Citation: ***A. R. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 202**

Date: November 26, 2015

File number: GE-15-1920

GENERAL DIVISION - Employment Insurance Section

Between:

A. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

NORTHWEST SCHOOL DIVISION NO. UNION

Added Party

Decision by: Teresa Jaenen, Member, General Division - Employment Insurance Section

Heard by Teleconference on November 17, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

Ms. A. R., the Appellant (Claimant) attended the hearing.

Mr. Davin Hildebrand, the representative for Northwest School Division No. Union attended the hearing.

INTRODUCTION

[1] On January 4, 2015 the Appellant made an initial claim for employment insurance benefits. On February 11, 2015 the Canada Employment Insurance Commission (Commission) denied the Appellant benefits because she did not have just cause to voluntarily leave her employment. On March 12, 2015 the Appellant made a request for reconsideration. On May 11 2015 the Commission maintained its original decision and the Appellant appealed the *Social Security Tribunal of Canada* (Tribunal).

[2] The hearing was held by Teleconference for the following reasons:

a) The complexity of the issue(s) under appeal.

b) The information in the file, including the need for additional information.

c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] The Tribunal must decide whether a disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act) because the Appellant voluntarily left her employment without just cause.

THE LAW

[4] Section 29 of the Act for the purposes of section 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;

(b.1) voluntarily leaving an employment includes:

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs;

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed;

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment;

(ii) obligation to accompany a spouse or common-law partner or a dependent child to another residence;

(iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act;

(iv) working conditions that constitute a danger to health or safety;

(v) obligation to care for a child or a member of the immediate family;

(vi) reasonable assurance of another employment in the immediate future;

(vii) significant modification of terms and conditions respecting wages or salary;

(viii) excessive overtime work or refusal to pay for overtime work;

(ix) significant changes in work duties;

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;

(xi) practices of an employer that is contrary to law;

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers;

(xiii) undue pressure by an employer on the claimant to leave their employment; and

(xiv) any other reasonable circumstances that are prescribed.

[5] Subsection 30(1) of the Act states:

(1) 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 employment; and

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

EVIDENCE

[6] In her application for employment insurance benefits the Appellant stated she quit the employment because of a personal conflict at work. She indicated the conflict was with the resource teacher who harassed her by constantly checking up on her which was not in her job description. She stated there was a specific incident that occurred when she was asked by a supervising teacher to correct some student papers while the students were doing silent reading. The Appellant stated she would have returned to go back to help individual students. She stated there was not enough time to go and help other students so she chose to do this instead. The Appellant stated the resource teacher came into the room and verbally scolded the teacher for giving the Appellant papers to correct. She stated that had been other conflicts but his was the breaking point. The Appellant stated she approached the resource teacher and told her that she had worked there for over 20 years and she knew her job and when the resource teacher replied "oh I don't know" she got extremely upset and couldn't tolerate her antics any longer. (GD3-9 to GD3-10).

[7] In the application the Appellant stated she was very upset and crying when she spoke to the principal telling him she couldn't handle the resource teacher any longer and she walked out. She stated the principal left a message on the following Monday after the weekend asking if she was serious about quitting if she was could she send a letter of resignation. She stated she was a member of a union but she did not contact a union representative because she didn't see the point as she had already made up her mind. She stated she did not contact any outside agencies because she was DONE. She did not request a transfer as there was no place to transfer. She never looked for other work as she quit on spur of the moment and there were no other schools in town (GD3-10 to GD3-11).

[8] A record of employment indicates the Appellant was employed with the Northwest School Division No. Union from August 26, 2014 to December 5, 2014 when she quit her job (GD3-19).

[9] On February 11, 2015 the Appellant was contacted the by Commission and confirmed the conflict was with the resource teacher. She stated she was expected to interact with her different times during the day or during group meetings. She stated the conflict had started

during the last school year but at first was off the side comments and she would make corrective type comments. She stated the resource teacher did and did not have authority. She was responsible for organizing and distributing the work for the EA's. It was the classroom teacher who oversaw and directed the EA on what to do in the classroom. She stated her and other EA's spoke about the resource teachers' behavior but she never went to the principal about her. She stated perhaps she should have but she didn't want to cause trouble. She stated she did speak to the resource teacher but she was dismissive and didn't think she was being out of line. The Appellant stated besides the conflict she had received bad news earlier that month that her husband had been diagnosed with cancer (GD3-20).

