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

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 95

Tribunal File Number: GE-15-4066

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: July 20, 2016

DATE OF DECISION: July 21, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, S. B., participated in the telephone hearing (teleconference) held on July 20, 2016.

INTRODUCTION

[2] On September 14, 2015, the Appellant filed a renewal claim for benefits effective September 13, 2015. The Appellant reported that he had worked as a "cook's assistant" for the employer, Nickels (2894645 Canada Inc.), from October 10, 2013 to September 6, 2015 inclusive and stopped working for that employer to become a self-employed worker (Exhibits GD3-3 to GD3-13).

[3] On October 7, 2015, the Respondent, the Canada Employment Insurance Commission ("the Commission"), notified the Appellant that he did not qualify for regular EI benefits starting September 6, 2015 because he had voluntarily stopped working for the employer, 2894645 Canada Inc., on September 6, 2015 without just cause within the meaning of the *Employment Insurance Act* ("the Act") (Exhibits GD3-17 and GD3-18).

[4] On October 19, 2015, the Appellant submitted an Employment Insurance reconsideration request (Exhibits GD3-19 and GD3-20).

[5] On November 10, 2015, the Commission notified the Appellant that it had upheld the decision rendered in his case respecting his voluntary leaving on October 7, 2015 (Exhibits GD3-23 and GD3-24).

[6] On November 10, 2015, the Commission notified the employer, 2894645 Canada Inc., that it had upheld the decision rendered in the Appellant's case respecting his voluntary leaving on October 7, 2015 (Exhibits GD3-25 and GD3-26).

[7] On December 7, 2015, the Appellant filed a Notice of Appeal with the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada ("the Tribunal") (Exhibits GD2-1 to GD2-7).

[8] In a letter dated December 10, 2015, the Tribunal informed the employer, 2894645 Canada Inc., that, if it wished to become an "added party" in this case, it had to file a request to that effect no later than December 28, 2015 (Exhibits GD5-1 and GD5-2). The employer did not act on that letter.

[9] This appeal was heard by the teleconference form of hearing for the following reasons

a) The fact that the Appellant would 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 whether the Appellant had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

THE LAW

[11] The provisions respecting voluntary leaving are set forth in sections 29 and 30 of the Act.

[12] For the application of sections 30 to 33 of the Act respecting disqualification from receiving employment insurance benefits in the case of "leaving without just cause," paragraph 29(*c*) of the Act provides:

> (*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, common-law partner or 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 are 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

any other reasonable circumstances that are prescribed.

[13] Subsections 30(1) and (2) of the Act provide as follows with respect to "disqualification" from receiving benefits:

> (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
>
> (*b*) the claimant is disentitled under sections 31 to 33 in relation to the employment.
>
> (2) 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

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

a) A Record of Employment (ROE) dated September 8, 2015 indicates that the Appellant worked for the employer, Nickels (2894645 Canada Inc.), from October 10, 2013 to September 6, 2015 inclusive and that he stopped working for that employer after voluntarily leaving (Code E – Voluntary leaving) (Exhibit GD3-14).

b) On October 7, 2015, the employer declared that the Appellant had left his employment because he no longer wanted to work on weekends; the employer explained that the Appellant would have liked to work only from Monday to Friday but that it was impossible to do so in the restaurant business (Exhibit GD3-16).

[15] The evidence adduced at the hearing is as follows:

a) The Appellant recalled the principal elements in the file and the circumstances in which he had voluntarily left his employment with the employer, Nickels (2894645 Canada Inc.), in order to show that he had just cause for voluntarily leaving within the meaning of the Act.

b) The Appellant noted that, contrary to what was indicated in a statement made to the Commission (Exhibit GD3-22), during his entire period of employment with the employer, Nickels (2894645 Canada Inc.), from October 10, 2013 to September 6, 2015, he had worked the following schedule: on Mondays, Tuesdays and Thursdays from 9:00 a.m. to 3:00 p.m., on Fridays from 9:00 a.m. to 4:00 p.m. and on Saturdays and Sundays from 8:00 a.m. to 4:00 p.m. He further noted that he might finish an hour later on weekends or work in the evenings depending on the needs expressed by the employer. The Appellant said he had had Wednesdays off (Exhibits GD3-3 to GD3-14 and GD3-22).

