[TRANSLATION]

Citation: *M. B. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 28

Appeal No: GE-13-1736

BETWEEN:

M. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER:	Normand Morin
HEARING DATE:	March 5, 2014
TYPE OF HEARING:	Teleconference
DECISION:	Appeal dismissed

PERSONS IN ATTENDANCE

[1] The Appellant, M. B., participated in the telephone hearing (teleconference) on March 5, 2014.

DECISION

[2] The Social Security Tribunal, hereafter called the Tribunal, concludes that there is no merit to the appeal from the decision of the Canada Employment Insurance Commission, hereafter called the Commission, to impose an indefinite disqualification from receiving Employment Insurance benefits on the Appellant because he did not prove that he had just cause for leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (the Act).

INTRODUCTION

[3] On August 17, 2010, the Appellant filed an initial claim for benefits effective August 15, 2010. The Appellant stated that he worked for Béton provincial from August 2, 2010, to August 13, 2010, inclusive. The Appellant indicated that he also worked for Groupe CDP from September 1, 2009, to July 13, 2010 (Exhibits GD3-2 to GD3-19).

[4] On May 29, 2013, the Commission informed the Appellant that it could not pay Employment Insurance regular benefits to him as of October 3, 2010, because he voluntarily left his employment at Canpar Transport L. P. on October 5, 2010, without just cause within the meaning of the Act (Exhibits GD3-30 to GD3-33). On June 25, 2013, the Appellant filed a "Request for Reconsideration of an Employment Insurance Decision" (Exhibits GD3-35 to GD3-38).

[5] On October 9, 2013, the Appellant filed a notice of appeal to the Employment Insurance Section of the Tribunal's General Division in order to appeal from the

reconsideration decision made in his case by the Commission on July 11, 2013, to uphold the initial decision rendered on May 29, 2013, concerning the voluntary leaving from Canpar Transport L. P. (Exhibits GD2-1 to GD2-4, GD2B-1 to GD2B-4, GD3-42, GD3-43 and GD3-30 to GD3-33).

[6] On March 7, 2014, the Tribunal informed the Commission that it had until March 17, 2014, to make new submissions related to the filing of new documents by the Appellant after the hearing on March 5, 2014 (Exhibits GD5-1 to GD5-10). The Commission did not respond.

TYPE OF HEARING

[7] The hearing was held by teleconference for the reasons given in the notice of hearing dated February 18, 2014 (Exhibits GD1-1 and GD1-2).

ISSUE

[8] The Tribunal must determine whether there is merit to the appeal from the Commission's decision regarding the Appellant's indefinite disqualification from receiving Employment Insurance benefits because he failed to prove that he had just cause for leaving his employment under sections 29 and 30 of the Act.

APPLICABLE LAW

[9] The provisions related to voluntary leaving are set out in sections 29 and 30 of the Act.

[10] In ***Rena-Astronomo*** **(A-141-97)**, which confirmed the principle established in ***Tanguay*** **(A-1458-84)** according to which the onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time, MacDonald J.A. of the Federal Court of Appeal (the Court) stated:

"The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment."

[11] This principle was confirmed in other decisions of the Court **(*Peace,* 2004 FCA 56; *Landry,* A-1210-92)**.

[12] Moreover, the term "just cause", as it is used in subsections 29(*c*) and 30(1) of the Act, was interpreted by the Court in ***Tanguay v. C.E.I.C.*** (**A-1458-84** (October 2, 1985); 68 N.R. 154) as follows:

> In the context in which they are used these words are not synonymous with "reasons" or "motive". An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[13] In ***White* (2011 FCA 190, A-381-10)**, Layden-Stevenson J.A. of the Court stated: "… The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job: *Canada (Attorney General) v. Hernandez*, 2007 FCA 320; *Canada (Attorney General) v. Campeau*, 2006 FCA 376; *Canada*

(Attorney General) v. Murugaiah, 2008 FCA 10. … The Board's observation that good cause does not equate to just cause was proper."

[14] In ***Christine Beaulieu* (2008 FCA 133, A-465-07)**, Desjardins J.A. of the Court stated: "One need only recall the jurisprudence of this Court applicable to this case. In *Canada (Attorney General) v. Martel*, [1994] F.C.J. No. 1458 (F.C.A.) (QL), A-1691-92, a case which is factually similar to the one at hand, I wrote for the Court (para. 12):

> An employee who voluntarily leaves his employment to take a training course which is not authorized by the Commission certainly has an excellent reason for doing so in personal terms; but we feel it is contrary to the very principles underlying the unemployment insurance system for that employee to be able to impose the economic burden of his decision on contributors to the fund.

