[TRANSLATION]

Citation: *J. F. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 144

Appeal #: GE-14-2625

BETWEEN:

J. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER:	Normand Morin
HEARING DATE:	October 15, 2014
TYPE OF HEARING:	Teleconference
DECISION:	Appeal dismissed

PERSONS IN ATTENDANCE

[1] J. F., the Appellant, participated in the telephone hearing (teleconference) held on October 15, 2014.

DECISION

[2] The Social Security Tribunal of Canada (the Tribunal) determines that the Appellant lost his employment because of his misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act).

INTRODUCTION

[3] On February 21, 2014, the Appellant filed an initial claim for benefits that took effect on February 16, 2014. The Appellant reported that he worked as an industrial truck operator for Canac-Marquis Grenier Limitée until February 12, 2014, inclusive, and stopped working for that employer because of a dismissal or suspension (Exhibits GD3-3 to GD3-13).

[4] On April 2, 2014, the Canada Employment Insurance Commission (the Commission) informed the Appellant that he was not entitled to receive Employment Insurance regular benefits as of February 16, 2014, because he stopped working for Canac-Marquis Grenier Limitée on February 14, 2014, due to his misconduct (Exhibits GD3-38 and GD3-39).

[5] On April 17, 2014, the Appellant filed a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-40 to GD3-42).

[6] On May 22, 2014, the Commission informed the Appellant that it was upholding the decision made in his case on April 2, 2014, in relation to his misconduct (Exhibit GD3-44).

[7] On June 26, 2014, the Appellant filed a Notice of Appeal to the Employment Insurance Section of the Tribunal's General Division (Exhibits GD2-1 to GD2-4).

[8] On August 7, 2014, the Tribunal informed the employer Canac-Marquis Grenier Limitée that if it wanted to be an "added party" in this case, it had to make the request no later than August 22, 2014 (Exhibits GD5-1 and GD5-2). The employer did not reply.

FORM OF HEARING

[9] The hearing was held by teleconference for the reasons given in the Notice of Hearing dated September 12, 2014 (Exhibits GD1-1 to GD1-3).

ISSUE

[10] The Tribunal must decide whether the Appellant lost his employment because of his misconduct pursuant to sections 29 and 30 of the Act.

APPLICABLE LAW

[11] The provisions for misconduct are set out in sections 29 and 30 of the Act.

[12] With respect to a disqualification or disentitlement from receiving Employment Insurance benefits, paragraphs 29(*a*) and 29(*b*) of the Act read as follows:

> For the purposes of sections 30 to 33,
>
> (*a*) "employment" refers to any employment of the claimant within their qualifying period or their benefit period;
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> (*b*) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers.

[13] With respect to a disqualification for misconduct or leaving without just cause, subsection 30(1) of the Act reads as follows:

> 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] With respect to a disqualification not affected by any subsequent loss of employment, subsection 30(2) of the Act reads as follows:

> The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

EVIDENCE

[15] The evidence on file is as follows:

(a) A Record of Employment dated February 19, 2014, indicating that the Appellant worked for employer Canac-Marquis Grenier Limitée from January 12, 2010, to February 14, 2014, inclusive, and stopped working for that employer because of a dismissal (code M - Dismissal) (Exhibit GD3-14).

(b) On February 25, 2014, employer Canac-Marquis Grenier Limitée said that several disciplinary actions had been taken against the Appellant and that he had received a number of oral and written warnings because of his insubordination. The employer stated that the Appellant did not listen to his boss's orders, that he used his cellular telephone several times even though such use was prohibited by company policy, especially since the Appellant drove a lift truck. The employer explained that, despite all the warnings given to the Appellant, the situation did not improve and the Appellant was then dismissed (Exhibit GD3-15).

(c) On March 25, 2014, the employer stated that the Appellant had been dismissed because he had been caught on February 12, 2014, [translation] "chatting on his cellular telephone" during his work hours, despite the [translation] "zero tolerance" policy regarding the use of this type of device. The employer said the Appellant was not checking the time when he was caught with his telephone and stated that the Appellant had admitted at that moment that he was still using it. The employer repeated that several disciplinary measures had been imposed on the Appellant for insubordination. The employer indicated that several meetings had been held with

the Appellant, in the presence of the union president, but that the situation had not improved. The employer added that the Appellant was also suspended at least twice and that the last suspension was during the holiday period. On the matter of the Appellant's alleged insubordination, the employer stated that the Appellant [translation] "nodded his head when he [the employer] asked him to do something and then decided not to do it or did something else" (Exhibit GD3-18).

