



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. C. v Canada Employment Insurance Commission*, 2018 SST 1332

Tribunal File Number: GE-18-1247

BETWEEN:

A. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: October 10, 2018

DATE OF DECISION: October 12, 2018

DECISION

[1] The appeal is allowed. The Tribunal finds that the Appellant, A. G., had just cause for voluntarily leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (Act).

OVERVIEW

[2] The Appellant worked as a heavy truck driver for the employer X (employer), from December 2, 2013, to July 6, 2017, and stopped working for that employer after voluntarily leaving. He then started a new job with the employer X on July 31, 2017, and this job ended on or around November 13, 2017. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant did not have just cause for voluntarily leaving his employment with X. The Appellant explained that he left his employment with that employer because his working conditions constituted a danger to his health and safety and to the safety of others on the road because of the condition of the truck he had to drive. He specified that the truck was not safe (for example, steering and braking problems, vibrating steering wheel and gear shift, carbon monoxide seeping into the cabin, the truck's high mileage) and that it should not be used for the purposes for which he used it (transporting wood and pipes). The Appellant explained that driving this truck became difficult and caused him health problems (for example, pain in his shoulders and arms). He also stated that he left his employment to take other employment. The Appellant disputed the decision after the Commission reconsidered it.

ISSUES

[3] The Tribunal must determine whether the Appellant had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

[4] To arrive at this finding, the Tribunal must answer the following questions:

- a) Was the Appellant's termination of employment a voluntary leaving?
- b) If so, did the Appellant's working conditions constitute a danger to his health or safety and could they justify his voluntary leaving?

c) Was voluntarily leaving the only reasonable alternative in the Appellant's case?

ANALYSIS

[5] The relevant statutory provisions appear in the annex of this decision.

[6] The test for determining whether a claimant had just cause for leaving an employment under section 29 of the Act is asking whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92; *Laughland*, 2003 FCA 129).

[7] Asking whether the Claimant acted as a reasonable and prudent person would do in similar circumstances does not constitute the right test for just cause (*Imran*, 2008 FCA 17).

Was the Appellant's termination of employment a voluntary leaving?

[8] Yes. The Tribunal finds that, in this case, the Appellant's termination of employment was a voluntary leaving within the meaning of the Act.

[9] The Tribunal considers that the Appellant had the choice to continue working for the employer but chose to leave his employment voluntarily (*Peace*, 2004 FCA 56).

[10] In his application for benefits filed on December 19, 2017, the Appellant indicated that he had stopped working for the employer X after voluntarily leaving. The Appellant explained that he had started new employment about 15 days to 4 weeks after leaving his employment (GD3-3 to GD3-22).

[11] The employer, X (Y. C.), explained in a January 29, 2018, statement to the Commission that the Appellant had left to take other employment (GD3-26).

[12] The July 18, 2017, Record of Employment issued by the employer indicates that the Appellant stopped working after voluntarily leaving (code E – Quit) (GD3-23).

[13] The Tribunal considers that the Appellant could have continued the employment he had but took the initiative of terminating that employment by telling the employer he would not continue working (*Peace*, 2004 FCA 56).

Did the Appellant's working conditions constitute a danger to his health or safety and could they justify his voluntary leaving?

[14] Yes. The Tribunal finds that the Appellant's voluntary leaving was justified by the existence of "working conditions that constitute a danger to health or safety," as section 29(c)(iv) of the Act states. The Tribunal specifies that, essentially, the questions of safety justify the Appellant's voluntary leaving in this case.

[15] The Tribunal considers that the Appellant's credible testimony during the hearing gave a complete and very detailed picture of the reasons leading to his voluntary leaving. The Appellant's testimony was detailed and supported by concrete examples.

[16] The Appellant made a number of clarifications about the conditions in which he performed his work as a heavy truck driver, specifically about the state of the truck he had to drive. The Appellant's testimony put the events leading to his voluntary leaving in context.

[17] The Appellant explained that he had been in X's employ for more than three and a half years, from December 2, 2013, to July 6, 2017, but that the company changed ownership about seven or eight months before he voluntarily left his employment. He indicated that he had about four or five years of experience as a heavy truck driver and that he had completed training in that field.