SUBMISSIONS OF THE PARTIES

[16] The Appellant presented the following observations and submissions:

a) The Appellant voluntarily left his employment to become a self-employed worker and because he was not satisfied with his working conditions (Exhibits GD3-6 and GD3-15).

b) The Appellant stated that he had never asked the employer if he could work from Monday to Friday only, as the latter told the Commission in a statement dated October 7, 2015 (Exhibit GD3-16). He said he had asked the employer for a weekend off from time to time (e.g. once a month or month and a half). The Appellant further noted that he had also told the employer he was ready to work on Wednesdays so he could have the requested time off. He emphasized that he had requested leave in September 2015, when the employer had less traffic, not when it was busy, and that his request was denied. The Appellant indicated that the employer had had no consideration for him. He said that, if he had been able to have a weekend off from time to time, the situation would have helped his personal relationship and given him less reason to quarrel with everyone (e.g. co-workers, spouse and children) (Exhibit GD3-16).

c) He explained that he had discussed the situation with his employer, but that the latter had not agreed to grant him leave given the needs of the business. The appellant felt it was a lost cause and decided to leave his employment. In his view, the employer had failed to appreciate him (Exhibits GD3-6, GD3-15 and GD3-22).

d) The Appellant submitted that he had been available to respond to all his employer's whims. He emphasized that, after making a very reasonable request to his employer concerning the leave he was seeking, he then realized that the employer had no consideration for him. He then felt it was appropriate to give the employer two weeks' notice (Exhibit GD2-4).

e) The Appellant explained that he wanted to be his own boss and "to work for himself." He indicated that he had contacted the Centre local d'emploi (CLE) [local employment centre] concerning his plan to become a self-employed worker (self-employed worker program). He said he started consulting the CLE around October 2015 after voluntarily leaving his employment. He explained that the CLE did not offer him the assistance he was seeking to carry out his plan (Exhibits GD3-15 and GD3-22).

f) The Appellant indicated that he had not looked for work before leaving the employment he had with the employer, Nickels (2894645 Canada Inc.). He said he had conducted that search after voluntarily leaving his employment. The Appellant explained that his work schedule with the employer had allowed him no time to look for another

employment. He noted that he had looked elsewhere only once he stopped working for the employer in question. The Appellant said he conducted an extensive job search in several fields (e.g. self-employed worker, handyman and beneficiary attendant). He said he had carried out minor contracts since voluntarily leaving his employment but was not currently working for an employer (Exhibits GD3-15 and GD3-22).

g) The Appellant said he had not communicated with his former employer to resume work in his previous position. He emphasized that he had not enjoyed the way the employer worked, that the employer had had no consideration for him and that he would not go back to work there. The Appellant noted that there was considerable staff turnover at that employer.

h) The Appellant contended that he had had reasonable grounds for leaving his employment, emphasizing that he was a good worker and a good person. He submitted that he did not think it was normal to be disentitled from receiving EI benefits when had made EI contributions. He emphasized that he did not consider that fair (Exhibit GD3-19).

[17] The Respondent (the Commission) presented the following observations and submissions:

a) Subsection 30(2) of the Act provides for a disqualification where the claimant voluntarily leaves his or her employment without just cause. The applicable test, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving his employment when he did (Exhibit GD4-2).

b) The Commission explained that the Appellant had worked at the employer, Nickels (2894645 Canada Inc.), as a cook's assistant for approximately two years (Exhibit GD3-5). It noted that he had worked on a full-time basis from Monday to Sunday, with Wednesdays off, and that he had wanted to have at least one weekend off per month (Exhibits GD3-15 and GD4-2).

c) The Commission explained that the employer could not grant the Appellant's request because it is impossible to work in the restaurant business from Monday to Friday only (Exhibits GD3-16 and GD4-2).

d) The Commission explained that, in the Appellant's mind, that refusal was a sign of a lack of appreciation by his employer, to which he submitted his resignation with two weeks' notice (Exhibit GD3-22). It submitted that the facts in the file show that the Appellant had a normal work schedule, having regard to the sector in which he was working. According to the Commission, the Appellant left his employment (Exhibit GD4-3) for good personal reasons (Exhibits GD3-19 and GD3-20).

e) The Commission noted that the Appellant indicated that he had left his employment because he wanted to work for himself (Exhibit GD3-6) but that he had not yet taken the preliminary steps to start up a business (Exhibit GD3-22) and to ensure he had other work before leaving his employment (Exhibit GD4-3).

f) The Commission concluded that the Appellant did not have just cause for leaving his employment on September 6, 2015 since he did not show that he had exhausted all reasonable alternatives to leaving. It submitted that, having regard to all the circumstances, a reasonable alternative would have been for him to ensure he had another employment that met his requirements while continuing his work. The Commission argued that, if the Appellant had wanted to work for himself, he should have verified the feasibility of his plan to ensure he did not leave his employment and then find himself unemployed. The Commission therefore determined that the Appellant did not prove he had just cause for leaving his employment under the Act (Exhibit GD4-3).

ANALYSIS

[18] In *Rena-Astronomo* (A-141-97), which confirms the principle established in *Tanguay* (A-1458-84) to the effect that it is the responsibility of the claimant who voluntarily leaves their employment to prove that there was no other reasonable alternative to leaving their employment at that time, the Federal Court of Appeal (the Court) notes the following: "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 immediately leaving his or her employment."

[19] This principle was confirmed in other decisions of the Court (*Peace*, 2004 FCA 56, and *Landry*, A-1210-92).

