

[TRANSLATION]

Citation: *A. R. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 188

Date: November 6, 2015

File: GE-15-1612

GENERAL DIVISION - Employment Insurance Section

Between:

A. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Normand Morin, Member, General Division – Employment Insurance Section

In-person hearing in Quebec City, Quebec on November 4, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, A. R., was present at the in-person hearing in Quebec City, Quebec on November 4, 2015.

INTRODUCTION

[2] On January 16, 2015, the Appellant filed an initial claim for benefits to take effect on January 11, 2015. The Appellant stated that she worked as a “maintenance worker” for the Employer, Fabrique Notre-Dame de Québec (Notre- Dame de Québec Parish), from November 21, 2011 to January 6, 2015 inclusive and stopped working for this employee because of a dismissal or suspension (Exhibits GD3-3 to GD3-16).

[3] On February 27, 2015, the Respondent, the Canada Employment Insurance Commission (the “Commission”), informed the Appellant that she was not entitled to regular employment insurance benefits as of January 4, 2015 because she stopped working for the Employer, Fabrique Notre-Dame de Québec, on January 9, 2015 because of her misconduct (Exhibits GD3-27 and GD3-28).

[4] On March 25, 2015, the Appellant filed a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-29 and GD3-40).

[5] On April 27, 2015, the Commission informed the Appellant that it was upholding the decision made on February 27, 2015 (Exhibits GD3-37 and GD3-38).

[6] On May 12, 2015, the Appellant filed an Application for leave to appeal before the Appeal Division of the Social Security Tribunal of Canada (the “Tribunal”) (Exhibits GD2-1 to GD2-3). The Tribunal clarifies that, although the Appellant used the form “Application for leave to appeal before the Appeal Division” to file her appeal instead of using the form “Notice of Appeal – General Division – Employment Insurance Section” or another similar form, this appeal was dealt with as though it was a regular appeal to the said Tribunal.

[7] On May 15, 2015, the Tribunal asked the Appellant to send it a copy of the reconsideration decision that is the subject of the appeal.

[8] On June 2, 2015, the Appellant sent the Tribunal a copy of the reconsideration decision that is the subject of the appeal (Exhibits GD2A-1, GD2A-2, GD2B-1, GD2B-2 and GD2C-1).

[9] On June 2, 2015, the Tribunal informed the Employer, Fabrique Notre-Dame de Québec, that if it wanted to join the appeal as an “added person” in this matter, it was required to file a request to that effect to the Tribunal by June 17, 2015 (Exhibits GD5- 1 and GD5-2). The employer did not respond to this request.

[10] This appeal was heard in accordance with the “in person” form of hearing for the following reasons:

- (a) The fact that credibility may be a determinative issue;
- (b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit (Exhibits GD1- 1 to GD1-4).

ISSUE(S)

[11] The Tribunal must decide if the Appellant lost her employment because of her misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

THE LAW

[12] The provisions relating to misconduct are stated in sections 29 and 30 of the Act.

[13] Paragraphs 29(a) and 29(b) of the Act provide as follows with respect to “disqualification” from receiving employment insurance benefits or “disentitlement” to such benefits:

. . . 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; (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

[14] Subsection 30(1) of the Act states the following about “disqualification” for “misconduct” or “leaving without just cause”:

. . . 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.

[15] Subsection 30(2) of the Act states the following about the “length of disqualification”:

. . . 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

[16] The evidence in the file is as follows:

- (a) In an email message sent to the Employer on January 6, 2016, the Appellant explained that she had wanted to make a donation to the Christmas collections (December 24, 2014 services) by first taking a \$20.00 bill from her pocket to give \$5.00 to the collection for the 8:00 p.m. mass and then putting \$15.00 back in her pocket. She indicated that she had also given \$5.00 at the 10:00 p.m. mass and \$5.00 at the midnight mass. She stated that she had then emptied the baskets into the bags designated for this purpose and had placed them in a safe after the collection from the 8:00 p.m. mass. She indicated that she had placed the bags from the collections from the 10:00 p.m. and midnight masses in the safe (pièce GD3-19).
- (b) In a letter dated January 12, 2015m, the Employer informed the Appellant that she was dismissed because she had been seen by two witnesses taking money from the collection from the December 24, 2014 mass and placing that money in her clothing (Exhibits GD3-17 and GD3-18).

