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

Citation: *T. R. v. Canada Employment Insurance Commission,* 2017 SSTGDEI 76

Tribunal File Number: GE-16-4100

BETWEEN:

T. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division—Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: May 11, 2017

DATE OF DECISION: June 2, 2017

Canada

REASONS AND DECISION

APPEARANCES

[1] The appellant, T. R., was present at the hearing by videoconference on May 11, 2017.

[2] The respondent, the Canada Employment Insurance Commission (the Commission) was absent during the hearing.

INTRODUCTION

[3] On July 19, 2016, the appellant filed a claim for employment insurance benefits effective July 17, 2016. He stated that he worked as a "[translation] produce manager—retail store" for the employer Provigo X M. B. (Alimentation M. B. inc.), from November 20, 2012, to July 11, 2016, inclusively, and then left voluntarily (exhibits GD3-3 to GD3-13).

[4] On August 30, 2016, the Commission informed the appellant that it could not pay him regular employment insurance benefits as of July 10, 2016, because he had voluntarily stopped working for Alimentation M. B. Inc. on July 16, 2016, without just cause within the meaning of the *Employment Insurance Act* (the Act) (exhibits GD3-21 and GD3-22).

[5] On September 7, 2016, the appellant filed a Request for Reconsideration of an Employment Insurance Decision (exhibits GD3-23 to GD3-31).

[6] On October 4, 2016, the Commission informed the appellant that the decision of August 30, 2016, regarding his voluntary departure was upheld (exhibits GD3-35 and GD3-36).

[7] On November 3, 2016, 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 GD2-25).

[8] On February 21, 2017, the Tribunal informed the employer, Alimentation M. B. inc. that, if it wished to be added as an "added party" to this case, it had to submit a request no later than March 8, 2017 (exhibits GD5-1 and GD5-2). The employer did not act on that letter.

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

(a) Videoconferencing was available in the appellant's location; and

(b) This form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

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.

EVIDENCE

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

(a) A record of employment dated July 26, 2016, shows that the appellant worked for the employer, Alimentation M. B. inc., from November 20, 2012, to July 16, 2016, inclusively, and that he stopped working for the employer after he had voluntarily left (code E—voluntary leaving) (Exhibit GD3-14).

(b) On August 19, 2016, the employer (M. B., owner) stated that the appellant had resigned, giving one week's notice. He stated that the assistant manager duties performed by the appellant had always remained the same and had not changed. The employer said that the appellant was in continual disagreement with his supervisor about the assignment (dispersion) of tasks and the work schedule. The employer noted that the appellant thought he was doing more than the others. The employer stated that the appellant did not get along well with others. He stated that the appellant was in a unionized position and that he filed a grievance after receiving a written warning. The employer stated that the appellant never spoke to him about the tasks he had to perform or the harassment he claims to have experienced from his supervisor. The employer stated that he would send the Commission the appellant's job description (Exhibit GD3-19).

(c) On September 29, 2016, the employer (M. B.) explained that the appellant had a job performance problem, that he seemed to have lost interest and that a number of meetings had been held with him in that regard. The employer stated that there was a disagreement between the appellant and a clerk (Mr. B) and that the disagreement was akin to jealousy. In response to a question about the appellant's allegation that the other employee was doing only one type of work while the appellant and other clerks were performing all the duties, the employer stated that that was questionable. The employer specified that the other employee in question was a retiree who worked three days a week as a clerk, whereas the appellant was an assistant manager and his duties were different from those of a clerk (Exhibit GD3-33).

(d) On September 29, 2016, the employer provided the Commission with a copy of the appellant's letter of resignation, dated July 11, 2016. In the letter, the appellant explained to the employer that a reorganization was forcing him to leave and that his last day of work would be July 16, 2016 (Exhibit GD3-34).

(e) On July 19, 2016, and on September 7, 2016 (Request for Reconsideration), the appellant provided the Commission with a copy of the following documents:

i. A "grievance form" dated April 25, 2016, to contest a written notice from the employer dated April 20, 2016 (Exhibit GD3-17); a letter dated April 27, 2016, from the United Food and Commercial Workers union (UFCW, Local 500) to the employer advising the employer that the UFCW had not obtained a satisfactory settlement with respect to the written notice to the appellant dated April 20, 2016, and that the UFCW was proceeding to the second level of the grievance procedure (Exhibit GD3-18).

ii. A "grievance form" dated April 25, 2016, to contest a written notice from the employer dated April 20, 2016 (exhibit GD3-17 or GD3-27).

iii. A letter from the employer (Provigo) to the appellant dated April 20, 2016, regarding the appellant's unsatisfactory job performance. In the letter, the

employer informed the appellant that it was deeply concerned about his poor job performance. The employer informed the appellant that, unfortunately, his work did not meet expectations and that his actions were affecting the smooth operation of the department and customer service of Provigo M. B.. The employer stated that the appellant's work was unacceptable and could not be tolerated (exhibits GD3-28 and GD3-29).

iv. A letter from the employer (Provigo) to the appellant dated June 2, 2016, regarding the appellant's role as assistant produce manager. In the letter, the employer informed the appellant that, as a result of its meeting with the appellant the previous month, it was compelled to provide him with a list of daily tasks to be performed as assistant manager. The employer advised the appellant that the failure to fulfill his responsibilities as an assistant would result in a more rigorous follow-up in the form of a coaching plan (exhibits GD3-30 and GD3-31).

