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

[TRANSLATION]

Citation: *P. G. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 143

Tribunal File Number: GE-16-1723

BETWEEN:

P. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: November 2, 2016

DATE OF DECISION: November 10, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, Mr. P. G., participated in the telephone hearing (teleconference) on November 2, 2016. Mr. Guy Renaud, from the *Conseil central de Québec Chaudière-Appalaches de la Confédération des syndicats nationaux* (CSN), represented the Appellant.

INTRODUCTION

[2] On January 6, 2016, the Appellant filed an initial claim for benefits, effective December 13, 2015. The Appellant stated that he had worked for Canada Bread Company Limited / McGavin Foods (Grupo Bimbo) from May 1, 1980, to December 10, 2015, inclusively, and that he stopped working for this employer due to a suspension or dismissal (Exhibits GD3-3 to GD3-14).

[3] On February 2, 2016, the Respondent, the *Canada Employment Insurance Commission* (Commission), informed the Appellant that he was not entitled to receive regular Employment Insurance benefits as of December 14, 2015, because he had stopped working for the employer, Canada Bread Company Limited / McGavin Foods, on December 10, 2015, due to his own misconduct (Exhibits GD2-19 and GD3-20).

[4] On February 23, 2016, the Appellant filed a request for reconsideration of an Employment Insurance decision (Exhibits GD3-21 and GD3-22).

[5] On April 5, 2016, the Commission informed the Appellant that it was upholding the decision it had made on February 2, 2016 (Exhibits GD3-28 and GD3-29).

[6] On April 5, 2016, the Commission informed Canada Bread Company Limited / McGavin Foods that it had upheld the decision regarding the loss of the Appellant’s job because of his misconduct (Exhibits GD3-30 and GD3-31).

[7] On April 26, 2016, the Appellant, represented by Mr. Guy Renaud, filed a notice of appeal with the Employment Insurance section of the General Division of the Social Security Tribunal of Canada (Tribunal) (Exhibits GD2-1 to GD2-7).

[8] On May 2, 2016, the Tribunal informed Canada Bread Company Limited / McGavin Foods that if it wanted to be involved as an "added party" in the present case, it would have to submit a request to the Tribunal by May 17, 2016 at the latest (Exhibits GD5-1 and GD5-2). The employer did not respond to that letter.

[9] This hearing was held via teleconference for the following reasons:

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

b) the fact that the Appellant or other parties are represented; and

c) this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit (Exhibits GD1-1 to GD1-4).

ISSUE

[10] The Tribunal must determine whether the Appellant lost his employment because of his misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

EVIDENCE

[11] The following evidence is contained in the file:

a) A Record of Employment dated December 30, 2015, indicates that the Appellant had worked for Canada Bread Company Limited / McGavin Foods from September 22, 2013, to December 10, 2015, inclusively, and that he stopped working for this employer due to his dismissal (code M – dismissal) (Exhibit GD3-15).

b) In statements made to the Commission on January 25, 2016, and on March 31, 2016, the employer explained that he dismissed the Appellant because he had punched one of his co-workers. The employer stated that the Appellant met with his supervisor to report the

co-worker in question because this person had put his ear plugs in the trash. The employer explained that the two employees in question (the Appellant and his co-worker) were fed up with each other. The employer explained that the Appellant had gone to see the supervisor and said: [translation] “If he keeps doing that, I’m going to flip out.” The employer stated that the supervisor had told the Appellant that this was not the way to react. The employer explained that, until this incident, he had not been aware of the issues between these two employees. The employer said he learned that the conflict between the employees in question had been ongoing for several years. The employer stated that he had heard that the Appellant’s co-worker owned firearms. He explained that, on December 10, 2015, the two co-workers—who worked on a production line—were talking to each other from a distance and swearing at each other. The employer explained that when the co-worker walked in front of the Appellant, he said something derogatory to him about his private life. The Appellant then struck his co-worker. The employer indicated that the co-worker in question had not physically provoked the Appellant when the Appellant hit him. The employer noted that other employees had witnessed the incident. The employer explained that the two employees were immediately suspended, on December 10, 2015, and that the dismissal occurred on December 23, 2015, in both cases. The employer indicated that the Appellant then filed a grievance regarding this situation, and the co-worker filed a complaint with the police. The employer stated that there was a zero-tolerance policy for violence in the workplace and that the Appellant, who had been working for the company for 35 years, had been aware of this policy. The employer noted that the Appellant knew he could be dismissed for hitting a co-worker. The employer indicated that he had nothing negative to say about the Appellant’s work, adding that this was the first time he had ever done something like this, and he had never received a warning for this type of behaviour before this incident. The employer noted that the Appellant was a colourful man who was not afraid to speak his mind. He explained that, at the factory where the Appellant worked, there were employees who had been there for 20 or 30 years and that, although there were often differences between them and they often spoke strongly to each other, there had never been any physical violence (Exhibits GD3-16 and GD3-25).

