Citation: *Canada Employment Insurance Commission v RS*, 2025 SST 107

# Social Security Tribunal of Canada
## Appeal Division

# Decision

| | |
|---|---|
| **Appellant:** | Canada Employment Insurance Commission |
| **Representative:** | Nikkia Janssen |
| **Respondent:** | R. S. |

---

| | |
|---|---|
| **Decision under appeal:** | General Division decision dated October 25, 2024 (GE-24-2968) |

---

| | |
|---|---|
| **Tribunal member:** | Janet Lew |
| **Type of hearing:** | Videoconference |
| **Hearing date:** | January 27, 2025 |
| **Hearing participants:** | Appellant's representative<br>Respondent |
| **Decision date:** | ~~February 10, 2025~~ |
| **CORRIGENDUM DATE:** | **February 12, 2025** |
| **File number:** | AD-24-768 |

## Decision

[1] The appeal is allowed.

[2] The settlement payment of $9,915[1] was earnings for the purposes of the *Employment Insurance Regulations*, and these earnings were subject to allocation under section 36(9) of the *Employment Insurance Regulations*.

## Overview

[3] The Appellant, the Canada Employment Insurance Commission (Commission), is appealing the General Division decision. The General Division determined that the Respondent, R. S. (Claimant), had received a lump sum payment of $9,915 as part of a settlement against his employer. It also found that that amount did not represent earnings for the purposes of the *Employment Insurance Regulations* and that it therefore did not have to be allocated.

[4] The Commission argues that the General Division based its decision on a factual error when it found that the payment did not represent earnings. The Commission argues that the evidence shows that the entirety of the payment was a "retiring allowance," but that the General Division overlooked this evidence. The Commission argues that the General Division should have found that the payment was earnings that had to be allocated.

[5] The Commission asks the Appeal Division to give the decision that it says the General Division should have made.

[6] The Claimant argues that the General Division did not make any errors. He argues that the evidence supports the General Division's findings. He also argues that his lawyer was negligent. He asks the Appeal Division to dismiss the appeal.

---

[1] The settlement was for $1~~0~~**[5]**,000 but after deducting legal fees of $5,085, the General Division calculated that the Claimant received $9,915.

# Issues

[7] The issues in this appeal are as follows:

a) Did the General Division overlook some of the evidence?

b) If so, how should the error be fixed?

# Analysis

[8] The Appeal Division may intervene in General Division decisions if the General Division made any jurisdictional, procedural, legal, or certain types of factual errors.[2]

[9] For factual errors, the General Division had to have 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.[3]

## The General Division overlooked some of the evidence

[10] The General Division overlooked some of the evidence, despite relying on part of it to define the nature of the payment from the employer to the Claimant. That evidence could have been critical to determining the nature of the payment.

### – General background

[11] The Claimant's employer had dismissed him from his employment when he was in the hospital. The Claimant argues that his employer acted in bad faith and that it wrongfully dismissed him. The Claimant's lawyer sought various damages from the employer in relation to the dismissal, including damages for bad faith and for what he described as disability discrimination. The parties settled.

---

[2] See section 58(1) of the *Department of Employment and Social Development* (DESD) Act.
[3] See section 58(1)(c) of the DESD Act.

[12] The General Division determined that the payment was for "aggravated damages owing to wrongful discrimination and disability discrimination."[4] The General Division also determined that this payment did not represent earnings.

– **the General Division's analysis and decision**

[13] The General Division was mindful that the Minutes of Settlement referred to the lump sum payment as a "retiring allowance." However, the General Division determined that the payment did not represent earnings because

- The Claimant's lawyer wrote a letter dated August 24, 2023, proposing settlement.[5] The General Division found that the lawyer had raised issues of wrongful dismissal and bad faith termination, as well as disability discrimination. The General Division noted that the lawyer sought compensation of $30,000 for "aggravated damages for the pain, suffering and indignity [the Claimant] experienced as a result of the Company's contravention of the [Human Rights] Code."[6]

  The General Division found that this correspondence demonstrated that negotiations with the employer were not about a retiring allowance but rather, about aggravated damages owing to disability discrimination.[7]

- The Claimant had only worked for the employer from April 10, 2023, to July 31, 2023, which the General Division found was a relatively short period. The General Division suggested that severance payment of $15,000 was disproportionate in relation to the time that the Claimant had worked.[8]

[14] The General Division largely relied on the lawyer's letter. The lawyer had indeed proposed payment of $30,000 as aggravated damages for pain, suffering, and indignity

[4] See General Division decision at para 31.
[5] See settlement proposal dated August 24, 2023, at GD 5-5 to 5-10.
[6] See General Division decision at para 26, citing GD 5.
[7] See General Division decision at para 27.
[8] See General Division decision at para 27.

the Claimant experienced as a result of the employer's contravention of the *Human Rights Code*. This fell under the heading of "Disability Discrimination" in the letter.