(f) In his Notice of Appeal filed on November 3, 2016, the appellant provided a copy of the following documents:

i. A letter of resignation from the appellant to the employer dated July 11, 2016, explaining that a reorganization was forcing him to leave and that his last day of work would be July 16, 2016 (exhibit GD2-8 or GD3-34);

ii. A letter from the employer (Provigo) to the appellant dated April 20, 2016, regarding the appellant's unsatisfactory job performance (exhibits GD2-9 and GD2-10 or exhibits GD3-28 and GD3-29).

iii. A letter from the employer (Provigo) to the appellant dated June 2, 2016, regarding his role as assistant produce manager (exhibits GD2-11 and GD2-12 or exhibits GD3-30 and GD3-31).

iv. A table entitled "Rapp. des ventes par rayon – 29 mai 2016" showing sales by department for the week of May 22, 2016, to May 28, 2016, inclusively. The

appellant's calculations, based on this table, are intended to show that the gross profit from sales in the produce department must be $15,733.00 for the week, based on sales totalling $52,440.56, which represents an average sale of $312.00 per hour (Exhibit GD2-13).

v. A weekly employee work schedule for the week of May 22, 2016, to May 28, 2016, inclusively, showing that appellant worked 40 hours in the produce department as an assistant manager/supervisor (Exhibit GD2-14).

vi. A letter from appellant dated July 19, 2016, giving reasons for his voluntary leaving (exhibits GD2-15 and GD2-16 or exhibits GD3-15 and GD3-16).

vii. A Request for Reconsideration of an Employment Insurance Decision (exhibits GD2-17 to GD2-19 or exhibits GD3-23 to GD3-26).

viii. A "grievance form" dated April 25, 2016, to contest a written notice from the employer dated April 20, 2016 (exhibits GD2-20 and GD2-21 or Exhibit GD3-17).

ix. A record of employment dated July 26, 2016, showing that the appellant worked for the employer, Alimentation M. B. inc., from November 20, 2012, to July 16, 2016, inclusively, (Exhibit GD2-22 or Exhibit GD3-14).

x. Letter from the Commission (Service Canada) to the appellant dated August 2, 2016, stating that the requested documents had been sent (Exhibit GD2-23).

xi. Letter from the Commission (reconsideration decision), dated October 4, 2016 (Exhibit GD2-24 or exhibits GD3-35 and GD3-36).

xii. Letter from the Commission (initial decision) dated August 30, 2016 (Exhibit GD2-25 or exhibits GD3-21 and GD3-22).

[12] The evidence presented at the hearing is as follows:

(a) The appellant recalled the circumstances that led him to voluntarily leave his employment at Alimentation M. B. inc. on July 16, 2016, to demonstrate that his voluntary leaving was justified within the meaning of the Act. He stated that he sent the employer a notice dated July 11, 2016, indicating that he would cease to work for the employer on July 16, 2016 (exhibits GD2-8, GD3-3 to GD3-14 and GD3-34).

(b) The appellant stated that he was an assistant manager when he started working for the employer in November 2012. He stated that he had been hired by M. B., the current owner of the food store Provigo X M. B (Alimentation M. B. inc.). The appellant said that he was hired when M. B. became the owner of Provigo X M. B. (Alimentation M. B. inc.). The appellant said that he had first applied for employment at Provigo's head office in X. He stated that, after a job interview with Provigo, he was contacted by Provigo X (X), where M. B. was then a manager. He said he then had a job interview with M. B.. The appellant said that approximately two months after his job interview with M. B., the manager of Provigo X told him that M. B. wanted the appellant to contact him because he had just acquired a food store (Provigo X M. B.—Alimentation M. B. inc.). The appellant stated that, after contacting M. B., M. B. told him that he absolutely wanted him to come and work at his new store (exhibits GD2-1 to GD2-25).

PARTIES' ARGUMENTS

[13] The appellant submitted the following observations and arguments:

(a) The appellant argued that he was justified within the meaning of the Act to leave his employment with the employer. He said that he had worked for the employer for three and a half years as an assistant produce manager. He stated that between the time that he was hired, in November 2012, and the time that problems arose with an employee, on April 16, 2016, he did not have any particular problems in performing his job. He said that, before April 16, 2016, he had never received a written warning or criticism from the employer. He stated that, as an assistant manager in the

produce department, he had to assign tasks (for example unpacking and storing goods, packaging, and recording quantities and losses) and give instructions to clerks when the manager was absent. The appellant specified that the second floor of the food store was used for the following: storage of produce, packaging, cutting and refrigeration. He noted that it was a dark place from which one cannot see outside. The appellant said in summary that it was not a pleasant place to be. He stated that he had always done his job well. The appellant stated that Jean Galette, the store manager when he was hired, was always satisfied with the sales achieved in the produce department (exhibits GD2-1 to GD2-25, GD3-15, GD3-16 and GD3-32).