[20] Moreover, the words "just cause," as used in paragraph 29(*c*) and subsection 30(1) of the Act, are interpreted by the Court in *Tanguay v. UIC* (A-1458-84 (October 2, 1985); 68 N.R. 154) as follows:

> In the context in which they are used these words are not synonymous with "reasons" or "motive." An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has, voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[21] The Court also held that the claimant who voluntarily leaves his employment has the onus of proving that he had no reasonable alternative to leaving at that time (*White*, 2011 FCA 190).

[22] In *Pannu* (2004 FCA 90), the Court held as follows:

> [3] The applicant's complaint is really against the *Employment Insurance Act*. She says she has contributed during her entire period of employment and that it is unfair that she should be denied her sickness benefits now. However, the *Employment Insurance Act* is an insurance plan and like other insurance plans, claimants must meet the conditions of the plan to obtain benefits. In this case, the applicant does not meet those conditions and is therefore not entitled to benefits.
>
> [4] While the applicant's case is a sympathetic one, the Court cannot rewrite the *Employment Insurance Act* to accommodate her.

[23] A claimant has just cause for voluntarily leaving their employment if, having regard to all the circumstances, including those set out in subsection 29(*c*) of the Act, leaving is the only reasonable alternative in their case.

[24] In this case, the Tribunal finds, having regard to all the circumstances, that the Appellant's decision to leave his employment with the employer, Nickels (2894645 Canada Inc.), cannot be considered the only reasonable alternative in this situation (*White*, 2011 FCA 190; *Rena-Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56; *Landry*, A-1210-92).

[25] A reasonable alternative would have been for the Appellant to continue occupying the employment he had with the employer while waiting to find another employment more consistent with his expectations or interests.

Working conditions and request for leave

[26] The Appellant's working conditions, more particularly the work schedule under which he had to work weekends, as well as the employer's refusal to grant him a weekend off from time to time, do not constitute just cause for voluntary leaving under of the Act.

[27] Despite the fact that the Appellant was dissatisfied with his work schedule and that the schedule could cause unpleasantness in his family life, and even at work, the Tribunal finds that he did not show that his working conditions were so intolerable that he had no alternative but to leave his employment when he did.

[28] The Appellant's evidence is that, for the entire duration of his employment, he worked in accordance with conditions that required him to work on weekends.

[29] The Tribunal notes that the Appellant knew the working conditions when he began working for the employer. He agreed to work in accordance with the schedule that was established when he was hired.

[30] The Tribunal finds that the Appellant could have continued working for his employer while waiting to find another employment that made it easier for him to reconcile his work with his other activities, responsibilities and family life.

Appellant's plan to become a self-employed worker

[31] The Appellant explained that he wanted to become a self-employed worker and that he had approached a local employment centre (CLE) for support in carrying out his plan. He noted that he did so after voluntarily leaving his employment. The Appellant indicated that he did not receive the support he had expected from that organization in order to carry out his plan.

[32] Before deciding to leave his employment voluntarily, the appellant could have inquired with the CLE that he consulted to determine the type of support he might receive from that organization for his plan to become a self-employed worker. Such an approach might also have enabled him to assess the extent to which he might be entitled to benefits.

[33] The Appellant could also have made similar inquiries with the Commission to verify the type of support he might be able to obtain to carry out his plan.

[34] Although the Appellant's idea to become a self-employed worker so that he could secure a better professional future was based on excellent reasons, the Tribunal finds that this initiative does not constitute just cause for voluntary leaving. Furthermore, the Appellant did not take this action until after he had voluntarily left his employment.

Reasonable assurance of another employment

[35] Nor did the Appellant show that he had obtained "reasonable assurance of another employment in the immediate future" before voluntarily leaving his employment, as provided by subparagraph 29(*c*)(vi) of the Act.

[36] Although the Appellant stated that he had conducted an extensive job search, he did so after voluntarily leaving his employment.

[37] Consequently, the Tribunal finds that the Appellant did not make a significant effort to find another employment more consistent with his abilities and expectations before voluntarily leaving the one he had. The Appellant moreover stated at the hearing that he had conducted no job search while working for his employer as his work schedule prevented him from doing so.

Employment Insurance contributions

[38] The Tribunal does not accept the Appellant's submission that he is entitled to benefits because he made EI contributions.

[39] Even though the Appellant was employed and made EI contributions during the period in which he worked, that situation does not automatically qualify him to receive benefits. A claimant must meet all the requirements of the Act in order to qualify for those benefits (*Pannu*, 2004 FCA 90).

[40] On the basis of the aforementioned case law, the Tribunal finds that the Appellant did not show that there was no reasonable alternative to leaving his employment with the employer, Nickels (2894645 Canada Inc.) (*White*, 2011 FCA 190; *Rena-Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56; *Landry*, A-1210-92).

[41] The Appellant could have continued his employment with that employer while waiting for another employment more consistent with his expectations and interests.

[42] The Tribunal finds that, having regard to all the circumstances, the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

[43] The appeal on this issue has no merit.

CONCLUSION

[44] The appeal is dismissed.

Normand Morin
Member, General Division - Employment Insurance Section