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

Citation: *R. Z. v. Canada Employment Insurance Commission and Gap Canada*, 2017 SSTGDEI 192

Tribunal File Number: GE-17-18

BETWEEN:

**R. Z.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**Gap Canada**

Added Party

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# SOCIAL SECURITY TRIBUNAL DECISION

## General Division – Employment Insurance Section

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DECISION BY: Lilian Klein

HEARD ON: August 11, 2017

DATE OF DECISION: August 31, 2017

Canada

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant made a renewal claim for employment insurance benefits on September 29, 2016. Through correspondence dated November 2, 2016, the Respondent informed him that he was disqualified from receiving benefits, because he had voluntarily left his employment without just case. The Appellant requested a reconsideration of this decision, and on December 15, 2016, the Respondent maintained its initial decision. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on December 28, 2016.

[2] The Tribunal must decide whether the Appellant is disqualified from receiving benefits, pursuant to section 30 of the *Employment Insurance Act* (Act), for voluntarily leaving his employment without just cause, within the meaning of section 29 of the Act.

[3] The hearing was held by teleconference for the following reasons:

a) The fact that the Appellant was the only party in attendance.

b) The information in the file, including the need for additional information.

c) The request of the Appellant.

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

[4] The Appellant attended the hearing. On April 24, 2017, the Tribunal had added his former employer (Employer) as an Added Party, but the Employer did not attend the hearing.

[5] Subsection 12(1) of the SST Regulations stipulates that the Member may proceed in a party's absence if it is satisfied that the party received notice of the hearing. The Tribunal is satisfied that the Employer received the Notice of Hearing, since it was sent through Canada Post to the contact address on file, by a priority service that required a signature on delivery. The

Notice was signed for on May 25, 2017. The Tribunal therefore proceeded with the hearing in the absence of the Employer under the authority of section 12 (1) of the SST Regulations.

[6] The Tribunal finds that the Appellant has not proven he had just cause for voluntarily leaving his employment. The reasons for this decision follow.

**PRELIMINARY ISSUES**

[7] The Appellant claimed that the officer of the Respondent who made the reconsideration decision was biased against him, and that he would launch a complaint against her and get her fired. However, this matter is not before the Tribunal, and will not be considered.

**EVIDENCE**

[8] On September 29, 2016, the Appellant made a renewal claim for employment insurance benefits, and a benefit period was established, effective September 25, 2016 (GD3-3 to GD3-19).

[9] On his application, he stated that he quit because of harassment by the general manager which took place a "couple times;" and "[h]arassment happen in August and didn't stop," with the final incident being a conversation at the beginning of September 2016, when she harassed him verbally in the hearing of other workers. He asked her to stop, and then contacted the district manager and Human Resources (HR). He stated that he had been told that there were three other supervisors before him who had quit because of the general manager. S"[s]he told me one time in the office that she don't like to fire people so she try to make them quit" (GD3-10 to GD3-11).

[10] He further stated that he had discussed the situation with his" immediate boss" before he left. He did not take his complaints outside the company because, after his conversation with the district manager, "I had the feeling that they will take care of the incident" (GD3-12).

[11] He confirmed that the district manager told him she would give him a positive reference if he wanted to apply for a transfer anywhere in Canada; "if I will move I would consider this offer. But till then I will look for work in Calgary or any other province" (GD3-12).

[12] His Record of Employment (ROE) stated that he quit (GD3-20 to GD3-21).

[13] On October 31, 2016, the Appellant told the Respondent that the general manager blamed him for not doing work correctly, of not being professional, and being unskilled. She told him to go home and "they would talk about this later." He stated that he tried speaking with the district manager, but "didn't receive any support" (GD3-22).

[14] On October 31, 2016, the Respondent spoke with the district manager, who stated that there was no proof of harassment; the general manager was strict because it was her job to communicate what had to be done, but she did not yell or swear at the Appellant. She confirmed that the former incumbent of the Appellant's position had left, but said that had nothing to do with the general manager, who had made her own complaint that the Appellant yelled at her, and was aggressive. The district manager stated that this had been confirmed by an assistant manager, who did not want to work with him anymore. The district manager asserted that the Appellant saw usual requests from an employer to an employee as harassment (GD3-25).

[15] She confirmed that the Appellant had not tried to discuss the situation with her before he resigned, although she came to see him for that reason; he had not wanted to transfer to another store, where he could avoid any contact with the general manager (GD3-25).