(b) The appellant stated that his problems with the employer began on April 16, 2016, when a clerk, Mr. B., refused to follow his instructions to go and work in production on the second floor of the store. The appellant said that when the employee in question refused to comply, he told him that he would settle the matter when M. B. arrived. He noted that the employee had reacted very negatively when he spoke to him (exhibits GD2-1 to GD2-25).

(c) The appellant stated that he discussed the situation with the owner on the very day that the event occurred with the clerk in question. He said that the owner sided with the clerk in question. The appellant stated that, in his discussion with the owner, the owner told him that, even though the manager was not present, this was what the manager wanted the employee in question to do (continue to work on the first floor). The appellant said he told the owner that he did not think this was right since, in the absence of the manager, he could give instructions. The appellant said he noticed that the owner had taken a position in favour of the manager and was protecting the clerk in question. The appellant then asked the owner if he wanted him (the appellant) to do production (on the second floor) and the owner said yes. He said he then went to work in production on the second floor as requested by the owner. The appellant pointed out that the owner was surprised by his reaction. In his opinion, his credibility as assistant manager was diminished because of the

owner's decision regarding the employee in question. He noted that the employee is an acquaintance of the boss, that he had a confidential agreement with the boss and that the boss was protecting him. The appellant stated that this employee was only placing merchandise (display) in the store and that he always had light work. He stated that the clerk was never scheduled when the store was receiving a shipment. The appellant stated that, although the employee was under his supervision, he did what he wanted and never came to see him for the boss's instructions. He stated that the employee did not listen to his instructions in the absence of the manager. The appellant stated that this employee performed only one task while the others performed all the tasks, which made their work heavier (exhibits GD2-1 to GD2-25, GD3-15, GD3-16 and GD3-20).

(d) The appellant stated that he had spoken with the representative of the UFCW, N. L., about the situation with the employee in question and the owner. He maintained that it was from the moment he discussed the situation with the union that he began to have problems with the employer. The appellant stated that, when he explained the situation to the union representative, he was told that he was right and that the employee in question should have gone to do the production work requested. He said the union representative told him that his having gone to do production diminished his credibility as assistant manager (exhibits GD3-15, GD3-16 and GD3-32).

(e) He stated that, a few days after the incident on Saturday, April 16, 2016, the union representative intervened with the owner, telling the owner that the clerk in question had to obey the instructions given in the manager's absence and asking the owner to ensure that the situation experienced by the appellant with that clerk did not recur. The appellant stated that the owner accepted the union's request and said that he would tell the manager that such a situation would not happen again. The appellant stated that the owner was very surprised by the union representative's intervention. He noted that the owner was uncomfortable with having to change his decision in

front of the union representative and that he had done so reluctantly (exhibits GD2-1 to GD2-25, GD3-15 and GD3-16).

(f) The appellant alleged that, as a result of the union's intervention, the owner sought revenge by issuing him a letter stating that his performance was unsatisfactory (letter dated April 20, 2016—exhibits GD2-9 and GD2-10 or exhibits GD3-28 and GD3-29). He recounted that the employer summoned him to a meeting on April 20, 2016. The appellant stated that he went to the meeting, which was attended by his union representative, N. L., the owner and the manager. The appellant stated that, at the meeting, the owner criticized him for his job performance. The appellant argued that the criticisms had nothing to do with his work, since his work was always done well. The appellant pointed out that, at the meeting, the employer did not say anything about the complaints in the letter dated April 20, 2016. The appellant believes that the letter had already been prepared. He also claimed that the boss started to harass him by assigning him heavier tasks, for example unstacking pallets of merchandise alone, doing a great deal of packaging on the second floor and taking care of garbage cans collected by the clerk in question (exhibits GD2-1 to GD2-25, GD3-15, GD3-16 and GD3-23 to GD3-26, GD3-28 and GD3-29).

(g) The appellant stated that, after receiving the notice, a grievance was filed by his union, dated April 25, 2016 (exhibits GD2-20 and GD2-21 or exhibit GD3-17). The appellant argued that the notice was unwarranted. He pointed out that the grievance specifies that the warning he received from the employer was unreasonable and without just cause. The appellant stated that the union had asked the employer to withdraw the written warning it had given him, but the employer had refused to do so. He noted that the grievance had not been heard.

(h) The appellant recounted that, following the filing of his grievance in April 2016, during an informal discussion with the owner regarding the performance of his work, the owner told him: "[translation] If you're not happy, leave. . . . Why are

you staying?" The appellant stated that he had asked the owner whether he would like to have someone do production on the second floor all day.

(i) The appellant said the employer summoned him to a second meeting, on June 3, 2016. The appellant stated that he attended the meeting, during which the owner, the manager and the union representative of the store employees, V. S., were present. He said that, at the meeting, the employer gave him a notice regarding his job performance (letter dated June 2, 2016—exhibits GD2-11 and GD2-12 or exhibits GD3-30 and GD3-31). The appellant stated that the employer did not indicate what deficiencies were being alleged in the letter dated June 2, 2016. The appellant said that he disagreed with the content of the letter. The appellant pointed out that, although the employer refers in the letter to a meeting during the previous month, there was no meeting in May 2016 (exhibits GD2-1 to GD2-25, GD3-23 to GD3-26 and GD3-30 to GD3-32).

