



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. P. v. Canada Employment Insurance Commission*, 2018 SST 1123

Tribunal File Number: AD-18-121

BETWEEN:

C. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 31, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Applicant, C. P. (Claimant), worked as a truck driver for the employer. He was dismissed because he left with a load illegally; according to the employer, the Claimant did not have the right to drive because he had already reached his maximum number of hours. He is alleged to have demanded \$400 from the employer's client to make the journey illegally. The Respondent[, the Canada Employment Insurance Commission] (Commission)[,] informed the Claimant that his claim for Employment Insurance benefits was refused because he had lost his employment because of his own actions. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed that decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had lost his employment because of his misconduct. It determined that although the Claimant's logbook complied with the rules, it did not reflect the reality of the matter. The General Division found that the Claimant's logbook did not reflect the load booklet and that he knew or should have known that his conduct could lead to disciplinary action up to and including termination because he did not comply with the rules of conduct for truck drivers.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division erred in law in its interpretation of the concept of misconduct under the *Employment Insurance Act* (EI Act) because he did not act against the employer's interests. The Claimant also maintains that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it by misinterpreting the logbook.

[5] The Tribunal must determine whether the General Division erred in its interpretation of the concept of misconduct under the EI Act and whether it 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.

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

ISSUES

[7] Did the Tribunal err by finding that the Claimant was guilty of misconduct even though he argues that he did not act against the employer's interests?

[8] Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it by misinterpreting the logbook?

ANALYSIS

Appeal Division's Mandate

[9] 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

[10] 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.

[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 Tribunal err by finding that the Claimant was guilty of misconduct even though he argues that he did not act against the employer's interests?

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

Issue 2: Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it by misinterpreting the logbook?

[12] The notion of misconduct does not imply that the breach of conduct is the result of a wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, in order to constitute 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 their actions would have on their performance.²

[13] The General Division found that the Claimant had lost his employment because of his misconduct. It determined that, although the Claimant's logbook complied with the rules, it did not reflect the reality of the situation. The General Division found that the Claimant knew or should have known that his conduct could lead to disciplinary action up to and including termination because he did not comply with the rules of conduct for truck drivers and that his logbook did not reflect the load booklet.

[14] The General Division, which had the benefit of hearing the Claimant at the hearing, did not place much weight on the Claimant's testimony that he had not violated the rules of conduct for truck drivers.

[15] The General Division placed more weight on the Claimant's initial declaration that he had exceeded his legal hours of driving as a truck driver and he knew it.³ It did not consider the Claimant's testimony that he was [translation] "mixed-up in the head" because he had not yet received his medication and did not know how to respond to the Commission agent. The General Division found that the Claimant had given detailed responses to the questions that the Commission asked him and that his medical situation did not prevent him from answering simple questions.

[16] Before the Appeal Division, the Claimant argued that the employer is the one who put together the routes and that it should have known that he would exceed his legal driving hours. He argues that the employer is now trying to absolve itself of responsibility for the worker.

² *Canada (Attorney General) v Hastings*, 2007 FCA 372; *Tucker*, A-381-85; *Mishibinijima*, A-85-06.

³ GD3-19.

[17] It is important to repeat that the General Division did not have to determine whether the dismissal or penalty was justified. Instead, it had to determine whether the Claimant's action constituted misconduct under the EI Act.

[18] It is well established that the General Division must focus on the claimant's actions, rather than those of the employer. It is not a matter of knowing whether the employer was guilty of misconduct by dismissing the Claimant in such a way that this dismissal was unjustified, but rather of knowing whether the Claimant was guilty of misconduct and whether this misconduct led to the loss of his employment.⁴

[19] As the General Division noted, it was up to the Claimant to inform his employer that he had exceeded his legal driving hours and to follow the rules of conduct for his profession, which he did not do. His employer could have then taken the necessary measures to send another truck and another driver to deliver the cargo.

[20] The Claimant submits that the concept of misconduct implies that the employee neglected the employer's interests by committing a deliberate infraction. He argues that there must be the intention to harm the employer and that, in this case, the Claimant accepted this transport contract in order to help the company, not to harm it. It would have resulted in losing the client if he refused to transport the goods in question.

[21] The Tribunal finds that this argument from the Claimant is without merit. It is clear that the Claimant acted against the employer's interests by agreeing to drive his truck beyond the allowed driving hours. By doing so, he exposed the employer to penalties and reprisals. In doing so, he broke the bond of trust that must exist between the employee and their employer.

[22] The Tribunal finds that the Claimant's deliberate failure to respect standards regarding hours of rest and hours of driving established by regulations constituted misconduct and was the direct cause of the loss of his employment. Furthermore, it is clear that the Claimant could have foreseen that his actions were likely to lead to dismissal because his behaviour directly contradicted the requirements of his job as a truck driver.

⁴ *Canada (Attorney General) v McNamara*, 2007 FCA 107; *Fleming v Canada (Attorney General)*, 2006 FCA 16.

[23] The Tribunal therefore finds that the General Division considered the Claimant's arguments, that its decision rests on the evidence before it, and that this decision complies with the legislative provisions and with the jurisprudence.

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

CONCLUSION

[25] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	October 23, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. B., Representative for the Appellant