Citation: *G. B. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 49

Appeal #: GE-13-2473

BETWEEN:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER:	Normand Morin
HEARING DATE:	May 14, 2014
TYPE OF HEARING:	Teleconference
DECISION:	Appeal allowed

PERSONS IN ATTENDANCE

[1] The Appellant, Mrs. G. B., attended the hearing held on May 14, 2014. Mrs. L. L. (witness) was also present.

DECISION

[2] The Social Security Tribunal of Canada (the "Tribunal") finds that the Appellant had just cause for voluntarily leaving her employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*, hereinafter the "Act".

INTRODUCTION

[3] On June 17, 2013, an initial claim for employment insurance benefits was filed and the benefit period was established starting on June 16, 2013. The Appellant was employed by Technosport Canada (Techno Sport Int'l Ltée) from October 23, 2006 to May 10, 2013 (Exhibits GD3-2 to GD3-12).

[4] On August 2, 2013 (based upon the facts on file), the Canada Employment Insurance Commission (the "Commission") decided that the Appellant had not demonstrated just cause for voluntarily leaving her employment. The Commission, therefore, imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act, effective June 16, 2013 (Exhibit GD3-20).

[5] On August 27, 2013, the Appellant sent a request for reconsideration of the Commission's decision disqualifying her for voluntarily leaving her employment without just cause (Exhibits GD3-21 to GD3-23).

[6] On October 2, 2013, the Commission informed the Appellant that the decision rendered on August 2, 2013 would be maintained (Exhibits GD3-24 and GD3-25).

[7] On October 25, 2013, the Appellant appealed the Commission's decision before the Tribunal (Exhibits GD2-1 to GD2-5).

[8] On December 2, 2013, the Tribunal asked the Appellant to send "*a copy of the decision in respect of which leave to appeal is being sought*", (Exhibits GD2A-1 to GD2A-3). On December 12, 2013, the Appellant sent the requested document to the Tribunal (Exhibits GD2A-1 to GD2A-3).

[9] On April 2, 2014, the Tribunal sent clarification questions to the Commission with regards to the Employer's statement (Exhibits GD1A-1 and GD1A-2). On April 3, 2014, the Commission replied to the Tribunal's request in an additional representation (Exhibits GD5-1 and GD6-1).

FORM OF HEARING

[10] The hearing of this appeal was held by way of teleconference for the reasons given in the Notice of Hearing dated April 14, 2014 (Exhibits GD1-1 and GD1-2).

ISSUE

[11] The Tribunal must decide if the Appellant had just cause for voluntarily leaving her employment within the meaning of sections 29 and 30 of the Act.

THE LAW

[12] As per the application of sections 30 to 33 of the Act concerning the disqualification from receiving any Employment Insurance benefits, in case of a "leaving without just cause", subsection 29(c) of the Act states that: "*[…] (*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.*"

[13] Subsection 30(1) of the Act state that: "*[…](1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless (*a*) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or (* b*) the claimant is disentitled under sections 31 to 33 in relation to the employment.*"

[14] In **Rena-Astronomo (A-141-97)**, the Federal Court of Appeal (the "Court") confirmed the principle established in **Tanguay (A-1458-84)** that where a claimant voluntarily leaves his/her employment, the burden is on that claimant to prove that there was no reasonable alternative to leaving when he/she did. In that case **(Rena- Astronomo, A-141-97)**, judge MacDonald stated that: "*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 immediately leaving his or her employment.* "

[15] The Court reaffirmed this principle in ***Canada (AG) v. White,* 2011 FCA 190**.

[16] In **Nancy Horslen (A-517-94)**, Judge A. J. Stone stated : "*It is noteworthy that not only was the respondent's hours of work reduced by almost 30% per week but that the reduced*

number of hours was not guaranteed. We share the Umpire's view that in dismissing the appeal before them, the majority failed to address the relevance and meaning of subparagraph 28(4)(g) of the Unemployment Insurance Act and that had they done so properly they would not have decided as they did. The legal question that needed to be addressed was whether on the facts the respondent had no reasonable alternative to leave her employment because of a "significant modification of terms and conditions respecting wages or salary". That question was not squarely addressed. We cannot see that the Umpire erred in answering it as she did and in finding there was "just cause" in the circumstances."

EVIDENCE

[17] The evidence in the docket is as follows:

a) The Appellant was employed by Gestions J G N C Inc. until April 28, 2013 when she voluntarily left that employment (Exhibits GD3-13 to GD3-14);
b) On July 10, 2013, when the Appellant was contacted for information, she advised that she quit because there was less hours to work and she was working 40 hours with Technosport (Techno Sport Int'l Ltée). She said it was not a quit, but a shortage of work (Exhibit GD3-15);
c) On July 10, 2013, the employer Gestions J G N C Inc. (Mrs. C. J.) was contacted for information. C. J. said that it was true that there was less work as of the end of April or Mid-May. She said the Appellant quit because she was moving to New Brunswick. The employer indicated that if the Appellant had not quit, she would have had part-time work all summer (Exhibit GD3-16);

d) On July 10, 2013, the Appellant stated that she decided to move to New Brunswick after her lay off from Technosport (Techno Sport Int'l Ltée). She explained that she would not have been able to live with just part-time employment. (Exhibit GD3-17);
e) On July 10, 2013, the Appellant advised she had lived in Montréal for 9 years and moved to Edmundston, New Brunswick because she wanted to return to her region,

after a lay off from her employer Technosport (Techno Sport Int'l Ltée), (Exhibit GD3-18);

f) On August 2, 2013, the Appellant said that in April, her employer, Technosport (Techno Sport Int'l Ltée), advised her that there would be a lay off in May. She then decided to quit her employment with Gestions J G N C Inc. (Exhibit GD3- 19).

