**Citation:** ***Canada Employment Insurance Commission v. A. P.,*** **2015 SSTAD 1320**

**Date: November 12, 2015**

**File number: AD-14-491**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Appellant**

**and**

**A. P.**

**Respondent**

**Decision by: Pierre Lafontaine, Member, Appeal Division**

**Heard by Teleconference on November 5, 2015**

## REASONS AND DECISION

## DECISION

[1] The appeal is granted, the decision of the General Division dated August 24, 2014, is rescinded and the appeal of the Respondent before the General Division is dismissed.

INTRODUCTION

[2] On August 22, 2014, the General Division of the Tribunal determined that:

- The Respondent left his employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (the "*Act*").

[3] The Appellant requested leave to appeal to the Appeal Division on September 11, 2014. Leave to appeal was granted by the Appeal Division on March 19, 2015.

## TYPE OF HEARING

[4] The Tribunal held a telephone hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The fact that the credibility of the parties is not anticipated being a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant, represented by Carol Robillard, was present at the hearing. The Respondent was not present at the hearing although he did receive the notice of hearing on June 4, 2015.

**THE LAW**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

**ISSUE**

[7] The Tribunal must decide if the General Division erred in fact and in law when it concluded that the Respondent had just cause to leave his employment pursuant to sections 29 and 30 of the *Act*.

**ARGUMENTS**

[8] The Appellant submits the following arguments in support of the appeal:

- The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner and its decision is not reasonable;

- The evidence clearly contradicts the conclusion of the General Division that the Respondent had just cause for leaving pursuant to 29(c)(vi) of the *Act*;

- Jurisprudence is clear that a claimant must have a *bona fide* offer of employment from a new employer and that the possibility of employment or

- finding employment after leaving does not meet the test of just cause pursuant to 29(c) (vi) of the *Act*;

- The question to be resolved was whether the Respondent had any reasonable alternative to leaving when he did. The evidence confirmed by the General Division was that the Respondent made a decision to voluntarily leave based on personal financial difficulties commencing in 2007. Although he had identified several potential employment opportunities, he did not act on them until his return to PEI and had no *bona fide* job offer at the time he voluntarily left;

- Although the Respondent's decision may have been a good personal one, he had the reasonable alternative of remaining employed with his employer until such time as he secured other employment in PEI. While it is legitimate that the Respondent may have wanted to improve his life financially, the EI fund should not have to bear the burden of his decision;

- The Appellant respectfully requests that the Appeal Division give the decision that the General Division should have given in accordance with s. 59(1) of the *DESD Act*.

[9] The Respondent did not submit any arguments against the appeal.

**STANDARD OF REVIEW**

[10] The Appellant submits that the applicable standard of review for mixed questions of fact and law is reasonableness – *Chaulk v. Canada (AG)*, 2012 FCA 190.

[11] The Respondent did not make any representations regarding the applicable standard of review.

[12] The Tribunal acknowledges that the Federal Court of Appeal determined that the standard of review applicable to a decision of a board of referees (now the General Division) or an Umpire (now the Appeal Division) regarding questions of law is the standard of correctness - *Martens c. Canada* (*AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Chaulk v. Canada (AG)*, 2012 FCA 190, *Canada (PG) v. Hallée*, 2008 FCA 159.

## ANALYSIS

[13] The Tribunal proceeded with the appeal hearing in the absence of the Respondent since it was satisfied that he had received proper notice of the hearing on June 4, 2015, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

[14] When it allowed the appeal of the Respondent, the General Division made the following findings:

> "[42] The Tribunal finds that when the Claimant left his employment that he believed that he would not be unemployed based on the numerous job postings within his profession in PEI.
>
> [43] After taking into consideration all of the evidence the Tribunal finds that the Claimant has shown that he had no reasonable alternative to leaving or taking leave, having regard to all the circumstances as per section 29(c) of the *Act* and that the Claimant has demonstrated just cause for so leaving as he legitimately believed at the time that he left his employment that he would not be unemployed and felt assured that he would find employment in PEI based on his job search."

[15] With great respect, the decision of the General Division cannot be maintained.

[16] The Federal Court of Appeal, in *Canada (AG) v. Muhammad Imran*, 2008 CAF 17, offers guidance regarding the interpretation of section 29(c) (vi): "reasonable assurance of another employment in the immediate future". The Court mentions the following:

> "[11] The Umpire accepted Mr. Imran's argument that he could not have stayed in his employment and been successful in finding a better job. On that basis, the Umpire concluded that Mr. Imran had no reasonable alternative but to leave his employment. With respect, this conclusion conflicts with the decision of this Court in *Canada (Attorney General) v. Traynor*, [1995] F.C.J. No. 836, in which Marceau J.A., at paragraph 11, stated: "the letter, as well as the philosophy and purpose, of the unemployment insurance scheme" does not allow a claimant to leave her job "with the sole view of improving her situation in the market place". Moreover, this Court held in *Laughland* at paragraph 12,
>
> > The Employment Insurance scheme is intended to protect those persons with no other reasonable choice but to leave their employment. Its purpose is not to provide employees in unstable employment, who leave their employment without just cause, with benefits while they seek better and more remunerative work.

[12] Mr. Imran argues that because jobs in the field of civil engineering were plentiful, he had reasonable assurance of another employment in the immediate future, which constituted just cause for voluntarily leaving his employment, pursuant to subparagraph 29(c)(vi) of the *Act*. In *Canada (Attorney General) v. Bordage*, 2005 FCA 155 (CanLII), Décary J.A. expressed the view at paragraph 11 that:

> Subparagraph 29(c) (vi) requires that there be reasonable assurance of another employment in the immediate future. In this case, none of the three requirements have been met… At the moment when he himself chose to become unemployed, the respondent did not know if he would have employment, he did not know what employment he would have with what employer, he did not know at what moment in the future he would have employment (see *Canada (Attorney General) v. Sacrey*, 2003 FCA 377 (CanLII), [2004] 1 F.C.R. 733; *Canada (Attorney General) v. Laughland*, (2003) 301 N.R. 331 (F.C.A.); *Canada (Attorney General) v. Bédard* (2004) 2004 FCA 21 (CanLII), 241 D.L.R. (4th) 763 (F.C.A.); *Canada v. Wall*, (2002) 293 N.R. 338 (F.C.A.); *Canada (Attorney General) v. Lessard*, 2002 FCA 469 (CanLII)).

[13] While Mr. Imran was successful in finding an engineering job shortly after leaving his employment, at the moment when Mr. Imran left his job it cannot be said that he knew what future employment he would have or the identity of his future employer. As such, just cause for leaving his employment on the basis provided in subparagraph 29(c) (vi) of the *Act* has not been established."

(Underlined by the undersigned)

[17] Applying these principles of the Federal Court of Appeal to the present case, the Tribunal finds that there cannot be "reasonable assurance of another employment in the immediate future" in accordance with section 29(c)(vi) of the *Act* when the undisputed evidence before the General Division demonstrates that the Respondent, at the moment when he himself chose to become unemployed, did not know if he would have employment, did not know what employment he would have with what employer and did not know at what moment in the future he would have employment .

[18] Although the Respondent's decision may have been a good personal one, he had the reasonable alternative of remaining employed with his employer until such time as he secured other employment in PEI. While it is legitimate that the Respondent may have wanted to improve his life financially, the EI fund should not have to bear the burden of his decision.

## CONCLUSION

[19] The appeal is granted, the decision of the General Division dated August 22, 2014, is rescinded and the appeal of the Respondent before the General Division is dismissed.

*Pierre Lafontaine*
Member, Appeal Division