[16] On November 1, 2016, the Appellant told the Respondent that the general manager had asked him to ship a parcel to a customer; when he had replied that it was her task rather than his, it made her angry. He explained that he did not request a transfer, since he wanted to look for work in his own field, as an IT programmer. He asserted that the district manager did not offer him a transfer, but admitted that she told him she could help him get a transfer (GD3-26).

[17] On November 2, 2016, he told the Respondent that he was the victim of verbal harassment by the general manager on September 5, 2016, or September 6, 2016; she had left the door open, so everyone could hear her remarks; she "shushed" him, telling him to calm down and be quiet; and he felt she was being racist when she suggested he did not understand what she was saying because English is only his second language. She gave him more duties to make sure he would fail; she said they would have to discuss if the job was a good fit for him, at a meeting set for 11.00am the day before he quit. She gave him some sheets on job skills to review, telling him he was unskilled in these areas (GD3-24).

[18] He also confirmed to the Respondent that he did not ask for a transfer, or discuss his concerns with the general manager, prior to making his decision to resign.

[19] Through correspondence dated November 2, 1016, the Respondent informed him that it would not pay benefits "because you voluntarily left your employment," since "voluntarily leaving your employment was not your only reasonable alternative" (GD3-27 to GD3-28).

[20] The Appellant submitted a reconsideration request, dated November 2, 2016, and received by the Respondent on November 10, 2016. In his request, he reiterated that he was bullied and verbally harassed by the general manager, who was being protected by the district manager, her close friend. He asked that a specific assistant manager (A.) be contacted to corroborate his story.

[21] He included as evidence his resignation letter dated September 16, 2016, in which he had stated: "I have appreciated and enjoyed the work I have done for this company, but I cannot continue to work in the environment provided. I have informed human resources about the harassment I have received in the form of verbal and emotional abuse." The district manager signed her acceptance of his resignation that same day (GD3-31).

[22] He appended to his request the email he had sent to HR at 2.48pm on September 14, 2016, asking that his complaint be kept confidential for the moment, and requesting a conversation by phone "about what to do and how I can make a complain (*sic*)." He wrote in the email that he had heard the district manager say she does not like to fire people, she will make them quit; when he asked his co-workers if they thought she was trying to make him quit, they "were kind of confused and they didn't know" (GD3-32).

[23] In this email, he repeated his account of being told by the general manager to take care of a shipment: his response that she or someone else should have done this task led to an argument in which she told him to go home and calm down, and come back the next day, so they could discuss this "and we can talk if this job is for you. So I asked her are [you] firing me – she said I didn't said that (*sic*)." She gave him some sheets to read about composure and listening skills, indicating that he was unskilled in these areas (GD3-33 to GD3-34).

[24] He reiterated his complaint that she gave him other duties that "interrupt my stock room duties," and then blamed him for not doing these duties. His work became more stressful and "I feel not safe at the same shift" as her (GD3-32).

[25] The email print-out included the reply he had received from the HR department the same day, at 3.13pm, acknowledging his communication, and informing him it was being forwarded in confidence to the HR Manager who was at that time responsible for his file (GD3-32).

[26] The Employer provided the Respondent with witness statements from other staff members who had worked with the Appellant, and had witnessed his interactions with the general manager and other employees (GD3-36 to GD3-38).

[27] One witness, a manager named S.B., said that "[i]n general R. Z.would not listen to instruction of any kind. It did not need to necessarily be negative in order for him to refuse to listen or acknowledge that he had heard you." She stated that even when she tried to give him positive feedback and constructive advice, he took it as criticism, and he then went to the general manager to complain about her. She said she was unwilling "to deal with him without another manager present ever again." She also recounted an incident at a marketing meeting where the general manager gave the Appellant and his shipping team a compliment, but he would not acknowledge it, and just ignored everyone (GD3-37 to GD3-38).

[28] Another witness, C.W., stated that "S.B. would ask him to do something and he would do the opposite, or not do at all… he would get defensive," and he would then go to the general manager and say that S.B. was picking on him. The witness also reported the Appellant got into a "yelling match" with another manager called A. She described an occasion when the general manager raised her voice when rebuking the Appellant for telling other employees what to do; the witness noted that she saw them "raise their voices at each other". She qualified her account by saying: "This was the first time I was present for a situation, however, I have heard that she raised her voice towards him before (GD3-36).

[29] On December 14, 2017, the Respondent tried twice to contact the Assistant Manager called A., since the Appellant had indicated she would support his story, but A. did not respond to either voice message left on these occasions (GD3-39).

