



Citation: *Canada Employment Insurance Commission v TL*, 2025 SST 642

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Ian McRobbie

**Respondent:** T. L.

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**Decision under appeal:** General Division decision dated November 4, 2024  
(GE-24-3215)

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**Tribunal member:** Janet Lew

**Type of hearing:** In Writing

**Decision date:** June 18, 2025

**File number:** AD-25-390

## Decision

[1] The appeal is allowed. The parties agree and I accept the following, that:

(a) the General Division exceeded its authority and overlooked some of the evidence when it decided that the employer's payment of a salary continuance to the Respondent, T. L. (Claimant), between October 3, 2023, and January 10, 2024, represented severance pay, and

(b) the appropriate remedy is to vary the General Division decision by removing the second line of paragraph 21 of the decision.

[2] This will enable the Appellant, the Canada Employment Insurance Commission (Commission), to process the claim and return approximately 500 insurable hours to the Claimant.

## Overview

[3] The Commission is appealing the General Division decision.

[4] The General Division decided that the Claimant experienced an interruption of earnings and that his claim for Employment Insurance benefits was properly established on October 8, 2023.

[5] The Claimant received a salary continuance from his employer after October 8, 2023, up to January 10, 2024. The General Division determined that the salary continuance constituted severance pay. The General Division left it to the Commission to determine if the payment was earnings under the *Employment Insurance Regulations* that had to be allocated.

[6] The Commission does not dispute the General Division's findings that the Claimant experienced an interruption of earnings. However, it challenges the General Division's findings that the salary continuance represents severance pay. The Commission argues that the General Division made jurisdictional and factual errors.

## **The parties agree on the outcome of the appeal**

[7] The Commission proposed settlement in this matter. The Commission asks the Appeal Division to find that the General Division made both jurisdictional and factual errors. The Commission asks the Appeal Division to correct the General Division's errors by varying the General Division decision. The Claimant agrees with the Commission's settlement proposal.

## **I accept the proposed outcome**

[8] I accept the proposed outcome. This is the appropriate disposition of this matter.

[9] The General Division exceeded its jurisdiction when it determined that the salary continuance represented severance pay:

- (a) The issues before the General Division were defined by the Commission's reconsideration decision. The reconsideration decision clearly dealt with only the interruption of earnings and the amount of the earnings.<sup>1</sup> Hence, the only issues before the General Division related to whether an interruption of earnings took place and the amount of the earnings.

As the Commission noted, it had not questioned the designation or the nature of the earnings in its reconsideration decision.<sup>2</sup> So, the General Division did not have any authority to change the nature of those earnings and to find that they represented severance.

- (b) By deciding that the salary continuance was severance, the General Division effectively determined that the Claimant did not have any insurable hours. In other words, it cancelled the insurability of the hours included in the Record of Employment issued on January 10, 2024. But the General Division did not have any authority to do this.

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<sup>1</sup> See reconsideration decision dated August 22, 2024, at GD3-38.

<sup>2</sup> See Commission's submissions and letter dated April 24, 2025, to the Federal Court, at AD2-7.

The Canada Revenue Agency has the exclusive jurisdiction to determine the insurability of hours and earnings arising out of employment. An employee, employer, or the Commission may seek a ruling on the amount of any insurable earnings, but neither the Commission nor the General Division has the authority to change the nature of an amount paid without a formal ruling from the Canada Revenue Agency.<sup>3</sup>

[10] The General Division also overlooked some of the evidence when it decided that the salary continuance represented severance. The employer issued a Record of Employment. It recorded insurable earnings in Box 15C of the Record of Employment.<sup>4</sup> Salary continuance is considered insurable, both in earnings and in hours and is allocated to the pay period for which it was paid.<sup>5</sup>

[11] If the employer had provided severance pay, then it would have indicated any amounts paid in Box 17C of the Record of Employment. Amounts indicated in Box 17C of the Record of Employment are not insurable in hours.<sup>6</sup>

[12] The employer also told the Commission that it paid the Claimant a salary continuance to January 10, 2024.<sup>7</sup>

[13] The General Division overlooked both the Record of Employment and the employer's statement to the Commission when it decided that the payment was severance, rather than a salary continuance.

[14] The General Division's error can be remedied by varying its decision, specifically, by removing the second line of paragraph 21. For greater specificity, this involves removing the sentence, "But I find that the earnings it paid him from October 3, 2023, to

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<sup>3</sup> See Commission's submissions and letter dated April 24, 2025, to the Federal Court, at AD2-7, citing section 90 of the *Employment Insurance Act*.

<sup>4</sup> See Record of Employment issued January 10, 2024, at GD 3-26.

<sup>5</sup> See Commission's submissions and letter dated April 24, 2025, to the Federal Court, at AD2-7, citing section 23(1) of the *Employment Insurance Regulations*.

<sup>6</sup> See Commission's submissions and letter dated April 24, 2025, to the Federal Court, at AD2-7, citing section 90 of the *Employment Insurance Act*.

<sup>7</sup> See Supplementary Record of Claim dated April 24, 2024, at GD3-28.

January 10, 2024, constitute severance pay.” This removes the General Division’s characterization of the payment as severance and restores it as a salary continuance.

## **Conclusion**

[15] The appeal is allowed. I am removing the second sentence of paragraph 21 of the General Division decision. The payment between October 3, 2023, and January 10, 2024, will continue to be recognized as a salary continuance. This will leave in place the insurability of the hours included in the Record of Employment issued on January 10, 2024.

Janet Lew  
Member, Appeal Division