- (c) A record of employment, dated January 19, 2015, states that the Appellant worked as a “maintenance worker” for the employer, Fabrique Notre-Dame de Québec, from November 21, 2013 to January 9, 2015 inclusive, and that she stopped working for that employer because she was dismissed (code M – Dismissal), (Exhibit GD3-20).
- (d) On February 13, 2015, the Employer (Claude Gignac, Employer’s representative) stated that he had dismissed the Appellant for theft. He explained that he had received written witness statements from two people who saw the Appellant put the money in her pocket. The Employer explained that the Appellant was serving as a sacristan during the December 2014 Christmas services and that one of her tasks was to empty the donation baskets into a bag and place that bag in the safe. The employer stated that the Appellant emptied the baskets onto a counter, separated the bills and left some on the counter. He stated that two witnesses, a church warden (member of the parish council) and a parishioner were in the sacristy and had seen the Appellant close her hand over the banknotes and then place her hand in her pocket. The Employer indicated that the Appellant’s task was to empty the baskets into the bag and place the bag in the safe because the money was counted later by another team. The Employer explained that, during the meeting with the Appellant on January 6, 2015, she had reiterated that she was not a thief and that she had not committed the alleged acts. The Employer argued that the Appellant’s version was not credible because she had stated that she had taken money at the time of the 8:00 p.m. collection on December 24, 2014, while the witnesses stated that the theft had taken place at about 10:40 p.m. during the 10:00 p.m. service. The Employer also indicated that the Appellant’s statement that someone was with her during the transfer of the money from the collections was unfounded because that person had been with the bishop throughout the Christmas services. He indicated that the Appellant could have search through the bags at any other time because she had access to the safe (Exhibits GD3-22 and GD3-23).
- (e) On February 23, 2015, the Employer sent to the Commission copies of two written witness statements, dated December 30, 2014, one from a church warden of the Notre-Dame de Québec parish council, and the other from a parishioner, which stated that they

had seen the Appellant take money from one of the collections from the Christmas 2014 services and place it in one of her pockets (Exhibits GD3-24 and GD3-25).

- (f) On April 22, 2015, the Employer stated that he did not know the amount of the theft attributed to the Appellant and had not filed a complaint with the police department. He stated that the Appellant had denied stealing the money and had refused to read the witness statements from two people concerning the actions alleged against her. He stated that J. F. could not have helped the Appellant following the collection made during the 10:00 p.m. service because he had been serving as the master of ceremonies for the Archbishop of Quebec City (Cardinal G. L.) and had remained by his side throughout the 10:00 p.m. service. He pointed out that the two witnesses who stated having seen the Appellant take money from the collection had not seen Mr. J. F. help her during the 10:00 p.m. service. He stated that Mr. J. F. had helped the Appellant during the 8:00 p.m. mass. The Employer indicated that the Appellant knew the combination to the safe. He explained that he had offered the Appellant the possibility of sleeping at the presbytery, but not in the sacristy, because the day after the Christmas 2014 services, the Appellant would start work again at 8:00 a.m. and he did not want her to have to travel in the middle of the night in winter (Exhibits GD3-33 and GD3-34).
- (g) On April 27, 2015, J. F., the master of ceremonies for Cardinal G. L., stated that he had helped the Appellant place all of the receipts in a bag when the collection from the 8:00 p.m. service on December 24, 2014 was brought to the sacristy of the Notre-Dame de Québec Cathedral Basilica at around 8:50 p.m. or 9:00 p.m. He stated that for the 10:00 p.m. service, which ended at around 11:15 p.m. or 11:20 p.m., he was in the choir to serve as the Cardinal's master of ceremonies and that he had not left this area at any time during that service to assist anyone in the sacristy (Exhibit GD3-35).

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

- (a) The Appellant recalled the circumstances leading to her dismissal following the events that occurred on December 24, 2014 in the sacristy of the Notre-Dame de Québec Cathedral Basilica after the collections made during the church services held that day.

- (b) She explained that she was working as the sacristan during the services on December 24, 2014. She specified that she had not collected the collections during these services but that she had worked in the sacristy to place the money collected during these collections in a bag and then put the bag in a safe (Exhibit GD3-21).