[30] On December 15, 2017, the Respondent spoke with the Appellant about his reconsideration request (GD3-40 to GD3-41). He stated that the district manager had said he was an amazing worker, and that he had misunderstood that general manager's statements and taken them the wrong way. He asserted that the district manager was defending her friend, the general manager. He confirmed he had gone to the general manager about S.B. because they were having problems communicating, but maintained he had never complained about her.

[31] He called C.W.'s statement a lie, asserting that "these people" were going to say whatever their employer wanted them to say.

[32] He also reported that he had filed a harassment complaint with the Human Rights Commission, but was told they did not deem his experiences to be harassment (GD3-41). This complaint does not form part of the evidence.

[33] On December 15, 2016, the Appellant was informed both verbally, and through correspondence dated the same day, that the original decision would be maintained on voluntary leaving without just cause (GD3-42 to GD3-44).

[34] On December 28, 2016, he appealed the reconsideration decision, reiterating his previous arguments (GD2-1 to GD2-10).

**SUBMISSIONS**

[35] The Appellant made the following submissions:

a) He was bullied and harassed by the general manager through verbal and emotional abuse. She wasn't "easy-going" anymore; she getting "worse and worse." He did not feel safe in the workplace when she was there. The final straw was when she ordered him to send out a package, which she or others should have done, and she rebuked him when he said this.

b) She said she never dismisses employees; instead, she gets them to quit. When he saw how she yelled at him in front of other employees, as well as customers, he felt she was trying to get him to quit.

c) He first emailed HR, wanting to keep his complaint confidential, because the general manager and the district manager were friends, and he was scared he would lose his job.

d) The general manager was “harassing” him by “pushing” him to have a meeting with her when he did not feel emotionally ready for it; he contacted the district manager to get her to cancel it.

e) When the district manager came to see him the next day, he gave her his pre-prepared letter of resignation, stating he was resigning because of harassment; she signed the document, which was proof she agreed with him about the harassment.

f) The company did nothing to stop the harassment. Co-workers told him this had happened before, with previous supervisors quitting because of the general manager.

g) Negative witness statements about him by former co-workers were lies; they were saying what their employer told them to say.

h) The district manager offered to help him find a transfer, but he did not want to work for this company anymore, because it should have had a zero tolerance policy towards harassment, but did not act immediately to remove the general manager.

i) He wanted to find a job in his field, but was prepared to work in retail if he had no option.

[36] The Respondent made the following submissions:

a) The Appellant had reasonable alternatives to leaving that he did not explore, such as allowing the district manager time to investigate and resolve the situation before he handed in his resignation, or looking into available transfers to other company locations.

b) He did not want the transfer, because he was looking for work as an IT programmer.

c) Section 29(c) of the Act does not include leaving because a workplace is not harmonious, or because a worker does not feel appreciated, as a circumstance showing “just cause.”

d) The final incident that led him to resign, in which the general manager told him take care of a shipment, was not so intolerable that he had no other option than to quit.

**ANALYSIS**

[37] The relevant legislative provisions are reproduced in the Annex to this decision.

[38] Section 30 of the Act provides that a claimant is disqualified from receiving benefits if the claimant voluntarily left any employment without just cause. The burden of proof is on the Respondent to show that the leaving was voluntary; then, the burden of proof shifts to the Appellant to demonstrate just cause for leaving (*Green v. Attorney General of Canada*, 2012 FCA 313).

[39] The Tribunal must first determine whether the Appellant left his employment voluntarily. The test for assessing voluntary leaving can be found in *Attorney General of Canada v. Peace*, 2004 FCA 56 at paragraph 15:

> Under subsection 30(1), the determination of whether an employee has voluntarily left his employment is a simple one. The question to be asked is as follows: did the employee have a choice to stay or to leave?

[40] In considering this question, the Tribunal has noted the Appellant's statement on his application that he quit voluntarily, as confirmed on his ROE, and during the Respondent's interactions with his employer. The Appellant did not dispute the fact that it was he, and not his employer, who initiated the end of his employment.

[41] Based on the evidence, therefore, the Tribunal finds that the Respondent met its onus of showing that he left his job voluntarily.

[42] Once the Respondent has shown that the Appellant left voluntarily, the onus shifts to the Appellant to show he had "just cause" for leaving, as set out in section 29 of the Act (*Attorney General of Canada v. White*, 2011 FCA 190). The legal test for determining whether he had "just cause" is whether, taking into account all the circumstances, on a balance of probabilities, he had no reasonable alternative to leaving the employment (*White, supra*).