(j) The appellant stated that, at the meeting on June 3, 2016, the employer criticized him for not performing his duties well, saying that his work was deficient and his performance, poor. The appellant stated that the only way to make the employer understand that its criticisms of his performance were not justified was to provide the employer with sales figures for his department. The appellant said the owner told him that he wanted sales of $250.00 per employee per hour. The appellant stated that he calculated that his performance during the week of May 22, 2016, to May 28, 2016, was $312.00 per hour (exhibits GD2-13 and GD2-14). Using a table ("Rapp. des ventes par rayon – 29 mai 2016"—Exhibit GD2-13), the appellant stated that, on the basis of his calculations, he had been able to show the owner that his performance exceeded what the owner was asking for. The appellant further stated that, overall, during the week of May 22, 2016, to May 28, 2016, sales in the produce department totalled $52,440.16, which he estimated was a profit of $15,733.00, or approximately 30% of sales. He said that, given a total of 168 hours (seven days) per person, this represented sales of approximately $312.00 per hour. The appellant asked how the owner could say that his performance was poor when

the numbers showed otherwise. He said that he explained the situation to his union, which told him that management was "[translation] out to lunch." The appellant argued that the owner did not know what he was criticizing and that the purpose of the meeting to which he had been summoned was to harass him one more time. He stated that the owner and the manager also told him that "[translation] flowers and ordering" were not done properly. In this regard, the appellant clarified that, each week, the employer received flowers delivered on mobile racks. He stated that he had been criticized by the employer because flowers on display to customers were dry or damaged on a weekend he had not worked. The appellant stated that his role was to take the flowers out of the store and display them outside and that he had properly fulfilled that responsibility. He claimed that the manager's behaviour at the meeting on June 3, 2016, was intimidating. The appellant said that he found the manager's attitude aggressive because the manager was gesticulating a great deal with his hands as he criticized the appellant's work. He said that he told the union representative how the manager was reacting but the manager then calmed down. The appellant pointed out that he sought the advice of the store's union representative (V. S.), who had attended the meeting on June 3, 2016, and she told him that the employer was picking on him (exhibits GD2-1 to GD2-25).

(k) The appellant stated that, following the meeting with the employer on June 3, 2016, there was no grievance to challenge the second notice (second warning) he received regarding his performance. There was no follow-up by the union to that effect. The appellant stated that he had lost confidence in his union and in his employer (exhibits GD2-1 to GD2-25, GD3-20, GD3-32).

(l) The appellant stated that, after the meeting on June 3, 2016, he approached his union to arrange to be transferred to another store but was unable to obtain such a transfer. He said that the representative told him it was impossible to transfer him to another store. The appellant stated that there had been no initiative by the union representative and that she was no longer fighting for him. He pointed out that transfers had been possible in other cases but the representative had not told him

why it was not possible in his case (exhibits GD2-1 to GD2-25, GD3-20 and GD3-32).

(m) The appellant stated that another event occurred on June 23, 2016, when the manager gave him a verbal warning for not having programmed the store's specials (entering the specials into the computer—SPLAN) even though he had not been told to do so. The appellant said that, on the afternoon of June 23, 2016, at approximately 3 p.m., when the produce order was late, the manager told him that he had forgotten to program the specials (SPLAN) and that, as punishment for having forgotten, he would have to unpack the pallets of merchandise (produce) that would be delivered that afternoon. The appellant said he was stunned by this demand, which he accepted, because it is the manager's responsibility to program the specials. The appellant explained that he is responsible for programming the specials in the manager's absence, but the manager was present when he made this accusation. The appellant submitted that the person who was supposed to program the specials must have forgotten to do so, and the manager wanted to lay the blame on him. The appellant believes that the manager wanted to overload him with work as another way of intimidating him. He stated that it was for this reason that he had spoken of intimidation by the manager (exhibits GD2-1 to GD2-25, GD3-20, and GD3-23 to GD3-26).

(n) With respect to the appellant's assertion that the manager was constantly changing his mind about his instructions, the appellant stated that this event occurred in the days following the event on June 23, 2016, and not the day before, as indicated in a statement dated August 22, 2016 (Exhibit GD3-20). He stated that, at the time of this event, the manager had initially asked him to work on the first floor to stock the shelves and had asked another employee to go to the second floor to unpack the order. The appellant stated that, when the order was delivered, the manager changed his instructions and asked him to unpack the order while the other employee, who had initially been assigned this task, stocked the shelves. The appellant stated that

this was another event that exacerbated the situation and added fuel to the fire (Exhibit GD3-20).