c) On or around February 5, 2016, the employer sent the Commission a copy of the letter of dismissal addressed to the Appellant on December 22, 2015 (Exhibits GD3-18 and GD4-2).

d) On March 22, 2016, the Appellant's union representative submitted that the Appellant had filed a grievance about the incident. The representative stated that the employer had a zero-tolerance policy for violence. He said he found it deplorable that the employer had done nothing, even though the Appellant had informed him of the situation on a number of occasions. The union representative said that the Appellant hit his co-worker only after the co-worker had approached him three times to make him angry and to attack his private life (Exhibit GD3-24).

e) On April 4, 2016, the employer indicated that the company had a zero-tolerance policy for violence, but that this policy had not been updated since the acquisition by Grupo Bimbo in 2014 and, therefore, could not be sent to the Commission (Exhibit GD3-26).

f) In his Notice of Appeal filed on April 26, 2016, the Appellant sent copies of the following documents:

   i. a letter from the Commission (decision under reconsideration) addressed to the Appellant on April 5, 2016 (Exhibit GD2-5, or Exhibits GD3-28 and GD3-29);

   ii. a letter from the employer addressed to the Appellant on December 22, 2015, advising him of his dismissal (Exhibit GD2-6 or GD3-18); and

   iii. a document entitled "*Syndicat des travailleurs(euses) de la Boulangerie Doyon (CSN) – Fédération du commerce*" (grievance no: 2016-01-04), indicating that the Appellant's union representative had filed a grievance on April 1, 2016, to dispute his dismissal (Exhibit GD2-7).

[12] The following evidence was presented at the hearing:

a) The Appellant went over the main elements of the file to show that he had not lost his job by reason of his own misconduct.

b) He explained that he had worked for the employer for nearly 35 years—since 1980. He said that he had never received a disciplinary notice from the employer during this period. The Appellant explained that, at the time of his dismissal, he was the person responsible for verifying orders and, before that, had held the position of team leader.

SUBMISSIONS

[13] The Appellant and his representative, Mr. Guy Renaud, presented the following observations and submissions:

a) The Appellant stated that he was dismissed for hitting a co-worker in the face during an altercation on December 10, 2015. He explained that a personal conflict with this co-worker, going back many years, had resurfaced. The Appellant indicated that the employer had not necessarily been aware of the history of the conflict that existed between him and his co-worker (Exhibits GD3-7, GD3-8, GD3-17 and GD3-23).

b) He explained that a few years before the incident on December 10, 2015, he and his spouse had been harassed in the workplace for something concerning their private life. The Appellant described how he had experienced difficulties at work after separating from his spouse, who worked at the same location that he did, in 2009. The Appellant stated that he had then met a new spouse, again at the same work location. He explained that his new spouse's former boyfriend also worked with them at the same location. The Appellant explained that this situation had exposed them to harassment in their workplace (for example, derogatory insinuations and comments from other employees toward the Appellant and his new spouse). He explained that he and his new spouse were on a leave of absence from work for medical reasons for three months in 2010–2011. When he returned to work, after previously holding the position of team leader, he returned the position responsible for verifying orders. The Appellant explained that when he returned to work in 2011, after his leave of absence, he had to work alongside

