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

Citation: *X v Canada Employment Insurance Commission and C. S.*, 2018 SST 1422

Tribunal File Number: GE-18-1918

BETWEEN:

X

Appellant (Employer)

and

Canada Employment Insurance Commission

Respondent

and

C. S.

Added Party (Employee)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: October 23, 2018

~~DATE OF DECISION: October 30, 2018~~

DATE OF CORRIGENDUM: November 20, 2018

Canada

DECISION

[1] ~~The appeal is dismissed. The Added Party has not proven that he had just cause for leaving his employment as there was another reasonable alternative.~~

[2] [**The appeal is allowed. The Appellant (Employer) has proven that there was another reasonable available to Added Party (Employee) instead of quitting his employment]. As a result, the Employee has not proven that he had just cause for leaving his employment.**

OVERVIEW

[3] The Added Party (Employee) was employed as a driver and was responsible to deliver trucks to the United States and Canada. While the Employee was employed, he went off his scheduled route with his work truck because his father in-law was terminally ill in the hospital. He parked the truck near his home and it was stolen overnight. The Employee was suspended from work for three weeks and when he returned to work, he states that he quit his employment because he had no choice as his Employer advised they were going to dismiss him. The Respondent determined that the Employee was entitled to benefits because he had no other reasonable alternative but to leave his employment. The Employer appealed that decision to the Social Security Tribunal (Tribunal). The Employer disputed that the Employee was going to be dismissed because he could have filed a union grievance and continued with arbitration. The Employer further noted that when the Employee returned to work, he was represented by his union representative and that he voluntarily made a decision to quit his employment instead. The Employer submits that the Employee did not have just cause to leave his employment and that there was at least one reasonable alternative available.

PRELIMINARY MATTERS

[4] Only the Employer and Witness, S.P attended the teleconference hearing. The Employee did not attend the teleconference hearing on October 23, 2018. The Tribunal waited 15 minutes past the appointed hearing time for the Employee and then proceeded with the merit hearing.

[5] Subsection 12(1) of the *Social Security Tribunal Regulations* provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if they are satisfied that the Notice of Hearing was received. The Notice of Hearing was signed as received by the Employee on September 6, 2018. Therefore, I am satisfied that the Employee received the Notice of Hearing and proceeded in his absence.

ISSUES

Issue 1: What was the reason for separation from employment?

Issue 2: Did the [**Employee]** have just cause for voluntarily leaving his employment? Were there any other reasonable alternatives?

ANALYSIS

[6] The relevant legislative provisions are reproduced in the Annex to this decision.

[7] Claimants are disqualified from employment insurance benefits where they voluntarily leave any employment without just cause (ss.30 (1) of the Act). The Respondent must first show that the [**Employee]** voluntarily left his employment. The burden then shifts to the **[Employee]** to show he had just cause for doing so (*Canada (Attorney General) v. White*, 2011 FCA 190). Claimants must prove that they had just cause for voluntarily leaving employment and that in the circumstances they had no reasonable alternative to leaving that employment (s.29 of the Act).

[8] The purpose of the Act is to compensate persons whose employment has terminated involuntarily and who are without work (*Canada (Canada Employment and Immigration commission)* v. *Gagnon*, [1988] 2 SCR 29).

Issue 1: What was the reason for separation from employment?

[9] The parties agree that the reason for separation from employment was because the Employee quit his employment on March 8, 2018. Accordingly, I accept that the Employee quit his employment on March 8, 2018.

[10] The **[Employee's]** application for benefits identifies that he quit his employment (GD3-7); his Record of Employment identifies that he quit (GD3-27) and a copy of the [**Employee's]** resignation letter was submitted (GD3-32).

Issue 2: Did the [Employee] have just cause for voluntarily leaving his employment? Were there any other reasonable alternatives?

[11] No, I find that the Employee did not have just cause for voluntarily leaving his employment because a reasonable alternative would have been to file a union grievance and participated in the arbitration process instead of quitting his employment.

[12] Section 29(c) of the Act provides that just cause for voluntarily leaving an employment exists if the **[Employee]** had no reasonable alternative to leaving, having regard to all the circumstances. This section provides a non-exhaustive list of circumstances which might justify voluntarily leaving an employment.