– **the Parties disagree over whether the payment is earnings**

[15] The parties dispute the nature of the payment from the employer to the Claimant. The Commission argues that the payment is earnings. The Claimant, on the other hand, denies that the payment is earnings and says that the payment represents aggravated damages, paid fully or in part for the employer's bad faith and disability discrimination. (If the payment was fully for bad faith and disability discrimination, then it would not be earnings for the purposes of the *Employment Insurance Regulations*.)

[16] If the payment is earnings, then generally it will be subject to allocation under section 36 of the *Employment Insurance Regulations*.[9]

[17] The *Employment Insurance Regulations* defines earnings. They are the "entire income of a claimant arising out of any employment."[10] Income is defined as "any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other persons, including a trustee in bankruptcy."[11]

[18] It is well established that "a settlement payment made in respect of an action for wrongful dismissal is income arising out of employment unless the claimant can demonstrate that due to 'special circumstances' some portion of it should be regarded as compensation for some other expense or loss."[12]

[19] In other words, sums received from an employer are presumed to be earnings.[13] If a claimant denies that any payment is earnings, they have to prove otherwise. They

---

[9] There may be exceptions, such as those listed in section 35(7) of the *Employment Insurance Regulations*, or if the payment does not arise from employment.
[10] See section 35(2) of the *Employment Insurance Regulations*. As noted above, there are exceptions to what qualifies as earnings. None of the exceptions apply in the Claimant's case.
[11] See section 35(1) of the *Employment Insurance Regulations*.
[12] See, for instance, *Canada (Attorney General) v Walford*, 1978 CanLII 3656 (FCA).
[13] See also *M.E.I. v Mayor* (1989), 97 NR 353 (FCA).

have to establish “special circumstances,” if any portion should be regarded as compensation for some other expense or loss.[14]

[20] The Commission argues that the General Division overlooked evidence that shows that the payment was income from and related to the Claimant’s employment. The Commission also argues that the evidence does not show that the payment was for aggravated damages for disability discrimination or for a bad faith claim.

[21] The Commission points to the following:

- The Minutes of Settlement reads in part that “3. The Employer shall pay to the Employee a further lump sum retiring allowance payment in the gross amount of $15,000, inclusive of legal fees…”[15] and
- The Minutes of Settlement also read that, “8. The Employer shall issue a revised Record of Employment including the gross Lump Sum less the actual legal fees, and shall include the code ’M’ and the words ‘dismissal without cause’”[16] and
- Record of Employment dated October 24, 2023, shows settlement pay of $10,509.90.[17] The total insurable earnings increased by this amount.

– **the General Division made an error - it overlooked some of the evidence**

[22] The General Division relied on the lawyer’s letter in finding that the payment was for disability discrimination. However, the General Division’s findings ignored the fact that the lawyer had also proposed payment for other heads of damages.

[23] In particular, the lawyer also proposed payment of $23,333.33 “representing four (4) months of payment in lieu of notice, calculated from [the Claimant’s] base salary, paid out as a retiring allowance, less statutory deductions.”[18] The lawyer also proposed

---

[14] See *Canada (Attorney General) v Radigan*, 1001 CanLII 22152 (FCA) and *Bourgeois v Canada (Attorney General)*, 2004 FCA 117.
[15] See Minutes of Settlement, at GD 5-14.
[16] See Minutes of Settlement, at GD 3-27 and GD 5-15.
[17] See Record of Employment at GD 3-17.
[18] See settlement proposal dated August 24, 2023, at GD 5-9.

$25,000 as additional aggravated damages for the employer's bad faith conduct in relation to the Claimant's dismissal.

[24] Despite largely relying on the lawyer's letter to find that the lump-sum payment represented aggravated damages for disability discrimination, the General Division made no mention of and did not address the lawyer's proposal for payment of any of these additional sums or heads of damages.