[43] The Federal Court of Appeal, in *Tanguay v. Unemployment Insurance Commission*, A-1458-84, made a clear distinction between "good cause" and "just cause." Simply put, someone

may have good reasons to leave, but, taking into account all the circumstances, this may not be enough to constitute "just cause."

[44] When assessing the reasons the Appellant gave for his resignation, the Tribunal notes that he complained of "harassment," and his complaints suggested he experienced "antagonism" from the general manager, even though he did not use this word. Accordingly, the circumstances the Tribunal has taken into account in order to determine whether he had "just cause" for leaving include, as per the non-exhaustive list in subsection 29(c) of the Act: paragraph (i) which refers to "sexual or other harassment," and paragraph (x), which covers "antagonism with a supervisor if the claimant is not primarily responsible for the antagonism."

**Was there "other harassment" as per 29(c)(i), or antagonism, as per 29(c)(x)?**

[45] The Tribunal finds the Appellant did not meet his burden of proving that the treatment he complained of from the general manager fell within the circumstances set out under these paragraphs of the Act.

[46] The Tribunal is sympathetic to the Appellant's perception that the criticism he received about his work performance was harassment, causing him stress. There may well have been times when he felt stressed—the Tribunal is aware that workplace stress is a phenomenon that cannot lightly be dismissed—but the evidence does not support his argument that his interactions with the general manager constituted harassment. As well, the Tribunal notes the general manager had complained to the district manager that the Appellant had been aggressive and had yelled at her (GD3-25).

[47] The Tribunal must therefore consider whether the evidence supports his version of their workplace interactions—in which she harassed him—or her version—in which he was argumentative and aggressive towards her—or a combination of both versions, which would indicate that interpersonal conflict was the main factor at play.

[48] Based on the evidence, the Tribunal concludes, on a balance of probabilities, that the general manager's interactions with the Appellant, while reflecting a poor working relationship, did not constitute harassment under the Act. The Tribunal makes this finding since the conduct the Appellant described as the "highest point" of the harassment—being told by the general

manager to take care of a shipment, a task he believed she or someone else should have done, and then being cautioned for his response—appears to comply with general workplace practices, whereby subordinates are required to follow instructions from their immediate supervisor.

[49] The Appellant's job description does not form part of the evidence, but there is nothing to suggest that his role as warehouse supervisor precluded his fulfilling the general manager's request, rather than arguing that she should have done it herself. The Tribunal concludes that if antagonism resulted from his response, it cannot be said, based on the evidence, that he was not "primarily responsible" for the antagonism, a necessary component of the circumstances envisaged in paragraph 29(c)(x) of the Act. For 29(c)(x) to be met, the antagonism would have had to have occurred independently of his participation, and be beyond his control (*Smith v, Attorney General of Canada*, A-875-96). The evidence does not show that this was the case.

[50] The Tribunal nevertheless finds that the witness statements on file (GD3-36 to GD3-38) support the notion of interpersonal conflict between the Appellant and the general manager. Before considering this evidence, the Tribunal has noted that the Appellant asked the Respondent to contact assistant manager A., who, he said, would corroborate his complaints. However, the record shows that although the Respondent attempted to contact her on two occasions, she did not reply to either voice mail, so this witness statement was not available.

[51] The evidence from C.W. indicates that in spite of the district manager's assertion to the Respondent that the general manager never yelled (GD3-25), there was at least one occasion when the general manager raised her voice when rebuking the Appellant. However, this was not a one-way interaction; in spite of the Appellant's claim that he managed to maintain his composure, even when provoked, the witness saw them "raise their voices at each other." The Tribunal notes the witness qualified her account by saying: "This was the first time I was present for a situation, however, I have heard that she raised her voice towards him before" (GD3-36).

[52] The Tribunal accepts C.W.'s testimony that the general manager raised her voice on the occasion she witnessed: however, it does not assign any weight to this witness' closing statement that she "heard" this had happened before, since she did not give the source of this information, and it is not supported by any other third-party evidence. This is not to say that the Tribunal condones managers raising their voices to employees, but just that there is only evidence of one

occasion when an exchange of this nature took place, and the witness confirmed that the Appellant participated in it.

[53] The Tribunal does not find that this meets the standard of antagonism envisaged in paragraph 29(c)(x) of the Act, since the general manager cannot be considered the only one responsible for the antagonism between them. As per *Smith*, cited above, this incident did not occur independently of the Appellant's participation. The Tribunal finds, therefore, that this one primary incident does not establish a pattern of antagonism towards him, or harassment against him.