[10] The Appellant stated that the resource teacher had directed the comments to the teacher in the classroom but not her. It was when she came back to the classroom the teacher said she was sorry as it looks like she got her in trouble. She stated she felt she could not go back to her job. She stated she did not speak to the principal or the union because she doesn't like to stir up trouble (GD3-20 to GD3-21).

[11] On February 11, 2015 the Commission notified the Appellant they were unable to pay her benefits because she voluntarily left her employment without just cause (GD3-23).

[12] On March 12, 2015 the Appellant made a request for reconsideration. She stated after the altercation with the resource teacher she walked out because she felt she didn't have any other options. She stated she saw no point in speaking to the principal or union as things would not have gotten better. This was the second time the resource teacher had verbally attacked her and the resource teacher did not like to have her authority or supposed authority questioned. She believed work conditions would become totally unbearable if she did speak to anyone. She stated she loved her job and misses it very much. She stated she had been paying into EI for 30+ years and believes she should be eligible for employment insurance benefits (GD3-24 to GD3-25).

[13] On May 7, 2015 the Commission contacted the employer who stated they had basically received a letter of resignation from the Appellant. He stated the Appellant did not speak to anyone in the Human Resource (HR) or to the principal about her issues. He stated the principal

was the Appellant's direct supervisor but there were shared responsibilities between the principal and the resource teacher (GD3-27).

[14] On May 11, 2015 the Appellant stated to the Commission that she supposed she should have taken a leave of absence but once she made the call she felt she could not go back to work with the resource teacher. She stated the resource teacher was not her boss but she did make the schedules and if there were certain problems she would go to her. If it was in the classroom they were under the direction of the teacher. She agreed she could have filed a complaint or grievance with the union but she is just support staff and felt that nothing could be done because the person she was having the conflict with was a head resource teacher (GD3-28).

[15] On May 11, 2015 the Commission notified the Appellant they were maintaining the original decision on voluntary leave (GD3-29 to GD3-30).

[16] In the Notice of Appeal the Appellant stated she had sent detailed explanation of the events leading up to the situation that came about to the Principal and the Vice-Principal and she was sure that they would have forwarded the information to the Superintendent. She stated she later learned from the Service Canada agent that they were unaware of the situation that led to her terminating her employment. She stated she has now sent a copy of this letter to the Superintendent. She stated there are erroneous finding with lack of communication within the school division. She stated she lives in a small town and there is no other school to transfer to and getting the union involved would only have made it more difficult with the resource teacher. A letter dated January 30, 2015 was included explaining the situation (GD2-1 to GD2-8).

EVIDENCE AT THE HEARING

[17] The Appellant stated that it may not have been harassment but the resource teacher made her feel incompetent because she was always checking up on her and it just became too much.

[18] The Appellant stated when they were working in a classroom they were to take their direction from the classroom teacher.

[19] The Appellant reiterated the final incident as it occurred as she had previously stated in her statements to the Commission.

[20] The employer stated there was a harassment policy in place and that the resource teacher was responsible to support the EA's.

[21] The Appellant stated she sent a letter dated January 30, 2015 to the principal but it was after she had already quit.

[22] The Appellant stated this happened on a Friday and on the Monday the principal called her to see if she was serious about quitting and if she was to remit a letter of resignation.

[23] The Appellant stated she was aware of the sick policy but she didn't speak to payroll she had already made up her mind.

[24] The Appellant stated the letter of resignation stated she was leaving because she needed to be by her husband's side. She stated she had a friend of hers deliver the letter of resignation.

[25] The employer stated he was not aware of the issues until he seen the letter dated January 30, 2015 which was after the fact.

SUBMISSIONS

[26] The Appellant submitted that:

a) It may not have been harassment but the resource teacher did make her feel incompetent in that she was always checking up on her;

b) She just couldn't take it anymore and decided she didn't want to return to work;

c) She didn't speak to anyone because she didn't want to cause trouble and didn't think it would make any difference because she was just an EA and the resource teacher was the head resource teacher

d) The resource teacher was not her boss but she was in charge of preparing the schedules; and

e) She has paid into the employment insurance system for 30+ years and believes she should be entitled to benefits.