Subsequent jurisprudence has been consistent with this decision (*Canada (Attorney General) v. Traynor*, [1995] F.C.J. No. 836 (F.C.A.) (QL); *Canada (Attorney General) v. Barnett*, [1996] F.C.J. No. 1289 (F.C.A.) (QL); *Canada (Attorney General) v. Bois*, 2001 FCA 175, [2001] F.C.J. No. 878 (F.C.A.) (QL); *Canada v. Wall*, 2002 F.C.A. 283, [2002] F.C.J. No. 1024 (F.C.A.) (QL); *Canada (Attorney General) v. Shaw*, 2002 FCA 325; *Canada (Attorney General) v. Lessard*, 2002 FCA 469, [2002] F.C.J. No. 1655 (F.C.A.) (QL); *Canada (Attorney General) v. Connell*, 2003 FCA 144, [2003] F.C.J. No. 1147 (F.C.A.) (QL); *Canada (Attorney General) v. Bédard*, 2004 FCA 21, [2004] F.C.J. No. 270 (F.C.A.) (QL); *Canada (Attorney General) v. Caron*, 2007 FCA 204, [2007] F.C.J. No. 754 (F.C.A.) (QL))."

[15] In ***Mohanathas Vairamuthu* (2009 FCA 277)**, Pelletier J.A. of the Court stated: "…it may well have been good cause for the respondent to have voluntarily left his employment but it is not just cause. Given that the condition being treated is not a threat to life or to health, and given the absence of evidence that no adequate alternate treatment was available in the Montreal area, the decision to seek treatment abroad was not just cause within the meaning of section 30 of the *Employment Insurance Act* , S.C. 1996 c. 23. In particular, it did not meet the standard set in paragraph 29(c)(v) of the Act."

[16] In ***Murray* (2013 FC 49)**, the case concerned a request made to the Federal Court by the applicant, Norman Murray, to "quash a decision of the Public Service Staffing Tribunal [PSST] dismissing his request to submit post-hearing evidence and dismissing his complaint of discrimination in a staffing process undertaken by the Immigration and Refugee Board [IRB] in 2006."

[17] In that decision (***Murray* 2013 FC 49**), the Honourable Mr. Justice Zinn stated as follows with regard to the test that should be applied to admit evidence produced after the closure of the hearing: "The parties agreed that the three-part test summarized in *Whyte v Canadian National Railway*, 2010 CHRT 6 [*Whyte*], which followed that used in *Vermette v Canadian Broadcasting Corporation*, [1994] CHRD 14, should be used. The test is the following: 1. It must be shown the evidence could not have been obtained with reasonable diligence for use at the trial; 2. The evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; and 3. The evidence must be such as presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible."

EVIDENCE

[18] The evidence on file is as follows:

(a) A Record of Employment dated October 22, indicating that the Appellant worked as a warehouse employee for Canpar Transport L. P. from October 4, 2010, to October 5, 2010, inclusive, and that he stopped working for this employer because he voluntarily left this employment (Code E – Quit), (Exhibit GD3-10).

(b) In a document called "Full text screen – Telephone reporting service – Electronic reporting certificate", the Commission stated that claimants who use the telephone reporting service to make their reports receive written instructions on how to access the system, complete the electronic reports and make corrections as needed (Exhibits GD3-11 to GD3-13).

(c) In an undated document, the Commission indicated that, for the period from September 26, 2010, to September [error in French; should be October] 9, 2010, the Appellant's telephone reports and the confirmation provided by a Commission officer show that the Appellant reported that he had not stopped working during the period from September 26, 2010, to October 9, 2010 (Exhibits GD3-14 to GD3-22).

(d) On October 29, 2010, the Appellant filed a report to change his work hours and earnings over the period from September 26, 2010, to October 9, 2010. He reported that he had not worked any hours or received any earnings over the period from September 26, 2010, to October 2, 2010, and that he had worked 13 hours and received $201.00 in earnings over the period from October 3, 2010, to October 9, 2010 (Exhibits GD3-23 to GD3-25).

