Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *F. G. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 58

Tribunal File Number: GE-15-2675

BETWEEN:

F. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: April 21, 2016

DATE OF DECISION: April 29, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The hearing initially scheduled for February 3, 2016 was postponed. A new hearing date was set for April 21, 2016.

[2] The Appellant, F. G., was present at the telephone hearing (teleconference) on April 21, 2016.

INTRODUCTION

[3] On April 21, 2015, the Appellant made an initial claim for benefits taking effect on April 19, 2015. The Appellant reported that he had worked for the Employer, Menuiserox Inc., from November 29, 2002 to April 2, 20015 inclusive and stopped working for that employer because of a dismissal or suspension (Exhibits GD3-3 to GD3-12).

[4] On June 1, 2015, the Respondent, the Canada Employment Insurance Commission (the "Commission") notified the Appellant that he was not entitled to regular employment insurance benefits as of May 10, 2015 because he stopped work for the Employer, Menuiserox Inc., on April 13, 2015 as a result of his own misconduct (Exhibits GD3-26 and GD3-27).

[5] On June 16, 2015, the Appellant filed a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-29 and GD3-30).

[6] On July 15, 2015, the Commission notified the Appellant that it was upholding its decision made in his case on June 1, 2015 (Exhibits GD3-32 and GD3-33).

[7] On August 19, 2015, the Appellant filed a Notice of Appeal to the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada (the "Tribunal").

[8] On August 31, 2015, the Tribunal informed the Employer, Menuiserox Inc., 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 September 16, 2015 (Exhibits GD5-1 and GD5-2). The Employer did not respond to that request.

[9] This appeal was heard by teleconference for the following reasons:

a) The fact that the Appellant will be the only party present at the hearing;

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

[10] The Tribunal must determine if the Appellant lost his job due to his own misconduct under sections 29 and 30 of the *Employment Insurance Act* (the "Act").

THE LAW

[11] The provisions relating to misconduct are set out in sections 29 and 30 of the Act.

[12] Subsections 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; . . .

[13] Subsection 30(1) of the Act provides as follows with respect to "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.

[14] With respect to the "length of disqualification", subsection 30(2) of the Act states:

> . . . 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

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

a) A record of employment dated April 20, 2015 states that the Appellant worked for the Employer, Menuiserox Inc., from October 12, 2008 to April 13, 2015 inclusive and that he stopped working for that employer as a result of a dismissal (Code M – Dismissal) (Exhibit GD3-13).

b) On April 27, 2015 and May 20, 2015, the Employer reported dismissing the Appellant after he had grabbed another employee by the throat, pretending to strangle him, in the workplace. The Employer explained that it could not tolerate this type of behaviour by an employee. The Employer considered the Appellant's behaviour unacceptable, particularly since the Appellant had appeared to downplay the incident. The Employer explained that there had been a progression in sanctions before proceeding with the Appellant's dismissal. The Employer explained that the Appellant had first been suspended and that that suspension had been changed to dismissal. It stated that there was a zero tolerance policy and that is why the Appellant had been dismissed. The Employer explained that the Appellant was a team leader and was also president of the union. It argued that the example the Appellant had set at the time of the incident complained of was not good for the other employees. The Employer explained that the Appellant, and the other employee involved, had had the opportunity to provide their version of the facts. The Employer reported that the other employee had complained to the Appellant because the Appellant had placed pallets (wood) in a place that interfered with the accomplishment of the work of the other employee in question. The Employer explained that these two people had begun arguing and that the Appellant had gotten out of his lift and grabbed the other employee by the throat in front of other employees. According to the Employer, the version given by the Appellant indicated that he had

explained that he was fed up with the situation and that if he had really wanted to strangle the other employee, he would have been able to do so, but that had not been the case. The Employer pointed out that the Appellant was not known to have problems with the other employees but that he had already been spoken to about a simulated act of violence in the past but that there had been no disciplinary action against him. The Employer explained that the company has a policy of progressive disciplinary measures but that in cases of violence, it can impose a suspension or dismissal. It indicated that the Appellant had filed a grievance to challenge his dismissal (Exhibits GD3-14 and GD3-15).

