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

Citation: *G. G. v. Canada Employment Insurance Commission and X*, 2018 SST 876

Tribunal File Number: AD-18-501

BETWEEN:

G. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: September 7, 2018

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] In early January 2017, the Applicant, G. G. (Claimant), a heavy equipment operator, left his employment with the Added Party, X (Employer), shortly after training and orientation had concluded. He claimed that he had just cause for leaving this employment, because he determined that there had been significant changes to his working conditions, such that they constituted a danger to his health and safety. As he noted in one of his letters, it was only after training and orientation had concluded that he knew more about what the job would entail.[1] He applied for and began receiving Employment Insurance regular benefits.

[3] On September 1, 2017, the Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that it was unable to pay any benefits starting January 1, 2017, because it determined that he had voluntarily left his employment with the Employer without just cause and that voluntarily leaving was not his only reasonable alternative.[2] This resulted in an overpayment of benefits. The Claimant sought a reconsideration of this decision.[3] The Commission decided in the Claimant's favour.[4] The Employer appealed the Commission's reconsideration decision to the General Division.[5]

[4] The General Division allowed the appeal, having found that the Claimant had had reasonable alternatives to leaving and that he had not proven he had just cause for voluntarily leaving his employment. The Claimant now seeks leave to appeal, on the basis that the General Division failed to observe a principle of natural justice and failed to consider the applicability of ss. 29(*c*)(vi), (ix), and (xiii) of the *Employment Insurance Act*. I must now decide whether the

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[1] Claimant's letter/request for reconsideration, at GD3-25 to GD3-26.
[2] Commission's letter dated September 1, 2017, at GD3-21 to GD3-22.
[3] Request for Reconsideration, at GD3-23 to GD3-26.
[4] Commission's letter dated October 23, 2017, at GD3-27 to GD3-28.
[5] Notice of Appeal, at GD2.

appeal has a reasonable chance of success; in other words, is there an arguable case on the basis of any of these arguments?

[5] I am refusing the application for leave to appeal because I am not satisfied that the appeal has a reasonable chance of success. As regrettable as it was for the General Division to issue two separate corrigenda, it was necessary to ensure that the information in the decision was correct. The General Division specifically referred to and considered the applicability of s. 29(*c*)(ix) of the *Employment Insurance Act* in its analysis. Furthermore, although the General Division did not specifically refer to s. 29(*c*)(iv) or (xiii) of the *Employment Insurance Act*, I find that it had, in fact, considered the issue of whether the Claimant's working conditions had changed significantly so as to endanger health or safety.

ISSUES

[6] The following issues before me are as follows:

> Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction?
>
> Issue 2: Is there an arguable case that the General Division erred in law by failing to consider the applicability of ss. 29(*c*)(iv), (ix) or (xiii) of the *Employment Insurance Act*?

ANALYSIS

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

> *(a)* the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> *(b)* the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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.

[8] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General)*.[6]

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction?

[9] The Claimant argues that the General Division failed to observe a principle of natural justice; he argues that the review of his case by the General Division constitutes "harassment." He notes that the General Division changed its decision "multiple times." The General Division rendered its original decision on April 9, 2018, and issued corrigenda on April 23, 2018 and July 11, 2018.

[10] Natural justice is concerned with ensuring that applicants have a fair opportunity to present their case and that proceedings are fair and free of any bias. It relates to issues of procedural fairness. Here, there are no allegations that the General Division deprived the Claimant of an opportunity to fully and fairly present his case or that it exhibited any bias against him during the course of the proceedings. The alleged breach occurred after the decision had been rendered, in the form of corrigenda.

[11] Corrigenda are issued to correct accidental slips, oversights, omissions or ambiguity.

[12] In this case, the General Division member made several corrections throughout his decision, primarily because he had misidentified the party to whom he was referring. Had the General Division failed to make the appropriate corrections to refer to the proper party, the decision would have made little sense. For instance, at paragraph 6, the General Division initially

[6] *Joseph v. Canada (Attorney General)*, 2017 FC 391.

wrote that “the Appellant has not proven he had just cause for voluntarily leaving his employment.” However, in the proceedings before the General Division, the appellant was the employer, whereas it was the added party who had voluntarily left his employment. It would have made little sense if the General Division left the decision intact so that it continued to read that the employer had voluntarily left his employment. The General Division amended this paragraph by deleting the word “Appellant” and replacing it with “Added Party.” The member made similar corrections throughout the decision.

[13] The other major correction that the General Division made to the decision was in its conclusion. Initially, the member wrote that the Employer’s appeal was dismissed, but the member subsequently amended this to read that the Employer’s appeal was allowed. Although the Claimant argues that the General Division’s decision should revert to its original conclusion, it is apparent from the overall decision that the General Division member originally intended to allow the Employer’s appeal. For instance, in the Overview section, at paragraph 6, the member wrote: “The Tribunal finds that the ~~Appellant~~ [Added Party] has not proven he had just cause for voluntarily leaving his employment.”