[18] At the hearing :

a) The Appellant stated again the information that she had previously described in her appeal letter (Exhibits GD2-1 to GD2-5);
b) She explained that she had worked for seven (7) years (October 2006 to May 2013) for the employer Technosport (Techno Sport Int'l Ltée) as a full-time employee;
c) She indicated that she started working for the employer Gestions J G N C Inc. in September 2010;
d) She mentioned that she had not applied on a new job while she was still in Montréal;
e) She said that she had not received Employment Insurance benefits in the previous years because she still had her full-time work.

SUBMISSIONS

[19] The Appellant submitted that:

a) It was always at the end of April, early May that she was stopping work for the employer Gestions J G N C Inc. and returning to work for that employer in September. She specified that she had the "release forms" indicating that there was a lack of work with Gestions J G N C Inc. in 2011 and 2012;
b) She wondered why she was not entitled to Employment Insurance benefits when it is a part-time job considering that she had worked full-time for the employer Technosport (Techno Sport Int'l Ltée) for seven (7) years;
c) The part-time employment she did as an Assistant Manager of a bowling alley for Gestions J G N C Inc. was just to supplement her income (Exhibit GD2-3);

d) During summer seasons in the previous years (2011 or 2012) she had left at the end of April because there was no work for the summer (Exhibit GD2-3). She indicated that it was the same situation last year (2013) with that employer (Exhibit GD2-3);
e) She was never informed that there was an opportunity for full-time employment during the summer;
f) Her part-time job (18-20 hours per week) was only from September to April at minimum wage (Exhibit GD2-3);
g) She would not have been able to live with just part-time employment (Exhibits GD2-3, GD3-17 and GD3-18);
h) The employer Gestions J G N C Inc. never mentioned that there would be work for her during the summer. She indicated that they always had the workers with more seniority working there during the summer months. She added that she was confused by the comment of the employer as to why there would be work available for her during the summer months for the part-time employee when the full-time employees have no work. She also indicated that she learned about a full-time employee receiving employment insurance benefits;
i) The employer told her that there was less work as of the end of April or Mid-May and not from April to mid-May (Exhibits GD3-16, GD4-2 and GD8-1);
j) With regards to the employer statement that: "*C. J. dit qu'il est vrai qu'il y a moins de travail <u>à compter de</u> fin avril, mi-mai.*" (Exhibit GD3-16) and translated by the Commission in its representations as: "*C. J. said that it was true that there was less work <u>f rom</u> the end of April <u>to</u> mid-May.*" (Exhibit GD4-2), the Appellant stated that she does not agree with the translation. She explained that the English version of the statement should read as that there is less work starting from the end of April and mid-May. She also stated that she agrees with the original Exhibit GD3-16 and disagrees with the Exhibit GD4-2 (Exhibit GD8-1);
k) She could not live in Montréal anymore with the cost of living being higher than it is in New Brunswick so she decided to move back home to be with her family;
l) She decided to move to New Brunswick after her lay off from Technosport (Techno Sport Int'l Ltée). She said that when she was advised that she was losing her employment with Technosport (Techno Sport Int'l Ltée) in April, she decided to

return to live in her province of New Brunswick. She explained that she decided to take this opportunity to return home to her family and friends (Exhibits GD3-19 and GD2-3);

m) An agent from Service Canada called her on July 10, 2013 informing her that she had been approved for Employment Insurance benefits and to continue her job search (Exhibits GD3-21 to GD3-23 and GD2-3). She stated that she received another call from Service Canada informing her that her request for Employment Insurance benefits was denied. The Appellant stated that the agent told her that if she had stayed in Montréal, she would have found work within a two week period (Exhibit GD2-3);

n) She had not looked for work in her new area (New Brunswick) before moving, but that since being in Edmundston, she had applied at various places for work (Exhibit GD3-19);

o) She is entitled to Employment Insurance benefits based on the information she has provided (Exhibit GD2-3).