c) On May 20, 2015, the Employer sent the Commission a copy of the following documents:

   i. "Menuiserox – Workplace Health and Safety Regulations". This document, signed by the Appellant on May 6, 2008, indicates that he is specifically prohibited from behaviour that negatively impacts the safety of any employee, such as jostling, pulling or scuffling (Exhibits GD3-16 to GD3-18);

   ii. "Menuiserox – Policy on Progressive Disciplinary Measures" (Exhibits GD3-19 and GD3-20).

d) On May 28, 2015, the Employer reported that it was not aware of any friction that might have existed between the employee who had been grabbed by the throat by the Appellant and the latter. It stated that it disagreed with the Appellant's allegations regarding shortcomings in safety measures taken by the company. The Employer stated that, on his last day of work, it was possible that an employee (Mr. G. R.) had asked the Appellant to move a pallet and that the Appellant had refused to do so, which led to the altercation between these two persons, but that [translation] "there is no excuse for the violent act that took place". The Employer explained that no complaint had been made against the employee (Mr. G. R.) who had the altercation with the Appellant or against the supervisor (Mr. B. T.). It stated that several employees had complained about the Appellant and that a number of them had also asked the Employer not to take the Appellant back because the work environment had been much better since his dismissal. The Employer stated that it had confirmed the version of the facts given by the

Appellant regarding the incident with the employee in question. The Employer stated that it had no note in the file indicating that the Appellant had mentioned that there was a problem with that employee or that the Appellant was being harassed by that employee. The Employer explained that if the Appellant had raised these matters, measures would have been taken to find a solution to the problem. It indicated that the Appellant could have filed an harassment complaint against the employee concerned. The Employer specified that the Appellant had also been entitled to file a grievance to that effect, but that that had not been done prior to his being dismissed (Exhibit GD3-24 and GD3-25).

e) On June 5, 2015, the Employer explained that the Appellant had stopped work on April 2, 2015, that he had been suspended for the week of April 5 to 11, 2015 and that he had been dismissed on April 13, 2015 (Exhibit GD3-28).

[16] The following evidence was adduced at the hearing:

a) The Appellant explained that, as part of his work, he drove a lift to transport wood and that a work colleague placed metal carts (manual carts) in a location that he considered inappropriate and unsafe. He explained that one of those carts was always in his way. The Appellant explained that when he arrived with a load of wood, he was always afraid of hitting a metal cart with his lift and thus running the risk of injuring employees. He stated that he had warned the employee in question about this on multiple occasions (some 50 times). The Appellant stated that, after all of the warnings he had given, he had "lost control". According to the Appellant, the employee in question also had a major hearing problem and did not even hear the lift's horn. He stated that he had pointed out the problem with the location used, in his opinion, to his supervisor (B. T.). The latter was also a shareholder of the company. No solution had been found for this situation. The Appellant stated that this problem did not seem to bother the Employer. On the day of the altercation with the employee, the Appellant stated that he had again warned the employee not to put the metal carts in his way but that he had replied to him [translation] "eat shit . . . the carts are going to stay there." The Appellant said that he then got out from his lift and grabbed the employee by the throat. He stated that he had pretended to

strangle him but he had no intention of doing so. The Appellant emphasized that he knew this employee and they often joked around and teased each other. He said that he did not feel guilty about what happened. He said that he had told his employer that if the action complained of was misconduct, then he was stopping work because it would not be possible to work in such a place (Exhibits GD2-1 to GD2-6, GD3-22, GD3-23, GD3-31 and GD3-34) (Exhibits GD3-22 and GD3-23).

b) The Appellant reported that his earlier statements to the Commission about the circumstances leading to his dismissal on April 13, 2015 were true (Exhibits GD2-1 to GD2-6, GD3-22, GD3-23, GD3-31 and GD3-34).