[13] I considered whether any of the following enumerated circumstances applied: undue pressure by an employer on the claimant to leave their employment, and any other reasonable circumstances that are prescribed.

[14] Sections 29 and 30 of the Act provide exceptions to the general rule that insured individuals that are not deliberately unemployed are entitled to benefits. The exceptions must therefore be strictly interpreted (*Goulet* v. *Commission*, A-358-83).

[15] The Employee advised the Respondent that he was forced to quit his employment. The **[Employee]** stated that after his 3 week suspension, he returned to work and attended a meeting with his managers and his union representative. He stated that his employer wanted him to sign a document that confirmed he was dismissed. However, after a discussion with the union representative, the employer agreed to give him good references for other employers if he agreed to sign a resignation letter (GD3-31).

[16] The union representative told the Respondent that the Employee had two options, to resign from his employment or to be reinstated without any working hours (GD3-34). He also said that the Employee had no other choice but to sign the resignation letter and that it was not

his fault that the trucks were stolen. He further noted that the employer would have not dismissed the Employee as they would not have wanted a judicial battle with the union.

[17] The Employer testified that he attended the meeting by teleconference and that the Employee was not forced to quit his employment, but that he voluntarily quit after he consulted with his union representative at their meeting. The Employer stated that he was given two choices, to either resign or go thru the arbitration process. The Employer disputes that he was told he would be dismissed or not provided with working hours because hours are assigned based on seniority and it was not possible to skip someone on the list.

[18] The Employer further stated that he believes the Employee opted to quit his employment after speaking with his union representative because there was sufficient misconduct evidence against him and his likelihood of success at arbitration was minimal.

[19] The Employer's Witness, S.P testified that he was present at the meeting with the Employee and the union representative. S.P said that the Employee chose to quit after speaking privately with his union representative. S.P noted that the Employee was given two options, to either quit or go thru the arbitration process. As the Employee decided to quit, S.P printed out the template resignation letter which was signed by the Employee and his union representative. S.P further noted that it would not have been possible to dismiss the **[Employee]** or reduce his hours because there is a union at the workplace.

[20] I was not satisfied that the Employee was pressured by the Employer to quit his employment because the evidence has demonstrated that he was given two options. The Employee could have exercised his right to file a union grievance and proceed with arbitration. I also note that the union representative was in attendance at the meeting and that they had an opportunity to speak privately. As a result, I was not persuaded that the Employee had no choice but to quit his employment at that meeting.

[21] The court has found that while the claimant's resignation was understandable in the circumstances, it was nevertheless precipitous and does not constitute just cause (*Canada (Attorney General)* v. *Quinn*, A-175-96)).

[22] Further, I was also persuaded by the Employer and S.P's testimony who noted that it would not have been possible to dismiss the Employee or reduce his hours because there is a union at the workplace. I find it more likely than not, that the Employee willingly signed the resignation letter and quit his employment without undue pressure because he was offered another option, which he chose not to exercise. As a result, I find that the Employee did not have just cause to leave his employment due to undue pressure by his employer based on subsection 29(c)(xiii) of the Act.

[23] The question is not whether it was reasonable for the claimant to leave their employment, but rather whether leaving the employment was the only reasonable course of action open to them, having regard to all the circumstances (*Canada (Attorney General)* v. *Laughland*, 2003 FCA 129).

[24] I find that the Employee had one reasonable alternative to leaving his employment, which was to exercise his right to go thru the arbitration process with the assistance of his union. The Employee was not obligated to quit his employment and ought to have exhausted all reasonable alternatives before he quit. I also note that the Employee was assisted by his union representative at the meeting and would have known that proceeding to arbitration was an available option.

CONCLUSION

[25] Having regard to all the circumstances, the ~~Appellant~~ [**Employee]** has failed to prove just cause for leaving his employment and does not meet any other exceptions listed in subsection 29(c) of the Act. The ~~Appellant~~ [**Employee]** has also failed to exercise at least one reasonable alternative which was available to him. As a result, the ~~Appellant~~ **[Employee]** is disqualified from receiving benefits because he voluntarily left his employment without just cause.

[26] ~~The appeal is dismissed~~. **[The appeal is allowed].**

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	October 23, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. B., Employer ~~(Added Party)~~ **(Appellant)** S.P, Witness for the Employer

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 14.

(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.