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

[TRANSLATION]

Citation: *Latécoère Interconnection Inc. v. Canada Employment Insurance Commission and A. N.*, 2018 SST 1337

Tribunal File Number: GE-18-3041

BETWEEN:

Latécoère Interconnection Inc.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

A. N.

Claimant/Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: N/A

DATE OF DECISION: November 30, 2018

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Claimant was recruited by the company Latécoère Interconnection Inc. (Latécoère), a subcontractor of Bombardier. He then took paid training from May 22 to 31, 2018, to be able to work on-site at the Bombardier plant. At the end of this training, the Claimant was offered a full-time position starting in the weeks following the training. However, the Claimant refused to sign the letter of offer that the employer gave him.

[3] After reviewing the file, the Canada Employment Insurance Commission (Commission) concluded that the Claimant had just cause for leaving his employment and granted him benefits.

[4] The employer, however, disputes the Commission's decision. The Appellant argues that the Claimant had been informed that there would be a short delay between the end of his training and his start date and that the Claimant refused to sign the letter of offer because he had another opportunity with a competitor.

PRELIMINARY MATTERS

[5] Given the facts in the case and the Appellant's request, the Tribunal decided to proceed with this appeal by written questions and answers.

[6] A notice of hearing containing the questions for each party was sent on October 17, 2018. The instructions in the document were in French, but the questions for the Claimant were in English (GD1). After receiving the notice of hearing, the Claimant asked that the documents from the Tribunal be translated fully into English and asked for an extension of the time to make submissions, which the Tribunal granted. An amended and translated notice of hearing was sent to all the parties on October 25, 2018 (GD1A-E/F).

[7] Only the Appellant responded to the Tribunal's questions. The Tribunal is satisfied that the Claimant received notice of the hearing and that he was aware of the questions that were put

to him because an acknowledgement of receipt in the file shows that he received the new notice of hearing in English and French on November 2, 2018 (the deadline to respond was November 26). The Tribunal decided to proceed in the Claimant's absence, in accordance with section 12(1) of the *Social Security Tribunal Regulations*.

ISSUES

[8] Did the Claimant voluntarily leave his employment at Latécoère Interconnection Inc.?

[9] If so, did the Claimant have just cause for voluntarily leaving his employment? In other words, did the Claimant have no reasonable alternative to leaving, having regard to all the circumstances?

ANALYSIS

[10] According to section 30 of the *Employment Insurance Act* (Act), a claimant who voluntarily leaves their employment without just cause is disqualified from receiving Employment Insurance benefits. However, just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances (section 29(c)).

[11] The onus is on the Commission to show that the leaving was voluntary, and a claimant has to show that they had just cause in leaving their employment (*Green v Canada (Attorney General)*, 2012 FCA 313).

[12] Therefore, as a first step and before considering the issue of just cause, the Tribunal must first determine whether there was a situation of voluntary leaving in this case.

Did the Claimant voluntarily leave his employment at Latécoère Interconnection Inc.?

[13] Yes, the Tribunal finds that the Claimant voluntarily left his employment for the following reasons.

[14] First, it is worth summarizing the facts. The Claimant was recruited by Latécoère for a position as an assembler in the field of aerospace. As a condition of employment, he had to pass

mandatory training to be able to work on-site at the Bombardier plant—Bombardier being one of the company's clients. This training ran from May 22 to 31, 2018, and the Claimant passed.

[15] Once the training was complete, the employer made the Claimant a job offer on June 1, 2018 (GD3-26 and 27). The letter that the employer prepared mentions a permanent job as an "aerospace electrical harness assembler" at the Bombardier plant in X, X. The letter in question does not, however, specify the start date. The document indicates that this issue would be determined shortly, following discussions with the client.

[16] After reading this first letter of offer, the Claimant refused to sign it. He explained that the letter of offer did not contain a start or end date and that he was not paid during the waiting period between the end of his training and the start of his duties.

[17] A few days later, the employer sent the Claimant an amended letter of offer containing a start date. Nevertheless, the Claimant refused to sign it again. He said that the delays were too long and that he was going to go work for another company.

[18] Section 29(b.1)(ii) of the Act sets out that voluntarily leaving an employment includes the refusal of a claimant to resume an employment.

[19] In this case, the Claimant was recruited by the employer to work in the field of aerospace, and his employment began the first day of the training associated with this employment. Moreover, he received pay during this training, and he was promised a position with the company at the end of it.

[20] The Claimant passed the training, and, as planned, he was offered a full-time position at the Bombardier plant in X. It is true that the initial letter of offer did not contain a start date (GD3-26), but, according to the employer, this was normal, and new employees were informed that there could be a delay of a few weeks between the training and the start of their duties (GD7-2). The employer prepared a second letter of offer on June 11 that states that the start date would be June 18 (GD2-7). Two days later, on June 13, the Claimant gave the employer official notice that he would not be working for the company (GD7-3).

[21] In the Tribunal's view, section 29(b.1)(ii) of the Act applies to this case. Indeed, although the Claimant had to take mandatory training before officially starting his duties, he was paid during the training, and it was directly related to the position he was to fill. In other words, the Claimant was not recruited by Latécoère just to take training; he was recruited to work as an assembler, and the paid training was an integral part of that employment.