[18] The Appellant explained that, during the seven or eight months before the end of his employment, he drove a different truck than the one he had before. He emphasized that it was not a new truck, as the employer said, but that he had been assigned the new truck for his work and that it was an [translation] "antique" (GD3-26). He stressed that this truck, which was used in the last months of his employment, had travelled about 3,000,000 (three million) kilometres.

[19] The Appellant explained that he was afraid when driving the truck. He specified that he also feared for the safety of those around him on the road (GD3-25).

[20] The Appellant stated that the truck did not do what he wanted it to and had the following problems:

- Insufficient dimensions and weight: The truck was too small or too light for its intended purpose—transporting bundles of wood and plastic pipes. The front of the truck was too light (GD3-29 to GD3-37);
- Brakes: The brakes malfunctioned. The truck was not braking enough for the load he transported (for example, load of more than 60,000 kilograms or between 130,000 and 140,000 pounds). To stop in traffic, the truck could stop about 30 feet further than the required distance (GD3-25);
- Steering and road handling: The truck was difficult to drive. The truck could keep going straight, even when going around a bend or turning a corner. The truck did not hold the road well (for example, on snow) (GD3-25);
- Vibrations: The truck [translation] “shook” or rattled on the road (for example, steering column, gear shift, cabin) (GD3-25 and GD3-29 to GD3-39);
- Exhaust pipes: The exhaust pipes leaked, and carbon monoxide seeped into the cab interior (GD3-29 to GD3-39);
- Age of the truck: The truck was too old and the mileage high (about 3,000,000 kilometres) (GD3-25 and GD3-29 to GD3-37).

[21] The Appellant stressed that the truck’s braking issues made it dangerous to drive. He explained that it was scary to press the brake pedal when he needed to stop in traffic. The Appellant argued that it made no sense and that he could have killed someone because of this issue. He stated that he came close to hitting vehicles with his truck on many occasions.

[22] The Appellant explained that a driver may be liable if they drive a truck that is not in working order.

[23] He indicated that the employer carried out mechanical inspections of its trucks with its mechanics.

[24] The Appellant explained that, if a truck is stopped on the road and a mechanical problem is found, the mechanic who did the inspection could also be blamed. He stated that a company mechanic refused to sign a mechanical inspection sheet for a truck because he considered it to be in too poor condition. The Appellant stated that the mechanic had decided to leave his employment rather than sign the mechanical inspection sheet in question.

[25] The Appellant said that a company truck lost a set of tires on the road and that the situation caused someone's death (GD3-36).

[26] He explained that having to drive the truck for several months, without the problems being corrected, was stressful for him (GD3-29 to GD3-37).

[27] The Appellant stated that he reported the problems he was having with the truck to his employer on several occasions, but nothing changed. He stated that he started to complain as soon as he got into the truck (GD3-25).

[28] The Appellant argued that he did not leave his employment on a whim. He explained that he had endured his employment and had been thinking of leaving for a number of months (GD3-39).

[29] The Appellant explained that he had discussed the situation with the owner (boss), Y. C., and told him several times that it made no sense to drive such a truck. He stated that he told the employer that he was not going to drive for a long time because it was not right.

[30] The Appellant specified that his truck broke frequently. He stated that he reported the problems he was having with the truck to the employer every two or three weeks during the last seven or eight months of his employment. The Appellant stated that he never signed the sheet concerning the condition of the trucks, which would have let the government perform related checks, and that he instead verbally reported the situation to his employer. He said that he did nothing to discredit the employer. The Appellant noted that the former owner understood their

responsibility in this regard better (for example, truck maintenance and repairs, taking them off the road until they were repaired). The Appellant stated that the new owner did not maintain the trucks as well as the previous owner did. The Appellant explained that the new owner repaired its trucks, but that there was always a delay or the trucks were incorrectly repaired (GD3-29 to GD3-39).

[31] The Appellant explained that, each time he spoke to the owner about his truck, the owner did not answer or talked about other things, or even told him that [translation] “I know you don’t like your truck; it’s okay.” According to the Appellant, the owner never stopped, even when his truck was [translation] “a public risk” (GD3-25).

[32] The Appellant stated that the owner finally told him that if his truck was always broken, it was his fault. He stressed that he travelled more than 200,000 kilometres per year and that the truck he usually drove never broke. When the engine in his old truck blew up after it had travelled more than 2,000,000 kilometres, the owner told him: [translation] “You’re driving it wrong,” but that truck had never had any damage before. He explained that, each time he tried to explain things to the owner, it always ended up [translation] “fizzling out” because the owner never answered questions. The Appellant said that he grew tired (GD3-29 to GD3-39).

