



[TRANSLATION]

Citation: *AR v Canada Employment Insurance Commission*, 2024 SST 1707

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

Decision

Appellant: A. R.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (684973) dated October 15, 2024 (issued by Service Canada)

Tribunal member: Jacques Bouchard
Type of hearing: Videoconference
Hearing date: December 4, 2024
Hearing participant: Appellant
Decision date: December 5, 2024
File number: GE-24-3735

Decision

[1] The appeal is allowed.

Overview

[2] The Appellant is appealing the Commission's decision to disentitle her from receiving benefits under section 33 of the *Employment Insurance Regulations* (Regulations) because she wasn't able to prove she was entitled to benefits as a teacher during a non-teaching period.

[3] The Appellant claims that the Commission made an error when it assumed that she had received a contract guarantee on June 21, 2024, for the following year, when the employer's offer was conditional on no teacher with a teaching diploma coming forward for the position offered.

[4] The Appellant has a DCS in early childhood education and a DCS in circus arts. She was under contract with the Cœur des Vallées [Cœur des Vallées school board] for 2023–2024, as an elementary drama teacher, despite not having a teaching diploma. She signed her contract for 2024 and 2025 in August 2024. Nothing on file contradicts this fact.

[5] According to the information on file, all teaching contracts are awarded each year between May 13 and May 29 for the youth sector (GD4-1). The Appellant confirmed that the employer made her a conditional offer on June 21, which she accepted.

[6] The Commission says that verbal acceptance of a job offer is a contract (GD4-3) (GD3-30 and GD3-31).

[7] The Commission points to case law to support its decision to deny the Appellant's application. It states that the Federal Court of Appeal has confirmed the principle that the exception under section 33(2) of the Regulations is intended to provide relief to teachers when there has been a genuine severance of the employee-employer relationship after the teaching period.

[8] At the hearing, the Appellant stated that all employees in her situation at the school were receiving Employment Insurance (EI) benefits, and her union encouraged her to challenge the decision. She said at the hearing that there had been a break in the contract and that the employer wasn't required to offer her a contract in August 2024, as she didn't have a teaching diploma.

Issues

[9] Was there a break in the contract with the employer, was the Appellant employed on a casual or substitute basis as defined in section 33(2)(b) of the Regulations? If so, the Appellant is entitled to EI benefits.

[10] According to the information on file (GD2-12 and GD3-7), the Appellant had a casual contract ending June 30, 2024. Nothing contradicts the Appellant's statements that the job offer was conditional on no teacher with a diploma applying for the job. The Appellant isn't in the situation under section 33(2)(a), being without a contract, because her contract was due to be signed in August 2024.

Analysis

[11] In this case, there was a real break in the contract, as demonstrated in GD3-7, and the Appellant had no guarantee of a job for the next school year. She had received an offer, but it was conditional. It is clear from the facts on file that the employer viewed the Appellant as a substitute or casual teacher until a qualified teacher became available.

[12] The facts on file clearly show that the Commission failed to consider the conditional aspect of the offer received and the nature of the contract between the parties. According to the agreement between the parties (GD3-7), it was a temporary contract ending on June 30, 2024. So, the employer-employee relationship was severed. Considering the conditional aspect of the offer the Appellant received on June 21, 2024, it appears that the Appellant's services were required as a substitute for a potential employee with a teaching diploma.

[13] Considering all the facts on file and the Appellant's statements at the hearing, I find that the Appellant qualifies according to the exceptions under sections 33(2)(a) and 33(2)(b) of the Regulations.

Conclusion

[14] The appeal is allowed.

Jacques Bouchard
Member, General Division – Employment Insurance Section