[25] There is no indication that the Claimant had abandoned his claim for payment in lieu of notice, or aggravated damages for the employer's bad faith conduct. So, it is unclear why the General Division focused solely on the aggravated damages for disability discrimination.

[26] As the General Division relied on the lawyer's letter, it should also have addressed these additional heads of damages that the Claimant sought. This represented an error.

[27] Although I have determined that the General Division overlooked parts of the lawyer's letter, this by no means establishes that the letter establishes how the settlement should be structured. I am simply finding that, if the General Division was going to rely on that letter, it had to consider the whole letter and not just select portions of it.

## Fixing the error

[28] Upon having found an error, the Appeal Division can either return the matter to the General Division for redetermination or it can give the decision that the General Division should have given. However, if it does the latter, there should be no gaps in the evidence and there must be a legal and sufficient evidentiary basis to give the decision.

[29] The Commission asks the Appeal Division to give the decision that it says the General Division should have made. The Commission asks the Appeal Division to find that the whole payment was a retiring allowance.

[30] The Claimant asks the Appeal Division to dismiss the appeal or to find that the payment reflects the various heads of damages set out in the lawyer's letter of August 24, 2023.

[31] I will come to my own assessment on the evidence. The parties have not asked me to return this matter to the General Division. There is a complete evidentiary picture to enable me to make my own decision on all of the issues.

[32] I have to assess the nature of the settlement: Is $9,915 earnings for the purposes of the *Employment Insurance Regulations*, or is any portion of it attributable to some other expense such as damages for bad faith or disability discrimination? And, if any portion represents earnings, is the amount subject to allocation under the *Employment Insurance Regulations*?

– **Settlement between the Claimant and his employer**

[33] When the parties settled the claim, they prepared Minutes of Settlement.[19] The Minutes show the following:

- the Claimant had received the gross sum of $1,458.52 in lieu of statutory notice and all outstanding vacation pay owed upon termination,
- the employer would pay the Claimant "a further lump sum retiring allowance payment in the gross amount of $15,000, inclusive of legal fees,"
- the employee would direct the employer to allocate his legal fees and the all-inclusive amount of $5,085 to his lawyer from the lump sum payment,
- the Claimant would execute a full and final release and indemnity, and
- the employer would issue a revised Record of Employment including the gross lump sum less actual legal fees.

[19] See Minutes of Settlement, at GD 3-27 and GD 5-15.

[34] As part of the settlement, the Claimant signed a full and final release, which formed part of the Minutes of Settlement.

[35] As part of the release, the Claimant agreed that he would release the employer from any claims, actions, and demands for damages, professional income, business income, wages, severance pay, notice of termination, termination pay, and overtime pay, among other things, arising out of or relating to his employment and termination of employment.

[36] The Claimant specifically agreed that he would withdraw any complaints, requests for reconsideration, appeals or any other proceedings made to the Employment Standards Branch.

[37] The Claimant also specifically agreed that he would permanently refrain from filing any application with the provincial Human Rights Tribunal or immediately withdraw any such applications.

[38] As agreed, the employer issued a revised Record of Employment that showed the Claimant had total insurable earnings of $33,918.43.[20] This represented a difference of $10,509.90 from the initial Record of Employment[21] issued on August 10, 2023, which showed total insurable earnings of $23,408.53. It is unclear how the employer calculated the difference.[22]

– **the Claimant states that the Minutes do not fully nor accurately reflect the terms of the settlement**

[39] The Claimant states that the Minutes of Settlement do not accurately nor fully reflect the terms of the settlement with his employer. He says that the lump sum payment represents damages for disability discrimination and for his employer's bad

[20] See Record of Employment issued on October 24, 2023, at GD 3-17.
[21] See Record of Employment issued on August 10, 2023, at GD 3-13.
[22] The General Division determined that the lump-sum settlement payment of $15,000 less legal fees of $5,085 should actually be $9,915, rather than $10,509.90. The Commission does not challenge the General Division's findings on the net payment to the Claimant.

faith. He says that his lawyer was negligent in not ensuring that the Minutes were accurate.

[40] The Claimant acknowledges that he signed the Minutes of Settlement, along with the Full and Final Release and Indemnity. However, when he signed them, he was unwell. He also felt under pressure from his lawyer to sign, as he says that his lawyer wanted to quickly collect his legal fees, more than anything else. He notes that his lawyer settled his claim against his employer in under a month. He says that claims like his ordinarily take months, if not years, to resolve.

