



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v CC*, 2024 SST 675

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Josée Lachance

Respondent: C. C.

Decision under appeal: General Division decision dated December 14, 2023 (GE-23-2951)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: May 30, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: June 18, 2024

File number: AD-24-25

Decision

[1] The Commission's appeal is allowed. The Claimant is not entitled to benefits for the non-teaching periods from July 3, 2023, to August 22, 2023; from December 25, 2023, to January 5, 2024; and from March 4, 2024, to March 8, 2024.

Overview

[2] The Respondent (Claimant) is a teacher. She obtained a full-time (100%) contract of employment for teaching at X from August 24, 2022, to June 28, 2023. On June 18, 2023, the employer offered her another full-time (100%) contract for the 2023-2024 school year, conditional on enough enrolment.

[3] On July 4, 2023, the Claimant applied for Employment Insurance (EI). On August 1, 2023, the Appellant (Commission) notified the Claimant that it could not pay her benefits during the non-teaching periods from July 3, 2023, to August 22, 2023; from December 25, 2023, to January 5, 2024; and from March 4, 2024, to March 8, 2024.

[4] The Claimant asked the Commission to reconsider this decision, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the employment relationship between the Claimant and X was severed. It found that the June 18, 2023, conditional offer did not guarantee continuity of employment and that the contract had ended, as the Record of Employment (ROE) indicated. The General Division also found that the Claimant was teaching part-time. It found that the Claimant meets two exceptions under the *Employment Insurance Regulations* (EI Regulations) which makes her eligible for benefits.

[6] The Commission was given permission to appeal the General Division decision. It argues that the General Division failed to consider the material before it and that it made an error of law.

[7] I must decide whether the General Division made its decision without regard for the material before it and made an error in its interpretation of section 33(2) of the EI Regulations.

[8] I am allowing the Commission's appeal.

Issue

[9] Did the General Division make its decision without regard for the material before it and make an error in its interpretation of section 33(2) of the EI Regulations?

Analysis

Appeal Division's mandate

[10] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[11] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[12] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

Did the General Division make its decision without regard for the material before it and make an error in its interpretation of section 33(2) of the EI Regulations?

– The parties' position

[13] The Commission argues that the General Division made an error of fact and an error of law when it found that, under section 33(2)(a) of the EI Regulations, the Claimant was entitled to benefits during the non-teaching periods scheduled for the school year despite the fact that her employer had offered her a new contract before the end of the school year.

[14] The Commission says that the fact that the Claimant did not sign a written contract before fall and the possibility that the offer would not materialize due to a lack of enrolment does not show that there is no continuity of employment between the two contracts.

[15] The Commission argues that the General Division also made an error of law when it indicated that the Claimant met a second exemption condition because she had shown that she was a part-time employee. It argues that part-time employment on a regular basis and under a teaching contract, such as the Claimant's for the 2022-2023 school year, is not enough to meet the exemption condition set out in section 33(2)(b) of the EI Regulations.

[16] The Claimant argues that the General Division did not make any errors of fact or of law. She argues that her ROE indicates that her contract ended and that the date of return was unknown. As indicated in her application for benefits, she did not know she would be hired before August 23, 2023. She officially signed her contract in October 2023.

– Employment Insurance: Additional conditions and terms in relation to teachers

[17] The General Division had to decide on the disentitlement imposed on the Claimant under section 33(2) of the EI Regulations for the non-teaching periods from

July 3, 2023, to August 22, 2023; from December 25, 2023, to January 5, 2024; and from March 4, 2024, to March 8, 2024.

[18] Section 33(2) of the EI Regulations says that a claimant who was employed in teaching for any part of their qualifying period is not entitled to receive benefits for any week of unemployment that falls in any non-teaching period. The term “any non-teaching period” includes the summer break.

[19] Section 33(2) of the EI Regulations contains three exceptions to this general rule. These are three separate exceptions, not one exception with three conditions. These three exceptions are the following:

- (a) The claimant’s employment contract in teaching has terminated.
- (b) The claimant’s employment in teaching was on a casual or substitute basis.
- (c) The claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

Section 33(2)(b) of the EI Regulations: teaching must be on a casual or substitute basis

[20] The Federal Court of Appeal has confirmed that casual or substitute teachers who enter into a temporary contract for regular teaching during the school year no longer meet the definition of “casual” or “substitute” within the meaning of section 33(2)(b) of the Regulations, even if they keep their casual or substitute status with the school board.² The exception in section 33(2)(b) emphasizes the performance of the employment and not the status of the teacher who holds it.³

² *Arkinstall v Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

³ *Canada (Attorney General) v Blanchet*, *supra*.

