



Citation: *JK v Canada Employment Insurance Commission*, 2023 SST 1962

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

## Decision

**Appellant:** J. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (615543) dated September 26, 2023 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** December 6, 2023

**Hearing participant:** Appellant

**Decision date:** December 14, 2023

**File number:** GE-23-2808

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he is entitled to Employment Insurance (EI) benefits during the non-teaching period from July 31 to September 4, 2023.

## Overview

[3] The Appellant worked on a contract as a teacher from January to July 2023. When the contract ended, he applied for EI benefits. In his application for benefits, he said he accepted an offer of a permanent position on July 13, 2023, for the 2023/2024 school year.

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving EI benefits, because no benefits can be paid to teachers during non-teaching periods.

## Matters I have to consider first

### **The Appellant didn't send the Commission's reconsideration decision**

[5] The Appellant has to send the Tribunal a copy of the Commission's reconsideration decision or the date of the reconsideration with his notice of appeal.<sup>1</sup> He did not do so. I have a copy of the Commission's file that has this decision. So, I don't need the Appellant to send it.<sup>2</sup>

### **Non-teaching periods after September 4, 2023**

[6] In its initial decision, the Commission decided that the Appellant can't be considered unemployed from September 5, 2023, to July 26, 2024, because he will be working for his employer. It also decided that the Appellant isn't entitled to EI benefits

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<sup>1</sup> See section 24(1)(e) of the *Social Security Rules of Procedure*.

<sup>2</sup> See section 8(4) of the *Social Security Rules of Procedure*.

in the non-teaching periods from July 28 to September 4, 2023, December 11, 2023, to January 5, 2024, April 1 to April 26, 2024.

[7] The Appellant asked the Commission to reconsider its decision. But he said the decision he wanted to be reconsidered was the decision that he isn't entitled to EI benefits in the non-teaching period from July 28 to September 4, 2023. He said he agreed with the decision about the non-teaching periods after September 4, 2023. He reiterated this in his notice of appeal.

[8] Based on the above, I don't find that the Appellant was asking the Commission to reconsider its decision about these non-teaching periods. So, I find that the reconsideration decision maintains the Commission's initial decision that the Appellant isn't entitled to EI benefits in the non-teaching period from July 28 to September 4, 2023.

## Issue

[9] Is the Appellant entitled to receive EI benefits during the non-teaching period from July 31 to September 4, 2023?

## Analysis

[10] The general rule is that teachers<sup>3</sup> can't be paid EI benefits during any non-teaching period of the year.<sup>4</sup> Non-teaching periods are those periods that happen every year when most people employed in teaching don't work.<sup>5</sup> These include periods such as the summer break, Christmas, and semester breaks.<sup>6</sup>

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<sup>3</sup> Section 33(2) of the Employment Insurance Regulations (EI Regulations) refers to a "claimant who was employed in teaching"; section 33(1) of the EI Regulations defines "teaching" as "the occupation of teaching in a pre-elementary, an elementary or a secondary school, including a technical or vocational school."

<sup>4</sup> See section 33 of the EI Regulations.

<sup>5</sup> See section 33(1) of the EI Regulations.

<sup>6</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

[11] Teachers aren't working during non-teaching periods. But they aren't considered to be unemployed during these periods. Not working is different from being unemployed.<sup>7</sup>

[12] There are a few exceptions to this general rule.<sup>8</sup> The Appellant has to prove that it is more likely than not that one of the exceptions applies to him.<sup>9</sup> I will look at these exceptions below to decide if the Appellant is entitled to EI benefits during non-teaching periods.

### **Has the Appellant's teaching contract terminated?**

[13] The Appellant hasn't shown that his teaching contract terminated.

[14] The onus is on the Appellant to show that the contract has terminated.<sup>10</sup>

[15] There may be time between two contracts when a teacher isn't under contract. But this doesn't mean that the relationship between the teacher and their employer has ended.<sup>11</sup> I have to decide if there was a "veritable break" in the continuity of the Appellant's employment.<sup>12</sup>

[16] The Commission says the Appellant's employment relationship continued when he entered into a new teaching contract following the previous teaching period. It says this means that his contract of employment for teaching wasn't terminated.

[17] The Appellant says his teaching contract ended on July 27, 2023, and he was unemployed until his new contract started on September 5, 2023.