(d) On March 25, 2014, the employer stated that the Appellant's disciplinary file was quite thick and that the union had not intervened to help the Appellant keep his job. The employer said that the Appellant, close to the time his employment ended, had bent the forks of the lift truck he was driving because he had used the lift truck to scrape the ice. The employer stated that the Appellant had also raised the forks of the lift truck on February 6, 2014, to remove icicles that hung from the roof, claiming that he wanted to protect employees who could have walked underneath. The employer also stated that the Appellant had [translation] "enjoyed ripping around in his lift truck, driving at his co-workers to scare them, and a client even complained about him because he almost hit the client with the lift truck he was driving." The employer stated that the [translation] "straw that broke the camel's back" was the fact that the Appellant used his cellular telephone during work hours again on February 12, 2014, when he was completely prohibited from doing so according to company policy. The employer specified that there are clocks all over the company, and even a time stamp. The employer also stated that the Appellant had already been given a last chance to keep his job. The employer submitted that the Appellant had previously been dismissed, then rehired, despite his misconduct, because there was a shortage of employees. The employer added that the Appellant had to be constantly monitored to ensure that there was no further misconduct. The employer also sent the Commission a copy of the following documents:

i. Canac's general policies regarding conduct in the workplace (Exhibits GD3-20 to GD3-22);

ii. A written warning issued to the Appellant on September 17, 2012, for insubordination (unexplained absence from workstation for 45 minutes) (Exhibit GD3-23);

iii. Oral warnings given to the Appellant for an absence and for his actions on October 31, 2012, (use of cellular telephone) and November 8, 2012, (inappropriate use of lift truck) (Exhibit GD3-24);

iv. Notice of two-day suspension without pay (December 19, 2012, and December 20, 2012) issued to the Appellant on December 18, 2012, for not doing the work requested and for using a cellular telephone during work hours (Exhibit GD3-25);

v. Oral warnings given to the Appellant for his actions on November 20, 2012 ([translation] "trouble-making"), August 20, 2013 (using cellular telephone), August 28, 2013 (chatting), and September 5, 2013 (using cellular telephone) (Exhibit GD3-26);

vi. Notice of suspension issued to the Appellant on September 11, 2013, informing him that he would be suspended without pay on September 18, 2013, and September 25, 2013, for using his cellular telephone (Exhibit GD3-27);

vii. Performance evaluation form for the Appellant (job improvement program) completed on January 28, 2014, and signed by the employer on January 30, 2014 (Exhibit GD3-28);

viii. Oral warnings given to the Appellant for his actions on February 3, 2014 (failing to follow his employer's instructions), February 6, 2014 (warning not to drive his lift truck along the mezzanines to make the snow and ice fall), February 7, 2014 (dangerously driving his lift truck), February 10, 2014 (oral warning for dangerous driving), February 11, 2014 (account from an employee stating that the driver of lift truck no. 757 had inappropriately used

the lift truck), and February 12, 2014 (using his cellular telephone) (Exhibits GD3-29 to GD3-35);

ix. Notice of dismissal issued to the Appellant on February 17, 2014 (Exhibit GD3-36).

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

(a) The Appellant described his work experience with employer Canac-Marquis Grenier Limitée and reiterated the circumstances that resulted in his dismissal on February 12, 2014.

(b) He indicated that he had started a new job shortly after his dismissal and had held four different jobs since then. He also stated that he contacted his former employer to get his job back, but that he had received no reply. He said he really missed the work he did for that employer.

SUBMISSIONS OF THE PARTIES

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

(a) He explained that he was dismissed because his foreman, G. R., had caught him on February 12, 2014, with his cellular telephone during his work hours. He stated that he had admitted it to Mr. G. R. and that, had Mr. G. R. come in five seconds earlier, he would have caught him using the telephone. He explained that he had previously been warned and suspended twice for using his cellular telephone at work (Exhibits GD3-16, GD3-17 and GD3-37). He stated that when he was caught by his employer on February 12, 2014, he had his cellular telephone in his hands, but it was off or in standby mode. He specified that he was going to put it back in his pocket and that he was also looking at an invoice at the same time. He expressed his disagreement with the employer's statement that he had caught the Appellant using his cellular telephone. The Appellant explained that he was not making a call or [translation] "texting" and that he was therefore not really using his telephone, but had pressed a button to check the time. He submitted that, after being seen by his employer with