[41] The Claimant urges me to reject any notion that the lump-sum payment represents a retiring allowance.

[42] At the same time, the Claimant argues that I should look to his lawyer's letter of August 24, 2023, to determine the breakdown of the lump sum payment. The Claimant suggests that, at the very least, the lump-sum payment should be proportionate to the different heads of damages. His lawyer had proposed:

- a retiring allowance of $23,333.33 (29.8%)
- damages for bad faith of $25,000 (31.9%)
- damages for disability discrimination of $30,000 (38.3%).

[43] I will now turn to the case law for some guidance.

– **A review of the case law**

[44] The claimant in *Plasse*[23] settled a claim against his employer. Mr. Plasse claimed that the settlement was based on foregoing his right to be reinstated. The Court of Appeal wrote:

> [18] If a settlement encompasses both an expectation of lost wages and a renunciation of a right to reinstatement granted by the appropriate authority, only the former constitutes "earnings" and only the value attributable to the former is

[23] See *Canada v Plasse*, 2000 CanLII 16290 (FCA).

> allocated… It would of course be open to the Commission in any given case to make sure that a purported settlement is not a mere sham to circumvent the unemployment insurance scheme by disguising compensation for lost wages as something else.

[45] The Federal Court of Appeal referred the matter to the Umpire, as it found that there was simply no evidence that the settlement monies related only to a future right of reinstatement. The Court found that the Board and Umpire failed to identify what part of the settlement related to lost wages and what part related to the reinstatement.

[46] In *N.I.*,[24] the General Division found that the settlement payment was not earnings because the evidence clearly showed that it was in exchange for N.I. relinquishing his right to reinstatement. This was the same outcome in *D.A,*[25] *A.M.*,[26] *T.S.,*[27] and a string of other cases. In *D.C.*,[28] however, the General Division found that there was no right to reinstatement, so the settlement payment in that case was determined to be earnings.

[47] In *G.N.*,[29] the General Division determined that payment to settle a wrongful dismissal claim was not earnings. The General Division found that the Minutes of Settlement stated that the monies were paid to settle legal proceedings in which G.N. alleged that his termination was a form of reprisal under the *Occupational Health and Safety Act* of Ontario.

[48] Similarly, in *R.C.*,[30] the General Division found that a large portion of a settlement was not earnings. The General release provided that the lump sum was consideration for, among other things, demands for damages for loss or injury, hurt feelings or emotional distress, and any claims arising from human rights, employment standards

---

[24] See *N.I. v Canada Employment Insurance Commission*, 2016 SSTGDEI 7.
[25] See *D.A. v Canada Employment Insurance Commission*, 2019 SST 1307.
[26] See *A.M. v Canada Employment Insurance Commission*, 2019 SST 227.
[27] See *T.S. v Canada Employment Insurance Commission*, 2021 SST 176.
[28] See *D.C. v Canada Employment Insurance Commission*, 2018 SST 995.
[29] See *G.N. v Canada Employment Insurance Commission,* 2019 SST 279.
[30] See *R.C. v Canada Employment Insurance Commission*, 2019 SST 564.

and occupational health and safety complaints. The General Division found that this did not support a characterization of the payment as earnings from employment.

[49] In *S.H.*[31] the General Division found that S.H. had not met the onus of proof to show that the settlement or any portion of it was for something other than compensation for lost income. A letter from his lawyer confirmed that "The total value of the settlement attributable to lost wages following termination was $120,000." The General Division found that S.H. attested as to the correctness of the statement. The General Division determined that the severance was earnings.

[50] In *S.C.*,[32] the General Division acknowledged that. S.C. had sought various heads of damages in her statement of claim. The General Division accepted that the parties had intended that payment be allocated for reasons other than lost wages. However, it determined that the settlement was earnings, as the minutes of settlement were not explicit about how it broke down the settlement monies.

[51] The Commission relies on *S.B.*[33] That case dealt with a $5,000 payment that S.B. received in the settlement of a wrongful dismissal action he had against his employer. The Commission determined the $5,000 payment was compensation for lost wages, but S.B. argued the amount was to compensate him for the improper manner in which his employer had terminated him.