the employee with whom he had the altercation. The Appellant indicated that he had made comments to this employee because he complained about having to do required work and that he made derogatory comments toward the Appellant (for example, [translation] “slob”; “retard”; “shithead”; and comments about the Appellant’s salary). He said that he had advised his supervisor of the situation at that time. The Appellant noted that he had had a number of verbal altercations with this employee in the past and that, if the situation continued, he was going to do something about it. The Appellant said that he had warned the employee in question that he would hit him if he did not stop insulting the Appellant (Exhibit GD3-8). He claimed that the employee then threatened him—claiming that he owned a firearm. The Appellant said that he then dropped the issue and focused on his work, health, spouse and children. He explained that he ignored the co-worker in question and went for about two years without talking to him, until an initial incident that took place on December 6, 2015 (Exhibits GD3-7, GD3-8, GD3-17, and GD3-21 to GD3-23).

c) The Appellant explained how, on December 6, 2015, he had found brand-new ear plugs in the trash. He let someone from the occupational health and safety committee know about the situation, without knowing that they belonged to the employee with whom he had had the altercation. He explained that the person responsible for occupational health and safety reported the situation to the head of the factory so he could resolve the problem. The Appellant said that because he had reported the incident to the employer, the employee in question started insulting him (ex: [translation] “shithead”; “retard”; “hag”). He then told the employee to stop and that he was fed up with his insults. The Appellant indicated that he was not the type to stand there and take it, and he admitted to sometimes insulting the employee with whom he had an altercation (Exhibits GD3-7, GD3-8 and GD3-17).

d) The Appellant said that he met with his foreman (supervisor) on December 7, 2015, to tell him about the comments from the employee in question, and to ask him to intervene before the situation escalated. The Appellant stated that he told the supervisor that he had had enough of this employee’s insults and that the next time something happened, he did not know how he was going to react or what was potentially going to happen. He

noted that he had asked for help so that nothing more would happen. The supervisor told him not to hit the employee in question, that it was not worth it and to let it go. He that he never intended to hit his co-worker, but that he did not know what would happen if a situation like this happened again. The Appellant said that the employer did not follow up on his request to intervene. He said he found it deplorable that the employer did not do anything in this case. He emphasized that the employer had not told him he would be dismissed if he hit the co-worker in question. The Appellant noted that this employee had already had altercations with other employees—he had already hit someone and been suspended (Exhibits GD3-7, GD3-8, GD3-17 and GD3-23).

e) The Appellant explained that on December 10, 2015, he told the team leader that the employee in question was not wearing regulation shoes, and the team leader told the employee in question that it was the Appellant who had told on him. He said that the team leader told the employee to go change his shoes and, after that, the employee in question walked by the Appellant three times, making derogatory comments (ex: [translation] "shithead", "shut your mouth", "hag"). The Appellant noted that he did not react the first two times this employee had gone past him. He explained that he walked by a third time—this time making comments about his new spouse and how she would have been better off staying with her old boyfriend—he hit him. The Appellant said that he had had enough. He explained that the harassment he had endured before was starting all over again. The Appellant indicated that he punched his co-worker only once, hard, and that afterward, the co-worker's mouth was bleeding (Exhibits GD3-7, GD3-8 and GD3-17 and GD3-23).

f) He noted that the co-worker had not physically provoked him and that it was not a legitimate case of self-defence. The Appellant argued that the employee in question had crossed a line he should not have crossed. He said that after the incident, he met with the head of the factory. This was after he was suspended. Two weeks later, the employer informed him that he was dismissed, explaining that his actions did not align with the company values and regulations in force. The employer said that he should have minded his own business and that he was not a member of the occupational health and safety

team. The Appellant admitted that he had acted impulsively. He noted that the other employee was also dismissed (Exhibits GD3-7, GD3-8 and GD3-17 and GD3-23).

g) The Appellant said that he had not really been aware of the existence of a "non-violence" policy, but that he had known that violence was never tolerated in general. He explained that he had simply acted in the moment (Exhibit GD 3-27).

h) He indicated that his union had filed a grievance, on or around December 27, 2015, to dispute his dismissal (Exhibits GD3-7 and GD3-8, GD3-17 and GD3-23).

i) The Appellant argued that he had a right to benefits, given that he was the victim in this situation. He believes that the circumstances leading to the Commission's refusal to give him benefits were not considered fairly. He submitted that the Commission's decision in his case was unfounded in fact and in law (Exhibits GD2-3 and GD3-21 to GD3-23).