(e) On May 19, 2011, the Appellant responded to a questionnaire sent by the Commission on the reasons for his separation from employment at Canpar Transport L. P. (Exhibits GD3-26 and GD3-27).

(f) On May 19, 2011, the Appellant said he had erred in reporting his earnings from CN Rail, Groupe CDP, Canpar Transport L. P., and Gestion VCA, as well as with regard to a trip made outside Canada. The Appellant asked for one week to verify the earnings he received from his current employers (Exhibits GD3-28 and GD3-29).

(g) In a document on the details of the notice of debt (DH009) dated June 1, 2013, the total amount of the Appellant's debt was established at $16,864.00 (Exhibit GD3-34).

(h) On July 10, 2013, the Appellant stated that he voluntarily left his employment at Canpar Transport L. P. because he wanted to take a training course (Exhibits GD3-39 and GD3-40).

(i) On July 10, 2013, Canpar Transport L. P. (R. C., supervisor at the Quebec distribution centre) said he did not remember the Appellant. He stated that the positions posted are always part-time, not full-time. He explained that it was not possible for a new employee to fill his schedule as a delivery driver with the work of a representative to make it full-time because the representatives' positions for Quebec were all in Montreal, and there were no such positions in Quebec City (Exhibit GD3-41).

(j) On March 6, 2014, following the hearing held on March 5, 2014, the Appellant sent to the Tribunal a copy of the following documents:

- **CUB 80252** (Exhibits GD5-1 to GD5-3);
- **CUB 77619** (Exhibits GD5-3 to GD5-8);
- A "tracking sheet – referral or recruitment" from Emploi-Québec regarding the truck driver training course taken by the Appellant at the Charlesbourg transportation training centre (Exhibit GD5-9);
- An "attestation – general development test" (GENT0020) issued by the Des Navigateurs school board indicating that the Appellant passed the general development test (TDG-GENT0020) on January 26, 2011 (Exhibit GD5-10; Exhibits GD5-1 to GD5-10).

[19] The evidence presented at the hearing is as follows:

(a) The Appellant repeated the circumstances that caused him to leave his employment at Canpar Transport L. P.

(b) He indicated that he was going to send to the Tribunal documents related to the steps taken with Emploi-Québec and with Employment Insurance to have the training course he took at the Charlesbourg transportation training centre recognized so that he could receive grants. He was also planning to send copies of **CUB 80252** and **CUB 77619** (Exhibits GD5-1 to GD5-10).

SUBMISSIONS OF THE PARTIES

[20] The Appellant made the following observations and submissions:

(a) The Appellant explained that he was looking for full-time employment at 40 hours a week and that he applied for a full-time position as a delivery person or delivery driver. He said he asked his employer to provide assurances to him in this regard, but the employer was unable to do so. He stated that, at the end of his hiring interview, the employer offered him a position as a representative because it could not give him full-time work as a delivery person or delivery driver (Exhibits GD2-4, GD3-37 and GD3-39). He explained that he did not want to

combine two types of employment by including work as a representative. The Appellant specified that he did not want to fill a representative position, as this position was different from what he wanted to do (Exhibit GD3-39). He said the employer offered him the position of representative because it was truly stuck, as another person occupying this position was on leave from work.

(b) He said he disagreed with the employer's statement that the representative positions were all located in Montreal and that there were no such positions in Quebec City (Exhibit GD3-41).

(c) He indicated that, on October 4, 2010, he started a training course to be an assistant delivery driver at Canpar Transport L. P. and that it was supposed to run for one month (Exhibit GD3-39). He indicated that, during this training, he had to fill the vans, which he had no problem with, then deliver packages (Exhibit GD3-39).

(d) He explained that he did not drive a truck in the two days he worked for Canpar Transport L. P.

(e) He said he decided to leave this employment after two days of training because the employer could not guarantee him full-time work and, furthermore, the employer wanted him to be a representative, but he just wanted to be a full-time delivery person (Exhibit GD2-4). He indicated that this was not full-time work that was offered to him, so he did not like it. He mentioned that he did not want to unload vans and that he was supposedly both a delivery person and a representative, which was not the case (Exhibit GD3-27).