[22] In this context, the 18 days between the end of the training and the start of his duties can be considered a temporary lay-off because the Claimant was not paid during this short period. After that, all indications are that the Claimant refused to resume the employment that he had been hired and trained for, which was a permanent, full-time job. The Tribunal finds that the Claimant voluntarily left his employment.

Did the Claimant have just cause for voluntarily leaving his employment? In other words, did the Claimant have no reasonable alternative to leaving, having regard to all the circumstances?

[23] The Tribunal finds that the Claimant did not have just cause for leaving his employment for the following reasons.

[24] In *Canada (Attorney General) v Laughland*, 2003 FCA 129, the Federal Court of Appeal confirmed the principle that the Employment Insurance scheme is intended to protect those persons with no other reasonable choice but to leave their employment.

[25] As mentioned earlier, the Claimant initially refused to sign the letter of offer dated June 1 because it did not contain certain information, namely the start date. However, the evidence shows that this factor is not the reason that the Claimant gave up his employment at Latécoère. In fact, when he gave his employer official notice of his decision to not resume the employment, the Claimant's start date was already set for June 18. Moreover, an amended letter of offer indicating when his first day of work would be had been sent to him two days earlier.

[26] The evidence shows rather that the Claimant gave up his employment at Latécoère to try to get a job directly with Bombardier. Indeed, the Claimant was invited to take a test at Bombardier on June 12, 2018 (GD3-25), just before he gave notice to Latécoère that he would not be resuming his employment (GD7-3).

Reasonable assurance of another employment in the immediate future

[27] Section 29(c)(vi) of the Act provides that just cause for leaving an employment may exist if the claimant had reasonable assurance of another employment in the immediate future.

[28] In *Canada (Attorney General) v Bordage*, 2005 FCA 155, the Court established that the notion of "reasonable assurance of another employment in the immediate future" requires that the claimant, at the moment of leaving their employment, know at least some precise information about their future employment situation. For example, the claimant should know if they will actually have another employment, what that employment will be, who the employer will be, and at what point in the future the new employment will begin. (See also *Canada (Attorney General) v Sacrey*, 2003 FCA 377, and *Canada (Attorney General) v Shaw*, 2002 FCA 325.)

[29] Based on these principles, the Tribunal does not believe that it is possible to find that the Claimant had reasonable assurance of another employment in the immediate future when he gave up his position at Latécoère.

[30] Indeed, even though the Claimant had passed Bombardier's selection test, the Claimant's own statements show that he was still in the selection process at least until the end of July 2018 and that he had not received any firm offer of employment from Bombardier. In his request for reconsideration (dated July 30), he said in particular (GD3-24): "Having passed the exam, I was advised by the Human Resources Department at X to wait for next steps;" and "Unfortunately, I am informed that currently, there are some unresolved issues between the union and Bombardier came, which is delaying the hiring process. I received a call from X (X) and she advised me that the hiring process will resume in the middle of August."

[31] Having passed the selection test, the Claimant was a good candidate for employment at Bombardier. Even so, when he gave up his employment at Latécoère, there was no guarantee that he would actually be hired at Bombardier, and he did not know when in the future he would be able to start working for this company, if he were hired.

[32] The Tribunal recognizes that having "reasonable assurance" does not necessarily mean getting a formal offer of employment. Nevertheless, case law has established that the level of

guarantee required to demonstrate “reasonable assurance” is just short of a formal offer (see *Sacrey*, para 14). Therefore, the legal threshold is rather high.

[33] The Tribunal finds that the Claimant did not have reasonable assurance of another employment in the immediate future when he left Latécoère.

Reasonable alternatives

[34] In the Tribunal’s view, it would have been reasonable for the Claimant to accept the offer from Latécoère and to resume his employment on June 18 rather than being unemployed for several more weeks while waiting on the uncertain outcome of a selection process with another employer.

[35] The Tribunal recognizes that the Claimant wanted to improve his life by taking a chance with another employer that was offering more attractive terms and conditions of employment. However, the Federal Court of Appeal has repeatedly confirmed that leaving an employment to improve one’s situation is not just cause within the meaning of the Act. (See, for example, *Canada (Attorney General) v Langevin*, 2011 FCA 163; *Canada (Attorney General) v Richard*, 2009 FCA 122; and *Canada (Attorney General) v Langlois*, 2008 FCA 18.)

[36] The Tribunal finds that the Claimant voluntarily left his employment by giving up on returning to work after completing the training his employer paid him to attend. The Tribunal finds that the Claimant did not have just cause for leaving his employment because leaving was not his only reasonable alternative, having regard to all the circumstances.

CONCLUSION

[37] The appeal is allowed.

[38] The Claimant is disqualified from receiving benefits from June 18, 2018, the date he was supposed to have resumed his employment at Latécoère, in accordance with section 29(b.1)(ii) of the Act.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	N/A
METHOD OF PROCEEDING:	Written questions and answers
APPEARANCES:	Mrs. Sonia Robillard for the Appellant, Latécoère Interconnection Inc.