c) The Appellant claimed that the action complained of against him was related to the problems with his supervisor. He argued that, for two years, his supervisor [translation] "put his fist in his face" (punched at his face, a half an inch from his nose) almost every day, that he was fed up with the situation and that he had told his boss. The Appellant indicated that he should have filed a grievance about the problem. He mentioned that he had discussed this situation with the Employer (the "boss") but the supervisor's behaviour had not changed. He claimed that the order to place the metal carts in a location that he considered to be inappropriate came from the shareholder (supervisor). He stated that the purpose of that order had been to brush him off and that, in this context, it would have been better for him to deal with the shareholder. The Appellant stated that the employee with whom he had had the altercation had obeyed the orders of his superior and was not responsible for the fact that he had put the metal carts in the location where he had been told to put them. The Appellant stated that the shareholder in question had come close to being punched (Exhibits GD2-1 to GD2-6, GD3-22 and GD3-23).

d) He stated that he had stopped work on April 2, 2015, had been suspended for a period of five days (five-day disciplinary sanction) in the week of April 5 to 11, 2015, and had then been dismissed on April 13, 2015 (Exhibit GD3-28). The Appellant specified that after receiving a letter of suspension, he had been notified by the Employer not to report to work after his period of suspension because he was going to be dismissed. He

indicated that he had also received a letter of dismissal. He specified that he had filed grievances to contest his suspension and dismissal (Exhibits GD2-1 to GD2- 6, GD3-22, GD3-23 and GD3-28 to GD3-30).

e) The Appellant explained that an agreement had been reached with the Employer in February 2016 after the grievances challenging his dismissal had been filed. The Appellant explained that, under that mutually agreed agreement, he had received a sum of $12,151.96 (gross amount) from his employer. This represented 20-22 weeks of work. He mentioned that this was severance pay. The Appellant stated that the Employer had issued a new termination of employment after the settlement but that the reason for the termination of his employment had remained the same, namely, dismissal (Code M – Dismissal) (Exhibits GD3-13, GD3- 29 and GD3-30).

f) The Appellant stated that he had started a new job with a new employer on August 28, 2015. He indicated that he would not return to work at his former employer and that he was proud that he is gone from there. The Appellant stated that his new employer provides a respectful workplace for all employees.

PARTIES' ARGUMENTS

[17] The Appellant made the following observations and submissions:

a) He explained that he had been dismissed for grabbing another employee by the throat during his shift (Exhibits GD3-3 to GD3-12, GD3-22 and GD3-23).

b) The Appellant stated that he had not injured anyone. He explained that when he drove a lift and had to transport wood 16 feet long, it was not normal for an employee to come and place carts in his way so he could not get by (Exhibits GD2-1 to GD2-6).

c) The Appellant stated that he knew that his action had been wrong. He explained that he had lost his temper because he had told the employee in question at least 50 times not to leave the carts in a specific location because it could present a high risk of an accident. The Appellant stated that he had had enough on the day that he committed the gesture

complained of, particularly since he had had a cold, had not been feeling well and had had a great deal of work to do (Exhibits GD3-22 and GD3-23 and GD3-31).

d) He explained that had he known that he would be dismissed and would not be entitled to benefits, he would have done more than grab the employee by the throat. The Appellant indicated that, given all these events, he felt depressed (Exhibit GD3-31).

e) The Appellant stated that it was not the employee in question that he should have grabbed on the day that the actions complained of took place, but rather the company's shareholder who had been harassing him (e.g., putting his fist in his face, half an inch from his nose, regularly, to upset him) (Exhibits GD2-1 to GD2-6, GD3-22, GD3-and GD3-34).

f) The Appellant explained that he had worked for the Employer for 12-13 years, that he was a team leader and that he was also president of the union (Exhibits GD2-1 to GD2-6, GD3-22 and GD3-23). He claimed that the Employee had taken advantage of the fact that he was the union president to dismiss him. He explained that as union president, he was aware of employee safety matters at the plant. As an example, the Appellant stated that the Employer did not like it when the Commission de la santé et de la sécurité du travail (CSST – now the CNESST – Commission des normes, de l'équité, de la santé et de la sécurité du travail) investigated the workplace (Exhibits GD2-1 to GD2-6, GD3-22, GD3-23, GD3-29 and GD3-30).