his telephone in his hand, the employer concluded that he had been using the telephone, but all he had really done was check the time. He explained that he needed to see the time because he had to go eat before 9:00 p.m. and there was no visible clock in the area he was in, the "pick client." He stated that, had he not gone to eat before that time, he would have received a warning. He said he knew he was not allowed to use his cellular telephone, but the company's rules applied to personal calls or texts, except in cases of emergency. He pointed out that this was his understanding of the rules. He stated that there is [translation] "zero tolerance," that he is not permitted to use his cellular telephone and that the employer has a clear policy regarding this (Exhibit GD3-37). He submitted that several other employees used their telephone at work, despite the rules, and that some of them had even expressed their fear of being caught by the employer. He submitted that the other employees who used their telephone had not been caught or warned, even though the foreman had gone by them (Exhibits GD3-16, GD3-17, GD3-37 and GD3-42).

(b) He expressed his disagreement with several of the actions of which he was accused by his employer, as well as the statements made and terms used by the employer to describe his actions (e.g., insubordination).

(c) He stated that, if one were to rely solely on his dismissal sheet (dismissal letter from the employer) indicating insubordination on his part, he appeared to be a [translation] "real moron … a reckless driver …", having "dangerously driven his lift truck …" He stated that he had received an oral warning about his fast driving and had then started a job improvement program to improve his behaviour (Exhibit GD3-28).

(d) He said he did not understand some parts of the letter he received from his employer, in particular with respect to his being away from his workstation for a period of 45 minutes. He stated that he always informed his employer when he would be away (letter from the employer on September 17, 2012) (Exhibit GD3-23).

(e) He said he disagreed with certain points mentioned in a notice of insubordination (oral warning). He described the situation where his foreman had asked him to remove snow from bundles of wood, which the Appellant found [translation] “meaningless” and pointless. Because of this, he said he had chosen to do something else to help another person (Exhibit GD3-25).

(f) He also expressed his disagreement with the employer’s statement that it had to do a repair costing thousands of dollars to replace the forks of the lift truck he was using because he had removed ice with it. He stated that the lift truck had never been repaired and the forks had not been replaced. He also stated that the lift truck had been used by two employees working on different shifts (day or night shifts). He submitted that, one weekend, students had driven the lift truck he used for his work and that one of them may have damaged it. He said he had noticed that the forks were bent but had not mentioned it to anyone. He said he was careful with the truck he used. He said the foreman must have thought he was the one who had caused the damage when removing ice.

(g) He submitted that, when Mr. G. R. became the foreman, [translation] “the problems really started.” He submitted that two other colleagues had left their jobs (one left and one was dismissed) after Mr. G. R. came in. He indicated that his turn then came, even though he had no specific problems with Mr. G. R. initially. He submitted that Mr. G. R. had been hired for a [translation] “specific and well-defined mission” with respect to three employees, including the Appellant, who had [translation] “strong personalities.” He said he admitted that he had a [translation] “hard head” and pointed out that the other two employees [translation] “stirred up a bit more” than he did. He explained that he did not get along well with the foreman and that he disagreed with the foreman’s methods (Exhibit GD3-37). He stated that his dismissal sheet showed the disdain that the foreman had for him. He submitted that he never disrespected Mr. G. R., even though they sometimes [translation] “raised their voices at each other.” He submitted that he had received oral warnings and a letter from the employer because his foreman wanted to [translation] “lay it on thick” in his file (Exhibit GD3-42).

(h) He submitted that Mr. G. R. harassed him daily, as was the case with other employees before. He stated that everything he did was put under a microscope by the foreman, who took notes. He explained that on several occasions he met with the head foreman, who was also Mr. G. R.'s brother-in-law, to apprise him of the situation because he was no longer able to deal with the foreman's actions. As an example, he mentioned a day where the foreman had followed him and had observed him for several minutes without doing or saying anything. He stated that he wanted to resign but had not done so because he believed the situation would work out, as the employer was satisfied with his work (Exhibit GD3-42).

(i) He stated that he had also talked to his union about his situation, but that the union had [translation] "not done much of anything." He explained that a meeting was held shortly after his job ended a meeting he attended, as did the foreman and the union representative. He said that the foreman explained his actions—he wanted to issue warnings to the Appellant because he felt the Appellant was not respecting the rules in place. He said he then told Mr. G. R. that he found Mr. G. R.'s actions [translation] "nasty." He indicated that the union had discussed the situation with the foreman, but that there had been no specific follow-up.

(j) He said he then kept notes in a notebook hidden in his lift truck regarding the times he felt he was harassed by his foreman. He indicated that he was not able to recover these notes before he was dismissed. He explained that it was the foreman who had the upper hand and that it was difficult to bring proof against him. He submitted that it was the foreman who disposed of the written evidence in his notebook that could demonstrate that he was being harassed.

(k) He submitted that he was not the only person who did not like working with the foreman. He mentioned that other employees (two or three) who were hired by Canac-Marquis Grenier Limitée had later resigned because they were unable to work with the foreman. He specified that one of them had requested a transfer to another of the employer's establishments located in Vanier, Quebec.

(l) He stated that, during his last two-day suspension, on September 18, 2013, and September 25, 2013 (Exhibit GD3-27), he had been called by an assistant foreman to come in to work, even though he was suspended. He said he had therefore gone to work on one of the days of his suspension and had even done overtime.

(m) He stated that, after being caught by his foreman with his cellular telephone in his hand, the foreman had been quick to tell him not to come to work the next day or the days after that. He submitted that the foreman did not have the right to tell him this and that the foreman had failed to comply with the procedure for dismissal, given the Appellant's years of experience. The Appellant specified that he had claimed monies from his employer for this reason (Exhibit GD2-3).

(n) He said he enjoyed his work, despite what one might think or say, and despite the fact that he may have made poor choices or that he had repeated some of his actions. He submitted that his employer said he was a very good worker (Exhibit GD3-28). He described himself as someone who is careful in his work and who pays attention to detail. He explained that he was proud of the work he was able to accomplish. He said he had received compliments from the head foreman on the quality of his work, but his file does not mention them.

(o) He submitted that he had made Employment Insurance contributions in all the years he was employed by Canac-Marquis. He submitted that he had the right to receive Employment Insurance benefits, regardless of the situation or the reason for separation from employment. He said he found it [translation] "very frustrating" to be denied benefits. He mentioned that he wanted to return to school to learn a trade and improve his situation (Exhibit GD2-3).

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

(a) Subsection 30(2) of the Act provides for an indefinite disqualification if it is established that the claimant lost his employment by reason of his own misconduct. The Commission specified that, for the act complained of to constitute misconduct within the meaning of section 30 of the Act, it must have been wilful or deliberate or

so careless or negligent as to approach wilfulness. The Commission specified that there must also have been a causal relationship between the misconduct and the dismissal (Exhibit GD4-6).

(b) It submitted that multiple acts or omissions may be considered misconduct if they are inconsistent with the purposes of an employment contract, represent a conflict of interest with the employer's activities or undermine the trust relationship between the parties. It submitted that any violation of established standards, directives, a formal or unwritten rule or even a collective agreement constitutes misconduct where the said standard, directive or rule is established and the violation or breach is clear (Exhibit GD4-7).

(c) It explained that the decision to disqualify a claimant from receiving benefits can therefore be made if the information in the file supports an affirmative answer to the following two questions about misconduct: 1. Does the information in the file suggest that the person claiming benefits committed acts or omissions covered by the interpretation of "misconduct"? 2. Does the information on file suggest that the person claiming benefits lost their employment because of these acts or omissions? The Commission submitted that this was the case here. The Appellant committed actions covered by the interpretation of "misconduct" because he voluntarily used his cellular telephone in the workplace and during work hours, despite not being permitted to do so, knowing that he may lose his job because he had been warned about it. In addition to insubordination, he operated the lift truck dangerously and broke the trust relationship that is necessary between him and his employer. The Appellant was dismissed because of these actions (Exhibits GD4-7 and GD4-8).

(d) It submitted that he had previously been warned about this and had even been suspended twice. He knew the rule but he continued to use his cellular telephone despite his employer's orders. The Commission submitted that the Appellant had been warned that, if he reoffended, he may be subject to further disciplinary action, including dismissal, and that is what happened. The Commission submitted that, on one hand, the Appellant tried to excuse his actions by alleging that he was only

looking at the time and that, on the other, he had admitted to using his cellular telephone just before being caught by his supervisor. The Commission submitted that the company's policy did not even permit him to have the telephone in his possession at his workstation: [translation] "cellular telephones and smart devices are not permitted at the workstation." The Commission submitted that, if the Appellant absolutely needed to know what time it was, he could have checked one of the company's clocks. It stated that, in addition to the use of the cellular telephone, there had been numerous incidents of insubordination involving the Appellant, as well as incidents of dangerous driving and inappropriate use of the lift truck, for which the Appellant had also received warnings (Exhibit GD4-7).

(e) It submitted that, even though the Appellant stated that the work environment had deteriorated when Mr. G. R., the foreman, had come in and taken action, the situation did not excuse the Appellant from breaking the rules concerning cellular telephone use, failing to comply with the employer's orders or driving the lift truck dangerously and/or inappropriately (Exhibit GD4-8).

(f) It submitted that, contrary to what the Appellant stated, having contributed to Employment Insurance does not in itself give him the right to receive benefits. It specified that, instead, this is a right that an insured person may exercise, like for any insurance policy, and entitlement depends on the various conditions established by the Act, including the reason for separation from employment (Exhibit GD4-8).

(g) It determined that the Appellant voluntarily broke a rule that he knew and for which he had already been penalized. He had been informed that recidivism could result in his dismissal. It concluded that the Appellant's actions constituted misconduct and that he was dismissed because of those actions. It added that the disqualification provided for in the Act therefore applies in his case (Exhibits GD4-8 and GD4-9).

ANALYSIS

[19] Although misconduct is not defined in the Act, it is mentioned in the case law, in ***Tucker*** **(A-381-85)**:

> In order to constitute misconduct the act complained of must have been willful or at least of such a careless or negligent nature that one could say the employee willfully disregarded the effects his or her actions would have on job performance.

[20] In that decision (***Tucker*, A-381-85**), the Federal Court of Appeal (the Court) recalled the words of Reed J. of the Court:

> Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent.

[21] In ***Mishibinijima*** **(2007 FCA 36)**, the Court reiterated the following:

> Thus, there will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the acts which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

[22] In ***McKay-Eden*** **(A-402-96)**, the Court made the following clarification:

> In our view, for conduct to be considered "misconduct" under the *Unemployment Insurance Act*, it must be wilful or so reckless as to approach wilfulness.

[23] The Court defined the legal notion of misconduct pursuant to subsection 30(1) of the Act as wilful misconduct that the claimant knew or ought to have known was such that it could result in his dismissal. To determine whether the misconduct may result in dismissal, there must be a causal relationship between the claimant's alleged misconduct and his employment. The misconduct must therefore constitute a breach of an explicit or implied obligation resulting from the employment contract (***Lemire*, 2010 FCA 314**).

[24] The decisions in ***Cartier*** **(A-168-00)** and ***MacDonald*** **(A-152-96)** confirm the principle established in ***Namaro*** **(A-834-82)** according to which it must also be established that the misconduct was the cause of the claimant's dismissal.

[25] For the act complained of to constitute misconduct pursuant to section 30 of the Act, it must have been wilful or deliberate or so careless or negligent as to approach wilfulness. There must also have been a causal relationship between the misconduct and the dismissal.

[26] The determination of whether the conduct of an employee that resulted in the loss of employment constitutes misconduct is a question of fact that must be decided based on the circumstances of each case.

[27] In this case, the Appellant's alleged actions, namely, having used a cellular telephone during his work hours, clearly constitute misconduct within the meaning of the Act.

[28] The Appellant said he knew the employer's policy. He also said that the company's rules stipulate "zero tolerance" and that he was not permitted to use his cellular telephone during work hours.

[29] Although the Appellant said his understanding of the employer's policy was that he was not permitted to use his cellular telephone to make or receive calls, or to send or receive text messages, the employer's policy is not limited to these uses in prohibiting the use of a cellular telephone in the workplace.

[30] Canac's general policies regarding behaviour in the workplace specify the following regarding personal telephone calls and the use of a cellular telephone:

> [Translation]
>
> … except in cases of emergency, making or receiving a personal telephone call is prohibited during work hours. Furthermore, cellular telephones and smart devices are not permitted at your workstation. … Non-compliance with one or more of these policies may result in immediate disciplinary action, from a written warning to suspension without pay and dismissal. Disciplinary action will be applied in consideration of the seriousness and consequences of the violation, the surrounding circumstances, the work environment, the employee's file and the company's usual practice.
>
> (Exhibit GD3-22)

[31] The Appellant admitted that he had his cellular telephone in his hand when he was caught by his foreman on February 12, 2014, but he submitted that his phone was turned off or in standby mode at that moment and that he had used it only to look at the time. He knew that this type of device was not permitted at his workstation.

