

CANADA / JUDGMENT

Gloglo v. Canada (Attorney General)

2024 FC 1923

COURT

Federal Court

DECIDED

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Gloglo v. Canada (Attorney General)

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Decision Content

Date: 20241129

Docket: T-793-23

Citation: 2024 FC 1923

Montréal, Quebec, November 29, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

MIDJOHODO FRANCK GLOGLO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] The applicant, Midjohodo Franck Gloglo, is seeking judicial review of a decision dated November 7, 2022 [Decision] whereby the Appeal Division of the Social Security Tribunal [SST] refused to grant him leave to appeal a decision of the SST's General Division. The General Division confirmed the Canada Employment Insurance Commission's [Commission] decision to deny Mr. Gloglo employment insurance [EI] benefits, as he had not accumulated enough insurable hours under the Employment Insurance Act, SC 1996, c 23 [EIA] to qualify for EI benefits. The General Division based its finding on a Tax Court of Canada's [TCC] final ruling that Mr. Gloglo's hours of employment in Ireland were not insurable and on the lack of other insurable employment during his qualifying period.

[2] On leave to appeal, the Appeal Division found that there was no arguable case that the General Division failed to apply the Agreement on Social Security Between Canada and Ireland, 29 November 1990, E102203-CTS 1992 No 6 [Agreement] or that it made a factual error regarding Mr. Gloglo's insurable hours.

[3] Mr. Gloglo submits that the Appeal Division erred in concluding that the General Division could not apply the Agreement and that he was entitled to EI benefits by virtue of this international agreement, notwithstanding the EIA. He also argues that, in any case, the Appeal Division erroneously found that he had not worked enough hours to receive EI benefits, as, according to him, the 34 weeks during which he worked in Ireland qualified as insurable employment for the purposes of the EIA.

[4] For the reasons that follow, Mr. Gloglo's application for judicial review will be dismissed. I find that the Appeal Division reasonably concluded that Mr. Gloglo's appeal had no reasonable chance of success. First, the Appeal Division properly pointed out that the General Division had no legal basis for considering, let alone applying, the Agreement. The Agreement is silent on the issue of EI benefits, whereas the EIA expressly sets out the eligibility requirements for such benefits. Mr. Gloglo did not meet the requirements under the EIA. Second, in light of the TCC's final ruling on the matter, it is clear that neither the General Division nor the Appeal Division had jurisdiction to consider whether Mr. Gloglo's hours of work outside Canada constituted hours of insurable employment for the purposes of the EIA. In short, Mr. Gloglo's appeal was wholly without merit, and the Decision has the qualities that make the Appeal Division's reasoning logical and consistent in relation to the relevant legal and factual constraints.

II. Background A. The factual context [5] From November 2019 to August 2020, Mr. Gloglo worked as an assistant professor at the University College Dublin's Sutherland School of Law, in the Republic of Ireland. During his stay in Ireland, the Irish government determined that his work in the country entitled him to EI benefits in Ireland and deducted social insurance payments from his paychecks accordingly.

- [6] Mr. Gloglo later returned to Canada and applied for regular EI benefits on March 25, 2021. However, the Commission denied his application for EI benefits in Canada, both initially and upon reconsideration, since he had accumulated zero hours of insurable employment in his qualifying period (March 22, 2020 to March 21, 2021).
- [7] Following the negative outcome of his reconsideration request, Mr. Gloglo chose to appeal the Commission's reconsideration decision to the General Division of the SST.
- [8] On August 9, 2021, the General Division dismissed Mr. Gloglo's appeal. Mr. Gloglo then appealed the General Division's decision to the Appeal Division of the SST.
- [9] In the meantime, on July 9, 2021, at the request of the General Division, the Commission sought a ruling from a Canada Revenue Agency [CRA] officer on the insurability of Mr. Gloglo's employment in Ireland, due to his lack of employment in Canada during his qualifying period. On October 21, 2021, a CRA officer ruled that Mr. Gloglo's employment in Ireland was not insurable for the purposes of the EIA.
- [10] On November 8, 2021, the Appeal Division allowed Mr. Gloglo's appeal and remitted the matter to the General Division for redetermination, with the direction that the matter be stayed until the parties receive a final determination on the CRA ruling.
- [11] On January 10, 2022, the Minister of National Revenue [MNR] upheld the CRA's ruling that Mr. Gloglo's work in Ireland was not insurable. The TCC later confirmed the MNR's decision and restated that Mr. Gloglo's employment in Ireland "was not insurable employment under section 5 of the EIA" (*Gloglo v Canada (Minister of National Revenue)*, 2022-384(EI), October 7, 2022).