g) The Appellant argued that, as union president, he worked hard to ensure employee safety. He stated that, even though several of the Employer's practices could have endangered that safety, he had not dared to contact the CSST (CNESST) because he did not want to get dismissed by the Employer. According to the Appellant, whenever he had talked about risks of injury or accidents and had mentioned that he might contact the CSST (CNESST) if nothing was done, the Employer had made it clear that if he complained, he would lose his job. The Appellant stated that he had not wanted to contact that body for fear that the plant would be required to close in order to meet the standards. He stated that his built-up frustration and the inaction by management, despite his numerous efforts to make the work environment safer, had led him to act

inappropriately and that that action had led to his dismissal. He stated that he did not want to argue with the employees and that, even though he was the team leader, it was not his responsibility, but the supervisor's, to manage them. The Appellant reported that he was human and he could no longer take the harassment that he was experiencing and the company's inaction regarding potentially dangerous employee safety situations he had pointed out and the fact that nothing had been done by the Employer in this regard. The Appellant claimed that he could have informed the CSST (CNESST) because there were a number major deficiencies related to workplace safety. According to the Appellant, his dismissal was a set-up and he had paid the price. He claimed that he had been wrongfully dismissed (Exhibits GD2-1 to GD2-6, GD3-22, GD3-23, GD3-29 and GD3-30).

h) The Appellant argued that the Commission had not asked him for his version of the facts before issuing a reconsideration decision in his case (Exhibits GD2-1 to GD2-6).

[18] The Respondent (the Commission) made the following observations and submissions:

a) Subsection 30(2) of the Act provides that an indefinite disqualification is imposed if it is established that the claimant lost the employment by reason of their own misconduct. The Commission explained that, for the action complained of to constitute misconduct under section 30 of the Act, it must have been wilful or deliberate or so reckless or negligent as to approach wilfulness. It stated that there must also be a causal relationship between the misconduct and the dismissal (Exhibit GD4-4).

b) The Commission argued that when acts of violence are committed in the workplace by one employee toward another, it can be concluded that there was misconduct because the violence in question breaches an essential condition of employment, namely, to maintain a healthy and harmonious workplace. It emphasized that an employee must act respectfully in his relations with his colleagues and avoid any breach of conduct that might be seen as an offence (Exhibit GD4-4).

c) The Commission explained that, in this case, the Appellant had admitted to committing the action complained of, namely, grabbing a colleague by the throat, because the

person did not want to move the pallets that were interfering with the Appellant's work and were dangerous to employee safety, even after having asked the employee numerous times to avoid placing them in that location. It stated that even though the Appellant alleged that he had been sick and had had a great deal of work that day, the circumstances did not justify the violence committed against his colleague, especially since he was team leader and the union president. According to the Commission, the Appellant had to have known that such action would not be tolerated by the Employer and that he might be dismissed. In its view, the Appellant should have gone to management to enforce the directives on the location for the placement of the pallets, rather than losing his temper and attacking his colleague unacceptably because the latter did not want to follow the his instructions. The Commission stated that the Appellant had mentioned being harassed by one of the shareholders and that management had been aware of this situation but did nothing. It explained that a few weeks before the Appellant's dismissal, the shareholder in question had put his fist in the Appellant's face, challenging him to defend himself, which the Appellant had not done. The Commission mentioned that, following that altercation, the supervisor, notified by the shareholder, brought them together to discuss the matter and the situation was resolved. It argued that the Appellant had explained that he had not informed the CSST (CNESST) of certain dangerous practices related to worker safety because he had been threatened by the Employer of losing his employment or of the plant closing because of non-compliance with the standards. The Commission indicated that the Employer stated that the pallets were placed outside the traffic corridor for lifts and were not in any way impeding the Appellant's work. It indicated that the Appellant had explained that he had acted violently because of his built-up frustration and because management was not taking any action to make the work environment safer. The Commission stated that the Appellant had explained having been provoked by his colleague who had said that he would not move the pallets. It argued that, despite his built-up frustration, the provocation and the fact that the Employer was not taking the necessary steps to ensure a safe work environment, losing his patience and grabbing his colleague throat is no way to solve a problem, especially in light of the Appellant's responsibilities as team leader and union president. The Commission pointed out that, even though the