PARTIES' ARGUMENTS

[18] The Appellant made the following submissions and arguments:

- (a) She explained that she had been dismissed after being accused of theft by her employer. She stated that the Employer had not accepted her version of the facts at the meeting with him on January 6, 2015. She also indicated that she had filed a complaint with the Commission des normes du travail (Québec) to that effect (Exhibits GD3- 3 to GD3-16, GD3-21, GD3-31 and GD3-32).
- (b) She stated that she did not steal money from the collections made during the 8:00 p.m., 10:00 p.m. and midnight services on December 24, 2014 (Exhibits GD3-21, GD3-26, GD3-31 and GD3-32).
- (c) She stated that she put money in the Christmas collections (December 24, 2014). She explained having searched in her pockets and first placing a \$20.00 bill in one of the collection baskets at the 8:00 p.m. service and then taking back \$15.00, consisting of a \$10.00 bill and a \$5.00 bill. She stated that J. F. (master of ceremonies) had seen her carry out his transaction, contrary to what was reported by a Commission agent. In a statement dated April 27, 2015, the Appellant stated that she had not made this transaction in front of Mr. J. F. but that there were other people in the sacristy who had seen her do it (Exhibit GD3-36).
- (d) She explained that, after the collection at the 10:00 p.m. service, she had taken \$15.00 out of her pocket and placed \$5.00 in the basket and then returned the \$10.00 bill to her pocket. She indicated that she then took a \$10.00 bill out of her pocket in order to make a \$5.00 contribution to the collection made at the midnight mass. She indicated that she had, in this way, contributed \$5.00 to each of the collections at the December 24, 2014 services. She stated that she did not know why she had contributed the sums in this

manner during these services. She stated that the money that she had in her pocket was her own money (Exhibits GD3-19, GD3-31, GD3-32 and GD3-36).

- (e) She stated that, as sacristan, her task had been, in particular, to put the money in the baskets from the collections made during the services on December 24, 2014 in the bags designated for that purpose and then to put the bags in a safe. She explained that she was not required to count the money collected and that she simply had to put the money received in a bag and then place the bag in the safe (Exhibits GD3-31 and GD3-32).
- (f) She explained that, in order to transfer the money collected during the collections at the 8:00 p.m. and 10:00 p.m. services on December 24, 2014, she had had to handle the banknotes because she had dropped several [on the ground] since there were too many and that Mr. J. F. had then helped her with this task as well as with putting the money collected in a bag provided for that purpose.
- (g) She stated that she had seen G. V., the church warden, as well as another person, Esther Gauthier, in the sacristy after the collection at the 10:00 p.m. service on December 24, 2014. She indicated that she had not seen Y. P. (parishioner) at that time. She said that she did not understand why Mr. G. V. had indicated that he saw Mr. Y. P. at that time. She stated she had seen Mr. Y. P. at the midnight service.
- (h) She stated that she had never told the Commission agents that J. F. was with her to help fill the bags and transfer the money collected from the collection at the 10:00 p.m. service. She stated that Mr. J. F. had helped her after the collection at the 8:00 p.m. service (collection from 9:00 pm – 9:30 p.m.) but not during the 10:00 p.m. mass. She argued that one of the agents with whom she had spoken was confused and that the agents had not really listened to her when she gave her version of the facts. She stated having told an agent that if he did not want her to talk and to give her version of the facts, then she would end the conversation that had started. She said that this did not prove that she had said that Mr. J. F. had helped her after the collection at the 10:00 p.m. service. She also stated that she had not said that the Mr. J. F. did not remember it (Exhibits GD3-21, GD3-26, GD3-31, GD3-32 and GD3-36).

- (i) In previous statements made on February 12, 2015, February 24, 2015, April 23, 2015 and April 27, 2015, the Appellant stated that Mr. J. F. was with her and that he had helped her or that she had helped him transfer the money collected after the collection during the 10:00 p.m. service on December 24, 2014. She specified in her statement dated April 23, 2015 that she held the bag while Mr. J. F. transferred the money from the baskets and that she had not acted alone at that time (Exhibits GD3-31 and GD3-32). She also clarified, in her statement dated April 27, 2015, that Mr. J. F. did not remember having been present in the sacristy during the 10:00 p.m. service on December 24, 2015 (Exhibits GD3-21, GD3-26, GD3-31, GD3-32 and GD3-36);
- (j) She argued that she had access to the safe containing the money from the collections, that she had the combination to open it and that, if she had wanted to take the money, she would not have done it in front of witnesses. She stated that she slept in the sacristy to be at work the next day and that if she had wanted to steal money from the collections, she would have waited until she was alone in the sacristy to do so. At the hearing, she clarified that she had slept in the presbytery, located on the second floor, and not directly in the sacristy located on the lower floor (Exhibits GD3-21, GD3-31 and GD3-32).
- (k) She stated that she had always been honest, that she would never have taken anything that did not belong to her, and that if she had wanted to do so, she would not have done it in front of people.
- (l) She argued that she did not lose her employment because of her misconduct, that she was unfairly dismissed and that the decision concerning her had been based on an erroneous finding of fact. She indicated that she wanted to receive employment insurance benefits and that she had used all of the means available to her to achieve that (Exhibits GD2-1 à GD2-3, GD3-29 and GD3-30).

