



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. D. v. Canada Employment Insurance Commission*, 2018 SST 690

Tribunal File Number: AD-17-887

BETWEEN:

R. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 22, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, R. D. (Claimant), made an initial claim for Employment Insurance benefits. After reviewing the claim, the Canada Employment Insurance Commission informed him that he was not entitled to Employment Insurance benefits because he had left his employment without just cause. The Commission found that the Claimant did not have reasonable assurance of another employment when he left his job. The Claimant requested a reconsideration of that decision. The Commission informed the Claimant that it was maintaining its initial decision. The Claimant appealed the decision to the Tribunal's General Division.

[3] Based on the evidence, the General Division concluded that the Claimant did not have reasonable assurance of another employment when he left his job, even though some employers had showed a clear interest in him. It found that the Claimant had reasonable alternatives to leaving his employment.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division ignored evidence before it, particularly the evidence about him being hired after receiving reasonable assurance of obtaining another employment, and that it erred in its interpretation of the case law on the notion of reasonable assurance.

[5] The Tribunal must decide whether the General Division erred in concluding that the Claimant had left his employment without just cause, pursuant to s. 29(c)(vi) of the *Employment Insurance Act* (EI Act).

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

ISSUES

[7] Did the General Division ignore the evidence before it, particularly the evidence about the Claimant being hired after receiving reasonable assurance of obtaining another employment?

[8] Did the General Division err in its interpretation of the case law on the notion of reasonable assurance?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has determined that the only mandate of the Appeal Division is that which is conferred to it by ss. 55 to 69 of the *Department of Employment and Social Development Act*.¹

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

[11] 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 1: Did the General Division ignore the evidence before it, particularly the evidence about the Claimant being hired after receiving reasonable assurance of obtaining another employment?

[12] This ground of appeal is without merit.

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

[13] The Tribunal listened to the recording of the General Division hearing. The facts retained by the General Division supporting its decision are simple and were confirmed by the Claimant in his testimony.

[14] The Claimant was looking for employment in X in early November 2016, before he left his job in X. Two companies had shown keen interest in his applications, and one of these companies, X, told him that they actually needed new drivers. After resigning and moving in late November, the Claimant approached X a second time. He was told to take his time with settling in and to contact the company after the holidays. He contacted the company in January, and he was hired by X as of February 2, 2017.

[15] The Tribunal is of the view that the General Division did not ignore the evidence before it and that this ground of appeal by the Claimant must be dismissed.

Issue 2: Did the General Division err in its interpretation of the case law on the notion of reasonable assurance?

[16] The Federal Court of Appeal has established that the notion of “reasonable assurance of another employment,” as described in s. 29(c)(vi) of the EI Act, implies the existence of three elements: “reasonable assurance,” “another employment,” and “immediate future.”²

[17] The Claimant argues that he had reasonable assurance of another employment when he left his job because, as a result of his job search before his departure, employers showed a keen interest in his applications, and, one of them, X, told him that they actually needed new drivers. He was in fact hired in February by X.

[18] The Tribunal must consider the time at which the Claimant decided to leave his employment in X.

[19] The evidence indicates that, at the time he chose to become unemployed in late November 2016, the Claimant did not know if or with which employer he would have

² *Canada (Attorney General) v. Lessard*, 2002 FCA 469.

employment, and he did not know at what point in the future he would have employment.³

[20] Moreover, on January 13, 2017, roughly six weeks after having left his employment in X, the Claimant stated to the Commission that he was still looking for a job.⁴

[21] Even though the Claimant managed to find employment as a driver shortly after having left his job, it cannot be said that, when he quit, he knew which job he would get or that he knew the identity of his future employer. At best, he knew that he would probably be hired by one of the potential employers.⁵

[22] The Tribunal considers that it was open to the General Division to conclude that the Claimant had not established just cause for leaving his employment on the grounds set out in s. 29(c)(vi) of the EI Act. The General Division made a decision that is in accordance with the law and with the case law.

[23] This ground of appeal fails.

³ *Canada (Attorney General) v. Sacrey*, (2004) 1 FC 733; *Canada (Attorney General) v. Laughland*, (2003) 301 NR 331 (FCA); *Canada (Attorney General) v. Bédard*, (2004) 2004 FCA 21, 241 D.L.R. (4th) 763 (FCA); *Canada v. Wall*, (2002) 293 NR 338 (FCA); *Canada (Attorney General) v. Lessard*, 2002 FCA 469.

⁴ GD3-17.

⁵ *Canada (Attorney General) v. Muhammad Imran*, 2008 FCA 17.

CONCLUSION

[24] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 14, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. D., Appellant Réal Labarre, Representative for the Appellant Manon Richardson, Representative for the Respondent