[33] The Appellant explained that the employer had told him that it was going to assign him another truck and that it was thinking of acquiring another used truck, but this did not happen (GD3-29 to GD3-39).

[34] The Appellant explained that he also spoke to the dispatcher about the state of his truck several months before leaving his employment. He indicated that the dispatcher was well aware of the condition of the company’s trucks because they drove or tested them. The Appellant stated that the dispatcher was also aware that he would not tolerate the situation for very long and that he was going to find other employment.

[35] He clarified that he told the dispatcher that he was going to leave his employment. The Appellant stated that he announced it about two weeks before voluntarily leaving and that he told the dispatcher that it was over.

[36] He explained that he told the employer, at the end of his last week of work, that he would work the following Sunday as planned.

[37] The Appellant stated that, before he left for the weekend, he returned to the employer's garage and told the mechanic that the truck was no longer braking, that it made no sense, and that something was not right. He said that he had noticed oil leaking from the truck's differential near a wheel and that he had a set of brakes that was no longer working. The Appellant indicated that oil was flowing from a wheel seal through the brakes. He stated that when the mechanic saw the condition of the truck, he smiled but told him that he was going to repair it. The Appellant explained that, despite the repairs to the truck, the employer's mechanic never managed to repair the truck in question and that something was always not quite right. He indicated that the mechanic would test the truck in the yard, at 10 km/h, without a load (GD3-29 to GD3-39).

[38] The Appellant also explained that he approached the company's mechanic to try to find the source of his truck's vibration problem, but that the mechanic was not able to do so. He stressed that the problem with his truck was never resolved (GD3-29 to GD3-37).

[39] The Appellant disagreed with the employer's version, which was that his truck was working (GD3-39 and GD3-40).

[40] The Appellant indicated that he did not contact the owner (Y. C.) to tell him that he was leaving his employment voluntarily. He explained that he did not speak to him because it would not have done any good, that he was not interested in doing it, and that he would not have even replied (GD3-40).

[41] The Appellant explained that he did not lodge a complaint about his situation at work with the labour board Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). He thought that if he had launched an action to that effect, so many discrepancies would have been found that the company would have closed its doors or declared bankruptcy (GD3-25 and GD3-39).

[42] The Appellant stated that the company had more problems on the road (for example, tickets) than normal because of its trucks breaking. He stressed that the employer had a fleet of

about 14 trucks before the change in ownership and that the number of trucks then decreased to four or five trucks. The Appellant noted that more than half of the fleet of trucks and trailers had been [translation] “scrapped” for being unsuitable and dangerous. He explained that the trailer he had used at the employer needed to be [translation] “scrapped,” that the employer continued to maintain it by adding parts, but that it did not make sense (GD3-38 and GD3-39).

[43] The Appellant explained that he had health issues connected with his working conditions and using the truck he drove during the last months of his employment, including numb arms, shoulder pain from using the gear shift, intestinal issues, weight gain, and sleep issues (GD3-25 and GD3-29 to GD3-39).

[44] The Appellant stated that he did not consult a doctor about these problems because it was clear to him that a number of them were caused by the truck he was driving. He stressed that the problem was the truck (GD3-25, GD3-38, and GD3-39).

[45] The Appellant mentioned that he did not start his new employment right after voluntarily leaving his previous employment because of his health issues.

[46] The Appellant explained that he did not complain about the number of hours he had to work for the employer. He clarified that he worked for the employer about 70 hours per week and that that was not the reason for his voluntary leaving (GD3-29 to GD3-37).

[47] In its statements to the Commission on January 29, 2018, and March 6, 2018, the employer indicated that the Appellant did not like his new truck, but that it was compliant and working (GD3-26 and GD3-40).

[48] The employer indicated that the Appellant had left his employment for other employment with his son in construction and that it could not give more information about his reasons for resigning (GD3-26 and GD3-40).

[49] In its argument, the Commission argued that the Appellant had blamed the employer because it never took the necessary steps to resolve the problems connected with his working

conditions. It assessed that the opportunity to work with his son, in better working conditions, motivated the Appellant to leave his employment (GD4-5 and GD4-6).