[19] The Respondent (the Commission) made the following submissions and arguments:

- (a) Subsection 30(2) of the Act provides for the imposition of an indefinite disqualification if it is determined that the claimant lost their employment due to

their own misconduct. The Commission clarified that, for the action complained of to constitute misconduct within the meaning of section 30 of the Act, it must be willful or deliberate or so reckless or negligent as to approach willfulness. It specified that there must also be a causal link between the misconduct and the dismissal (Exhibit GD4-7).

- (b) It indicated that it was dealing with two contradictory versions. It explained that the alleged actions took place around 10:40 p.m. but the Appellant refers only to facts that took place around 8:40 p.m. The Commission explained that, given there were two credible and disinterested witnesses, it considered the Employer's version to be more credible in the circumstances (Exhibit GD4-8).
- (c) It argued that Mr. J. F. (Cardinal G. L.'s master of ceremonies) had provided a very clear and concise statement that he could not have been present around 10:40 p.m. in the sacristy because of his duties during the 10:00 p.m. service (December 24, 2014) and that the persons in attendance, as well as those celebrating the mass, could testify to that. The Commission pointed out that the Appellant's testimony did not match because she could not claim to have been helped by and in the presence of Mr. J. F. to receive the collection from the 10:00 p.m. service, and that she then transferred it to the safe around 10:45 p.m. (Exhibit GD4-8).
- (d) It argued that the Appellant contradicted her own words. The Commission indicated that the Appellant stated that J. F. was accompanying Cardinal G. L. who was leading the 10:00 p.m. mass, that those who had collected had brought the baskets into the sacristy, after the collection, while the mass was still ongoing, and that she had looked after placing the donations from the collection in the safe. The Commission pointed out that the Appellant had also stated that, for the money received from the collection at the 10:00 p.m. mass, she was helped by Mr. J. F. and that she was not alone (Exhibits GD3-31 et GD4-8).
- (e) The Commission indicated that the Appellant explained that she had handled the money in order to change a \$20.00 bill belonging to her so that she could change and leave \$5.00 in the collection for the 8:00 p.m. mass and an identical amount in the collection for each mass. The Commission pointed out that this explanation had

little credibility since the Appellant had not made this transaction in front of the people responsible for the collection and she had not obtained permission to make it. It explained that the witnesses talk about facts that took place after the collection at the 10:00 p.m. mass, at around 10:45 p.m. It stated that Mr. J. F., who was present because he helped the Appellant at the time of the receipt of the collection from the 8:00 p.m. mass, had no knowledge of this handling of the money if it occurred at 8:00 p.m. as claimed by the Appellant (Exhibit GD4-8).

- (f) It determined that, given the evidence submitted, the Appellant, despite her claims, committed the alleged act, which caused her to lose her employment. It concluded that the act constituted misconduct within the meaning of the Act because the Appellant lacked professional ethics by stealing money belonging to the parish. The Commission argued that, by this act, the Appellant irreparably broke the relationship of trust with her employer and that she could expect to be dismissed for acting in such a manner. It pointed out that, regardless of the nature or the amount of the theft, and the severity of the sanction that was imposed, the fact remains that the Appellant took money that did not belong to her without authorization (Exhibit GD4-8).

ANALYSIS

[20] While the Act does not define “misconduct”, case law states, in *Tucker* (A-381-85), that:

The test for misconduct is whether the act complained of was willful, or at least of such a careless or negligent nature that one could say that the employee willfully disregarded the effects his or her actions would have on job performance.

[21] In that decision (*Tucker*, A-381-85), the Federal Court of Appeal (the “Court”) recalled the words of Justice Reed of the Court to the effect that:

. . . Dishonesty aside, the courts seem to be prepared to accept that employees are human; they may get ill and be unable to fulfill their obligations and they may make mistakes under pressure or through inexperience. . . 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 . . .

