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

Citation: *Canada Employment Insurance Commission v. E. C.*, 2018 SST 1103

Tribunal File Number: AD-18-370

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

E. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: November 8, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Respondent, E. C. (Claimant), originally took a leave from her part-time job (First Employer) to prepare for and write her final diploma examinations and to complete a six-week work placement required by her course of studies. However, the Claimant did not return to the First Employer, quitting after her work placement to start a full-time position with another employer (Seasonal Employer). The Appellant, the Canada Employment Insurance Commission (Commission), denied her claim for Employment Insurance benefits because she had voluntarily left her job without just cause, and it maintained its decision when the Claimant sought reconsideration. The Claimant successfully appealed to the General Division of the Social Security Tribunal, where the General Division found that the Claimant had not increased her risk of unemployment by accepting a seasonal position because she would have quit working in the fall to return to school anyway. The Commission now appeals the General Division decision to the Appeal Division.

[3] The appeal is allowed. The case authority does not support the General Division's conclusion that the Claimant's intention to treat her job as temporary means that her job may be considered equivalent to temporary employment for the purpose of determining whether she increased the risk of her unemployment by quitting a permanent job for a seasonal one. The General Division failed to appreciate that the Claimant's actions resulted in her unemployment, regardless of her personal plans and purposes.

ISSUE

[4] Did the General Division err in law by accepting that the Claimant's intention to treat her job with the First Employer as temporary meant that its term was equivalent to the term of the temporary job with the Seasonal Employer?

ANALYSIS

General Principles

[5] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[6] However, the Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The only grounds of appeal are described below:

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.

Issue: Did the General Division err in law by accepting that the Claimant's intention to treat her job with the First Employer as temporary meant that its term was equivalent to the term of the temporary job with the Seasonal Employer?

[8] According to s 30 of the *Employment Insurance Act* (EI Act), "[a] claimant is disqualified from receiving any benefits if the claimant lost any employment because […they] voluntarily left any employment without just cause". Paragraph 29(c) of the EI Act states that "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."

[9] The evidence is clear that the Claimant had full-time employment arranged for the summer season to start immediately following her work-placement and leave from the First Employer. It was also appropriate in the circumstances for the General Division to consider

whether the Claimant had a reasonable assurance of employment in the immediate future, a circumstance described in subparagraph 29(c)(vi) of the EI Act. Furthermore, the General Division's finding that she had a reasonable assurance of employment in the immediate future, is founded on facts in evidence.

[10] However, as the General Division correctly noted, it must consider all of the circumstances to determine whether the Claimant had just cause for leaving her employment. As stated in *Canada (Attorney General) v Langlois*:[1] "[Reasonable assurance of employment in the immediate future] being established, how does one determine whether the [claimant] had just cause to leave his employment for another, seasonal or not?"

[11] The General Division acknowledged the Claimant's testimony that she had made arrangements in April to move to another province in September 2017 to attend school. It considered it to be significant that the Claimant's intention was to quit working at the end of the summer, even if the Claimant had not left her First Employer for a position with the Seasonal Employer. The General Division reasoned that the Claimant would be employed for the same length of time at the Seasonal Employer job as she would have been if she stayed at the First Employer job and that, therefore, her move from one position to the other was "not detrimental to a finding of just cause."[2]

[12] *Langlois* had noted that the circumstance regarding "reasonable assurance of employment in the immediate future" is the only one of the circumstances listed in s 29(c) of the EI Act that "come[s] into being solely through the will of the claimant." It also stated the following:

> Apart from certain exceptions, it is the responsibility of insured persons, in exchange for their participation in the scheme, not to provoke that risk or, *a fortiori*, transform what was only a risk of unemployment into a certainty: see *Tanguay v. Canada (Unemployment Insurance Commission)* (1985), 10 C.C.E.L. 239 (F.C.A.). That is why an employee's voluntary leaving in favour of seasonal employment poses a special problem in the context of the rules of employment insurance. Indeed, seasonal employment, by its very nature, involves a risk—if not a certainty—of a cessation of work that may

[1] *Canada (Attorney General) v Langlois*, 2008 FCA 18
[2] General Division decision, para. 19

> or may not give rise to benefits, depending on whether or not the number of hours required under section 30 of the Act has been reached.

[13] *Langlois* suggested that the most important factors in considering whether leaving to take a seasonal position are the time of the voluntary separation and the remaining duration of the seasonal employment.[3] However, the General Division did not identify how the emphasis on these important factors in *Langlois* supported a finding of just cause. In *Langlois*, the Court said that entitlement to *benefits depends on whether the number of hours required by s 30 has been reached*. The "season" in *Langlois* was the construction season, and the Court considered that it was relevant whether the claimant in that case was able to accrue sufficient hours to qualify for Employment Insurance benefits within the four-month period that remained of a longer construction season.[4]

[14] In this case, the Claimant only started working on June 26, 2017, and worked until August 25, 2017, for a total of two months. She could not have accrued the 490 hours of insurable employment unless she worked 54.5 hours per week or extended her season by almost four weeks. (Her record of employment indicates that she worked only 344 hours in this period, averaging 38 hours of employment per week.[5]) There was no evidence that the Claimant accepted the Seasonal Employer job with the understanding that she would be working substantially more than the usual 35–40 hour work week or that she would continue working well into September.