j) The representative submitted that the Appellant's actions had not been willful, but rather a "black out". He argued that the Appellant's actions had not constituted misconduct and that this situation did not correspond to the definition given to the term misconduct (***Tucker*, A-381-85**).

k) He argued that in the *Digest of Benefit Entitlement Principles*, misconduct is interpreted as follows: "While this is not an absolute principle, it can also be said that, to constitute misconduct, the actions or omissions alleged must have been voluntary or willful or of such a careless or negligent nature that one could say the employee willfully disregarded the effects their actions would have on their ability to fulfill the conditions of their employment. [...]" (Chapter 7 – Section 1: Introduction).

l) The representative indicated that in order for an action to be willful, it must have been thought through, and that this was not the case with the Appellant's action. He explained that the Appellant had already been under a lot of pressure in the past, to the point of "burn-out," because of harassment after his separation and meeting his new spouse. The representative noted that the Appellant and his spouse had even had suicidal thoughts at one point.

m) The representative emphasized that society does condone violence. He argued that Chapter 7, Subsection 3.3.2 of the *Digest of Benefit Entitlement Principles* dealing with acts of violence states:

> The cause of acts of violence that happen either at or outside the workplace must be assessed before a decision of misconduct can be taken. The act itself does not always lead to a conclusion of misconduct. Details to consider when acts of violence lead to the dismissal from employment would be: [...] Were threatening remarks made? Was there aggressive, hostile or menacing behaviour that created a reaction of violence? [...] As always, an officer will consider whether all reasonable alternatives were exhausted. If this was an ongoing issue, did the claimant speak to their supervisor/employer/union representative? The facts gathered must provide the rationale behind the behaviour. The facts should explain why the claimant felt that violence was the only alternative. Acts of violence may constitute a reaction to a disagreeable climate between individuals and are typified by acts of physical assault on another person Acts of violence may constitute misconduct. A conclusion of misconduct must nonetheless be based on careful consideration. For example, after asking for protection from his or her employer, the claimant may have been provoked and forced to defend themselves. [...].

n) The representative noted that the Appellant had alerted his employer to the situation on December 7, 2015. The representative indicated that in its submission, the Commission explained that it had contacted the employer and the employer claimed to have spoken to the other employee, even though the Appellant had not necessarily been aware of it (Exhibit GD4-3). Based on the representative's assessment, this intervention must not have been very productive because only three days later, the situation reoccurred. The representative argued that after meeting with the other employee, the employer should have taken measures to protect the Appellant. It is the representative's opinion that had the employer been proactive in this matter, the latter would have met with both employees and imposed disciplinary measures, for example.

o) He submitted that the Appellant had received threatening comments, that had been provoked and then forced to defend himself. The representative noted that the Appellant did not react to the first two altercations with his co-worker, but only after he was insulted and criticized. He explained that even though his supervisor had warned him not to react, the Appellant reacted because he was insulted and was pushed over the edge when the employee in question had attacked the Appellant's private life. The representative explained that at that moment, the harassment he experienced in the past

came rushing back to him. He emphasized that it had been a “black out” and that the Appellant punched the employee only once and did not continue to hit him—it was not a fight.

p) The representative explained that the Appellant did something regrettable, but that it was not a willful action and rather an action taken because his private life had been attacked. According to the representative, the Commission did not consider these elements when making its decision. He asked that the appeal be allowed.

q) Regarding the grievance filed with the purpose of disputing the dismissal, the representative indicated that an out-of-court settlement had been reached between the Appellant and the employer in October 2016. He indicated that the Appellant returned to work on October 9, 2016 (Exhibit GD3-24).

ANALYSIS

[14] The relevant statutory provisions are set out in the appendix to this decision.

[15] Although the Act does not define the term “misconduct”, the case law, in ***Tucker*** **(A-381-85)**, indicates the following:

> In order to constitute misconduct the act complained of must have been wilful or at least of such a careless or negligent nature that one could say the employee wilfully disregarded the effects his or her actions would have on job performance.

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

> [...] Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces wilful or wanton disregard of employer’s interest, as in deliberate violations, or disregard of standards of behaviour which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent [...].

