



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. R. v Canada Employment Insurance Commission*, 2018 SST 1329

Tribunal File Number: GE-18-2583

BETWEEN:

**M. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Lucie Leduc

HEARD ON: October 25, 2018

DATE OF DECISION: November 27, 2018

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant worked as a lineman for X for 31 years before retiring. He then decided to work as a truck driver. In 2017, he found employment as a driver for the company X; he liked the employment, but it offered only occasional on-call work. Therefore, he accepted employment as a full-time driver with X in August 2017. The Appellant states that, when he was hired, his employer had accepted that he would have to sometimes miss a few days of work when the company X called him for a trip. He resigned from his position with X in May 2018. The Appellant submits that, in the spring of 2018, his employer, X, did not want to honour the agreement that he would take time off to go work for X when he was called. He also submits that he left his employment because of this failure to honour the agreement and because of the fact that X did not have enough work for him. The Employment Insurance Commission (Commission) determined that the Appellant had voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (Act) and, as a result, disqualified him from Employment Insurance benefits.

## **ISSUE**

[3] The Tribunal must determine whether the Appellant had no reasonable alternative to leaving his employment given the circumstances.

## **ANALYSIS**

[4] The Tribunal must determine whether the Appellant had just cause for leaving his employment under the provisions of section 29 of the *Employment Insurance Act* (Act). Generally, a person who leaves their employment voluntarily is disqualified from receiving Employment Insurance benefits (section 30 of the Act). However, the Act states that, under exceptional circumstances, sometimes a person may have just cause for voluntarily leaving their

employment and be eligible for Employment Insurance benefits. It is up to the person to prove this.

**Issue 1: Did the Appellant have no reasonable alternative to voluntarily leaving given his circumstances?**

[5] The Federal Court of Appeal has stated on many occasions that, to determine whether a person had just cause to leave their employment, the person must show that, having regard to all the circumstances, they had no reasonable alternative but to leave (*Canada (Attorney General) v Patel*, 2010 FCA 95 (*Patel*); *Bell*, A-450-95; *Landry*, A-1210-92; *Hernandez*, 2007 FCA 320).

[6] For the following reasons, I find that the Appellant failed to show that he had no reasonable alternative to leaving given his circumstances.

[7] In this case, the Appellant explained that he enjoyed working for the company X. X hires former X linemen to work in the United States whenever problem cases arise from time to time when there are power outages. However, the Appellant testified that it did not offer full-time work, except in New Brunswick. The Appellant stated that, when he was called to work for X, he carried out long trips that paid very well.

[8] The Appellant testified that, when he was hired, he was transparent with X and set out as a condition of employment that he would take time off when called to complete a trip for X. This included sometimes having to leave in the middle of the day and without finishing a work shift. He stated that the employer, X, understood and agreed to this arrangement. He indicated that he completed about six trips for X while he was employed by X. However, he stated that, in the spring of 2018, his employer started to complain about his calls from X and asked him to work full shifts in the future.

[9] The Tribunal notes that the Appellant does not dispute the fact that he voluntarily left his employment with X. The Appellant submits that he left because of the change in attitude about the calls from X and because of a shortage of work. He attests that X did not have any hours for him during the holiday period or in May 2018. The Appellant says that he stayed home without work from May 1 to May 5, 2018, until he was called to complete a trip for X on May 5, 2018. He says that he received no calls from X about coming in to work until he got back on May 22,

2018. He says that he went to see X after he got back and that X did not have any work for him. The woman who worked in human resources apparently told him to wait one or two weeks.

[10] The Appellant claims that, in this context, he decided to leave. He thought that, if he was not working on a regular basis, it would be better to leave. Moreover, he claimed that, if X had offered him continuous work without lay-off periods, he would have thought twice about leaving.

[11] When asked if he prioritized his work for X, the Appellant responded saying that he did not prioritize one employment over the other but that, when X laid him off during the holiday period, he did not like that at all. Then, not having any work shifts in May, without any guarantee for the future, contributed to his decision.

[12] The Tribunal accepts that the Appellant did not leave X on May 1, 2018, but that that day was his first day not working there.

[13] The Commission submits that the Appellant made a personal choice to leave in choosing his employment with X when his employer, X, did not want to let him take on trips for X anymore. The Commission also submits that choosing to keep seasonal, on-call employment over full-time employment is not just cause within the meaning of the Act.

[14] The Tribunal also finds that the evidence shows that deciding to leave was the Appellant's personal decision. Yet, the Employment Insurance program cannot support the costs of appellants' personal choices, as admirable as they may be. The Tribunal understands very well that the Appellant may have preferred employment in his field of expertise with a much higher salary with X over employment with X that paid less. The Tribunal also understands the Appellant's frustration of experiencing lay-off periods during the holidays and in May 2018.

[15] However, the Tribunal finds that the principle that persons insured by the Employment Insurance program should not cause the risk or certainty of unemployment is the fundamental principle of insurance programs. Furthermore, the Federal Court of Appeal has made this principle clear: "a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to

occur.” (*Tanguay*, A-1458-84 (*Tanguay*)). In this case, the Appellant put himself in a position of unemployment. The Tribunal is puzzled and finds it difficult to understand how the Appellant was able to choose leaving an employment for which he did not have work when he left.

[16] Furthermore, if the Appellant saw fit to leave, the Tribunal will not judge that decision. It might have been the best decision for him given the circumstances. However, the decision to leave unfortunately remains a personal decision that cannot justify benefits within the meaning of the Act. The fact that he did not like that his employer imposed lay-off periods on him or that it no longer accepted that he would leave now and then in the middle of the day for another employment is certainly unfortunate, but it is not just cause within the meaning of the Act.

[17] From the Appellant’s perspective, his decision was reasonable. However, the issue is not whether it was reasonable for him to leave his employment, but rather whether it was the only reasonable alternative open to him, having regard to all the circumstances (*Laughland*, 2003 FCA 129). Indeed, the Federal Court of Appeal has confirmed that, when assessing voluntary leaving in Employment Insurance, it is imperative and essential that this issue be examined. The Tribunal finds that, in his May 2018 unemployment situation, the Appellant could have waited longer before leaving to see whether he would resume his duties. During the lay-off period at X, a reasonable alternative would have been to find another full-time employment before leaving. Even if the employment could not provide him with work at certain times such as during the holiday period and in May 2018, it is hard to imagine that the Tribunal would conclude that leaving his employment before finding another one was more reasonable than maintaining the employment relationship.

[18] Furthermore, being on lay-off possibly proved to be a good thing for the Appellant since he was able to complete a trip for X from May 5 to May 22, 2018, without being in conflict with X, which explains his true motives for voluntarily leaving even less. The Appellant could have also looked for work and kept his position with X until he secured another job.

[19] In conclusion, I therefore find that, in these circumstances, the Appellant failed to show that he had no reasonable alternative to leaving. As a result, I find that he did not have just cause

to voluntarily leave his employment within the meaning of the Act and that a disqualification should be imposed.

**CONCLUSION**

[20] The appeal is dismissed.

Lucie Leduc  
Member, General Division – Employment Insurance Section

HEARD ON:	October 25, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant