

Citation: *Compass Group Canada v. M. N.*, 2015 SSTAD 834

Date: July 2, 2015

File number: AD-15-320

APPEAL DIVISION

Between:

Compass Group Canada

Applicant

and

M. N.

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On April 24, 2015, the General Division of the Tribunal determined that:

- The Respondent did not lose her employment by reason of her own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on May 28, 2015.

ISSUE

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *DESD Act* provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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.

[8] The Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] In its Application for leave to appeal, the Applicant proceeds to reply in detail to the testimony of the Respondent before the General Division regarding the events that led to her dismissal with supportive documents.

[10] The Tribunal notices from the file that the Applicant was added as an interest party by the General Division Member on February 6, 2015. A notice of the hearing held before the General Division on April 24, 2015 was sent to the Applicant on March 16, 2015. The Applicant decided not to appear at the hearing and is not pleading in its Application for leave to appeal that it did not receive the notice of hearing.

[11] The General Division is the pivot of the entire system put in place for the purpose of verifying and interpreting the facts and to make an assessment on the issue before it. The Applicant made the choice not to appear at the General Division to present its version of the events and the General Division Member found the Respondent to be credible. Unfortunately, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[12] In its Application for leave to appeal, the Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. It has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[13] In view of the above, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[14] The Application is refused

Pierre Lafontaine
Member, Appeal Division