B. The SST's General Division decision [12] On October 31, 2022, the SST's General Division dismissed Mr. Gloglo's appeal in its redetermination decision. While recognizing that Mr. Gloglo had an interruption of earnings at the end of his Irish contract of employment, the General Division determined that a qualifying period could only be established if he had worked enough insurable hours within Canada. In light of the TCC's final determination on the issue of insurability, the General Division found that Mr. Gloglo had zero hours of insurable employment, therefore making him ineligible for EI benefits.

- [13] On November 1, 2022, Mr. Gloglo applied to the SST's Appeal Division for leave to appeal of the General Division's decision.

C. The SST's Appeal Division Decision [14] In support of his application for leave to appeal, Mr. Gloglo alleged errors of fact and law. He first raised an error of law, alleging that the General Division erred in concluding that it could not apply the Agreement and that he was entitled to receive EI benefits by virtue of this international agreement, notwithstanding the EIA. He also argued that the General Division committed a factual error by finding that he had not worked enough hours to receive EI benefits, as the 34 weeks during which he worked in Ireland also qualified as insurable employment for the purposes of the EIA.

- [15] The Appeal Division refused Mr. Gloglo's leave to appeal on November 7, 2022, finding that his appeal had no reasonable chance of success.
- [16] First, the Appeal Division determined that there was no arguable case that the General Division had failed to apply the Agreement. In its view, the General Division could not consider the Agreement in its determination of Mr. Gloglo's eligibility to receive EI benefits. The fact that the Agreement states that Canada and Ireland have "[r]esolved to co-operate in the field of social security," or the fact that deductions for Pay Related Social Insurance — the Irish equivalent of EI contributions — were withheld from source for the duration of Mr. Gloglo's employment in Ireland, had no bearing whatsoever on Mr. Gloglo's eligibility for EI benefits in Canada. The Agreement deals specifically with Canada's Old Age Security program and the Canada Pension Plan, and not with the issue of EI benefits or other social security measures. The Appeal Division plainly stated that claimants who seek benefits under the EIA must meet the requirements set out therein.
- [17] Second, the Appeal Division was not satisfied that there was an arguable case that the General Division made an error regarding Mr. Gloglo's lack of insurable hours during his qualifying period. The TCC had confirmed the MNR's decision that Mr. Gloglo's work in Ireland was not insurable because the employment was outside Canada and did not meet the conditions of section 5 of the Employment Insurance Regulations, SOR/96-332 [EI Regulations]. The General Division had also determined that, other than his work in Ireland, Mr. Gloglo had no other employment during his qualifying period. The Appeal Division underscored that the General Division was bound by the insurability ruling. As a result, it concluded that the General Division (or even itself) did not have jurisdiction to consider whether Mr. Gloglo's hours of work outside Canada were hours of insurable employment under the EIA.

D. Standard of review [18] It is well established that the standard of reasonableness applies to decisions of the Appeal Division denying leave to appeal (*Cecchetto v Canada (Attorney General)*, 2024 FCA 102 at para 4 [*Cecchetto*]; *Kuk v Canada (Attorney General)*, 2024 FCA 74 at para 5; *Bhamra v Canada (Attorney General)*, 2023 FCA 121 at para 3). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

- [19] This presumption can only be rebutted in two types of situations. The first is where Parliament has prescribed the applicable standard of review or provided for a statutory appeal mechanism from an administrative decision to a court; the second is where the question under review falls within one of the categories of questions for which the rule of law requires review on a standard of correctness (*Vavilov* at paras 10 and 17; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27). This is the case for constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more

administrative bodies (Vavilov at paras 17, 53). None of the situations that would justify departing from the presumption of reasonableness review applies in this case. At the hearing before the Court, Mr. Gloglo embarked in convoluted ramblings about the alleged constitutional dimension of EI benefits and other social security measures in place in Canada which, in his view, would trigger the application of the correctness standard to the Appeal Division's Decision. His claims are totally ill-informed and unfounded, and it is crystal clear that no constitutional question arises from the Decision that would justify a departure from the presumption of reasonableness established in Vavilov.

- [20] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85; Mason at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (Vavilov at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (Vavilov at paras 15, 95, 136).
- [21] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (Mason at paras 58, 60; Vavilov at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (Vavilov at para 13), without “reweighing and reassessing the evidence” before it (Vavilov at para 125).
- [22] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (Vavilov at para 100).