[18] I find that the Appellant's contract hasn't terminated. I find for reasons that follow that the employment relationship with his employer continued.

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<sup>7</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

<sup>8</sup> See section 33(2) of the EI Regulations.

<sup>9</sup> *Stone v Canada (Attorney General)*, 2006 FCA 27.

<sup>10</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27.

<sup>11</sup> *Bazinet v. Canada (Attorney General)*, 2006 FCA 174; *Canada (Attorney General) v. Robin*, 2006 FCA 175.

<sup>12</sup> *Stone v. Canada (Attorney General)*, 2006 FCA 27; *Bazinet v Canada (Attorney General)*, 2006 FCA 174.

[19] The Appellant worked as a teacher under a temporary contract for a school district. He sent the Commission a letter from the employer with details of the contract. It shows that the contract was for the period January 3 to July 27, 2023.

[20] In his application for benefits, the Appellant said he was offered a permanent teaching contract on July 12, 2023. He accepted the offer the next day. The contract start date was September 5, 2023.

[21] The Appellant sent the Commission a copy of the offer of a permanent contract. It's from the same school district he worked for under the temporary contract from January to July 2023. The letter shows the effective date of the permanent contract as July 1, 2023. But the employer told the Commission that since the Appellant was under a temporary contract until July 27, 2023, the permanent contract was actually effective July 28, 2023.

[22] I accept as fact that the Appellant worked under a teaching contract until it ended on July 27, 2023. I also accept that he didn't work or have income until September 5, 2023. But that isn't enough for me to find that the Appellant's contract terminated on July 27, 2023. To decide if the 2023 summer non-teaching period was a "veritable break" in the Appellant's employment, I have considered several factors.

[23] The Appellant's employer told the Commission that the Appellant had medical and dental benefits coverage through the summer non-teaching period and that premiums were paid by the employer. It also said that if the Appellant had sick leave credits, they would have carried over to his new contract.

[24] I asked the Appellant about what his employer told the Commission. He said that as far as he knows, medical benefits ceased due to the temporary contract. He added that the school district allowed him to have benefits up to September, but if he didn't sign a new contract, they would end on September 30. He clarified that while his medical coverage continued, there were two separate reasons for that coverage based on the two contracts.

[25] Concerning the sick leave credits, the Appellant said that from what he understands, as an employee, he had to use his sick leave credits within a contract; they're not paid out or given in lieu. He said if his temporary contract had ended and he worked as a teacher on call, his sick leave credits would stay with his record in the district, just like his seniority. He added that whenever he accepted another contract, his sick leave credits would be pulled from his account automatically and added to the contract. He said he wasn't aware that the sick leave credits would roll over, but he could access them once he started a new contract.

[26] The Commission said there were linkages between the Appellant's two teaching contracts. It said these include annual pay increases, accumulation of seniority or job security, carryover of seniority, unused sick leave and pension, and continued coverage of medical and dental benefits in the summer non-teaching period. It said that this shows the employment relationship continued between the Appellant and the employer when he entered into an agreement for the next teaching period.

[27] I asked the Appellant about what the Commission said. He said this is incorrect. He said the use of the words "carry-over" and "continuing" aren't correct. He said all teachers get annual pay increases. He said it's the same for seniority whether he had taken a new contract or not. The Appellant said that medical and dental coverage would also have continued whether he had taken a new contract or not.

[28] In his application for benefits, the Appellant checked statements that apply to his situation. These include that his previous experience would be recognized for seniority purposes, his unused sick days and pension contributions would be carried forward to the new teaching period, and that he was presently covered by his employer's medical, dental and disability plan.

[29] I acknowledge that the Appellant doesn't agree with the Commission's conclusion that there were linkages between his two contracts with the school district for the reasons it stated. And I have already accepted as fact that the Appellant wasn't paid in August 2023. But I find from his testimony and the details he gave in his

application for benefits noted above that the relationship with the employer wasn't severed. In fact, there was no gap between the contracts.

[30] I find that there was no veritable break in the continuity of the Appellant's employment. He accepted the new contract with the same employer before his old contract ended. There was no gap between the two contracts. And I don't find that the Appellant's testimony that the continued seniority, pay increases and benefits apply whether or not a teacher accepts an offer of a permanent contract means that his teaching contract terminated.