Appellant mentioned that the officer had not taken his version of the facts during the conversation he had with him on July 15, 2015, during that conversation, the Appellant confirmed that he had committed the act after losing his patience and that had he known how events would unfold, he would have done more than grab his colleague's throat. According to the Commission, even though the Appellant stated that he had not harmed anyone, the action itself of grabbing the throat of another employee, even without injury, is intolerable in order to maintain a good work environment, and an employer cannot wait until someone is hurt to act. The Commission explained that the Appellant claimed that it was a set-up, that the Employer had nothing to complain of except the incident with one of the shareholders, which was resolved through discussion. The Commission pointed out that the Employer had admitted that it was aware of that situation and had not imposed any sanction on the Appellant (Exhibits GD4-4 and GD4-5).

d) The Commission determined that the Appellant's act of violence against his colleague, namely, grabbing him by the throat to strangle him, constituted misconduct under the Act, especially for a team leader and union president. According to the Commission, such an act is unacceptable to an employer seeking to maintain a healthy and harmonious work environment in its plant (Exhibit GD4-5).

ANALYSIS

[19] 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.

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

> . . . 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 . . . .

[21] In *Mishibinijima* (2007 FCA 36), the Court stated the following:

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

[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] The Court has defined the legal concept of misconduct for the purposes of subsection 30(1) of the Act as wilful misconduct where the claimant knew or ought to have known that their conduct was such that it was likely to result in dismissal. To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant’s misconduct and the claimant’s loss of employment. The misconduct must therefore constitute a breach of a duty that is explicit or implied in the contract of employment (*Lemire*, 2010 FCA 314).

[24] The decisions in *Cartier* (A-168-00) and *MacDonald* (A-152-96) confirmed the principle established in *Namaro* (A-834-82) that it must also be established that the misconduct was the reason for the claimant's dismissal.

[25] To constitute misconduct within the meaning of section 30 of the Act, the act complained of must have been wilful or deliberate or so reckless or negligent as to approach wilfulness. There must also be a causal relationship between the misconduct and dismissal.

[26] Determining whether an employee's conduct that resulted in the loss of that person's employment constitutes misconduct is a question of fact to be decided based on the circumstances of each case.

[27] In this case, the act complained of with respect to the Appellant, namely, having grabbed an employee by the throat, clearly constitutes misconduct under the Act.

Deliberate nature of the alleged act

[28] The Appellant admitted having committed the act complained of and which led to his dismissal.

[29] He indicated that he had grabbed the throat of an employee but that he had not squeezed and had not injured the person. The Appellant explained that, as part of his work, he was driving a lift and that he had warned the employee in question on numerous occasions to not put the metal carts in a location that could compromise employee safety or interfere with him doing his work.

[30] The Appellant explained that he had lost his temper when he had again had to warn the employee concerned and that person had responded to him using vulgar language. The Appellant stated that he had been provoked by the employee. The Appellant then got out of his lift and grabbed the employee by the neck, pretending to strange him.

[31] Despite the Appellant's description and the circumstances in which the act complained of was committed, the Tribunal is of the view that this act was deliberate. His action was conscious, deliberate or intentional (*Mishibinijima*, 2007 FCA 36; *McKay-Eden*, A- 402-96; *Tucker*, A-381-85).

[32] While the Appellant was transparent and honest regarding the act complained of, he had to have known that committing an act of violence against a colleague was completely incompatible with the duties related to the performance of his work. The Appellant acknowledged that the act he had committed "was wrong" (Exhibit GD3-31).

[33] By committing the action complained of, the Appellant contravened a perfectly legitimate expectation of his employer.

[34] The Employer had clearly indicated that it could not tolerate the act committed by the Appellant and that nothing could excuse such action (Exhibits GD3-14, GD3-24 and GD3-25).