(o) The appellant explained that he met with union representatives (V. S. and N. L.) on July 5, 2016, to ask them to speak with the owner to establish a rotation of duties with the clerk (Mr. B.) who did not want to follow the instructions he was giving as assistant manager. The appellant stated that the union representatives informed him that the employer had refused the request for a rotation of duties. The representatives then told him that the employer felt he worked better on the second floor (production), unpacking the merchandise, than on the sales floor or area. He said the representatives told him that the clerk in question would remain in the work area on the first floor. In the appellant's view, the employer was discriminating against him. He pointed out that the owner's statement was completely false and showed a lack of co-operation. In the appellant's view, the owner's decision further diminished his credibility as an assistant manager, compared with a clerk who was a friend of the boss. He argued that he has 25 years of experience as a produce manager and knows what the job is all about. The appellant stated that he had been a clerk and assistant manager in the past and had never been told that he was better at doing the kind of production work that the employer wanted him to do on the second floor. He submitted that it would have been to the employer's advantage if he had worked on the first floor and that the employer would have seen profits increase. The appellant explained that, in the store where he worked, sales were easy because his customers were generally well-to-do. He stated that, with the experience he had gained over time and as an assistant manager, he would have been able to reduce store losses by making fewer purchasing errors, thereby increasing profits. The appellant explained that, as an assistant manager, he must work in the sales area (floor) to see how things are going, to make things better and to determine which products to highlight or prioritize to increase the company's profits. He stated that he almost never worked on the floor and that his main tasks were cutting fruit and preparing salads. The appellant pointed out that in three and a half years he had always done the work requested and that he was working on the

second floor more often than other employees. He noted that, since being hired as an assistant manager, he has never received a job description from the employer (exhibits GD2-1 to GD2-25, GD3-32).

(p) The appellant submitted that the owner had caused him to lose his credibility in front of a clerk, had violated the collective agreement, was failing to comply with labour standards, had not co-operated, and had used physical and psychological harassment tactics against him. He said that, in a telephone conversation with an officer of the Commission (Service Canada), the owner had damaged his reputation and discriminated against him by saying that he did not get along well with people. In the appellant's view, this was an abuse of power by the owner, who was acting out of vengeance (exhibits GD2-1 to GD2-25).

(q) The appellant submitted that the owner and the manager were picking on him and that the situation at work was intolerable. The appellant explained that, given the hostile work environment, he decided to quit his job. He said that his experience as an assistant manager was never considered by the employer. The appellant stated that having to unpack several pallets of merchandise every day was exhausting him and affecting his health. He argued that he was working in an unhealthy environment. In his opinion, no one would work in a place where the employer would give unwarranted grievances (warnings), as in his case. The appellant stated that he was working with a boss who did not follow the standards and who criticized him in an intimidating manner. He asked how a person could continue to work under those conditions. The appellant maintained that there was no chance that the situation would improve with this employer and that it had merely deteriorated. He said that he had no choice but to leave (exhibits GD3-15, GD3-16 and GD3-32).

(r) The appellant stated that he had given the employer a letter dated July 11, 2016, advising the employer that he would be terminating his duties as assistant produce manager on July 16, 2016 (Exhibit GD3-34). He stated that after he gave the letter to the owner, the owner remained silent and then left. The appellant stated that, on

July 13, 2016, a delivery boy came to see him, saying that the owner had sent him to see the appellant and tell the appellant, “Bye.” The appellant argued that this was another irresponsible act by the owner showing that he wanted the appellant to leave; it was not like a voluntary leaving (exhibits GD2-1 to GD2-25, GD3-15, GD3-16 and GD3-32).

(s) The appellant explained that he had left his employment because of workplace harassment by his employer. The appellant argued that harassment is a discriminatory practice under paragraph 14(1)(c) of the *Canadian Human Rights Act* (Part I—Prohibited grounds of discrimination—Harassment), which reads, “14(1) It is a discriminatory practice, . . . (c) in matters related to employment, to harass an individual on a prohibited ground of discrimination” (exhibits GD3-23 to GD3-26). The appellant submitted that, based on the evidence of harassment that he presented, showing the discrimination against him, and under the *Canadian Human Rights Act*, the Commission has an obligation to pay him benefits, especially since he has paid employment insurance premiums (exhibits GD2-1 to GD2-25, GD3-15, GD3-16, GD3-20 and GD3-23 to GD3-26).

(t) The appellant stated that he did not wait until he had found another job before leaving the one he had. He said that he had done visual job searches and was looking for a store manager position. He stated that he had applied to a potential employer but was not selected. The appellant also stated that he wanted to try working in another field and that he had enrolled in a course to be a security guard (exhibits GD3-20 and GD3-32).

[14] The Commission presented the following arguments and submissions:

(a) The Commission stated that subsection 30(2) of the Act provides for disqualification where the claimant voluntarily leaves his employment without just cause. The Commission stated that the applicable test, having regard to all the circumstances, is whether the appellant had a reasonable alternative to leaving his employment when he did (Exhibit GD4-6).

(b) The Commission stated that since the appellant had taken the initiative of leaving, the situation was considered a case of voluntary leaving (Exhibit GD4-6).

(c) The Commission assessed that the appellant did not attempt to resolve the labour disputes he had with a clerk (Mr. B.). It conceded that the appellant had gone to his employer to report the clerk's refusal to obey his instructions but that, given his employer's lack of co-operation, he had used his union to try to defuse the disagreement. The Commission stated that the appellant had contacted his union but had decided not to go further (exhibits GD2-3 and GD4-6).