[14] At paragraphs 35 to 45, the member examined whether the Claimant had just cause for leaving his employment. The member determined that “having regard to all of the circumstances, [he found] that the ~~Appellant~~ [Added Party] had reasonable alternatives available to leaving and [that he had] not proven he had just cause for voluntarily leaving his employment in accordance with sections 29 and 30 of the Act.” Given the overall decision, it logically flowed that the member was allowing the Employer’s appeal and that paragraph 46 had to be corrected to reflect this.

[15] While the changes—particularly at paragraph 46—were unfortunate, they were necessary to correct accidental errors and to ensure that the decision accurately reflected the member’s findings and conclusion. Although the member issued two separate corrigenda, including one several months after the decision had been originally released, and the corrected outcome was certainly upsetting, this does not constitute harassment. As I have noted above, natural justice is concerned with procedural fairness and ensuring that applicants have a fair opportunity to present their case and that proceedings and fair and free of any bias. The issuance of corrigenda

well after the conclusion of the proceedings does not fall within this sphere. I am not satisfied that the appeal has a reasonable chance of success on this basis.

Issue 2: Is there an arguable case that the General Division erred in law by failing to consider the applicability of ss. 29(*c*)(iv), (ix) or (xiii) of the *Employment Insurance Act*?

[16] The Claimant argues that the General Division failed to appreciate the evidence before it and that it therefore failed to consider the applicability of ss. 29(*c*)(iv), (ix), and (xiii) of the *Employment Insurance Act*. He claims that the General Division would have determined that he had just cause if it had considered the evidence.

[17] Subsection 29(c) of the *Employment Insurance Act* provides for just cause for voluntarily leaving an employment, if the claimant had no reasonable alternative to leaving, having regard to all the circumstances, including:

> (iv) working conditions that constitute a danger to health or safety,
>
> [. . .]
>
> (ix) significant changes in work duties; or …
>
> (xiii) any other reasonable circumstances that are prescribed.

[18] The Claimant submits that he had expected that work as an equipment operator would include a physical component, but he did not expect that he would have to lift telephone poles. He claims that this constituted a significant change in his work duties. Similarly, he also expected that the Employer would provide housing if the jobsite was a significant distance from the Employer's offices, a common practice in the construction industry. Initially, the Employer expected the Claimant to commute close to 150 km each way, just to get to the job site. The Claimant argues that driving those distances with treacherous road conditions to get to jobsites not only represented a significant change in the work duties, but it would have also endangered his safety and that of the people with whom he was expected to work. Eventually, the Employer relented and agreed to provide housing for the Claimant, but the Claimant was concerned that the Employer could change the terms of his working conditions or duties later.

[19] At paragraph 42, the General Division referred to s. 29(*c*)(ix) of the *Employment Insurance Act*. It reviewed the evidence and found that there was no evidence to indicate that the Employer would make any significant changes to the Claimant's work duties that involved any travel.

[20] The General Division noted the Claimant's concerns that he would be expected to perform heavy physical work. It also noted the Employer's response that labourers would perform any heavy physical work. The General Division determined that because the Claimant did not stay employed long enough, his concerns were speculative, such that it was unable to find that there had been significant changes to the work duties. As a result, it cannot be said that the General Division failed to consider the applicability of s. 29(*c*)(ix) and determine whether there had been significant changes in work duties.

[21] The Claimant raised concerns about the danger to his health or safety in anticipation of travelling appreciable distances between the Employer's office and jobsites. The General Division did not specifically refer to ss. 29(*c*)(iv) or (xiii) of the *Employment Insurance Act*, but it determined that the Claimant's concerns were a moot issue because once the Employer learned about them, the Employer indicated that it would pay for the Claimant's accommodations during the work week, such that the Claimant would not be required to travel between the office and any jobsites. While the Claimant's concerns about possible future changes to his working environment may have been reasonable, the General Division indicated that they too were speculative and had yet to be borne out. Accordingly, I am not satisfied that there is an arguable case that the General Division failed to consider the applicability of s. 29(*c*)(iv) or (xiii) of the *Employment Insurance Act*.

[22] Essentially, the Claimant is seeking a reassessment or a rehearing on the issue of just cause. However, s. 58(1) of the DESDA provides for only limited grounds of appeal. It does not allow for a reassessment of the evidence or a rehearing of the matter.

[23] As an aside, I note that there was evidence that suggested that the Employer may not have fully described certain aspects of the employment and that the Claimant made certain assumptions about what the work would entail. Over the course of the training and orientation, he learned more about what the work would entail and what the Employer expected from him.

The General Division should have addressed whether this scenario, in fact, represented a significant change in work duties. If these work duties had been expected of the Claimant all along, this may not have constituted a change in work duties at all, even if the Claimant had not asked about his work duties and was unaware of them.

[24] I have reviewed the underlying record and do not see that the General Division overlooked or misconstrued key evidence or that it erred in law, whether or not the error appears on the face of the record.

CONCLUSION

[25] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	G. G., Applicant