[35] The Employer also stated that there was a zero tolerance policy regarding violence in the workplace (Exhibit GD3-15).

[36] The document entitled “Menuiserox – Workplace Health and Safety Regulations”, signed by the Appellant on May 6, 2008, states as follows: [translation] “The following is prohibited: . . . behaviour that negatively impacts the safety of any employee, such as jostling, pulling or scuffling” (Exhibit GD3-18).

[37] The Employer also emphasized that, as team leader and union president, the Appellant had served as a bad example to the other employees at the time of the incident (Exhibit GD3-15).

[38] The Appellant was well aware that he had to comply with the Employer’s clearly stated requirement.

[39] Even though the Appellant argued that he had been ill and had had a great deal of work to do at the time of the incident with a colleague, those circumstances cannot justify his act of violence against that employee.

[40] The Tribunal is of the view that the Appellant deliberately decided to ignore a fundamental requirement of his employment. By that act, the Appellant broke the relationship of trust with his employer (*Tucker*, A-381-85).

[41] The Appellant did not consider the standards of behaviour the employer was entitled to expect of him (*Tucker*, A-381-85).

[42] The Appellant breached a fundamental duty that is explicit or implied in the contract of employment (*Tucker*, A-381-85; *Lemire*, 2010 FCA 314).

[43] The Tribunal is of the opinion that the Appellant’s alleged action was of a nature that it could normally be expected that it would likely result in his dismissal. He knew that his conduct was such as to impair the performance of the duties owed to his employer and that there was a real possibility he would be dismissed (*Tucker*, A-381-85; *Mishibinijima*, 2007 FCA 36).

Appellant’s role as a union representative and union activities

[44] The Tribunal does not accept the Appellant’s submission that the Employer took advantage of the fact that he was the union president to dismiss him because he had, in that

capacity, made a number of interventions related to workplace health and safety in the company. The Appellant claimed that his dismissal was a “set-up” (Exhibit GD2-4).

[45] According to the Appellant, each time he had pointed out to the Employer risks of injury or accident to employees and had mentioned that he might contact the CSST (CNESST) if no action was taken to correct the situation, the Employer had made it clear that if he complained, he would lose his employment (Exhibits GD3-22 and GD3-23).

[46] The Tribunal believes that the Appellant’s submission in this regard cannot justify the act of violence he committed against a colleague.

[47] Moreover, the Tribunal believes that there is no relevant evidence to demonstrate that the Appellant was allegedly dismissed because he was the union president and because he took matters related to workplace health and safety too seriously by making them known to the CSST (CNESST).

Harassment at work

[48] The Appellant claimed that the action complained of against him was related to the harassment problems he said he had experienced with his supervisor over a period of two years. The Appellant stated that his supervisor would regularly put his fist in his face to annoy him, telling him to defend himself but that, despite being aware of this situation, the Employer had done nothing to correct it (Exhibits GD3-22 and GD3-23).

[49] The Tribunal cannot accept this argument in the Appellant’s favour. First, the harassment that the Appellant claimed to have experienced by his employer cannot serve as justification for the act of violence he committed against one of his colleagues.

[50] Second, there is no relevant evidence to show that the Appellant had been harassed in his workplace.

[51] The Employer reported that it had no note in the file to show that the Appellant had informed it that he was being harassed at work. The Tribunal must clarify that the Employer’s statements indicate that the Appellant had never mentioned to the Employer that he was being harassed by the employee with whom he had had an altercation and not by his supervisor

(Exhibits GD3-24 and GD3-25). At the hearing, the Appellant clarified that the harassment he claimed to be the victim of came from his supervisor.

[52] Whatever the case, the Employer indicated that if the Appellant was being harassed, he could have filed a complaint but that nothing of the sort had occurred in this regard (Exhibits GD3-24 and GD3-25).

Cause of the dismissal

[53] The Tribunal is of the opinion that the causal link between the Appellant's action and his 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).

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

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

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

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

CONCLUSION

[58] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section