[20] The Respondent (the Commission) submitted that:

a) Subsection 30(2) of the Act provides for an indefinite disqualification when the claimant voluntarily leaves her employment without *just cause*. The test to be applied, having regard to all the circumstances, is whether the Appellant had a reasonable alternative to leaving her employment when she did (Exhibit GD4-3) ;

b) Even if the Appellant does not agree with the decision because she feels it is being based on part-time employment that she only took to supplement her income from her full-time job, the Commission explained that there is no difference between part-time or full-time employment and it considers both status of employment when making a decision on a reason for separation (Exhibit GD4- 3);

c) The Appellant says that she was not aware that she could continue to work for the employer, however the employer stated that the claimant quit because she was moving and that she could have continued to work during the summer, on a part-time basis (Exhibit GD4-3);

d) The Appellant advised that she had lived in Montréal for nine (9) years and took the opportunity to move back to New Brunswick to be closer to family. She also advised that she could not continue to live in Montréal with just a part-time income (Exhibit GD4-3);
e) The Commission concluded that the Appellant did not have just cause for leaving her employment on April 28, 2013 because she failed to exhaust all reasonable alternatives prior to leaving (Exhibit GD4-4);
f) The Commission submitted that considering all of the evidence, a reasonable alternative to leaving would have been to search for work in Montréal and New Brunswick if her intention was to possibly return home at some point (Exhibit GD4-4);
g) The Commission submitted that the Appellant made a personal decision to leave her part-time employment in order to return to New Brunswick to be closer to family. Consequently, the Appellant failed to prove that she left her employment with *just cause* within the meaning of the Act (Exhibit GD4-4);
h) In response to the question asked by the Tribunal to know if the Commission had based their argument on the initial statement from the employer (Exhibit GD3-16) or the translation (Exhibit GD4-2), the Commission indicated that its decision would have been based on the Supplementary Record of Claim (Exhibit GD3-16) recorded in French and taken on July 10, 2013 (Exhibit GD5-1). The Commission indicated that as per the previous additional representations submitted on March 27, 2014, the decision was based on the employer's statement. It specified that the representations were written after the decision was made so the translation may not be word for word. As per the original representations, the Commission feels that as the claimant could have continued to be employed, even on a part-time or reduced basis, it was a personal decision she made to leave her job (Exhibit GD6-1).

ANALYSIS

[21] In the present case and having regard to all the circumstances, the Tribunal finds that the Appellant had no reasonable alternative to leaving her employment from the employer Gestions J G N C Inc. when she did.

[22] The evidence in the file indicate that even if the Appellant had not quit the employment she had with Gestions J G N C Inc. and would have had part-time work all summer, that employer clearly stated that there was less work as of the end of April or mid-May (Exhibit GD3-16).

[23] The Appellant stated that she quit her employment because there was less hours to work with the employer Gestions J G N C Inc. (Exhibit GD3-15). The Appellant also stated that during summer seasons in 2011 and 2012, she worked for that employer, she had quit at the end of April because there was no work for the summer months (Exhibit GD2-3). The Appellant indicated that it was the same situation last year (2013) with that employer (Exhibit GD2-3). At the hearing, the Appellant mentioned that she had a "release form" from her employer indicating a lack of work (2011 and 2012).

[24] Based on the employer Gestions J G N C Inc. and the Appellant statements, as well as the employment history between both of them, the Tribunal considers that that situation indicates a "*significant modification of terms and conditions respecting wages or salary*" with Gestions J G N C Inc. as of the end of April, when the Appellant voluntary left her employment.

[25] Paragraph 29(c)(vii) of the Act specifies that: "*(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: […](vii) significant modification of terms and conditions respecting wages or salary, […]*".

[26] The Commission has submitted that *"[…] the claimant could have continued to be employed, even on a part-time or reduced basis, it was a personal decision she made to leave her job*" (Exhibit GD6-1), but the Tribunal considers that the Commission has not properly assessed the impact on the Appellant with regards to a reduction of work

announced by the employer Gestions J G N C Inc. The Tribunal finds that question was not squarely addressed by the Commission **(*Horslen*, A-517-94)**.

[27] The Tribunal also finds that the employment of the Appellant with Gestions J G N C Inc. was on a part-time basis, with minimum wage for only 18-20 hours per week, and was not her main employment (Exhibit GD2-3). The Appellant explained that she had worked for Gestions J G N C Inc. to supplement her income in addition to her full-time employment with employer Technosport (Techno Sport Int'l Ltée) before losing her full- time employment with that employer in April 2013.

[28] The Tribunal accepts that the decision of the Appellant to leave her part-time employment with Gestions J G N C Inc. is not due to a personal choice, but it's rather to a major economic consequence of losing her full-time employment with Technosport (Techno Sport Int'l Ltée).

[29] The Tribunal considers that the Appellant was forced to leave her part-time employment and that it was not a voluntary leaving on her part.

[30] In that context, the Tribunal finds the Appellant's explanation that she would not have been able to continue living in Montréal with a part-time employment is also the consequence of losing her full-time employment (Exhibit GD3-17). Therefore, the Tribunal accepts that the Appellant's decision to move to New Brunswick was not the reason for resigning from her employment with Gestions J G N C Inc.

[31] Considering all of the evidence, the Appellant demonstrated that she left her employment with just cause within the meaning of the Act.

[32] Based on the issue under consideration, the Tribunal determines the Commission was not justified in imposing an indefinite disqualification pursuant to sections 29 and 30 of the Act.

CONCLUSION

[33] The appeal is allowed.

Normand Morin
Member, General Division

DATED: June 9, 2014