[50] The Tribunal finds as fact that the Appellant's assertions that his and others' safety could have been seriously compromised because of the condition of the truck he had to drive.

[51] The Appellant's testimony, which was not contradicted, also indicates that before voluntarily leaving, he reported his truck's mechanical issues to the employer on numerous occasions but that the employer did not perform the proper follow-up so that the truck would be safe. The owner concluded that the Appellant's driving was the cause instead.

[52] The Tribunal finds that the employer's statements are limited to indicating that the truck the Appellant drove was compliant and working. The employer did not explain how it followed up on the Appellant's numerous comments about his problems with his truck.

[53] The Tribunal is also of the view that the employer tried to lay the blame for the truck's problems on the Appellant.

[54] The Tribunal finds that the Appellant has shown that he worked in conditions that could constitute a danger to health or safety, under section 29(c)(iv) of the Act. In this case, a safety issue was essentially in question because the Appellant had to use his truck to carry out his work as a driver.

Was voluntarily leaving the only reasonable alternative in the Appellant's case?

[55] Yes. The Tribunal finds, having regard to all the circumstances, that the Appellant's decision to voluntarily leave his employment with the employer must be considered the only reasonable alternative in this situation (*White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92; *Laughland*, 2003 FCA 129).

[56] The Tribunal considers that the Appellant approached the employer a number of months before leaving his employment to find a solution to the safety problem he faced in relation to driving his truck and the risk that truck could pose to his and others' safety.

[57] The Appellant's testimony indicates that he reported the problems he observed with his truck and the risks that truck could pose to his and others' safety to the employer (for example, owner, dispatcher) numerous times.

[58] His testimony also indicates that his numerous efforts proved unsuccessful because the truck's mechanical problems and general condition continued to pose a safety problem.

[59] The Tribunal is of the view that the Appellant tried to resolve his problems concerning the use of his truck with the employer before deciding to voluntarily leave his employment (*White*, 2011 FCA 190).

[60] The Tribunal does not accept the Commission's argument that a reasonable alternative would have been for the Appellant to keep his employment with X until his new employment began on July 31, 2017, and to make sure that the new employment would last long enough (GD4-6).

[61] The Tribunal also does not accept the Commission's argument that the Appellant did not show that there was an urgent need to leave his employment and that instead he made a personal decision to leave permanent employment for seasonal employment.

[62] What is more, the Tribunal cannot agree with the Commission's analysis, which states that the Appellant should also have sought a medical opinion and/or contacted the CNESST if his working conditions were so intolerable.

[63] The Tribunal is of the view that, after working with the employer to try to find a solution to the problem he was facing, the Appellant could not be compelled to continue driving a truck that could pose risks to his and others' safety.

[64] The Tribunal finds that the Appellant was made to work in working conditions that constitute a danger to health or safety, as stated in section 29(c)(iv) of the Act.

[65] The Tribunal accepts that the Appellant's voluntary leaving is essentially justified by safety reasons and that a medical opinion was not necessary or mandatory in his case.

[66] Given the Appellant's numerous comments to the employer to resolve the problem associated with using his truck, the Tribunal is of the view that the fact that he did not take further steps to report to the CNESST a problem that the employer was already aware of and for which it had not found a satisfactory solution cannot be held against the Appellant. The Appellant indicated that he did not take that step to avoid harming his employer.

[67] In summary, the Tribunal finds that the Appellant has shown that there was no reasonable alternative to leaving his employment (*White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92; *Laughland*, 2003 FCA 129).

[68] Based on the case law mentioned above, the Tribunal considers that, having regard to all the circumstances, the Appellant had just cause for voluntarily leaving his employment, under sections 29 and 30 of the Act.

CONCLUSION

[69] The appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

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| HEARD ON: | October 10, 2018 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCE: | A. G., Appellant |

ANNEX

THE LAW

Employment Insurance Act

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

- (vii) significant modification of terms and conditions respecting wages or salary,
- (viii) excessive overtime work or refusal to pay for overtime work,
- (ix) significant changes in work duties,
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
- (xi) practices of an employer that are contrary to law,
- (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
- (xiii) undue pressure by an employer on the claimant to leave their employment, and
- (xiv) any other reasonable circumstances that are prescribed.

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 1.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.