(d) The Commission found that no specific event had occurred that caused the appellant to leave his employment immediately. It explained that, although it could understand that the appellant was dissatisfied with the way he was treated, he had no urgency to leave his job and could have kept it until he found another more satisfying job. In the Commission's view, despite all the facts alleged, the appellant did not demonstrate that the circumstances at work were so difficult that he could not wait and that he had to leave his job immediately. It opined that a reasonable alternative to leaving voluntarily would have been for the appellant to ensure that he had found another job before leaving the one he had. The Commission argued that a person who voluntarily leaves his employment must demonstrate that his departure was the only reasonable alternative given the circumstances. It argued that, although there was disagreement between the appellant and a clerk and with the manager, it alone did not justify leaving the employment (exhibits GD4-6 and GD4-7).

(e) In the Commission's view, the appellant did not demonstrate that he had used all reasonable alternatives available to him before he made the final decision to leave his employment. The Commission finds that, although the reasons given are commendable, they demonstrate the appellant's dissatisfaction rather than harassment. The Commission argued that there was no indication that there was an urgent need for the appellant to leave his employment without ensuring that he had already found other employment (Exhibit GD4-7).

(f) The Commission found that, despite all the reasons given by the appellant, he had not shown just cause for leaving his employment when he did. The Commission argued that its decision is consistent with the legislation and supported by the case law (*White,* 2011 FCA 190) (Exhibit GD4-7).

ANALYSIS

[15] The relevant statutory provisions are appended to this decision.

[16] 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."

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

[18] 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 [just cause] 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.

[19] The Court reaffirmed the principle that where the claimant has met the burden of proving that he had no reasonable alternative to leaving his employment at the time he did, the test for just cause under paragraph 29(c) of the Act has been met (*White,* 2011 FCA 190, *Taiga Works v. Lau,* 2008 FCA 275).

[20] In *Smith* (A-875-96), the Court made the following point:

> Subsection 28(4) of the Act provides some understanding for the meaning of the phrase "just cause" for voluntarily leaving an employment. It provides for an examination of "all the circumstances", including those enumerated in that section, so as to determine if "the claimant had no reasonable alternative to leaving the employment". An examination of the enumerated circumstances indicate situations occurring independently from the will or participation of the claimant and beyond his control. This is true with regard to all the headings, but one should note in particular paragraph (*j*) which reads: (*j*) antagonistic relations between an employee and a supervisor for which the employee is not primarily responsible; . . .

[21] 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.

[22] In this case, the Tribunal finds, having regard to all the circumstances, that the decision the appellant made to leave the employment he held with the employer, Alimentation M. B. inc., must 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; *Smith,* A-875-96).

[23] The Tribunal finds that the appellant's voluntary leaving was justified by the existence of "antagonism with a supervisor if the claimant is not primarily responsible for the antagonism," as set out in paragraph 29(c)(x) of the Act, and by "undue pressure by an employer on the claimant to leave their employment" under paragraph 29(c)(xiii) of the Act.

[24] Paragraphs 29(c)(x) and 29(c)(xiii) specifically provide that

> . . . 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: . . . (x) antagonism with a supervisor if the claimant is not primarily

> responsible for the antagonism, . . . (xiii) undue pressure by an employer on the claimant to leave their employment . . .

[25] The Tribunal gives greater credence to the appellant's testimony than to the employer's statements.

[26] The Tribunal finds that the testimony given by the appellant during the hearing provided a complete and highly detailed picture of the reasons leading to his leaving voluntarily. His testimony was very detailed and free of contradictions.

Employer's contradictory statements

[27] The Tribunal finds contradictory the employer's explanations concerning the circumstances that led to the appellant's voluntary leaving.

[28] In a statement made on August 19, 2016, the employer stated both that the appellant never spoke about the tasks he had to perform and that the appellant thought he was doing more than the others and that he was in continual disagreement with his supervisor about the assignment of tasks or the work schedule. The employer also stated that the appellant did not get along well with others (Exhibit GD3-19).

[29] In the statement made on September 29, 2016, the employer indicated that there was a disagreement between the appellant and a clerk (Exhibit GD3-33). The employer did not mention this problem in its statement dated September 19, 2016.

[30] The employer also indicated in its statement dated September 29, 2016, that the appellant had a job performance problem, that he seemed to have lost interest in his work and that a number of meetings had been held with him in that regard (Exhibit GD3-33). The employer did not mention this situation in its statement dated August 19, 2016.

[31] The Tribunal points out that none of the employer's statements refers to the two written warnings it gave the appellant regarding his unsatisfactory job performance, one dated April 20, 2016 (exhibits GD2-9 and GD2-10 or exhibits GD3-28 and GD3-29), and the other dated June 2, 2016 (exhibits GD2-11 and GD2-12 or exhibits GD3-30 and GD3-31).

[32] The employer provided no concrete example of the criticisms it had made in the two letters in question. None of the letters refers to the disagreement between the appellant and an employee, a situation that the employer referred to in explaining the appellant's voluntary leaving (Exhibit GD3-33).

