



Citation: *RT v Canada Employment Insurance Commission*, 2025 SST 759

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

## **Decision**

**Appellant:** R. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (721965) dated March 18, 2025  
(issued by Service Canada)

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**Tribunal member:** Edward Houlihan

**Type of hearing:** Videoconference

**Hearing date:** May 13, 2025

**Hearing participant:** Appellant

**Decision date:** June 24, 2025

**File number:** GE-25-1319

## Decision

[1] The appeal is dismissed. The Appellant received earnings, and the Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

## Overview

[2] The Appellant received \$6,408.64 from her former employer. The Commission decided that the money is “earnings” under the law because it is vacation pay.

[3] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.<sup>1</sup>

[4] The Commission allocated the earnings starting the week of February 9, 2025, at an amount of \$1,458 per week. This is the week that the Commission said that the Appellant was separated from her employment. The Commission said that being separated from her job is why the Appellant received the earnings.

[5] The Appellant disagrees with the Commission. The Appellant says that the money isn’t earnings because she couldn’t take vacation while she was working for her employer. Also, she received this money before she applied for benefits so it shouldn’t be allocated and delay her receiving benefits.

## Matter I have to consider first

### The Commission made a mistake

[6] In the Notice of Decision dated February 10, 2025, the Commission set out that the Appellant had received vacation pay of \$5,832.<sup>2</sup> This was incorrect.

[7] The Appellant had received vacation pay of \$6,408.64.<sup>3</sup>

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<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

<sup>2</sup> See GD3-23 to GD3-24

<sup>3</sup> See GD3-15.

[8] The cases say that a clerical error that doesn't prejudice the other party isn't fatal to the decision under appeal.<sup>4</sup>

[9] The Appellant was aware of the proper amount of vacation pay that she had received.<sup>5</sup> She was able to submit her appeal regarding the correct amount of vacation pay.<sup>6</sup>

[10] I find that it was a clerical error on the part of the Commission. However, there was no prejudice to the Appellant. The mistake was not fatal to the decision of the Commission.

## Issues

[11] I have to decide the following two issues:

- a) Is the money that the Appellant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

## Analysis

### Is the money that the Appellant received earnings?

[12] Yes, the \$6,408.64 that the Appellant received is earnings. These are my reasons for deciding that the money is earnings.

[13] The law says that earnings are the entire income that you get from any employment.<sup>7</sup> The law defines both "income" and "employment."

[14] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.<sup>8</sup>

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<sup>4</sup> See *Desrosiers v Canada (Attorney General)*, A-128-89

<sup>5</sup> See GD3-15 and GD3-33

<sup>6</sup> See GD2-16

<sup>7</sup> See section 35(2) of the EI Regulations.

<sup>8</sup> See section 35(1) of the EI Regulations.

[15] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>9</sup>

[16] The Appellant's former employer gave the Appellant \$6,408.64. The Commission decided that the money was vacation pay. So, it said that the money is earnings under the law.

[17] The Appellant doesn't agree. She says that the money isn't earnings because she earned the vacation pay while working. She wasn't able to take vacation and only received the money when her contract finished.

[18] The Appellant has to prove that the money is **not** earnings. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that the money isn't earnings.

[19] I find that the money paid to the Appellant at the end of her contract with the employer was earnings.

[20] The employer set out in the Record of Employment (ROE) that the amount of \$6,408.64 was vacation pay.<sup>10</sup> The Appellant acknowledges that the amount was for vacation pay she earned while working for her employer.<sup>11</sup>

[21] I find that the money received by the Appellant is earnings. Because it is earnings, it must be allocated to her claim.

[22] I will now look at whether the Commission properly allocated the earnings.

### **Did the Commission allocate the earnings correctly?**

[23] Yes. I find that the Commission allocated the earnings correctly.

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<sup>9</sup> See section 35(1) of the EI Regulations.

<sup>10</sup> See GD3-15

<sup>11</sup> See GD3-33

[24] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.<sup>12</sup>

[25] The Appellant's earnings are vacation pay. She earned the vacation pay while working for the employer.

[26] The employer gave the Appellant the money because the Appellant was separated from her job.<sup>13</sup>

[27] The Appellant says that she wasn't able to take vacation while working for her employer.

[28] In her evidence she also said that the only way to get her vacation pay was to go on vacation or at the end of the contract.

[29] Her evidence was that she wasn't able to take vacation. Her family situation and work situation didn't allow her to take vacation.

[30] Her main goal was to save money so when she finished her contract, she could use her vacation pay to help her son with his education costs.

[31] Also, she said that she received the money before she applied for benefits so it shouldn't be allocated and delay her receiving benefits.

[32] The law says that the earnings you get for being separated from your job have to be allocated starting the week you were separated from your job. It doesn't matter when you actually receive those earnings.

[33] The earnings have to be allocated starting the week your separation starts, even if you didn't get those earnings at that time.<sup>14</sup>

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<sup>12</sup> See section 36 of the EI Regulations.

<sup>13</sup> See GD3-30 and GD2-14

<sup>14</sup> See section 36(9) of the EI Regulations.

[34] I find that the Appellant was separated from her job starting the week of February 9, 2025.

[35] The Appellant's Record of Employment (ROE) shows that her last day worked was February 7, 2025.<sup>15</sup>

[36] The Appellant received the earnings with her last paycheck on the day she separated from her employer.<sup>16</sup> This was 2 days before she applied for benefits.<sup>17</sup>

[37] The amount of money to be allocated starting that week is \$1,458. This is because \$1,458 is the Appellant's normal weekly earnings. The parties don't dispute this amount, and I accept it as fact.<sup>18</sup>

[38] This means that starting the week of February 9, 2025, \$1,458 is allocated to each week. If there is any amount of earnings that is left over, it will be allocated to the last week.

[39] I can empathize with the Appellant who had planned to have a lump sum to assist with her son's education costs and receive benefits immediately. at the end of her contract.

[40] However, the vacation pay she received from her employer is earnings and was properly allocated by the Commission.

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<sup>15</sup> See GD3-15

<sup>16</sup> See GD3-29

<sup>17</sup> See GD3-23

<sup>18</sup> See GD3-33

## **Conclusion**

[41] The appeal is dismissed.

[42] The Appellant received \$6,408.64 in earnings. These earnings are allocated starting the week of February 9, 2025, at \$1,4508 per week. Any amount left over is allocated to the last week.

Edward Houlihan  
Member, General Division – Employment Insurance Section