[21] In addition, the Federal Court of Appeal has established that a full-time teaching contract for an extended period cannot be considered “casual” or “substitute” within the meaning of section 33(2)(b) of the EI Regulations.⁴

[22] The evidence clearly shows that the Claimant’s teaching job was regular and performed on a continuous and predetermined basis and not on a casual or substitute basis within the meaning of section 33(2)(b) of the EI Regulations.

[23] This means the General Division ignored the evidence before it and made an error in law regarding the interpretation and scope of section 33(2)(b) of the EI Regulations.

[24] This means I am justified in intervening.

Section 33(2)(a) of the EI Regulations: The teacher’s employment contract in teaching must have terminated

[25] With respect to section 33(2)(a) of the EI Regulations, the Federal Court of Appeal has established the applicable legal test: Was there a veritable break in the continuity of the claimant’s employment, causing her to become unemployed?

[26] In its decision, the General Division relied heavily on the fact that the employer indicated on the ROE that the employment contract ended on June 28, 2023, and on the fact that the Claimant’s job offer was conditional.

[27] The exception in section 33(2)(a) of the EI Regulations is meant to benefit teachers that go through a veritable severance in the employer/employee relationship at the end of the teaching period. The fact that there may be an interval between two contracts where the teacher is not under a contract does not mean that there was a veritable break in the relationship between the teacher and their employer.⁵

⁴ *Arkinstall v Canada (Attorney General)*, supra, note 2.

⁵ *Oliver et al v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v Robin*, 2006 FCA 175.

[28] It is also well established that the question of whether a teacher fell within the exception cannot be decided only on the basis of an end date set out in a contract. All of a claimant's circumstances must be considered in light of the purpose and intention of the law.⁶

[29] A review of the General Division decision shows that it did not properly consider all the circumstances to determine whether there had been a veritable break in the continuity of the Claimant's employment so that she became unemployed.

[30] The evidence before the General Division shows that the Claimant worked as a teacher for X before and during her qualifying period. She was under contract in full-time teaching at X (100%) from August 24, 2022, to June 28, 2023. On June 18, 2023, the employer offered her a full-time (100%) contract for the 2023-2024 school year, conditional on enough enrolment. She accepted the conditional offer in June 2023. She did go back to work on August 23, 2023.

[31] The Claimant argues that she did not accept the job offer in June but on August 23, 2023, and that her contract was not signed until October 2023. But the evidence shows that, in interviews the Commission held, the Claimant initially said twice that she had accepted the employer's conditional offer in June 2023.⁷

[32] I am of the view that, even if it were considered that the Claimant did not accept the job offer until August 23, 2023, there was still no veritable break in the employment relationship because she received a job offer in June 2023, and expected to go back for a third consecutive year if there were enough enrolments and to go back to school to teach, even though she did not sign a formal contract before October 2023.

[33] The evidence before the General Division does not show a **veritable break** in the continuity of the Claimant's teaching job.

⁶ *Bazinet v Canada (Attorney General)*, 2006 FCA 174, para 44.

⁷ See GD3-16 and GD3-25.

[34] In light of all the facts of the case and the Federal Court of Appeal's findings, the General Division made an error when it found that the Claimant met the condition set out in section 33(2)(a) of the EI Regulations.

[35] This means I am justified in intervening.

State of unemployment

[36] The General Division did not make a decision on the issue of the week of unemployment. The Claimant does not dispute that she was not unemployed anymore from August 23, 2023. So, I do not need to decide this issue.

Remedy

[37] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.

[38] The evidence shows, on a balance of probabilities, that the Claimant worked as a teacher at X before and during her qualifying period. She was under contract in full-time teaching at X (100%) from August 24, 2022, to June 28, 2023. On June 18, 2023, the employer offered her a full-time (100%) contract to teach the same subject in the same classes for the 2023-2024 school year, conditional on enough enrolment. She accepted the conditional offer in June 2023. She did go back to work on August 23, 2023.

[39] The evidence shows that the Claimant's teaching job was regular and performed on a continuous and predetermined basis and not on a casual or substitute basis within the meaning of section 33(2)(b) of the EI Regulations.

[40] The evidence does not show a veritable break in the continuity of the Claimant's teaching job within the meaning of section 33(2)(a) of the EI Regulations.

[41] The Claimant does not meet the exceptions set out in section 33(2) of the EI Regulations. This means she is not entitled to benefits during the non-teaching periods from July 3, 2023, to August 22, 2023; and from December 25, 2023, to January 5, 2024; and from March 4, 2024, to March 8, 2024.

Conclusion

[42] The Commission's appeal is allowed. The Claimant is not entitled to benefits for the non-teaching periods from July 3, 2023, to August 22, 2023; from December 25, 2023, to January 5, 2024; and from March 4, 2024, to March 8, 2024.

Pierre Lafontaine
Member, Appeal Division