 months of the year. But, if one of the following conditions applies to a teacher’s situation, they may receive EI benefits:

⁴ See CUBs 18606, 16776 as quoted by T. Steven Lavender. *The 2023 Annotated Employment Insurance Act*, Thomson Reuters Canada, p.739.

⁵ See page GD3-19 of the appeal record.

⁶ Section 33(1) of *the Employment Insurance Regulations* (Regulations).

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

[19] The Commission says that the Appellant was employed in teaching and was not entitled to employment insurance benefits during the Summer non-teaching period. Consequently, the Commission imposed disentitlements from June 30, 2022, to August 24, 2022.⁷

[20] But the Appellant said that her term contract came to an end on June 30, 2022. A different contract, one as a permanent teacher would not start until August 25, 2022. She was not paid in the two months between the end of her term contract and the beginning of her permanent contract. The Appellant argues therefore, her employment as a teacher didn't continue over the summer months.

Did the Appellant's contract end on June 30, 2022?

[21] At the hearing, the Appellant argued that her term contract ended at the end of June 2022. She said that as a term employee she didn't get paid for the summer period as permanent teachers do. When she enquired about her status with her employer on June 29, 2022, her employer told her two things:⁸

- "Your contract ended on June 30, 2022."
- "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."

[22] So, I accept that as a term teacher, the Appellant worked an entire 10-month school year just like permanent teachers. But, she didn't qualify for the employer's

⁷ See page GD4-1 of the appeal record.

⁸ See page GD3-20 of the appeal record.

program for permanent teachers where pay was ‘accumulated’ over the 10-month school year and then paid out over the summer.

[23] So, the Appellant didn’t have a contract that provided for an annual (12-month) salary. Case law tells us that “The fact that benefits continue [or don’t] over the summer vacation period has been held to be determinative” in whether or not a contract has been terminated.⁹

[24] The Appellant wasn’t paid over the summer non-teaching period. So, it goes without saying that her “benefits didn’t continue over the summer vacation period.” Therefore, I find that the Appellant’s contract as a term employee terminated on June 30, 2023.

[25] Because of this, I find that section 33(2)(a) of the *Regulations* entitles the Appellant to benefits because “the claimant’s contract of employment for teaching [had] terminated.”

Conclusion

[26] The appeal is allowed.

Jean Yves Bastien
Member, General Division – Employment Insurance Section

⁹ See CUBs 65294,65483,65924,700118,070476,77852 as quoted by T. Steven Lavender. *The 2023 Annotated Employment Insurance Act*, Thomson Reuters Canada, p.741.