[54] The Tribunal has given weight as well to C.W's statement about the Appellant's interactions with other managers: "S.B. would ask him to do something and he would do the opposite, or not do at all… he would get defensive," and he would then go to the general manager and say that S.B. was picking on him." This witness also reported that the Appellant got into a "yelling match" with another manager called A. These observations support the contention that he found it difficult to take directions, or even suggestions, from others, and that this was, therefore, not an issue confined just to his interactions with the general manager.

[55] This observation is further supported by S.B.'s statement that the Appellant "would not listen to instruction of any kind. It did not need to necessarily be negative in order for him to refuse to listen" (GD3-36). This statement confirmed the district manager's assessment that he tended to see reasonable directives from his employer as harassment (GD3-25). As well, the Tribunal notes that negative evaluations are not necessarily synonymous with antagonism.

[56] The Tribunal does not doubt that the various incidents the Appellant described involving the general manager took place. However, it also notes that while, according to S.B., he went to the general manager to complain about her when she tried to give him positive feedback and advice—an interaction refuted by the Appellant, but confirmed by C.W.— he delayed making internal complaints about his own experiences until less than 48 hours before he resigned.

[57] The Tribunal accepts that he may well not have found the atmosphere at the workplace conducive to his skills and temperament—it was not his choice of job, since, as he testified, he was compelled to take the job after he was laid-off in his field, and could not find other work—

but the Tribunal concludes it is more probable than not that he would have made a complaint to HR earlier on, if his situation was so intolerable that he felt he had no reasonable alternative to leaving his employment.

[58] The Tribunal does not assign significant weight to his statement to the Respondent that he did not complain earlier on in spite of what he experienced, since the general manager and the district manager were friends, and he was worried about losing his job. The Tribunal makes this determination because he could not have predicted the outcome of a complaint, and in any case he quit, which led to the same outcome: the end of his employment.

[59] As well, the Tribunal does not find the material given to him by the general manager on listening skills and composure to be, on its own, demeaning or insulting, as he claimed (GD3-33 to GD3-34). As his immediate supervisor, the general manager had the authority to draw his attention to skills he needed to work on, an action that the Tribunal does not find, in itself, to be harassment. Nor was it proof of harassment for her to set a meeting to discuss these issues, following his negative response to her request that he take care of an outstanding shipment.

[60] Moreover, the Tribunal does not accept his argument that the district manager's signature on his letter of resignation was proof that harassment took place; her signature merely signifies her acceptance of his resignation.

[61] The Tribunal therefore finds that the situation that the Appellant described did not meet the circumstances of either paragraph 29(c)(i), or paragraph 29(c)(x) of the Act.

**Was there undue pressure on the Appellant to leave his employment, as per 29(c)(xiii)?**

[62] In order to determine whether the Appellant's situation met the circumstances of paragraph 29(c)(xiii) of the Act, the Tribunal has considered his initial claim that the general manager told him she never dismisses anyone, but will make sure they quit (GD3-22). The Tribunal notes that he later informed the Respondent that he had heard her make this statement, rather than it being voiced directly to him (GD3-24). In his email to HR (GD3-32), he said he heard this comment when he was in her office and "she talked about some problem with worker (*sic*)." The Tribunal finds that this inconsistent testimony does not support the Appellant's initial

claim on this point, since it finds, on a balance of probabilities, that any manager employing such a reprehensible strategy, would be unlikely to reveal it to the intended target.

[63] The Tribunal also notes that although the Appellant recounted in his email to HR that he had asked co-workers whether they thought the general manager was trying to make him quit, the answer he reported—they were "confused" and did not know—does not support his assertion that she was employing this strategy against him. As per the case law on "just cause," the Appellant's resignation based on his perception that he was the target of this strategy—which, on a balance of probabilities, has not been proven—was "precipitous" (*Attorney General of Canada v, Quinn*, A-175-96), and therefore does not show that he meets the circumstances of paragraph 29(c)(xiii) of the Act.

[64] To sum up, the Tribunal does not find the evidence establishes that the Appellant was being harassed by the general manager, or that she was antagonistic to him, without him contributing to the antagonism between them. The witness statements showed he had difficult working relationships with other managers as well, when dealing with instructions or advice. He did not provide evidence for his argument that several of his predecessors had quit because of the general manager. As well, he did not prove his thesis that her style was to push people to resign rather than firing them, and that she had been using this strategy to get him to quit too.