[27] The employer submitted that:

a) They were not aware of any issues until after the Appellant quit and sent a letter dated January 30, 2015; and

b) The principal was the Appellant's direct supervisor however the resource teacher shared responsibilities and was responsible to schedule and work the EA's.

[28] The Respondent submitted that:

a) The Appellant did not demonstrate just cause for voluntarily leaving her employment because she failed to exhaust all reasonable alternatives prior to leaving;

b) A reasonable alternative would have been for the Appellant to seek guidance from her union about the conflict with the head resource teacher regarding option or request a period of leave to deal with her personal/work issue;

c) A reasonable alternative would have been to seek medical advice or counselling fher situation was making it difficult for her to attend work because of the stress and tension she states she was experiencing;

d) It is not just cause to leave employment based on a single incident without making some attempts to resolve the issue rather than to simply decide to quit; and

e) Without exploring the option of involving the union the Appellant decided to leave her employment for purely personal reasons for leaving her employment.

ANALYSIS

[29] The Tribunal must decide whether the Appellant should be disqualified pursuant to sections 29 and 30 of the Act because she voluntarily left her job without just cause. Subsection 29(c) of the Act provides that an employee will have just cause by leaving a job if this is no

reasonable alternative to leaving taking into account a list of enumerated circumstances including

(i) sexual or other harassment The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when she did.

[30] The Federal Court of Appeal reaffirmed the principle that where a claimant voluntarily leaves her employment, the burden is on the claimant to prove that there was no reasonable alternative to leaving when she did (*Canada (AG) v. White*, 2011 FCA 190 (CanLII)).

[31] In this case from the evidence on the file and from the oral evidence of Appellant there is no dispute that she voluntary left her employment, thus the onus is on the Appellant to prove she had just cause to do so.

[32] In *Rena-Astronomo* (A-141-97), which confirmed the principle established in *Tanguay* (A-1458-84) according to which the onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time, MacDonald J.A. of the Federal Court of Appeal (the Court) stated: “The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment.”

[33] The Appellant initially argued that she left her employment due to harassment; however at the hearing she stated that it may not have been harassment but rather the resource teacher made the working conditions difficult and made the Appellant feel incompetent. She stated the stress was just too much and she just couldn’t take it anymore so she quit.

[34] The Tribunal must apply the test of whether the Appellant had a reasonable alternative to leaving her employment when she did. The Act imposes a duty on the claimant not to deliberately cause the risk of unemployment to occur. A claimant who has voluntarily left her employment and has not found other employment is only justified in acting in this way if, at the time she left, the circumstances existed which excused her from thus taking the risk of causing other to bear the burden of her unemployment. A claimant is responsible to exhaust all reasonable alternatives prior to placing themselves in a position of unemployment.

[35] The Tribunal from the Appellant’s oral evidence that she did have issues the resource teacher, however the evidence does support that the resource teacher was one whom was responsible for the scheduling of EA’s to which that was the employment of the Appellant. The Tribunal finds that the evidence was substantiated by the employer that the resource teacher shared responsibilities with the principal; therefore the resource teacher was within her responsibilities when she addressed the teacher.

[36] The Tribunal finds from the evidence of the Appellant that the resource teacher did not address her directly but rather spoke to the classroom teacher who has requested the Appellant do mark the tests.

[37] The Tribunal finds that although the Appellant did not agree with the resource teachers actions it would appear from the evidence that she was preforming her duties and if the Appellant did not agree with her actions, the Appellant had an option to speak directly to the principal who was her direct supervisor.

[38] It has been said unsatisfactory working conditions will only constitute just cause for leaving employment (a) were they are “so manifestly unsatisfactory as to give rise to a genuine grievance,” where the claimant has taken all reasonable steps to alleviate the grievance or dissatisfaction by discussing them with the employer, and has also made an attempt to try to find other employment; or (b) where conditions are so intolerable that the employee has no other choice but to separate from that employment. There is a high obligation on a claimant to seek solutions to intolerable conditions before leaving. A claimant who does take reasonable steps to alleviate intolerable conditions will generally has just cause if those steps are unsuccessful.

