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

[TRANSLATION]

Citation: *A. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 480

Tribunal File Number: AD-16-495

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 20, 2016

Canada

REASONS AND DECISION

DECISION

[1] The Tribunal allows the appeal.

INTRODUCTION

[2] On February 22, 2016, the Tribunal's General Division found that the Appellant had voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On March 31, 2016, the Appellant filed an application for leave to appeal before the Appeal Division after having received the General Division's decision on March 1, 2016. Leave to appeal was granted on April 15, 2016.

ISSUE

[4] The Tribunal must decide if the General Division erred when it concluded that the Appellant did not have just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the Act.

THE LAW

[5] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

> (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> (c) The Board of Referees 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.

STANDARDS OF REVIEW

[6] The parties made no submissions concerning the applicable standard of review to the present file.

[7] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (A.G.) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division "acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[8] The Federal Court of Appeal further indicated that:

> Not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal.

[9] The Federal Court of Appeal concludes by underscoring that "[w]here it hears appeals pursuant to subsection 58(1) of the Department of Employment and Social Development Act, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act."

[10] The mandate of the Appeal Division of the Social Security Tribunal described in *Jean* was subsequently confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

ANALYSIS

[12] The parties agreed to have the Tribunal render the decision based on the evidence on file as well as their submissions.

[13] The Appellant stated that he had been hired exclusively as a forklift truck driver and that occasionally he would have to do some data entry. He had immediately told his employer about the disability in his right arm at his interview. For his own protection, the employer had him sign a document stating that he had a pre-existing condition. He and the employer had agreed that his duties would be limited to driving the lift truck and doing some data entry into the computer, and that he would not be able to perform any manual tasks or strain his right arm. He notes that he would have never accepted this job had the employment conditions been different than those proposed.

[14] The Appellant's testimony from the very beginning indicates that one of the owner's two sons refused to comply with the Appellant's employment conditions. This son, through various means, violated the employment agreement by forcing the Appellant to perform other tasks that were unsuitable to his physical condition and that did not comply with his employment conditions. The son in question also happened to be his immediate supervisor. He wouldn't allow him to use the forklift truck or the computer, which were the reason he was hired in the first place.

[15] Instead, he had him perform all kinds of manual work, including unloading the trailers with a [translation] "manual lift", commonly referred to as "pompeux" [pump]. He had to move loads weighing 1,000 kg, which had a negative effect on his arm. He complained to the owner's other son, and as a last resort, to the owner himself. Despite their good intention, they weren't able to keep the issue from getting worse and the Appellant eventually resigned.

[16] After having stated the contrary before the General Division, the Respondent is now stating that under the circumstances, the Appellant has shown that the work relationship was so intolerable that he was left with no choice other than to quit. The Respondent states that

no one should have to indefinitely put up with an intolerable work environment or an ongoing conflict situation created by supervisors.

[17] The Respondent therefore maintains on appeal that the Appellant had just cause to leave his employment under subparagraph 29(*c*)(x) of the Act, and that he has shown that, given the circumstances, this was the only reasonable alternative in his situation.

[18] The Tribunal is of the opinion that by finding that the Appellant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the Act, the General Division failed to consider the overall relevant facts in the file and therefore has committed an error in law – *Bellefleur v. Canada (A.G.)*, 2008 FCA 13.

[19] The evidence before the General Division clearly shows the open hostility of the owner's son, who was also the Appellant's immediate superior. The Appellant complained to the owner's other son, and as a last resort, to the owner himself. Despite their good intention, they weren't able to keep the issue from getting worse and the Appellant eventually resigned. Furthermore, the employer made statements, which were dubious, to say the least, to an agent of the Respondent following the Appellant's claim for benefits. The employer stated that the Appellant had not been hired as a forklift driver because he didn't have the necessary skills whereas the evidence before the General Division showed the exact opposite (Exhibit GD8-12).

[20] Having regard to the arguments in support of the Appellant's appeal and to the Respondent's position on appeal, and after reviewing the appeal file and the General Division's decision, the Tribunal agrees that the appeal should be allowed.

CONCLUSION

[21] The Tribunal allows the appeal.

Pierre Lafontaine

Member, Appeal Division