**Reasonable alternatives to leaving**

[65] In order to demonstrate "just cause" under the law, the Appellant had to show that he had no "reasonable alternatives" to leaving his job when he did, but the Tribunal has concluded that he had several options that he could have explored. He could, for example, have waited to meet with the district manager, who came to his workplace at his request for that very purpose, to discuss fully whether his issues could be resolved, before tendering his resignation.

[66] In most cases there is an obligation on claimants to make all reasonable effort to address complaints to the employer, to try to resolve a workplace conflict before making a unilateral decision to quit (*Attorney General of Canada v. White*, 2011 FCA 190; *Attorney General of Canada v. Hernandez, 2007 FCA 320*). The Tribunal notes, however, that the Appellant only contacted the company's HR department on the afternoon of September 14, 2016, at which time

he asked that his concerns should, for the moment, be kept confidential. He received a reply that same afternoon, within 25 minutes of his enquiry, informing him that his request on how to make a complaint would be forwarded to the HR Manager in charge of his file.

[67] So far, the Tribunal finds the company's response time to be adequate, considering that there was no immediate physical danger to the Appellant, he had been asking for advice on how to make a complaint rather than requesting an immediate investigation, and he had specifically asked for confidentiality, which would, in itself, limit HR's ability to complete an investigation.

[68] The Tribunal notes that when the Appellant called the district manager the next morning, to ask her to ensure the cancellation of his meeting with the general manager—scheduled for 11.00am that same day—she intervened immediately, as per his request. She then came to his workplace to meet with him on the following day, at which time he gave her his letter of resignation without attempting to resolve the matter. The Tribunal finds that participating in a comprehensive discussion with the district manager on ways to resolve his concerns would have been a reasonable alternative to first tendering his resignation, and then only afterwards informing her of his reasons.

[69] The Tribunal finds his various accounts of this final meeting to be inconsistent. On October 31, 2016, he told the Respondent that he had tried speaking to the district manager, but did not receive any support (GD3-22). And yet earlier, on his application for benefits, he had stated that after he spoke to her, he had the "feeling that they will take care of this incident" (GD3-12). This inconsistency diminishes his credibility on his claim that the company had already demonstrated that it would not follow up on its "zero tolerance to harassment" policy.

[70] The Tribunal thus gives low weight to the Appellant's argument that his complaints should have been resolved instantly, and the general manager removed, before his meeting with the district manager took place, considering as well that less than 48 hours had passed since he first contacted HR. It gives more weight to his testimony that he had pre-prepared a letter of resignation even before he requested the meeting; he would "always change the date," so that he would always have a copy of the letter "ready to go." The Tribunal does not conclude, therefore, that he tried to explore avenues of dispute resolution as a reasonable alternative to quitting, since he had already planned his departure, and was waiting for an opportunity to make it happen.

[71] The Tribunal finds that the Appellant had another reasonable alternative to leaving without trying to resolve the matter: he could have secured other employment before leaving, since remaining employed is seen as a reasonable alternative to quitting (*Attorney General of Canada v. Murugaiah*, 2008 FCA 10; *Attorney General of Canada v. Campeau*, 2006 FCA 376).

[72] The Tribunal also finds that the Appellant could have explored the possibility of a transfer to another branch, which he confirmed was broached with him by the district manager; he had asserted he only had difficulty dealing with the general manager, so a transfer would have been a way of avoiding her completely. However, he stated on his application for benefits that he would only consider this offer if he decided to move (GD3-12).

[73] Moreover, the Tribunal assigns weight to his statement to the Respondent on November 2, 2016, that he did not want a transfer, since "he wanted to look for work in his own field as an IT programmer" (GD3-26). This statement suggests that his desire to find a better job in his area of expertise was a prime factor in his decision to leave a job that he considered, understandably, beneath his level of skills and qualifications.

[74] However, the Tribunal is mindful of the principle, firmly established in the jurisprudence, that while it is a legitimate goal to want to improve one's life by changing jobs, one cannot expect those who contribute to the employment insurance system to bear the cost (*Attorney General of Canada v. Langlois*, 2008 FCA 18). Leaving work to search for a better job is therefore not considered a reasonable alternative to staying employed.

[75] To conclude, based on the evidence, and the submissions of both parties, the Tribunal finds that the Appellant did not meet his onus to show "just cause" for voluntarily leaving his employment, as per section 29 of the Act, since he had reasonable alternatives to leaving. The Tribunal finds, therefore, that the disqualification under section 30 was justified.

**CONCLUSION**

[76] The appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

**ANNEX**

**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.