[33] Although the employer stated in its statement dated August 19, 2016, that the appellant never spoke about the duties he had to perform, a grievance was filed by the union representing the appellant several months earlier, on April 25, 2016, regarding the warning letter dated April 20, 2016. The employer provided no comment to that effect.

[34] In its statement dated August 19, 2016, the employer also "promised" the Commission that it would send the appellant's job description, but no such documents appear in the file (Exhibit GD3-19).

Antagonism and undue pressure on the appellant to leave his employment

[35] The Tribunal finds that the appellant has demonstrated, using a number of concrete, detailed examples, the existence of antagonism between him and the employer for which the appellant is not primarily responsible.

[36] The appellant has also demonstrated that the employer unduly pressured him to voluntarily leave his employment by making comments to that effect.

[37] The Tribunal is of the opinion that the situation experienced by the appellant in his work as an assistant manager escalated to the point where he had no choice but to voluntarily leave his employment.

[38] Without providing concrete examples, the employer very harshly criticized the quality of the work performed by the appellant in two letters that it sent him on April 20, 2016, and June 3, 2016. The two letters do not refer to any specific facts that may have called into question the quality of the appellant's work.

[39] At the hearing, the appellant stated that he had worked for three and a half years as an assistant produce manager and had not encountered any particular problems in performing his

work until April 16, 2016, when an employee refused to follow the instruction he had given him to go to do production work on the second floor of the store. The appellant stated that he had never received any written warnings from the employer regarding the quality of his work before this event.

[40] The evidence in the file and the appellant's testimony indicate that it was after the appellant went to the employee union regarding the event with an employee on April 16, 2016, that the situation with the employer deteriorated irreparably.

[41] The purpose of the union's intervention with the owner following the event on April 16, 2016, was to tell him that the appellant, as an assistant manager, had the authority to give instructions to an employee in the manager's absence.

[42] A few days after the intervention, on April 20, 2016, the employer met with the appellant to tell him that his job performance was unsatisfactory and gave him a letter to that effect (exhibits GD2-9 and GD2-10 or exhibits GD3-28 and GD3-29).

[43] In the letter dated April 20, 2016, the subject line of which reads, "[translation] Unsatisfactory Work Performance," the employer wrote as follows:

> [Translation]
>
> . . . For some time, we have been deeply concerned about your poor job performance. Unfortunately, your work does not meet expectations and your actions are affecting the smooth operation of the department and customer service . . . Your work performance is unacceptable and cannot be tolerated. This letter is a written warning that you must improve your performance . . . (exhibits GD2-9 and GD2-10 or exhibits GD3-28 and GD3-29).

[44] The letter also states that the appellant was allegedly treating customers with disrespect, taking his coffee and lunch breaks late, and not performing the duties assigned to him. However, the employer did not refer to any specific facts or events (such as dates, persons involved or accounts from witnesses) in relation to the criticisms of the appellant's performance.

[45] On April 25, 2016, after receiving the employer's letter of April 20, 2016, the appellant grieved the warning he had received from the employer (exhibits GD2-20 and GD2-21 or Exhibit GD3-17).

[46] The appellant also stated that following his intervention with the employer on April 16, 2016, the employer began harassing him by assigning heavier duties (for example unpacking pallets alone and doing a great deal of packaging on the second floor).

[47] The Tribunal also accepts as true the appellant's testimony that, after the meeting on April 20, 2016, during a discussion with the owner about job performance, the owner told him, "[translation] If you're not happy, leave. . . . Why are you staying?"

[48] In another letter to the appellant, dated June 2, 2016, the employer made the following comments:

> . . . we are compelled to provide you with a list of daily tasks to be performed as assistant manager. . . . we find that there continue to be deficiencies in your work. Please be reminded that your duty as an assistant manager is to replace the manager by performing all his duties whether he is present or absent . . . (exhibits GD2-11 and GD2-12 or exhibits GD3-30 and GD3-31).

[49] Aside from listing the appellant's duties and responsibilities, the letter makes no mention of any specific deficiencies on the appellant's part.

[50] Moreover, no comparison can be made between the tasks that the appellant was required to perform, as set out in the employer's letter of June 2, 2016, and the tasks that he was required to perform under his job description.

[51] The appellant stated that he never received a job description when he was hired. The employer did not send the Commission a document serving as a "job description," even though the employer said it would (Exhibit GD3-19).

[52] The appellant's testimony, which was not contradicted, also indicates that on June 23, 2016, the appellant was falsely accused of not programming the specials and that, as a disciplinary measure (punishment), he had been assigned to unpack several pallets of merchandise (produce) alone.

[53] The appellant also indicated that, in the days following the event on June 23, 2016, he had to respond to contradictory instructions from his boss. His boss asked him to go work in

production on the second floor, when he had just assigned him to do work on the floor (on the first floor).

Finding solutions

[54] The Tribunal finds that the appellant tried, by several means, for several months starting on April 16, 2016, to find a solution to the problems encountered in performing his work, but that his efforts proved unsuccessful.

[55] When a problem occurred with an employee on April 16, 2016, the appellant first spoke with the owner to have his authority restored over the employee in question, but to no avail. Rather, the appellant's testimony shows that the appellant was rebuked by the owner and, moreover, had to go to the second floor of the store to do production work, the very work that the employee in question had refused to do.