(f) He explained that he left this employment because he wanted to take a training course in order to obtain a licence to drive heavy vehicles (Class 1) (Exhibits GD3-37 and GD3-39). He argued that he could not afford to work part-time, so he took a training course at the Charlesbourg transportation training centre to be a truck driver.

(g) He explained that he had taken steps, several months before his voluntary leaving in October 2010, to contact Emploi-Québec and Employment Insurance in order to have his training course at the Charlesbourg transportation training centre recognized and in order to receive grants (Exhibit GD5-9 and GD5-10). He also

explained that the local employment centre helped him do this and assisted him in registering at the "blue bird" training centre [Charlesbourg transportation training centre]. He indicated that he now has his Class 1 licence and that he is working in his field of interest (Exhibit GD3-39).

(h) He said he never thought two days of work for an employer would cause so many problems for him. He said he never received a termination of employment document from Canpar Transport L. P.; otherwise, he would have gone to see the employer to ask about the "quit" entered as the reason his employment ended (Exhibits GD2-4, GD3-37 and GD3-39).

(i) He referred to the content of **CUB 80252** and **CUB 77619**. He submitted that these cases were similar to his (Exhibits GD5-1 to GD5-8).

[21] The Commission made the following observations and submissions:

(a) The Commission made the following clarification: [translation] "The Commission wishes to inform the Tribunal that the claimant is appealing only on the issue of the voluntary leaving from Canpar Transport on October 5, 2010. The Commission, in evidence, had to include documents or references to other issues in the claimant's case, but the Commission respectfully asks the Tribunal to stick to the only issue under appeal by the claimant, namely, the voluntary leaving" (Exhibit GD4-1).

(b) It explained that subsection 30(2) of the Act provides for an indefinite disqualification when a claimant voluntarily leaves their employment without just cause. It specified that the legal test consists of determining whether leaving the employment was the only reasonable alternative for the appellant in that case (Exhibit GD4-4).

(c) It underscored that the fact that the Appellant may be [translation] "dissatisfied with his work hours does not constitute just cause within the meaning of the *Employment Insurance Act*" (Exhibit GD4-4). It stated that [translation] "part-time work is preferable to no work at all" (Exhibit GD4-4).

(d) It also submitted that the Appellant's desire to obtain his Class 1 and wanting to take the necessary steps to pursue and complete his secondary studies (Exhibits GD3-37 and GD3-39) was a personal choice (Exhibit GD4-4).

(e) It explained that, when it comes to a strictly personal choice, it is generally expected that the person's choice will not compromise the continuity of the person's employment. It added that, in such a case, a person [translation] "may have difficulty passing the test set out in the legislation" (Exhibit GD4-5).

(f) It concluded that the Appellant did not have just cause for leaving his employment on October 5, 2010, because he did not exhaust all the reasonable alternatives before leaving his employment. It explained that, considering all the evidence, a reasonable alternative would have been to continue the training offered by his employer, which was for the position of delivery person, and to look for other employment elsewhere during this time (Exhibit GD4-5).

(g) It stated that the Appellant did not prove that he had just cause for leaving his employment within the meaning of the Act (Exhibit GD4-5).

(h) It submitted that its decision complied with the legislation and was supported by the case law because, although the reason for the voluntary leaving was valid for the Appellant, it did not correspond to the type of situation set out in subsection 29(*c*) of the Act, thus enabling him to force third parties to pay him benefits (Exhibit GD4-5).

(i) It submitted that the onus was on the Appellant to find other employment before leaving or to contact an organization such as Emploi-Québec to obtain a referral to training (Exhibit GD4-5).

ANALYSIS

[22] For the purposes of sections 30 to 33 of the Act related to the disqualification from receiving Employment Insurance benefits in the case of leaving an employment without just cause, subsection 29(*c*) of the Act stipulates the following:

> (*c*) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:
>
> (i) sexual or other harassment,
>
> (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
>
> (iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,
>
> (iv) working conditions that constitute a danger to health or safety,
>
> (v) obligation to care for a child or a member of the immediate family,
>
> (vi) reasonable assurance of another employment in the immediate future,
>
> (vii) significant modification of terms and conditions respecting wages or salary,
>
> (viii) excessive overtime work or refusal to pay for overtime work,
>
> (ix) significant changes in work duties,
>
> (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
>
> (xi) practices of an employer that are contrary to law,
>
> (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
>
> (xiii) undue pressure by an employer on the claimant to leave their employment, and
>
> (xiv) any other reasonable circumstances that are prescribed.

