



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. R. T.*, 2018 SST 748

Tribunal File Number: AD-18-235

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

R. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 18, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal. The decision of the General Division dated March 21, 2018, is annulled and set aside.

OVERVIEW

[2] The Respondent, R. T. (Claimant), was employed full time when she voluntarily left her employment because she had accepted an on-call position with the X. There were no guaranteed hours, but the Claimant hoped that the position would develop into a permanent one, which would mean a significant increase in salary with the potential for better benefits. The Appellant, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not demonstrate just cause for voluntarily leaving her employment. The Claimant was therefore denied benefits. She requested a reconsideration of this decision. The Commission however maintained the original decision.

[3] The Claimant appealed the Commission's decision to the General Division, which concluded that the Claimant had no reasonable alternatives available to her before leaving her employment, when considering all the circumstances. The General Division found that there was no reason for the Claimant to stay at her full-time position because she took on a position that paid more and could lead to permanent full-time work.

[4] The Commission was granted leave to appeal to the Appeal Division. The Commission submits that the General Division erred in law when it ignored the jurisprudence of the Federal Court of Appeal that states that leaving permanent employment for part-time or on-call employment does not constitute just cause under sections 29 and 30 of the *Employment Insurance Act* (Act), even if the new job offers a better salary and better benefits.

[5] The Tribunal must decide whether the General Division erred in law by ignoring Federal Court of Appeal jurisprudence and accepting the Claimant's desire to improve her personal and financial situation as just cause for voluntarily leaving her employment.

[6] The Tribunal allows the Commission's appeal.

ISSUE

[7] Did the General Division err in law by ignoring Federal Court of Appeal jurisprudence and by accepting the Claimant's desire to improve her personal and financial situation as just cause for voluntarily leaving her employment?

ANALYSIS

The Appeal Division's mandate

[8] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that act.¹

[9] 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.²

[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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

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

² *Idem*.

Issue: Did the General Division err in law by ignoring Federal Court of Appeal jurisprudence and by accepting the Claimant's desire to improve her personal and financial situation as just cause for voluntarily leaving her employment?

[11] The appeal is allowed.

[12] The facts of the case are simple and undisputed.

[13] The Claimant was employed full time when she voluntarily left her employment because she accepted an on-call position with the X, which would mean a significant increase in salary. The job also suited her family better. When the Claimant decided to leave her full-time employment, there were no guaranteed hours, but she hoped that the position would develop into a permanent one, which would mean better benefits. A friend had started on the on-call list and a year later had a permanent position.

[14] The Tribunal finds that the General Division erred in law when it ignored the Federal Court of Appeal jurisprudence and when it accepted the Claimant's desire to improve her personal and financial situation as just cause for voluntarily leaving her employment.³

[15] An employee who voluntarily leaves her employment to accept an on-call employment with no guarantee of hours and no promise of full-time employment, although this employment offers the possibility of permanent employment and better benefits in the future, certainly has an excellent reason for doing so in personal terms. However, it is contrary to the very principles underlying the Employment Insurance system for that employee to be able to impose the economic burden of her decision on contributors to the fund.⁴

[16] The Tribunal finds that giving up full-time employment for on-call employment, the extent of which is necessarily uncertain, cannot be considered just cause under the Act.

³ *Canada (Attorney General) v. Richard*, 2009 FCA 122; *Canada (Attorney General) v. Langlois*, 2008 FCA 18; *Canada (Attorney General) v. Sacrey*, 2003 FCA 377.

⁴ *Martel*, A-1691-92.

[17] The Tribunal is also not convinced from the evidence before the General Division that the Claimant's working conditions were so intolerable as to leave her no option but to resign when she did. Furthermore, it is clear from the evidence before the General Division that the Claimant did not consult a doctor or discuss her health issues with her employer before deciding to quit.

[18] The Claimant's alternatives were to remain with the permanent full-time employment until she found something more suitable that would be permanent and full-time, discuss her health concerns with her employer to find a solution, or attempt to reach an agreement with the employer to allow her to be available on-call, while retaining her full-time employment.

CONCLUSION

[19] The Tribunal allows the appeal. The decision of the General Division dated March 21, 2018, is annulled and set aside.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	July 10, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Julie Villeneuve, Representative for the Appellant R. T., Respondent