[31] Based on the above, I don't find that the Appellant has shown that his contract with the employer has ended.

### **Was the Appellant working in teaching on a casual or substitute basis?**

[32] The Appellant wasn't working on a casual or substitute basis.

[33] If a claimant's work in the teaching during the qualifying period is on a casual or substitute basis, they can get EI benefits. But the work must have been "predominantly or entirely" on a casual or substitute basis for the exception to apply.<sup>13</sup> I find this interpretation persuasive.

[34] The Appellant said his work under the temporary contract from January to July 2023, was on a casual basis. He included a definition of casual teaching from the Commission's website. It says, "[c]asual teaching means irregular, occasional or incidental teaching. If the employment involves filling an unexpected or temporary absence for a short period and, if the employment can be cancelled at any time, it is of a casual nature".

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<sup>13</sup> *K. C. v. Canada Employment Insurance Commission*, AD-17-278

[35] The Commission said the Appellant's work under the temporary contract was sufficiently regular, consistent, and pre-determined that it doesn't meet the definition of casual or substitute teaching. It says the Appellant fulfilled the temporary contract.

[36] The Appellant testified about the Commission's submission. He said he was replacing a teacher who was on medical leave. But he said at any moment, the contract could be void if the teacher who was on medical leave returned to work. The Appellant said he wasn't sure if any day would be his last or if he would return to work the following day. He added that he went to work every day he was required.

[37] The Appellant's employer issued a ROE showing that the Appellant worked from January 3 to July 27, 2023, and was paid weekly. The earnings listed on the ROE are the same in every pay period except for the first week the Appellant worked. I acknowledge that the Appellant's contract could have ended at any time if the teacher who he was replacing returned from leave. But I find that the ROE shows that the Appellant worked on a regular basis through the end of his contract.

[38] Since the Appellant worked on a regular basis, I don't find that it can be considered to be irregular, occasional or incidental. Instead, the Appellant worked every day he was required. I also don't find that the Appellant was replacing the teacher for a short period, even though it wasn't for the full school year. I accept the Commission's evidence as fact that he fulfilled the seven-month temporary contract.

[39] Based on the above, I don't find that the Appellant's work was predominantly or entirely on a casual or substitute basis.

### **Does the Appellant qualify for EI benefits in an occupation other than teaching?**

[40] The Appellant does not qualify for EI benefits in an occupation other than teaching.

[41] In his notice of appeal, the Appellant said he did seasonal work in his qualifying period in addition to his teaching job. He said he would have had more than 306 insurable hours with this employer, but he had to return to his job at the school district.



[42] The Appellant testified that he agreed with the Commission's submission that he would not qualify for benefits because he didn't work enough hours in an occupation other than teaching. But he wanted to note that he got this job instead of just relying on EI benefits to support himself.

[43] I acknowledge the Appellant's efforts to minimize his use of EI benefits. And I find that he worked for an employer other than the school district during his qualifying period. But I find that that Commission is correct. Since the Appellant would require between 420 and 700 insurable hours to qualify for benefits, I find that the 306 insurable hours the Appellant worked isn't enough to find that he qualifies for EI benefits in an occupation other than teaching.

### **So, is the Appellant entitled to EI benefits in the non-teaching period?**

[44] Based on my findings above, I find that the Appellant hasn't shown that he meets one of the exceptions to get EI benefits in the non-teaching period from July 28 to September 4, 2023.

[45] The Appellant testified about the financial impact of not getting EI benefits at a time when he really needed them. He said he had used EI benefits in the past as a guarantee that he could pay his rent while he looked for work. He added that if he hadn't taken the permanent contract or if he had lied about it, he would have been okay.

[46] I find that the Appellant has acted responsibly and with integrity, using EI benefits only as necessary. I agree with him that EI benefits are intended to help claimants transition from unemployment to work. But EI is an insurance plan, and like other insurance plans, you have to meet certain requirements to receive benefits.

[47] While I sympathize with the Appellant's situation, I can't change the law.<sup>14</sup>

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<sup>14</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

## **Conclusion**

[48] The Appellant hasn't shown that he meets one of the exceptions to get EI benefits in the non-teaching period. Because of this, I find that he is disentitled from receiving benefits.

[49] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section