III. Analysis [23] Mr. Gloglo contends that the SST's Appeal Division erred in concluding that the General Division could not apply the Agreement and that the latter entitled him to EI benefits. More specifically, he believes that the words “[r]esolved to co-operate in the field of social security” in the Agreement should be interpreted purposefully so as to conclude that he should receive EI benefits due to “Revenue Ireland” (officially known as the Department of Social Protection) having already determined that he was eligible for EI benefits in that country. In other words, he claims that, under the Agreement, his entitlement to EI benefits in Ireland should automatically entail the same entitlement in Canada. Consequently, the social insurance deductions made by Revenue Ireland on the salary for his work in Ireland should be transferred to the MNR.

- [24] On the other hand, Mr. Gloglo asserts that the numerous denials of his entitlement to EI benefits by the various Canadian decision-makers were based on “irrelevant provisions” of the EIA.
- [25] Moreover, Mr. Gloglo also argues that the Appeal Division erroneously found that he had not worked enough hours to receive EI benefits, as, in his view, the 34 weeks during which he worked in Ireland also qualified as insurable employment for the purposes of the EIA.
- [26] Upon review, I conclude that Mr. Gloglo’s submissions are meritless.
- [27] As asserted by the respondent, the Attorney General of Canada [AGC], the Appeal Division reasonably denied leave to appeal given the lack of a reviewable error. The Agreement has no relevance to EI benefits, and it was therefore impossible for the General Division to apply it to qualify Mr. Gloglo for such benefits. Claimants seeking EI benefits must meet the conditions set out in the EIA. I further agree with the AGC that the MNR has exclusive jurisdiction to determine how many hours of insurable employment a claimant possesses under the EIA. Since the MNR’s determination was upheld by the TCC, the Appeal Division could not interfere with the General Division’s finding that Mr. Gloglo had zero hours of insurable employment.

A. The statutory framework [28] In accordance with the EIA, a claimant cannot qualify for EI benefits without an interruption of earnings and a sufficient number of insurable hours of employment within the 52 weeks before the beginning of a benefit period (sections 7, 8 and 10(1) of the EIA).

- [29] Pursuant to section 5 of the EI Regulations, insurable employment must be performed within Canada unless the following conditions are met:
- (a) the person so employed ordinarily resides in Canada;
 - (b) that employment is outside Canada or partly outside Canada by an employer who is resident or has a place of business in Canada;
 - (c) the employment would be insurable employment if it were in Canada; and
 - (d) the employment is not insurable employment under the laws of the country in which it takes place.
- [30] Only a CRA officer authorized by the MNR can determine a claimant’s hours of insurable employment under subsection 90(1) of the EIA (*Canada (Attorney General) v Romano*, 2008 FCA 117 at paras 7–9 [Romano]). In the same vein, subsection 64(3) of the Department of Employment and Social Development Act, SC 2005, c 34 [DESDA] provides that questions of employment insurability arising in an application or appeal before the SST must be resolved by an authorized CRA officer.
- [31] Insurability rulings made by authorized CRA officers may be appealed to the MNR, and subsequently to the TCC (sections 91 and 103(1) of the EIA).

[32] Parties dissatisfied with their request for reconsideration of a Commission decision may appeal the reconsideration decision to the General Division (section 113 of the EIA and paragraph 52(1)(a) of the DESDA). They may then appeal the General Division's decision to the Appeal Division, provided leave to appeal is granted (sections 55 and 56(1) of the DESDA).

B. The test for granting leave to appeal [33] Turning to the test for granting leave to appeal to the Appeal Division, it is explicitly found in the DESDA. Thus, an application for leave to appeal a decision of the General Division may only be granted if the applicant succeeds in demonstrating that at least one of the three grounds of appeal set out in subsection 58(1) of the DESDA has a reasonable chance of success (Cecchetto at para 5).

[34] Under subsection 58(1) of the DESDA, an appeal will be allowed if the General Division:

- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) 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.

[35] Subsection 58(2) of the DESDA provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success." This is a low threshold, merely requiring the applicant to demonstrate "some arguable ground upon which the proposed appeal might succeed" (Brown v Canada (Attorney General), 2024 FC 1544 at para 41, citing Osaj v Canada (Attorney General), 2016 FC 115 at para 12; see also Fancy v Canada (Attorney General), 2010 FCA 63 at paras 2–3).

C. The Decision is reasonable [36] In my view, there is no doubt that the SST's Appeal Division reasonably denied leave to appeal due to the complete lack of a reviewable error in the General Division's decision.

[37] First, the Appeal Division rightly dismissed the argument that Mr. Gloglo should qualify for EI benefits in Canada simply because he was entitled to them in Ireland.

[38] As the Appeal Division found, the only Canadian social security benefits covered by the Agreement are the Canada Pension Plan and Old Age Security pension programs (Article II(1)(a) of the Agreement). Nowhere does the Agreement stipulate or imply that it serves to govern the portability of EI benefits. The social security benefits covered by the Agreement are explicitly restricted to the two legislations described in the Agreement, and these do not include EI measures. As its name suggests, it is rather the EIA that sets out the qualifying requirements to receive EI benefits (subsection 7(1) of the EIA). It should come as no surprise that a Canadian statute is the appropriate instrument for determining whether an individual may claim EI benefits in Canada.

