



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *M. T. v. Canada Employment Insurance Commission*, 2018 SST 645

Tribunal File Number: AD-17-656

BETWEEN:

M. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 1, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, M. T. (Claimant), made an initial claim for Employment Insurance benefits. After reviewing the application, the Respondent, the Canada Employment Insurance Commission (Commission), informed the Claimant that he was ineligible for Employment Insurance benefits because he lost his job due to his own misconduct. The Commission found that the Claimant threw a cardboard box at his supervisor's face and that, over the years, he received warnings for lateness and inappropriate behaviour. The Claimant requested a reconsideration of that decision. The Commission informed the Claimant that it was upholding its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division determined that the Claimant lost his job on July 26, 2016, for insulting his supervisor and throwing a cardboard box at the supervisor's face. It found that the Claimant's actions constituted misconduct under the *Employment Insurance Act* (EI Act), because he knew or should have known that his actions would lead to his dismissal.

[4] The Tribunal granted leave to appeal. The Claimant submits that the General Division erred by finding that he was dismissed for misconduct, when he was actually fired for exercising a right.

[5] The Tribunal must decide whether the General Division erred by finding that misconduct was the real reason for the dismissal.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUE

[7] Did the General Division err by finding that misconduct was the real reason for the Claimant's dismissal?

ANALYSIS

Appeal Division's Role

[8] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division. It does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err by finding that misconduct was the real reason for the Claimant's dismissal?

[11] The General Division's role is to determine whether the employee's behaviour constitutes misconduct within the meaning of the EI Act and not whether the severity of the penalty imposed by the employer was justified, or whether the employee's actions were a valid ground for dismissal.²

[12] On the other hand, the notion of misconduct does not imply that it is necessary that the breach of conduct be the result of a wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, in order to constitute

¹ *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

² *Canada (Attorney General) v. Lemire*, (2010) FCA 314.

misconduct, the act complained of must have been willful or at least of such a careless or negligent nature that one could say the employee willfully disregarded the effects his or her actions would have on his or her performance.³

[13] Examining the evidence before it, the General Division found that the Appellant was late for work on July 24 and 25, 2016. His employer then informed him that this was his last written warning and that from then on, he had to be calm and respectful to his colleagues and his supervisor. The following day, the Appellant was late for work again. He then got in an argument with his supervisor. He insulted his supervisor and threw a box at his supervisor's face before leaving his workstation.

[14] The Tribunal notes that the General Division preferred the employer's version of events regarding the incident that took place on July 26, 2018, wherein the Claimant insulted his employer and threw a box at his supervisor's face before leaving his workstation. It determined that the Claimant had had multiple conflicts with his supervisor regarding his lateness and absences; this led to the final incident. The General Division did not give credibility to the version of the incident that the Claimant presented. It is also clear that the General Division did not take into account the Claimant's version of the incident in which he was he was dismissed for exercising a right with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

[15] It is well-established in case law that aggressive or violent behaviour at work constitutes misconduct under the EI Act.

[16] In his submissions on appeal, the Claimant argues that the case was entirely put together by the employer to dismiss him after his complaint for psychological harassment to the CNESST and in order to prevent him from collecting Employment Insurance benefits.

[17] This argument by the Appellant is unfounded. The Tribunal submits that the Appellant's complaint to the CNESST was filed on June 7, 2016, the same day that the

³ *Canada (Attorney General) v. Hastings*, 2007 FCA 372; *Tucker* A-381-85; *Mishibinijima*, A-85-06.

Appellant received another disciplinary notice from his employer, and when the employer was not yet aware of the complaint. Furthermore, the employer issued the Appellant several warnings for his insubordination and his poor attendance well before this complaint was filed.

[18] The Claimant also submits that there was a settlement with his employer regarding his complaint to the CNESST. The Claimant did not present this agreement before the General Division because he had to respect its confidentiality. He did, however, obtain permission from the CNESST to present the agreement before the Tribunal's Appeal Division.

[19] The Tribunal finds it necessary to reaffirm that the mere existence of a concluded settlement agreement between the parties is not in and of itself determinative of the issue of whether an employee was dismissed for misconduct. It falls to the General Division to assess the evidence and come to a decision. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has been terminated.

[20] Without making a decision on its admissibility on appeal, the Tribunal notes that the agreement does not include—either expressly or implicitly—any admissions that the facts in the Claimant's case were erroneous or did not correctly reflect the events as they took place. The agreement does not contain any retraction from the employer regarding the events that initially led to the Claimant's dismissal.

[21] The Tribunal is of the opinion that that the General Division did not commit an error when it determined, on the basis of the evidence before it, that the Claimant was dismissed for insulting a superior and throwing a cardboard box at his face on July 26, 2016.

[22] The General Division's decision is based on the evidence brought before it, and its decision is consistent with the legislative provisions and case law.

[23] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

CONCLUSION

[24] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 15, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	M. T., Appellant Manon Richardson, Respondent's representative