

Citation: *Canada Employment Insurance Commission v. N. K.*, 2015 SSTAD 1074

Date: September 12, 2015

File number: AD-15-834

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

N. K.

Respondent

and

Westfair Foods Ltd

Added Party

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On June 30, 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 July 17, 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] In regard to the application for permission to appeal, 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] The Applicant submits that the General Division based its decision on an erroneous finding of fact in determining the Respondent's actions were not wilful and did not meet the test for misconduct within the meaning of the *Act*. The Applicant argues that the decision is therefore unreasonable.

[10] The Applicant submits that the General Division recognized that the alleged breach of a harassment policy would constitute misconduct and from the Respondent's own admission she did breach the policy. The General Division therefore erred when it determined that the Respondent did not act willfully but spontaneously reacted due to stress, emotion and a co-workers behavior. Knowingly contravening to the provisions of the employer's code of conduct equates to misconduct under the *Act*.

[11] The Applicant further submits that the General Division erred when it focused on the employer's behavior leading up to the dismissal, instead of assuming its role in finding if misconduct existed and resulted in the loss of employment.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[13] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division