[52] S.B. and his representative both testified that the $5,000 was for pain and suffering and for defamation of character. They denied that it was paid in lieu of notice, as they said he had already received severance upon separation. The General Division rejected these arguments.

[53] Three parts made up the $5,000 payment:

- **$684.02** – S.B. stated this was to reimburse him for out-of-pocket medication expenses. The General Division found that this still amounted to earnings

[31] See *S.H. v Canada Employment Insurance Commission*, 2014 SSTGDEI 81.
[32] See *S.C. v Canada Employment Insurance* Commission, 2018 SST 1428.
[33] See *S.B. v Canada Employment Insurance Commission*, 2021 SST 660.

because the health plan was a benefit that arose from S.B.'s employment. The General Division found that there was a sufficient connection between S.B.'s employment and the amount received.

- **$2,559.98 and $1,756 -** the General Division noted that that there was correspondence that suggested that some of the income be treated as a retiring allowance.

  The General Division also found that there were statutory deductions taken off $2,559.98 and that the employer held back $1,756 in trust, for the purposes of reimbursing the Commission for Employment Insurance benefits that had been paid to S.B. The General Division found that the statutory deductions and the holdback for Employment Insurance indicated that these monies were earnings. The General Division did not see any evidence that could support a finding otherwise.

- The General Division accepted that the parties wanted to characterize the settlement in different ways, but it found that ultimately, they did not do that.

- The General Division accepted that S.B. was distressed about how his employer had dismissed him. It also accepted that some portion of the payments represented compensation for that. However, because the parties had not been more specific about the nature of the payments, the General Division was unprepared to speculate what portion compensated S.B. for how his employer had dismissed him and what was earnings-related compensation.

[54] In *E.L.*,[34] the General Division found that, due to special circumstances, $10,000 that E.L. received in general damages was not earnings. The General Division found that the amount represented pain and suffering for the bad faith manner in which E.L. had been terminated from her employment.

---

[34] See *E.L. v Canada Employment Insurance Commission*, 2019 SST 468.

[55] In that case, the minutes of settlement indicated that $50,000 would be paid as a retiring allowance, while a further $10,000 would be paid as general damages. The minutes also specified that the $50,000 would be subject to repayment of income tax, whereas the general damages were not.

[56] Because of the apportionment of payment into two categories and designating only one portion to be subject to income tax, the General Division accepted that the payment for general damages compensated E.L. for something other than a loss of earnings.

[57] In *H.L.*,[35] the Appeal Division examined whether the settlement was earnings. H.L. had demanded general damages for bad faith and for discrimination. The employer agreed to characterize the settlement monies of $8,890.63 as general damages, without referring to bad faith or discrimination. The Appeal Division found a claimant bears a heavy burden of proof. They have to rebut the legal presumption that any settlement payments received from an employer is not compensation for lost earnings. The Appeal Division wrote:

> [53] Absent special circumstances, employment insurance law presumes that wrongful dismissal settlement are for lost income. The fact that both [H.L.] and the employer characterized the settlement amount as general damages is not a special circumstance that would justify a finding that the settlement was not for lost income.
>
> [54] [H.L.] brought a claim against the employer asserting that the employer discriminated against them, and that the employer settled with him. This does not necessarily imply that the payment was for loss of reputation, or for injury to his dignity, feelings, and self-respect.

[58] The Appeal Division noted that the settlement described the $8,890.63 as general damages, but it did not explain what the general damages were meant to compensate, or how they were calculated. “General damages can be almost anything,

[35] See *H.L. v Canada Employment Insurance Commission*, 2024 SST 1375.

and both [H.L.] and the employer could have their own reasons for characterizing the payment as such, regardless of the actual loss they were considering."[36]

[59] Ultimately, the Appeal Division found that H.L. had not met the burden of proof. The Appeal Division found that the evidence did not establish that it was more likely than not that any part of the settlement payment for the wrongful dismissal claim was for anything other than lost income.

– **The settlement was earnings**

[60] It is clear from the case law that a claimant bears the burden of proof to establish that any payment is for an expense or loss other than earnings. It is not enough to show a settlement proposal with various heads of damages. As the Court of Appeal held in *Plasse*, there has to be evidence that identifies what part of a settlement relates to lost wages and what part relates to compensation for other matters. The Claimant's case is unlike *E.L.* or *S.B*, where there was a clear difference between the types of payments.