[23] In this case, the Tribunal determines that, given all the circumstances, the decision made by the Appellant to leave his employment at Canpar Transport L. P. cannot be considered the only reasonable alternative in this situation.

[24] The evidence on file and the testimony given by the Appellant demonstrate that his primary intent was to take a training course in order to obtain a licence to drive heavy vehicles (Class 1) (Exhibits GD3-37 and GD3-39).

[25] Despite the steps taken by the Appellant with Emploi-Québec and Employment Insurance (the Commission) to have his training at the Charlesbourg transportation training

centre recognized and to receive grants, the Tribunal finds that he did not have just cause for voluntarily leaving his employment. The Appellant did not obtain authorization from these organizations that could have provided him with just cause for his voluntary leaving (Exhibits GD5-9 and GD5-10) (***Beaulieu*, 2008 FCA 133**).

[26] In this respect, the Tribunal does not accept in its analysis the new documentation and additional evidence that were submitted to it following the hearing on March 5, 2014 (Exhibits GD5-1 to GD5-10), because these documents do not have a significant or determinative impact on this case and they do not constitute information likely to influence the decision of this Tribunal (***Murray*, 2013 FC 49**).

[27] More specifically, the documents submitted by the Appellant regarding his training, namely, the "tracking sheet – referral or recruitment" (Emploi-Québec) concerning the truck driver training taken by the Appellant at the Charlesbourg transportation training centre (Exhibit GD5-9) and the certificate indicating that he passed the "general development test (TDG-GENT0020)" (Exhibit GD5-10), do not demonstrate that he had obtained the Commission's approval to take this training course or that it had been recommended or or he had been referred by Emploi-Québec (local employment centre), the designated competent authority in this area. This training was taken on the personal initiative of the Appellant, as he himself admitted (Exhibit GD3-39) (***Beaulieu*, 2008 FCA 133**).

[28] Moreoever, although the Appellant felt that his employment at Canpar Transport L. P. did not allow him to perform the type of tasks he wanted to perform, and although the employment was only part-time when he was seeking full-time employment, this type of situation does not represent just cause for his voluntary leaving.

[29] The Appellant knew when he was hired that the work was part-time and that he would have one month of training as part of this employment (Exhibits GD3-39 to GD3-41).

[30] Despite the Appellant's legitimate lack of satisfaction concerning the tasks he had to perform or the training that he had begun barely two days prior, the Tribunal finds that there was no urgent need for him to voluntarily leave his employment. There is no evidence

demonstrating that his employment conditions were such that they could justify his leaving his employment right away.

[31] Rather than leave his employment after a few days of work, the Appellant could have tried beforehand to speak with his employer to find a solution to the problems encountered in performing the tasks assigned to him or concerning the training that he had begun for this employer, which was expected to run for one month **(*White*, 2011 FCA 190)**.

[32] Despite the reasons given by the Appellant to justify his voluntary leaving, the Tribunal is of the view that he could have continued to work for Canpar Transport L. P. while waiting to obtain new employment that was more suited to his expectations and interests, or ensuring that he had the Commission's authorization to take a training course prior to starting.

[33] Although the Appellant's decision to leave his employment at Canpar Transport L. P. can be supported by excellent reasons, none of them constitute just cause for his voluntary leaving within the meaning of the Act **(*Vairamuthu*, 2009 FCA 277; *Beaulieu*, 2008 FCA 133**).

[34] The Tribunal finds that there is no evidence on file to suggest that the voluntary leaving was the Appellant's only reasonable alternative in this situation. Based on the case law referred to above, the Tribunal finds that the Appellant did not demonstrate that there was no reasonable alternative to leaving his employment at Canpar Transport L. P. The Appellant could have continued to work for this employer, tried to find solutions with the employer to the problems encountered while performing his tasks or obtained authorization from the Commission to take a training course (***Rena-Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Landry*, A-1210-92; *Peace*, 2004 FCA 56; *White*, 2011 FCA 190; *Beaulieu*, 2008 FCA 133**).

[35] In light of all the circumstances, the Tribunal finds that the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

[36] There is no merit to the appeal on this issue.

CONCLUSION

[37] The appeal is dismissed.

Normand Morin
Member, *General Division*

DATE OF REASONS: April 15, 2014