



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. R. v Minister of Employment and Social Development*, 2020 SST 203

Tribunal File Number: AD-19-867

BETWEEN:

L. R.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 3, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The file is returned to the General Division for a reconsideration of the issue.

OVERVIEW

[2] The Appellant, L. R. submits that he is eligible for an Old Age Security (OAS) pension. The Respondent, the Minister of Employment and Social Development, submits that it is required to suspend the Appellant's OAS pension given his incarceration.

[3] The Appellant raised a constitutional issue before the General Division. The General Division asked the Appellant to meet the conditions stated in section 20(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations). In response, the Appellant filed submissions. The General Division determined that the Appellant's notice of constitutional question did not meet all the conditions and informed him, by interlocutory decision, that the appeal would be heard as an ordinary appeal.

[4] The Appellant appealed the General Division's interlocutory decision. The Appeal Division refused to grant leave to appeal because, in the absence of exceptional circumstances, the Appeal Division should not intervene in a case involving an interlocutory order from the General Division. However, it recommended to the General Division to specify to the Appellant which condition of section 20(1)(a) of the SST Regulations had not been met.

[5] The General Division then proceeded to hear the appeal as an ordinary appeal, without specifying to the Appellant which condition of section 20(1)(a) of the SST Regulations had not been met. Therefore, the Appellant did not have the opportunity to correct his notice of constitutional question. The General Division found that the Appellant could not receive OAS pension benefits until his release.

[6] The Appellant obtained leave to appeal the General Division decision. He submits that the General Division failed to observe a principle of natural justice.

[7] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

[8] The Tribunal allows the Appellant's appeal and returns the file to the General Division for a reconsideration of the issue.

ISSUE

[9] Did the General Division fail to observe a principle of natural justice?

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* (DESD Act).¹

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

[12] Therefore, unless the General Division failed to observe a principle of natural justice, made an error in 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.

Issue: Did the General Division fail to observe a principle of natural justice?

[13] The Claimant invokes section 58(1)(a) of the DESD Act.

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

[14] At the General Division's request, the Appellant argues that he sent the additional submissions on November 10, 2019. They were not considered by the General Division before it gave its decision. He argues that he has respected the deadlines imposed by the Tribunal since the beginning of the proceedings.

[15] The Tribunal notes that the General Division asked the Appellant to file his additional submissions on the issue by November 18, 2019. The Appellant sent his submissions to the General Division within the time allowed—on November 10, 2019—but the General Division did not receive them. Therefore, the General Division gave its decision without considering the Appellant's submissions.

[16] The Tribunal also notes that the General Division did not specify to the Appellant which condition of section 20(a)(a) of the SST Regulations had not been met, to give him an opportunity to correct his notice of constitutional question.

[17] However, the Appeal Division had recommended such an approach so that the appeal process before the General Division could be conducted in a manner that respects fairness and natural justice. Instead, the General Division interpreted the Appeal Division decision on leave to appeal the interlocutory decision as a refusal to allow a constitutional challenge.

[18] The Respondent is of the view that the General Division failed to observe a principle of natural justice by not specifying the conditions of section 20(1)(a) of the SST Regulations that the Appellant did not meet, which prevented him from correcting his notice of constitutional question. It suggests returning the file to the General Division with instructions about the notice of constitutional question.

[19] For the reasons mentioned above, the Tribunal is of the view that it is appropriate to allow the appeal.

CONCLUSION

[20] The appeal is allowed. The file is returned to the General Division for a reconsideration of the issue taking into account the Appellant's submissions, including those from November 10, 2019.²

[21] The General Division must also specify to the Appellant which condition of section 20(1)(a) of the SST Regulations was not met, to give him an opportunity to correct his notice of constitutional question within a reasonable timeframe.

Pierre Lafontaine
Member of the Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES :	L. R., Appellant Suzette Bernard (counsel), Respondent

² AD1-3 to AD1-6.