[17] In ***Mishibinijima*** **(2007 FCA 36)**, the Court reiterated the following:

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

[18] In ***McKay-Eden*** **(A-402-96)**, the Court made the following specification: "In our view, for conduct to be considered "misconduct" under the ***Unemployment Insurance Act,*** it must be wilful or so reckless as to approach wilfulness."

[19] These elements can also be found in the following decisions: ***Hastings*** (A-592-06), ***Lee*** (A-64-06), ***Caul*** (A-441-05), ***Wasylka*** (A-255-03), ***Locke*** (A-72-02), ***Langlois*** (A-94-95) and ***Secours*** (A-352-94).

[20] The Court defined the legal notion of misconduct, for the purposes of subsection 30(1) of the Act, as willful misconduct, where the claimant knew or ought to have known that his or her conduct was such that it would result in dismissal. To determine whether misconduct can result in dismissal, there must be a causal relationship between the misconduct of which the claimant was accused and the loss of his or her employment. The misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment (***Lemire*****, 2010 FCA 314**).

[21] In ***Marion*** **(A-135-01)** , the Court reiterated the following:

> The role of the Board of Referees was to determine not whether the severity of the penalty imposed by the employer was justified or whether the employee's conduct was a valid ground for dismissal, but rather whether the employee's conduct amounted to misconduct within the meaning of the Act: ***Fakhari and Attorney General of Canada*** (1996), 197 N.R. 300 (F.C.A.); ***A.G.C. v. Namaro*** (1983), 46 N.R. 541 (F.C.A.); ***Canada v. Jewell*** (1994), 175 N.R. 350 (F.C.A.); ***A.G.C. v. Secours*** (1995), 179 N.R. 132 (F.C.A.); ***Attorney General of Canada v. Langlois***, A-94-95, February 21, 1996 (F.C.A.).

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

[23] The Court has reaffirmed the principle that the burden of proof rests with the employer or the Commission to show that the claimant lost his or her job because of his or her misconduct (***Lepretre*****, 2011 FCA 30;** ***Granstrom*****, 2003 FCA 485**).

[24] For the alleged act to constitute misconduct within the meaning of section 30 of the Act, it must be wilful or deliberate, or of such a careless or negligent nature that it appears to have been committed willfully. There must also be a causal relationship between the misconduct and the dismissal.

[25] Determining whether an employee's conduct that results 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.

[26] In this case, the Appellant's alleged act of hitting another employee in the face clearly constitutes misconduct within the meaning of the Act.

[27] In the dismissal letter addressed to the Appellant on December 22, 2015, the employer provided him with the following direction:

> [translation] The investigation also revealed that your colleague came to your workstation three (3) times and that it was during the third "visit" that his insults were directed at your private life, causing you to react immediately to his words and punch him in the face. [...] we are regrettably obligated to terminate your employment as of today's date (Exhibit GD3-18).

Willfulness of the Alleged Action

[28] The Appellant admitted that he had committed the act of which he is accused and that resulted in his dismissal.

[29] He indicated that he punched his co-worker in the face after the co-worker had insulted him on several occasions. He said that he did what he did because of a longstanding conflict with the employee in question going back several years. He explained that, right before the incident, the co-worker in question had made derogatory comments, insulted him and swore at him. The Appellant explained that he could not take it anymore, and so he punched this employee in the face.

[30] Despite the Appellant's description and the circumstances in which the action occurred, the Tribunal finds that the Appellant's act approaches wilfulness. His action was conscious,

deliberate or intentional (***Mishibinijima*, 2007 FCA 36; *McKay-Eden*, A- 402-96; *Tucker*, A-381-85**).

[31] The Tribunal finds that the Appellant consciously chose to defy a fundamental requirement of his employment. By acting this way, the Appellant broke the bond of trust that connected him to his employer (***Tucker*, A-381-85**).

[32] The Tribunal is of the opinion that the Appellant had to have been aware that violence toward a co-worker is entirely incompatible with the duties assigned to him to perform his job.

[33] By committing this act, the Appellant violated a completely legitimate expectation of his employer.

[34] The employer indicated that there was a zero-tolerance policy for violence in the workplace and that the Appellant, who had been working there for 35 years, had been aware of the existence of such a policy (Exhibit GD3-25).