[32] He also said that he had admitted his actions to his foreman and that, had the foreman arrived five seconds earlier, he would have caught the Appellant using his cellular telephone (Exhibit GD3-37).

[33] The Appellant also receive numerous warnings concerning the use of his cellular telephone during work hours, specifically on October 31, 2012, and September 5, 2013 (Exhibits GD3-24 and GD3-26).

[34] He was also suspended without pay for two days, on December 19, 2012, and December 20, 2012, for having used his cellular telephone during work hours (Exhibit GD3-25). On September 11, 2013, he was given another two-day suspension (September 18, 2013, and September 25, 2013) for the same reason (Exhibit GD3-27). The Appellant was also told at the time that if he violated the policy again, more severe action, up to dismissal, may be taken (Exhibit GD3-27).

[35] The notice of suspension issued to him on December 18, 2012, also specifies that a general order had been given to employees at a general meeting about the employer's zero tolerance policy concerning the use of cellular telephones in the workplace (Exhibit GD3-25).

[36] The employer explained that the fact that the Appellant had once again used his cellular telephone during work hours on February 12, 2014, was the [translation] "straw that broke the camel's back" and submitted that the Appellant had already had a [translation] "last chance" to keep his job (Exhibit GD3-19).

[37] After all the warnings he received and disciplinary action taken against him, the Appellant could not ignore the risk he was taking of compromising his job in case of recidivism. The Appellant knew how to conduct himself and had to avoid leaving himself open to this type of behaviour in order to keep his job.

[38] The Appellant knowingly chose to violate a very clear order given by his employer, knowing that he could be dismissed if he failed to comply. In doing so, the Appellant broke the trust relationship between him and his employer. The Appellant failed to consider the standards of behaviour that the employer had the right to expect of him (***Tucker*, A-381-85**).

[39] The Tribunal determines that the Appellant's alleged actions were such that he normally could have foreseen that they might result in his dismissal. He knew that his conduct was such as to impair the performance of duties owed to his employer and that dismissal was a real possibility (***Tucker*, A-381-85, *Mishibinijima*, 2007 FCA 36**).

[40] The Appellant also gave several explanations for other actions of which he was accused by his employer (e.g., conduct and use of his lift truck, refusal to complete a task, absence from his workstation) and for which a number of disciplinary measures were imposed on him. However, the explanations he gave do not excuse his alleged actions, namely, the multiple times he used his cellular telephone during work hours. In this case, it was when his foreman caught him yet again, on February 12, 2014, with his cellular telephone in his hand, that the decision to dismiss him was ultimately made.

[41] The Appellant's allegations of harassment by his foreman cannot excuse the actions of which he was accused several times regarding the use of his telephone. Despite his assessment of the situation and the actions the resulted in his foreman's attitude toward him (e.g., intervention of his union representative, taking notes in the notebook), the Appellant should have continued to comply with the company's policy and specific rules concerning cellular telephones in the workplace.

[42] The Tribunal cannot accept the Appellant's argument that he is entitled to receive benefits because he contributed to Employment Insurance for a number of years. Entitlement to receive benefits is not linked solely to the fact that contributions were made over the years. A claimant must meet all the requirements of the Act in order to receive benefits. One of these requirements also includes the reason for separation from employment.

[43] In short, the Tribunal determines that the Appellant was dismissed because of actions he committed wilfully and deliberately (***Tucker*, A-381-85; *McKay-Eden*, A-402-96; *Mishibinijima*, 2007 FCA 36**).

[44] That is why the Tribunal determines that these actions constitute misconduct within the meaning of the Act and that the Appellant's loss of his employment was his own fault. His dismissal is the direct consequence of the actions he was accused of on several occasions (***Namaro*, A-834-82; *MacDonald*, A-152-96; *Cartier*, A-168-00**).

[45] Based on the case law previously cited and on the evidence presented, the Tribunal determines that the Appellant lost his employment because of his misconduct and that the Commission's decision to disqualify him from receiving Employment Insurance benefits is therefore justified in the circumstances.

[46] The Tribunal concludes that the appeal regarding the issue at hand does not have merit.

CONCLUSION

[47] The appeal is dismissed.

Normand Morin
Member, General Division

DATE OF REASONS: December 12, 2014