[22] In *McKay-Eden* (A-402-96), the Court offered the following clarification: “In our view, for conduct to be considered "misconduct" under the *Unemployment Insurance Act*, it must be willful or so reckless as to approach willfulness.”

[23] In *Mishibinijima* (2007 FCA 36), the Court recalled as follows:

Thus, there will be misconduct where the conduct of a claimant was willful, 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.

[24] The Court defined the legal notion of misconduct within the meaning of subsection 30(1) of the Act as willful misconduct where the claimant knew or ought to have known that his or her conduct was such as to result in dismissal. To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant’s alleged misconduct and his or her employment. The misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment (*Lemire*, 2010 FCA 314).

[25] The decisions rendered in *Cartier* (A-168-00) and *MacDonald* (A-152-96) confirm the principle established in *Namaro* (A-834-82) whereby it must also be established that the misconduct constituted cause for the claimant’s dismissal.

[26] In *Djalabi* (2013 FCA 213), the Court recalled as follows:

. . . According to the case law, the concept of misconduct does not require evidence of the elements of criminal liability: “It is not necessary for a behaviour to amount to misconduct under the Act that there be a wrongful intent. It is sufficient that the reprehensible act or omission complained of be made ‘willfully’, i.e. consciously, deliberately or intentionally” (Canada (Attorney General) v. Secours, [1995] F.C.J. No. 210 (QL) at paragraph 2, as cited in Canada (Attorney General) v. Pearson, 2006 FCA 199 at paragraph 15). That is, an act is deliberate if “the claimant knew or ought to have known that the conduct was such as to impair the performance of the duties owed to the employer and as a result dismissal was a real possibility” (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 at paragraph 14).

[27] The Court also established the principle that much greater weight should be given to initial, spontaneous statements than to subsequent statements after an unfavorable decision from the Commission (*Lévesque, A-557-96, Clinique Dentaire O. Bellefleur, 2008 FCA 13, Lépine, A-78-89, Boucher, A-272-96, Rancourt, A-355-96, El Maki, A-737-97*).

[28] For the action complained of to constitute misconduct within the meaning of section 30 of the Act, it must be willful or deliberate or be so reckless or negligent as to approach willfulness. There must also be a causal link between the misconduct and the dismissal.

[29] Determining that the conduct of an employee that led to the loss of his employment constitutes misconduct is a question of fact to be decided based on the circumstances of each case.

[30] In this case, the Appellant's alleged action, namely, having taken money from the collections made at the services on December 24, 2014 at the Notre-Dame de Québec Cathedral Basilica, clearly constitutes misconduct within the meaning of the Act.

Balance of evidence gathered from the Employer

[31] The Tribunal considers that the action committed by the Appellant was willful. Her action was conscious, deliberate or intentional (*Mishibinijima, 2007 FCA 36*).

[32] The Tribunal states that it gives greater credibility to the evidence collected from the Employer than to the testimony provided by the Appellant, and concludes, based on the balance of probabilities, that the Appellant was dismissed as a result of an action that she took willfully and deliberately (*Tucker, A-381-85, McKay-Eden, A-402-96*).

[33] In the letter dated January 12, 2015, addressed to the Appellant, the Employer provided the following explanations:

[Translation]

This letter is further to our meeting on Tuesday, January 6, 2015 and your current suspension without pay. The meeting took place in the presence of the undersigned and Mgr. D. B. and was held as a result of the statements by two witnesses who saw you take money from the collection from the 10:00 p.m. mass on December 24, 2014 and place that money in your clothing. ... It is

unfortunate that we were unable to talk with you in greater detail and, especially, to better understand the situation. You subsequently sent us a written statement on the possible events. We have therefore closed our internal investigation and as the versions are very different, I am informing you that the suspension without pay is upheld from January 7 to 11, 2015 and that as of January 12, 2015, upon receipt of this letter, you are dismissed from the employment you held with the Notre-Dame de Québec parish. (Exhibit GD3-17)

[34] The Tribunal also takes into consideration the fact that the evidence collected from the Employer relies on the statements of several people with no particular interest in making erroneous or dishonest statements with respect to the Appellant's alleged action or, indeed, statements of a nature to be prejudicial to the Appellant.

