



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v AR*, 2025 SST 285

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Julie Meilleur

**Respondent:** A. R.

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**Decision under appeal:** General Division decision dated December 5, 2024  
(GE-24-3735)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference

**Hearing date:** February 25, 2025

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** March 26, 2025

**File number:** AD-24-851

## Decision

[1] The appeal is allowed. The Respondent (Claimant) isn't entitled to benefits for the non-teaching periods from July 1, 2024, to August 22, 2024; from December 23, 2024, to January 3, 2025; and from March 3, 2025, to March 7, 2025.

## Overview

[2] The Claimant is a teacher. She was under contract with X for 2023–2024 as an elementary drama teacher, despite not having a teaching diploma. The employer's offer for 2024–2025 was conditional on no teacher with a teaching diploma coming forward for the position offered. She signed her contract in September 2024.

[3] The Appellant (Commission) concluded that the Claimant was employed as a teacher, so she wasn't entitled to Employment Insurance (EI) benefits during non-teaching periods when she wasn't teaching. Because of this, the Commission imposed a disentitlement from July 1, 2024, to August 22, 2024; from December 23, 2024, to January 3, 2025; and from March 3, 2025, to March 7, 2025.

[4] The Claimant asked the Commission to reconsider its decision, but it maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[5] The General Division determined that the employment relationship between the Claimant and X had been severed. She had received an offer, but it was conditional. The General Division also determined that the Claimant's job was on a casual or substitute basis. The General Division concluded that the Claimant was entitled to receive benefits during the periods in dispute.

[6] The Commission was given permission to appeal the General Division's 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 interpreting section 33(2) of the *Employment Insurance Regulations* (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 interpreting section 33(2) of the Regulations?

## **Analysis**

### **Appeal Division's mandate**

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

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

[12] This means that 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.

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

[13] The General Division had to make a decision about the disentitlement imposed on the Claimant under section 33(2) of the Regulations for the non-teaching periods

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

from July 1, 2024, to August 22, 2024; from December 23, 2024, to January 3, 2025; and from March 3, 2025, to March 7, 2025.

[14] Section 33(2) of the Regulations says that a claimant who was employed in teaching for any part of their qualifying period isn't 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.

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

- a) The claimant's contract of employment for 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 Regulations: The teaching must be on a casual or substitute basis**

[16] Before the General Division, the Claimant confirmed that she was an elementary school teacher for X. She confirmed that she had a full contract from January 8 to June 30, 2024. She confirmed that in the last week of June she received and accepted a conditional offer from the school administration for a full contract for 10 months starting August 23, 2024, for the 2024–2025 school year.

[17] 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.<sup>2</sup> The exception in section 33(2)(b) emphasizes the performance of the employment and not the status of the teacher who holds it.<sup>3</sup>

[18] In addition, the Federal Court of Appeal has established that a full-time teaching contract for an extended period can't be considered "casual" or "substitute" within the meaning of section 33(2)(b) of the Regulations.<sup>4</sup>

[19] 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 Regulations.

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

[21] This means I am justified in intervening.

### **Section 32(a) of the Regulations: The teacher's employment contract in teaching must have terminated**

[22] The Commission says the General Division didn't properly consider all the circumstances to determine whether there had been a veritable break in the continuity of the Claimant's employment. It argued that the evidence before the General Division shows that the employer confirmed the contract offer made to the Claimant on June 21, 2024, that the Claimant accepted the contract that same day, and that she returned to her teaching position at the start of the 2024–2025 school year as planned.

[23] The Commission argues that even though the Claimant hadn't signed her written contract in June 2024, and there was a chance that the offer might not go through if a

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<sup>2</sup> *Arkininstall v Canada (Attorney General)*, 2009 FCA 313; *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>3</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>4</sup> *Arkininstall v Canada (Attorney General)*, 2009 FCA 313.

teacher with a diploma applied for the job, it doesn't mean there was a break in employment between the two contracts.

[24] The Claimant says that the General Division didn't make an error, as she had no contract guarantee on June 21, 2024, for the 2024–2025 school year because the employer's offer was conditional on no teacher with a teaching diploma coming forward for the position offered.

[25] With respect to section 33(2)(a) of the 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 them to become unemployed?

[26] In its decision, the General Division relied heavily on the fact that the Claimant's contract ended on June 30, 2024, and that her offer of employment for 2024–2025 was conditional on no teacher with a teaching diploma coming forward for the position offered.

[27] The exception in section 33(2)(a) of the 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 isn't under a contract doesn't mean that there was a veritable break in the relationship between the teacher and their employer.<sup>5</sup>

[28] It is also well established that the question of whether a teacher fell within the exception can't 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.<sup>6</sup>

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<sup>5</sup> *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.

<sup>6</sup> *Bazinet v Canada (Attorney General)*, 2006 FCA 174 at para 44.

[29] A review of the General Division decision shows that it didn't properly consider all the circumstances to determine whether there had been a veritable break in the continuity of the Claimant's employment that resulted in her being unemployed.

[30] The undisputed evidence before the General Division shows that the Claimant worked as a teacher for X during her qualifying period. She had a full-time (100%) teaching contract at X from January 8 to June 30, 2024.

[31] The Claimant confirmed that in the last week of June she received and accepted a conditional offer from the school administration for a full contract beginning on August 23, 2024, for the 2024–2025 school year. She returned to work on August 23, 2024.

[32] The evidence before the General Division doesn't show a **veritable break** in the continuity of the Claimant's teaching job.

[33] The Claimant received a job offer in June 2024 and planned to return for a second consecutive year if no teacher with a teaching diploma applied for the position offered. She did return to the school to teach, even though she didn't sign a formal contract until September 2024. She wasn't in fact unemployed.

[34] In light of all the facts on file 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 Regulations.

[35] This means I am justified in intervening.

## **Remedy**

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

[37] The undisputed evidence before the General Division shows that the Claimant worked as a teacher for X during her qualifying period. She had a full-time (100%) teaching contract at X from January 8 to June 30, 2024. She confirmed that, in the last

week of June 2024, she received and accepted a conditional offer from the school administration for a full contract beginning on August 23, 2024, for the 2024–2025 school year. She returned to work on August 23, 2024.

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

[39] The evidence doesn't show a veritable break in the continuity of the Claimant's teaching job within the meaning of section 33(2)(a) of the Regulations.

[40] The Claimant doesn't meet the exceptions set out in section 33(2) of the Regulations. This means she isn't entitled to benefits during the non-teaching periods from July 1, 2024, to August 22, 2024; from December 23, 2024, to January 3, 2025; and from March 3, 2025, to March 7, 2025.

## **Conclusion**

[41] The Commission's appeal is allowed.

[42] The Claimant isn't entitled to benefits for the non-teaching periods from July 1, 2024, to August 22, 2024; from December 23, 2024, to January 3, 2025; and from March 3, 2025, to March 7, 2025.

Pierre Lafontaine  
Member, Appeal Division