[39] In this case the Tribunal sympathies with the Appellant especially after working for an employer for over 20 years and feeling she was not being treated fairly. However the Tribunal finds that the Appellant had reasonable alternatives available to her, but instead chose to make a personal decision and leave her employment without exhausting them first.

[40] The Tribunal finds from the evidence on the file and from both the oral evidence provided by the Appellant and the employer that she did not take any steps to try and

alleviate the issue with the resource teacher by speaking to the principal or employer or the union. The Tribunal finds from the evidence that it wasn't until after the fact when the Appellant provided the employer with a letter on January 30, 2015 that they became aware of the reason she left. The Tribunal finds it would have been reasonable for the Appellant to remain employed, present the letter and give the employer an opportunity to address the issues.

[41] The Tribunal finds from the Appellant's oral evidence that she did receive a call from the principal the following Monday who did leave a specific message asking if she was serious about quitting, and if so she would need to submit a letter of resignation. The Tribunal finds this presented the Appellant an opportunity to call the principal directly and discuss the situation, however the Appellant testified that she didn't call him back but instead wrote a letter of resignation which she stated she was leaving to be by her husband's side, and to which she had a friend deliver the letter.

[42] The Tribunal finds that Appellant did not provide the employer with any opportunity to provide a resolution to the problems the Appellant was encountering with the resource teacher but instead made a personal decision to quit.

[43] The Appellant presents the argument that she didn't contact her union and file a complaint or grievance because she didn't want to stir up trouble and she believed it wouldn't have made a difference.

[44] The Tribunal finds it unfortunate the Appellant felt the way she did however the facts show that she was part of a union to which she could have contacted and the Tribunal finds the Appellant did not act like a reasonable person in this situation. Especially when the options were available to her to do so. The fact the Appellant presumed nothing would be done does not support there was any compelling reasons that would have prevented her from ascertaining her rights. The Tribunal finds by the Appellant doing nothing she never provided the union with an opportunity to investigate the matter and determine if the allegations could be proven.

[45] The Tribunal finds from the Appellant's oral testimony that she was under a great deal of stress from work and personal issues however she testified that she did not seek any medical advice.

[46] The Tribunal finds if the Appellant was under a great deal of stress a reasonable alternative would have been to seek medical advice and then request a medical or leave of absence that would have allowed her time to recover and then be able to cope with workplace stresses.

[47] The Tribunal finds from the evidence on the file and from her oral testimony that she did not look for other employment prior to leaving because he left in haste. The Tribunal finds there is an obligation for the Appellant to seek employment before placing themselves in a position of unemployment. The Tribunal realizes the Appellant left in haste; however she testified that the she had been having conflicts with the resource teacher since the last school year and therefore the Appellant could have been searching for other employment, especially when she was not prepared to bring up her issues with her superiors.

[48] The Appellant presents the argument that she has paid into the employment insurance for 30+ years and she should be entitled to benefits.

[49] The Tribunal finds an Appellant is not entitled to benefits solely because of contributions to the employment insurance scheme over the years but they must the requirements in order to be eligible for benefits. In this case the Appellant has failed to prove she had just cause to voluntarily leave her employment or that she had no reasonable alternative to so, therefore the Appellant does not meet the requirement.

[50] The Tribunal relies on *Landry* A-1210-92 where the Court concluded that it is not sufficient for the claimant to prove she was reasonable in leaving her employment, but rather the claimant must prove that after considering all of the circumstances she had no reasonable alternative but to leave her employment.

[51] The Tribunal sympathies with the Appellant's situation as well as the personal family matters she is dealing with however the Tribunal must adhere to the legislation.

[52] The Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (Canada (AG) v. Levesque, 2001 FCA 304).

[53] The Tribunal relies on (*Canada (A.G.) v. Knee* 2011 FCA 301) which states:

> *However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.*

[54] The Tribunal finds that the Appellant's reasons to her may be good cause to leave however they do not constitute just cause within the meaning of the Act. The Tribunal finds subsection 30(1) of the Act of an indefinite disqualification be imposed because the Appellant voluntarily left her employment without just cause.

CONCLUSION

[55] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section