[56] The appellant then spoke with his union, a few days after the event on April 16, 2016, to restore his authority over the employee who had refused to follow the instruction he had given him to go to work in production on the second floor of the store. It is clear that this intervention was of little help to the appellant in restoring his authority. The appellant received a warning letter from the employer a few days after the intervention.

[57] After receiving the warning letter dated April 20, 2016, the appellant also used his union to file a grievance against the employer's action (exhibits GD2-20 and GD2-21 or Exhibit GD3-17).

[58] In this context, the Tribunal does not accept the Commission's argument that the appellant did not attempt to resolve the labour disputes he had with a clerk, that he had used his union to try to defuse the disagreement, but that he had made a decision not to proceed further (Exhibit GD4-6). The appellant took several steps with the employer and the union to find a solution to the problem with the employee in question.

[59] The evidence in the file and the appellant's testimony show that the steps he took with the employer and his union later backfired. The Commission did not demonstrate from the evidence

gathered from the employer that there was a disagreement between the clerk in question and the appellant.

[60] However, the Commission acknowledged that there was a disagreement between the appellant and the manager (Exhibit GD4-7).

[61] The appellant also tried to find a solution following the meeting he attended on June 3, 2016, during which the employer gave him a letter informing him that there were deficiencies in his work. At the meeting, the appellant was accompanied by the union representative of the store employees.

[62] Even though, in this case, the union did not file another grievance as a result of that meeting and the issuance of a second warning letter to the appellant, the appellant responded to the employer's allegations that his performance was unsatisfactory.

[63] The appellant therefore took another approach to finding a solution to the criticisms that were once again made by the employer about his job performance. The appellant pointed out during the hearing that this was the means he had found to show that the employer's criticisms were unjustified.

[64] Using a table entitled "Rapp. des ventes par rayon – 29 mai 2016" and calculations he had done, the appellant was able to rebut the employer's findings that his sales were unsatisfactory. The appellant pointed out that his calculations show that he made sales of $312.00 per hour in his department (produce), whereas the employer told him that its objective was to make sales of $250.00 (Exhibit GD2-13).

[65] In early July 2016, the appellant also requested that the employer transfer him to another food store. He again sought assistance from his union but was unable to obtain the requested transfer.

[66] The Tribunal cannot agree with the Commission's analysis that no specific event had occurred that caused the appellant to leave his employment immediately (exhibits GD4-6 and GD4-7).

[67] In the Tribunal's view, several events followed the appellant's intervention with the employer and the intervention of his union with respect to the problem with an employee on April 16, 2016.

[68] The Tribunal finds that the appellant did not voluntarily leave his employment "immediately," as the Commission stated.

[69] The Tribunal finds that, before making the decision to leave his employment, the appellant made numerous attempts during the period from April 2016 to July 2016 to find a solution to the problems he was facing in performing his work. The appellant informed the employer on July 11, 2016, that he would stop working on July 16, 2016 (exhibit GD2-8 or GD3-34).

[70] The Tribunal does not accept the appellant's argument that he was harassed under paragraph 14(1)(c) of the *Canadian Human Rights Act.* The appellant did not demonstrate that the situation at his work could constitute a discriminatory practice based on a prohibited ground of employment discrimination as provided for in paragraph 14(1)(c) of the *Canadian Human Rights Act.*

[71] The Tribunal finds that the existence of antagonism between the employer and the appellant for which the appellant is not primarily responsible shows that the appellant's voluntary leaving had become the only reasonable alternative under the circumstances (*White,* 2011 FCA 190; *Peace,* 2004 FCA 56; *Landry,* A-1210-92; *Smith,* A-875-96).

[72] The appellant cannot be considered solely responsible for the antagonism between him and the employer (*Smith,* A-875-96).

[73] The Tribunal is also of the opinion that the appellant's voluntary leaving is also the result of undue pressure by the employer to leave his employment (*White,* 2011 FCA 190; *Peace,* 2004 FCA 56; *Landry,* A-1210-92).

[74] The appellant tried to find a solution to address the problems encountered in performing his work with the employer Alimentation M. B. inc., but his efforts proved unsuccessful.

[75] Having regard to the particular circumstances brought to its attention in this case, the Tribunal concludes that the appellant had no reasonable alternative to leaving voluntarily in this situation.

[76] Based on the above-mentioned case law, the Tribunal finds that the appellant has shown that there was no reasonable alternative to leaving his employment with the employer (*White,* 2011 FCA 190; *Rena-Astronomo,* A-141-97; *Tanguay,* A-1458-84; *Peace,* 2004 FCA 56; *Landry,* A-1210-92; *Smith,* A-875-96).

[77] The Tribunal finds that, having regard to all the circumstances, the appellant had just cause to voluntarily leave his employment under sections 29 and 30 of the Act.

[78] The appeal on the issue has merit.

COMING INTO FORCE

[79] The appeal is allowed

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; and

(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

(xiv) any other reasonable circumstances that are prescribed.

30 (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.

(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:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(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.