[35] The employer stated that the Appellant knew he could be dismissed for hitting a co-worker.

[36] The dismissal letter that the employer sent to the Appellant also indicated this:

> [translation] Considering that the "individual" is at the core of our organizational values, you must understand that at no time is violent behaviour, or derogatory or disrespectful words, tolerated in our organization, no matter what the reason that provoked it. When you act the way you did, you violate this value that is crucial within our organization. Workplace violence is defined as much by physical actions as it is by words: the impact and consequences are equally severe and irrevocable (Exhibits GD3-18).

[37] Even though the Appellant claimed that he had not really been aware of the existence of a non-violence policy, he said he had known that, in general, violent behaviour was never tolerated and that he had acted in the moment or under impulse (Exhibits GD3-17 and GD3-27).

[38] The Appellant's testimony indicates that he met with the supervisor on December 7, 2015, to let him know that he had been subjected to derogatory and insulting comments from the co-worker in question. The Appellant explained that he had told his supervisor that if this situation happened again, he did not know how he would react.

[39] The Appellant stated that the supervisor then told him not to hit the employee in question, that it would not be worth it and to let it go (Exhibit GD3-23). Despite his employer's warning, the Appellant decided to take justice into his own hands.

[40] The Appellant failed to consider the standards of behaviour that the employer had the right to expect of him (***Tucker*, A-381-85**).

[41] The Appellant breached an express or implied duty of the contract of employment (***Tucker*, A-381-85; *Lemire*, 2010 FCA 314**).

[42] The Tribunal does not accept the argument that the Appellant's representative has presented, namely, that the Appellant had no choice but to defend himself physically against the employee in question. It was the Appellant who had hit his co-worker. The Appellant in fact stated that he did not hit his co-worker out of self-defence and that the co-worker in question had not provoked him physically (Exhibits GD3-17 and GD3-23). The Appellant said that he did what he did because he was sick of the co-worker in question attacking his private life (Exhibits GD3-117 and GD3-23).

[43] The Tribunal is of the view that the Appellant's alleged act was of such magnitude that he should normally have foreseen 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, as a result, dismissal was a real possibility (***Tucker*, A-381-85; *Mishibinijima*, 2007 FCA 36**).

Severity of the Sanction Imposed

[44] The Appellant's representative argued that the employer should have taken measures to protect the Appellant after meeting with the employee involved in the altercation. The representative submitted that if the employer had been proactive in this matter, the latter would have met with the employees in question and imposed a disciplinary measure, for example.

[45] On this aspect, the Tribunal reiterates that the case law has established that its role is not to determine whether the dismissal is justified or whether the sanction imposed on the Appellant was appropriate, but to determine whether the Appellant's action constitutes misconduct within the meaning of the Act (***Marion*, 2002 FCA 185**).

Harassment at Work

[46] The Appellant also argued that his alleged act was related to harassment he had experienced in the workplace several years earlier. To explain his actions, the Appellant said that he felt like the harassment he had experienced in the past was starting all over again.

[47] The Tribunal cannot support the Appellant's argument. The harassment the Appellant said he had been subjected to cannot serve to justify his act of violence toward one of his co-workers.

Cause of the Dismissal

[48] 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**).

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

[50] That is why the Tribunal finds that the Appellant's action constitutes misconduct within the meaning of the Act and that the Appellant lost his employment through his own fault. His dismissal is the direct consequence of the action of which he was accused (***Namaro*, A-834-82; *MacDonald*, A-152-96; *Cartier*, A-168-00**).

[51] Based on the evidence and the case law submitted, the Tribunal determines that the Appellant lost his employment because of his misconduct and that the Commission's decision to disqualify him from receiving Employment Insurance benefits is thereby justified under the circumstances.

[52] The Tribunal concludes that this appeal has no merit.

CONCLUSION

[53] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

APPENDIX

THE LAW

Employment Insurance Act

29 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;
>
> **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, and
> >
> > **(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.
>
> **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 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

(xiv) any other reasonable circumstances that are prescribed.

30 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;

(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. The length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits.

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(*a*), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

Employment Insurance Regulations (Regulations)