- [39] In sum, none of the SST divisions can be faulted for refusing to grant Mr. Gloglo EI benefits pursuant to the Agreement, since the latter was totally “irrelevant” in this case. The relevant statutory framework is the EIA.
- [40] Furthermore, I wholly agree with the AGC that none of the SST divisions had jurisdiction to consider whether Mr. Gloglo’s hours of work in Ireland qualified as hours of insurable employment within the meaning of the EIA.
- [41] In *Canada (Attorney General) v Haberman*, 2000 CanLII 15802 (FCA) [Haberman], the Federal Court of Appeal held that, following a plain reading of paragraph 90(1)(d) and section 122 of the EIA (the modern equivalent of the latter being subsection 64(3) of the DESDA), the MNR clearly has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses under the EIA (Haberman at paras 13–19).
- [42] Since the Haberman decision, the MNR’s exclusive jurisdiction over employment insurability determinations has become even clearer. Haberman has since been reaffirmed in other appellate decisions (*Romano* at paras 7–9; *Canada (Attorney General) v Didiodato*, 2002 FCA 345 at para 2; *Canada (Attorney General) v Thiara*, 2001 FCA 386 at para 1; *Canada (Attorney General) v Tuomi*, 2000 CanLII 16151 (FCA) at paras 1–3; *Canada (Attorney General) v Hawryluk*, 2000 CanLII 15606 (FCA) at para 8). What is more, subsection 64(3) of the DESDA expressly provides that questions of employment insurability arising in an application or appeal before the SST must be dealt by an authorized CRA officer.
- [43] I pause to underline that the TCC expressly confirmed the MNR’s ruling that the 34 weeks Mr. Gloglo worked in Ireland did not meet the conditions of section 5 of the EI Regulations and could therefore not count as insurable employment. The Appeal Division respected the binding nature of this insurability ruling and adhered to it. As a result, it reasonably found that the General Division could not have possibly committed a factual error in concluding that Mr. Gloglo did not have any insurable hours during his qualifying period.

D. Final observation [44] It is not necessary to address the rest of Mr. Gloglo’s submissions in any more detail, including his request for an order compelling Parliament to revise the wording of the Agreement. These arguments are, on their very face, baseless and beyond this Court’s jurisdiction.

- [45] At the hearing, Mr. Gloglo notably attempted to challenge interlocutory orders previously issued by Justice Paul Favel and by Associate Judge Alexandra Steele in this matter, dismissing motions that he had previously filed. However, as I confirmed at the hearing, Mr. Gloglo chose not to file a motion for reconsideration under rule 397(1) of the Federal Courts Rules, SOR/98-106 [Rules] nor to appeal the orders, and the deadline to initiate both procedures has now long passed. While it was entirely open to Mr. Gloglo to choose not to do so, he must now live with the consequences. Indeed, these interlocutory orders are now final and are not subject to any challenge.

[46] I understand that as a self-represented litigant (albeit with a legal background), Mr. Gloglo may not have appreciated the consequences of his failure to request reconsideration of the orders or to appeal them. Unfortunately, the fact that he is self-represented and may be unfamiliar with the Court's rules of procedure or governing legislation does not provide him with special dispensation from the application of the law and the Rules (*Davis v Canada* (Royal Canadian Mounted Police), 2024 FCA 115 at paras 51–53, citing *Nowoselsky v Canada* (Treasury Board), 2004 FCA 418 at para 8 and *MacDonald v Canada* (Attorney General), 2017 FC 2 at para 30).

IV. Conclusion [47] For the reasons set forth above, Mr. Gloglo's application for judicial review is dismissed. I am satisfied that the SST's Appeal Division reasonably refused to grant leave to appeal the General Division's decision. Indeed, the appeal was doomed to fail for two reasons: (i) the Appeal Division properly considered and rejected Mr. Gloglo's rather fanciful argument regarding the applicability of the Agreement; and (ii) it rightfully found itself bound by the TCC's ruling that Mr. Gloglo's employment in Ireland was not insurable under the EIA. Consequently, the Decision bears the hallmarks of justification, transparency, and intelligibility required under the standard of reasonableness. There are no grounds for the Court to intervene.

[48] As the AGC is not seeking costs, none are awarded.

JUDGMENT in T-793-23

THIS COURT'S JUDGMENT is that:

This application for judicial review is dismissed.

No costs are awarded.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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