[15] It is undisputed that the Claimant chose to quit the First Employer job because she had found a better paying job for the summer and because she knew she could not continue working at the First Employer after she returned to school. Whatever her reason, the Claimant made the decision to leave the First Employer. There was no evidence that she would not have had work with the First Employer through the summer and afterwards, if she had not taken the seasonal job or if she had requested a longer leave of absence and not left the province in the fall.

[16] The General Division is correct that the Claimant's temporary seasonal job would not have continued beyond the time she intended to quit the First Employer job and that this meant

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[3] *Supra* note 1 at para 33
[4] *Supra* note 1 at para 39
[5] GD3-25

that the Claimant's decision to quit to take the seasonal job did not increase her risk of unemployment *relative to the risk of unemployment associated with her intention to quit at the end of the summer*. But this is unhelpful. Her decision to voluntarily leave the First Employer meant that she chose an increased **absolute** risk of unemployment from that point on, up to and including the time that she would have quit otherwise.

[17] The decision in *Langlois* does not suggest or support that a claimant who has quit a permanent job to accept a temporary job has not thereby provoked a risk of unemployment solely because the claimant intended to quit his or her first job in any event. I find that the General Division erred in law by misinterpreting and misapplying *Langlois* under s 58(1)(b) of the DESD Act.

[18] I appreciate that the Claimant has worked very hard to put herself through school and it would seem that she had a good reason to change jobs for the summer season. Unfortunately, having a good cause for leaving is not the same as having a "just cause"[6] in the eyes of the law.

CONCLUSION

[19] The appeal is allowed.

REMEDY

[20] Having allowed the appeal, I have the authority under s. 59 of the DESD Act to return the matter to the General Division for reconsideration, vary the decision in whole or in part, or make the decision the General Division should have made. I consider the General Division record to be complete and I will therefore make the decision the General Division should have made.

[21] The Claimant quit a permanent position to accept a seasonal one. The Claimant offered personal reasons for her choice, which included the fact that the Seasonal Employer job was in a field for which she had trained, that she would be able to earn more money during the summer at the Seasonal Employer, and that working at the Seasonal Employer increased the prospect of future employment opportunities at the Seasonal Employer. Most importantly, the Claimant

[6] *Canada (Attorney General) v Connell*, 2003 FCA 144

stated that she would have had to quit the First Employer in the fall in any event because she would be moving out of province to attend school.

[22] Regardless of those very good, personal reasons, the Claimant has not established that she had just cause for leaving. I agree that the Claimant had a reasonable assurance of another employment in the immediate future when she quit the First Employer. However, that other employment was a temporary employment of only two months' duration, with no expectation of an extension. The new job at the Seasonal Employer did not offer the Claimant sufficient hours of insurable employment to qualify for Employment Insurance benefits during the time she worked there (see paragraph 11 above), and the Claimant's choice to quit the First Employer for a seasonal summer job significantly increased the risk of her unemployment. In fact, absent significant changes in the Claimant's plans and the nature of the employment relationship with the Seasonal Employer (of which there was no evidence), her choice virtually guaranteed her unemployment at the end of the summer.

[23] Considering the circumstances that were before the General Division, I find that the Claimant has not established that she had no reasonable alternative to leaving, and that she therefore left her employment without just cause. Ultimately, the Claimant's reason for leaving the First Employer job to take the Seasonal Employer job was that she had plans to go to school in the fall. While it may be true that the Claimant had no reasonable alternative *in light of her plans to go to school out of the province*, the Federal Court of Appeal has not accepted that returning to school is just cause for leaving employment,[7] and I cannot take the Claimant's plans to return to school into consideration.

[24] Therefore, the Claimant is disqualified under s30 of the EI Act from benefits because she left her employment without just cause under s 29(c) of the EI Act. According to s30(5)(a), this means that none of the hours of insurable employment that the Claimant accumulated prior to the disqualification, including her employment at X may be used for the purpose of determining her eligibility.

[7] *Supra* note 5 at para 2

[25] The Commission had argued in part that the General Division refused to exercise its jurisdiction to consider the question of whether the Claimant accumulated sufficient hours of insurable employment after her disqualification. The reason the General Division did not consider whether the Claimant had accumulated sufficient hours of insurable employment after leaving her employment to qualify for benefits is that it had found that the Claimant had just cause for leaving her employment. The effect of this would be to allow the hours of insurable employment that she had accumulated within her qualifying period prior to leaving her First Employer. However, I have found that the Claimant did not have just cause and that the Commission correctly disallowed those hours from consideration, meaning that it is now important whether the Claimant accumulated sufficient hours of insurable employment in the period after the disqualification, to qualify for Employment Insurance benefits.

[26] However, under s. 113 of the EI Act, the General Division is only authorized to consider the appeal brought from the reconsideration decision. Neither the original Commission decision of October 24, 2017, nor the reconsideration decision of December 13, 2017, that maintained the original decision, considered the question of whether the Claimant accumulated sufficient hours of insurable employment to qualify for benefits under s. 7(1) of the EI Act. The General Division did not have jurisdiction to address the question and neither do I, in this appeal from the General Division decision.

[27] The Claimant voluntarily left her employment without just cause and is therefore disqualified under s. 30 of the EI Act from receiving Employment Insurance benefits in relation to hours of insurable employment accumulated prior to her disqualification.

Stephen Bergen
Member, Appeal Division

HEARD ON:	October 30, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. C., Respondent Louise LaViolette, Representative

	for the Appellant