[35] The Tribunal considers that the written statements provided by a church warden of the parish of Notre-Dame de Québec, a parishioner and a person serving as the master of ceremonies during the Christmas 2014 services corroborate all aspects of the version of the facts given by the Employer with respect to the Appellant's alleged action. The Employer's statements are supported by evidence that is sufficiently explicit in this regard.

[36] The written statement of the church warden of the parish of Notre-Dame de Québec, as well as that of a parishioner, indicate that these individuals witnessed the Appellant appropriating money from the collection made during the 10:00 p.m. service on December 24, 2014 (Exhibits GD3-24 and GD3-25).

[37] The church warden stated that he had served as a volunteer for the parish of Notre-Dame de Québec for 25 years and had no other interest than to do his duty to provide his statement. He described the Appellant's action after the collection at the 10:00 p.m. mass on December 24, 2014 as follows:

[Translation]

. . . The sacristan's [the Appellant] actions drew my attention. Rather than emptying the baskets directly into the bag, she separated the paper money from the coins and I then noticed that, before transferring the contents of the basket into the bag, she left a few bills on the counter. After doing the same thing with each of the baskets, she gathered up the bills set aside and put them in her right pants pocket. (Exhibit GD3-24)

[38] The parishioner who was with the church warden in the sacristy after the collection at the 10:00 p.m. mass on December 24, 2014, stated that he witnessed the following events:

[Translation]

Mr. G. V. [the church warden] was seated beside me and he went back to the counter where the sacristan [the Appellant] was busy sorting the money from the collection. He gestured to me to come over and told me in a low voice to check the sacristan's right hand; I then saw that she had paper money in her clenched hand. I then asked Mr. G. V. why she was keeping money in her hand and he said to me "she is stealing". He then told me that she had put this money in her pants pocket. (Exhibit GD3-25)

Appellant's contradictory statements

[39] The Tribunal finds contradictory the Appellant's statement regarding a person being in the sacristy of the cathedral basilica, specifically, Cardinal G. L.'s master of ceremonies, during the 10:00 p.m. service on December 24, 2014. The Tribunal considers that such a contradiction undermines the credibility of the Appellant's testimony.

[40] The documentary evidence shows that, on four different occasions, namely, February 12, 2015 (Exhibit GD3-21), February 24, 2015 (Exhibit GD3-26), April 23, 2015 (Exhibits GD3-31 and GD3-32), and April 27, 2015 (Exhibit GD3-36), the Appellant told two different Commission agents that the master of ceremonies, J. F., had helped her in the sacristy, after the collection at the 10:00 p.m. service (Exhibits GD3-26, GD3-31, GD3-32 and GD3-36). She also clarified that the master of ceremonies was also with her, in the sacristy, after the collections made during the 8:00 p.m. and 10:00 p.m. masses, but that he did not remember this (Exhibit GD3-36).

[41] At the hearing, the Appellant stated that she had not told the Commission agents that Cardinal G. L.'s master of ceremonies was in the sacristy to transfer the money collected during the 10:00 p.m. service on December 24, 2014. The Appellant also added, at the hearing, that one of the agents with whom she had spoken was confused regarding the statements she had made in this regard or that the agents had not given her the time to give her version of the facts.

[42] The Tribunal states that, in this case, it gives greater importance to the Appellant's earlier statements than to the one she made at the hearing after having read the written statement

from the master of ceremonies in which he clarified that he was not with the Appellant, in the sacristy, at the time that the money from the collection at the 10:00 p.m. service on December 24, 2014 were transferred.

[43] In his statement dated April 27, 2015, the master of ceremonies provided the following clarifications:

[Translation]

I remember helping Ms. A. R. [the Appellant] when the collection came back to the sacristy. It was about 8:50 p.m., 9:00 p.m. We placed all of the money in a single bag. For the 10:00 p.m. service, which ended at about 11:15 p.m., 11:20 p.m., I was in the choir of the Notre-Dame de Québec Cathedral Basilica serving as the Cardinal's master of ceremonies. At no time during that service did I leave the choir to help anyone in the sacristy. That is not my job. . . .
(Exhibit GD3-35)

[44] The Tribunal considers that the Appellant made statements after learning of the reconsideration decision by the Commission, dated April 27, 2015, confirming the initial decision dated February 27, 2015, whereby the Appellant was not eligible to receive employment insurance benefits (Exhibits GD3-37 and GD3-38).

