



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. C. B.*, 2017 SSTADEI 18

Tribunal File Number: AD-16-218

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

C. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: November 22, 2016

DATE OF DECISION: January 23, 2017

DECISION

[1] The appeal is allowed. The decision of the General Division is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] Previously, a member of the General Division allowed the Respondent's appeal. In due course, the Commission filed an application for leave to appeal and leave to appeal was granted.

[3] A teleconference hearing was held. The Commission and the Respondent each attended and made submissions.

THE LAW

[4] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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.

ANALYSIS

[5] This case is about whether or not the General Division member correctly determined the Respondent had just cause to voluntarily leave her employment.

[6] The Commission submits that the General Division member erred in law by not applying the established jurisprudence of the Courts. In their view, the jurisprudence stands for the proposition that just cause will not be established if the claimant left their

employment for personal or purely financial reasons, as is the case here. They ask that their appeal be allowed.

[7] The Respondent argues that she has been unable to afford her rent since her daughter (who had been contributing) moved out. In her view, her only reasonable option at that point was to move to a more affordable province. As this required that she leave her employment, she submits that the General Division member was correct in finding that she had shown just cause to do so.

[8] The General Division member, after summarizing the evidence and submissions, stated the law. He then determined (at paragraph 21 of his decision) that the Respondent left her employment for “financial reasons”. The member then concluded (at paragraph 28) that “given the economic circumstances she found herself in” the Respondent had shown just cause. He then allowed the appeal.

[9] Unfortunately, I must agree with the Commission that in coming to this conclusion the General Division member ignored the established jurisprudence of the Courts and thereby erred in law.

[10] Representative of this jurisprudence is *Canada (Attorney General) v. Richard*, 2009 FCA 122. In that case, the Federal Court of Appeal summarized the law in most emphatic terms at paragraph 14:

Case law is nonetheless clear on this issue, and [the Commission] has complained that it was not followed. How many times does it have to be repeated before umpires understand and the Chief Umpire ensures that they have understood? However noble and legitimate the desire to improve one's lot may be, this desire is not, for the purposes of sections 29 and 30 of the Act, a legal justification for voluntarily leaving one's employment. In *Langlois*, [*Canada (Attorney General) v. Langlois*, 2008 FCA 18], above, the Court wrote as follows at paragraph 31 of the reasons for its decision:

[31] While it is legitimate for a worker to want to improve his life by changing employers or the nature of his work, he cannot expect those who contribute to the employment insurance fund to bear the cost of that legitimate desire. This applies equally to those who decide to go back to school to further their education or start a business and to those who simply wish to earn more money: see *Canada (Attorney General) v. Tremblay* (1994), 172 N.R. 305 (F.C.A.); *Astronomo v. Canada (Attorney General)* (1998), 37 C.C.E.L. (2d) 141 (F.C.A.); *Canada (Attorney General) v. Martel*, (1994), 7 C.C.E.L. (2d) 130 (F.C.A.). In the words of this Court in *Campeau*, above, at paragraph 21, “sincerity and inadequate income do not constitute just cause under section 30 of the Act, allowing [the claimant] to leave her employment and making the Employment Insurance system bear the cost of supporting her.”

[11] It is difficult for me to imagine how the Federal Court of Appeal could have been clearer.

[12] I find that by not considering and applying the jurisprudence of the Courts, the General Division member erred in law. I am obligated to intervene to correct that error.

[13] If the member had considered and applied the above line of cases to the findings of fact he made in his decision, he could have come to only one possible conclusion: that because the Respondent had left her employment for personal financial reasons, she had not shown just cause within the meaning of the *Employment Insurance Act*.

[14] The General Division decision cannot stand.

CONCLUSION

[15] For the above reasons, the appeal is allowed. The decision of the General Division member is rescinded and the determination of the Commission is restored.

Mark Borer

Member, Appeal Division