

Federal Court



Cour fédérale

Date: 20201109

Docket: T-969-19

Citation: 2020 FC 1039

Ottawa, Ontario, November 9, 2020

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

HUU NGHIA VUONG

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Huu Nghia Vuong seeks judicial review of a decision by the Appeal Division of the Social Security Tribunal [Appeal Division], dismissing his appeal from a decision by the General Division of the Social Security Tribunal [General Division]. The Applicant appealed to the General Division from a decision by the Employment Insurance Commission [the Commission], which granted his motion for reconsideration and reduced the amount paid in lieu of notice,

which was applied against his employment insurance benefits, to \$1,747.20. Despite the fact that he was successful before the Commission on reconsideration, Mr. Vuong appealed to the General Division, which dismissed his appeal on the basis that it was bound to fail. However, believing there to be an error on his Record of Employment, issued on December 10, 2018, Mr. Vuong filed an appeal to the Appeal Division stating that his Record of Employment still contained an error and that it needed to be corrected in order to avoid future complications.

[2] The Appeal Division noted that Mr. Vuong was successful before the Commission and found that the General Division made no error of fact, law or jurisdiction, nor did it fail to observe a principle of natural justice, by dismissing an appeal that was bound to fail.

II. Analysis

[3] In my view and considering that the Applicant was successful before the Commission, the only issue raised by this Application for Judicial Review is whether the Applicant's Record of Employment still contains an error that could have an impact on his future claims, and if so, whether it was the Commission's responsibility to correct it.

[4] The Applicant is of the view that his Record of Employment dated December 10, 2018 still contains an error. He believes that the amount he received in lieu of notice is accounted for twice on his Record of Employment Form; an amount of \$1,680 appears under section 17C of the Form under "Pay in lieu of notice" and the amount of \$1,747.20 is also included in the total Insurable Earnings (\$2,693.60) received for his last pay period ending on June 3, 2018, found under section 15C of the Form.

[5] Service Canada's guide entitled "How to Complete the Record of Employment Form", includes the following information, found at page 31 of the guide:

- When you enter insurable earnings in Blocks 17A, 17B and 17C, you must also add these amounts to the total insurable earnings reported in Blocks 15B and 15C (P.P. 1 field). For example, you will add any amount of vacation pay paid on separation to the total in Blocks 15B and 15C, since vacation pay is considered to be insurable earnings.

[6] Therefore, the amount of \$1,747.20 that Mr. Vuong received as pay in lieu of notice needed to appear separately under section 17C and while also being included in the last insurable earning received and accounted for under section 15C.

[7] As for the \$67.20 difference between the figure included under section 15C (\$1,747.20) and the amount reported under section 17C, this discrepancy can be accounted for by way of the 4% vacation pay that was paid to the Applicant by his former employer, as seen on the cheques dated September 13 and 27, 2018, as found in the Respondent's Record before this Court. As a result, there is indeed an insignificant error of \$67.20. This error can have no possible impact on Mr. Vuong's future claims, since all relevant parties agree that he only received \$1,747.20 from his former employer as pay in lieu of notice. Or, if we follow his logic, this error would work in his favour. One thing is certain: it had no impact on the Commission's decision.

[8] Therefore, the Appeal Division did not err in dismissing the Applicant's appeal and there is no need for this Court to intervene, nor is there any need to elaborate further.

[9] The Respondent has rightfully requested that the Attorney General of Canada be substituted as the sole respondent in this case and an order will be made amending the style of cause accordingly.

JUDGMENT in T-969-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed;
2. The style of cause is amended to substitute the Attorney General of Canada as the sole respondent in this case;
3. No costs are granted.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-969-19

STYLE OF CAUSE: HUU NGHIA VUONG v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 2, 2020

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: NOVEMBER 6, 2020

APPEARANCES:

Huu Nghia Vuong ON HIS OWN BEHALF

Isabelle Mathieu-Millaire FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Ottawa, ON