[45] In this regard, the Tribunal believes that a statement made before knowing the consequences is more credible than a second statement made later on for the purpose of re-establishing her right to employment insurance benefits. The Tribunal is of the opinion that the purpose of the Appellant's statement at the hearing was to improve her situation and to try to bring it back to her advantage by attempting to bring into cast doubt on the statements made by the persons contradicting her version of the facts

[46] Moreover, there is abundant case law showing that greater weight must be given to initial, spontaneous statements made by interested persons, before the Commission's decision, than to subsequent statements offered with the goal of justifying or improving the claimant's situations in light of an unfavourable decision by the Commission (*Lévesque*, A-557-96, *Clinique Dentaire O. Bellefleur*, 2008 CAF 13, *Lépine*, A-78-89, *Boucher*, A-272-96, *Rancourt*, A-355-96, *El Maki*, A-737-97).

[47] The Tribunal does not consider reasonable the explanations provided by the Appellant that during the collection at the 8:00 p.m. service on December 24, 2014, she had donated \$20.00 and then taken back \$15.00 to then contribute to the collections at the 10:00 p.m. and midnight services (Exhibit GD3-19).

[48] The Tribunal is also of the opinion that the Appellant contradicted herself when she stated, at the hearing, that Mr. J. F., the master of ceremonies, had seen her make the transaction during which she had placed \$20.00 in one of the baskets from the collection from the 8:00 p.m. service on December 24, 2014, to then take back \$15.00, when in a statement dated April 27, 2015, the Appellant stated that she had not made this transaction in front of Mr. J. F., but that there had been other people in the sacristy who had seen her do it (Exhibit GD3-36).

[49] The documentary evidence collected from the Employer clearly shows that the Appellant breached an express or implied duty resulting from the contract of employment (*Tucker, A-381-85, Lemire, 2010 FCA 314*).

[50] The Appellant breached the relationship of trust that bound her to her employer. The Appellant chose not to consider the standards of behaviour that the employer had the right to expect of her (*Tucker, A-381-85*).

[51] The Tribunal considers that the Appellant also carried out an action of a nature to undermine the interests of her employer.

[52] The Tribunal is of the opinion that the Appellant's alleged action was of a nature that it could normally be expected that it might result in her dismissal. She knew that her conduct was such as to impair the performance of her duties owed to her employer and that dismissal was a real possibility (*Tucker, A-381-85, Mishibinijima, 2007 FCA 36*).

[53] The Tribunal points out that, according to the case law, "the concept of misconduct does not require evidence of the elements of criminal liability" (*Djalabi, 2013 FCA 213*). It is not necessary for the behaviour in question to result from wrongful intent, but only that the reprehensible act or omission complained of be made "willfully", i.e. consciously, deliberately or intentionally (*Mishibinijima, 2007 FCA 36*). The Tribunal believes that this type of behaviour has been amply shown in the Appellant's case.

[54] The Commission also pointed out, in its arguments, that the Appellant had lacked professional ethics in stealing the money belonging to the parish and that “regardless of the nature or the amount of the theft, and the severity of the sanction, the fact remains that the claimant took money that did not belong to her without authorization” (Exhibit GD4-8).

Cause of the dismissal

[55] The Tribunal is of the opinion that the causal link between the Appellant’s action and her dismissal was established. The Employer clearly showed the reasons giving rise to the Appellant’s dismissal (*Namaro*, A-834-82, *MacDonald*, A-152-96, *Cartier*, A-168-00).

[56] In brief, the Tribunal considers that the Appellant was dismissed because of an action she took willfully and deliberately (*Tucker*, A-381-85, *McKay-Eden*, A-402-96, *Mishibinijima*, 2007 FCA 36).

[57] For these reasons, the Tribunal considers that that action constitutes misconduct within the meaning of the Act and that the Appellant lost her employment through her own fault. Her dismissal was the direct consequence of the action alleged against her (*Namaro*, A-834-82, *MacDonald*, A-152-96, *Cartier*, A- 168-00).

[58] Relying on the above-mentioned case law and on the evidence adduced, the Tribunal considers that the Appellant lost her employment because of her misconduct and consequently, the Commission’s decision to disqualify her from receiving employment insurance benefits is justified in the circumstances.

[59] The Tribunal concludes that the appeal of the issue is without merit.

CONCLUSION

[60] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section