[61] Here, the Minutes of Settlement describe the entirety of the payment as a "retiring allowance," inclusive of legal fees.

[62] The Claimant urges me to reject any notion that the lump-sum payment represents a retiring allowance because, as he says, he did not retire and continues to work. However, I note that the Claimant's lawyer's proposal for settlement included payment of $23,333.33, to be paid out as a "retiring allowance."

[63] The full and final release indicates that payment is in part for consideration for the Claimant withdrawing any claim under the *Human Rights Code*. However, neither the minutes nor the release gives any breakdown as to what portion, if any, were earnings, damages for bad faith, or damages for disability discrimination.

[36] See *H.L.*, at para 57.

[64] The revised Record of Employment also suggests that the payment was earnings. After all, the employer included the entirety of the settlement payment as insurable earnings.

[65] The parties may not have intended payment to be fully attributable to earnings, but there is no evidence that shows any breakdown of the settlement.

[66] The Claimant essentially urges me to disregard the Minutes of Settlement and the full and final release. However, he signed both documents. The Claimant suggests that he was not fully coherent, given his medical state. He states that he was "not in [his] right and sane mind to understand what [he] was signing."[37] But there was no medical evidence before the General Division to support these claims.

[67] The Claimant has filed additional medical records as part of his appeal to the Appeal Division. The Appeal Division however generally does not accept new evidence. But even if it did, this evidence does not establish the Claimant's state of mind when he signed the Minutes of Settlement and the final release.

[68] The Claimant also argues that his lawyer was negligent. He says that his girlfriend, also a lawyer, is of the opinion that his lawyer had done the bare minimum, instead of protecting his interests. He also states that she advises him that he cannot pursue his lawyer for any relief. So, he argues that he should not be penalized for the negligence of his lawyer. Either way, he says that I should follow the precedent-setting cases that his lawyer cited in the settlement proposal.[38]

[69] I do not have any jurisdiction to examine the Claimant's lawyer's conduct or determine whether he met any professional standards. Even if there was any basis or merit to the Claimant's assertions against his lawyer, I do not have any authority to provide him with the relief that he seeks. Any remedies that may be available for the Claimant to pursue against his lawyer lie elsewhere.

---

[37] See Claimant's letter dated November 28, 2024, at AD 3-43.
[38] See settlement proposal dated August 24, 2023, at GD 5-9 to 5-8.

[70] The Claimant urges me to follow the cases cited by his lawyer in the letter dated August 24, 2023. However, they deal with damage awards. They do not deal with the issue before me. They do not deal with how the payment arising out of the settlement of September 19, 2023, should be characterized.

[71] The parties simply did not identify what part might have been a retiring allowance, damages for bad faith, or damages for disability discrimination. Given the evidence that was before the General Division, I find that the settlement amount of $9,915 was earnings under section 35 of the *Employment Insurance Regulations*.

– **Allocation of the earnings**

[72] Having determined that this payment was indeed earnings, I have to decide how the payment should be allocated.

[73] The Commission argues that the settlement money should be added to the vacation pay[39] as monies paid by reason of separation. The Commission also argues that these monies should be allocated pursuant to sections 36(9) and (10) of the *Employment Insurance Regulations*.[40]

[74] Those sections set out how any earnings paid or payable to a claimant by reason of a separation from an employment are to be allocated. The earnings are allocated to a number of weeks that begins with the week of the separation, with the total earnings from that employment, in each consecutive week except the last, equal to that claimant's normal weekly earnings from that employment.

[75] Section 36(9) of the *Employment Insurance Regulations* applies, and the earnings shall be allocated in the manner described by the section.

[39] As the General Division noted, the Claimant also received $2,783.53 in vacation monies.
[40] See Commission's Representations to the Social Security Tribunal-Appeal Division, at AD 4-5 to 4-6.

## Conclusion

[76] The appeal is allowed.

[77] The General Division overlooked some of the evidence. I am substituting my own decision in place of the General Division decision.

[78] The evidence before the General Division did not explicitly show that the settlement payment was for anything other than earnings. Therefore, the settlement payment of $9,915 was earnings for the purposes of the *Employment Insurance Regulations*, and these earnings, together with the vacation pay, were subject to allocation under section 36(9) of the *Employment Insurance Regulations*.

Janet Lew
Member, Appeal Division