



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. P. v. Canada Employment Insurance Commission*, 2018 SST 444

Tribunal File Number: AD-18-159

BETWEEN:

K. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 24, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed, and the file is returned to the Employment Insurance Section of the Social Security Tribunal's General Division for a new hearing by a different member.

OVERVIEW

[2] The Appellant, K. P. (Claimant), made an initial claim for Employment Insurance benefits. An investigation revealed that, during the benefit period, the Claimant was employed by X. The Respondent, the Canada Employment Insurance Commission (Commission), disqualified the Claimant from receiving benefits after finding she had voluntarily left her employment without just cause. The Commission also imposed a monetary penalty because the Claimant made a misrepresentation by knowingly providing false or misleading information.

[3] The Claimant requested a reconsideration of this decision. She stated that she was unaware that the time spent at X counted as employment and left because she felt it did not pay enough and she wanted to be free to schedule future job interviews. She did not report her earnings because she was not sure she would be paid. The Commission maintained its initial decision but reduced the amount of the penalty due to mitigating financial circumstances.

[4] The Claimant appealed the Commission's decision to the General Division. The General Division concluded that the Claimant had not demonstrated that she had no reasonable alternative to leaving her employment and found that she had failed to demonstrate just cause for leaving her employment under sections 29 and 30 of the *Employment Insurance Act* (Act).

[5] The Claimant requested and was granted leave to appeal to the Appeal Division.

[6] The Tribunal must decide whether the General Division erred by preventing the Claimant from introducing evidence supporting her position that she was never employed and that she therefore did not voluntarily leave her employment.

[7] The Tribunal allows the appeal, and the file is returned to the Employment Insurance Section of the General Division for a new hearing before a different member.

ISSUE

[8] Did the General Division fail to respect a principle of natural justice when it prevented the Claimant from introducing evidence supporting her position that she was never employed and that she therefore did not voluntarily leave her employment?

ANALYSIS

[9] The Claimant submits that, pursuant to paragraph 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act), the General Division failed to observe a principle of natural justice. She states that her right to a fair hearing was prejudiced by the General Division's denial of her adjournment request. The Claimant submits that, by refusing the adjournment, the General Division prevented her from introducing evidence that demonstrates that she was never employed by X and that she therefore did not voluntarily leave her employment.

[10] The Commission is of the position that the General Division's decision to refuse the adjournment and to proceed with the hearing cannot be said to comply with the rules of fairness and natural justice.

[11] It is the Commission's position that the Claimant has grounds to appeal under paragraph 58(1)(a) of the DESD Act.

Did the General Division fail to respect a principle of natural justice when it prevented the Claimant from introducing evidence supporting her position that she was never employed and that she therefore did not voluntarily leave her employment?

[12] The General Division had to decide whether the Claimant had just cause for leaving her employment under sections 29 and 30 of the Act.

[13] The Claimant submits that, by refusing the adjournment, the General Division prevented her from introducing evidence that demonstrates that she was never employed by X and that she therefore did not voluntarily leave her employment.

[14] The concept of “natural justice” includes the right of a claimant to a fair hearing. A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party and the opportunity to answer those allegations.

[15] While it is true that the Claimant could have been more diligent with her request for documentation from the employer, the refusal of the adjournment by the General Division prevented the Claimant from demonstrating that she was never employed by X. She was therefore denied the opportunity to answer the Commission’s allegations.

[16] The General Division should always be very cautious about denying an adjournment when the refusal could compromise the right of a claimant to make a full presentation at the hearing. This is particularly true when the adjournment is requested to introduce relevant evidence on the key issue before the General Division.

[17] Considering the Claimant’s arguments and the position of the Respondent, and for the above-mentioned reasons, the Tribunal agrees that the appeal must be allowed.

CONCLUSION

[18] The appeal is allowed. The case will be returned to the Employment Insurance Section of the Tribunal’s General Division for reconsideration by a different member.

[19] The Tribunal orders that the General Division decision dated February 5, 2018, be removed from the file.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
PARTIES:	K. P., Appellant Francesca Allodi-Ross, Representative for the Appellant Suzanne Prud'Homme, Representative for the Respondent