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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v A. T.*, 2019 SST 151

Tribunal File Number: AD-18-569

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

A. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 21, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant (Commission) denied the Respondent, A. T. (Claimant), Employment Insurance benefits. In the Commission's view, the Claimant gave his employer an ultimatum and, when the employer refused to give him a raise, he voluntarily left his employment without just cause, which was not the only reasonable alternative in his case. In the Claimant's view, he did not voluntarily leave his employment. The employer removed his name from the work schedule. The Claimant requested a reconsideration of the decision. However, the Commission upheld its initial decision. The Claimant appealed that decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had not voluntarily left his employment because he did not have the option of leaving or staying. In the General Division's view, the employer refused to discuss a pay raise and removed the Claimant's name from the work schedule.

[4] The Tribunal granted leave to appeal. The Commissions argues that 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 before it. It argues that the General Division did not consider the ultimatum the Claimant gave the employer. The Commission also maintains that the General Division made an error of law by not applying the legal test for dismissal to the facts of the case.

[5] The Tribunal must decide whether 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 before it. It must also decide whether the General Division made an error of law by not applying the legal test for dismissal to the facts of the case.

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

ISSUES

[7] 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, mainly by failing to consider the ultimatum the Claimant gave the employer?

[8] Did the General Division make an error of law by not applying the legal test for dismissal to the facts of the case?

ANALYSIS

The 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 sections 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 and 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 made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

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

Issue: 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, mainly by failing to consider the ultimatum the Claimant gave the employer?

[12] The General Division had the advantage of hearing the Claimant's testimony and found that he did not leave his employment voluntarily. It deemed the Claimant's testimony at the hearing to be credible.

[13] The General Division found that the Claimant had tried to negotiate new working conditions with the employer. However, he did not receive a favourable response from his employer. The employer then indicated [translation] "terminated" on the Claimant's section of the employee schedule posted in the employee lounge. As a result, he had no other choice but to leave the premises.

[14] In the Commission's view, the Claimant asked the employer for a raise and gave the employer an ultimatum. When the employer refused, the Claimant decided to voluntarily leave his employment.

[15] It is evident from the General Division's decision that the General Division did not give credence to the Commission's position that the Claimant had given his employer an ultimatum. Instead, the General Division accepted the Claimant's testimony that, during his exchanges with the Commission, the Commission insisted that he had given his employer an ultimatum, whereas he stated that he had tried to negotiate better working conditions.

[16] The Tribunal is of the view that the evidence supports the General Division's finding that the Claimant did not voluntarily leave his employment. The preponderant evidence shows that the employer refused to discuss a raise, removed the Claimant's name from the work schedule, and wrote the word [translation] "terminated" on it. The Claimant therefore did not have the choice of leaving or staying at work.

[17] It has long been established that the Appeal Division does not have the authority to retry a case or to substitute its discretion for that of the General Division.

[18] Furthermore, it is established case law that, except in certain obvious circumstances, the issue of credibility must be left to the General Division, which is in a better position to decide on the matter. The Appeal Division will intervene only if it is obvious that the General Division's decision on the issue is unreasonable, in light of the evidence before it.

[19] The Tribunal finds no reason to intervene in this case on the issue of credibility as assessed by the General Division.

[20] The Tribunal is of the view that the General Division did not base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

Issue: Did the General Division make an error of law by not applying the legal test for dismissal to the fact of the case?

[21] This ground of appeal is without merits for the reasons above.

[22] The preponderant evidence before the General Division does not support a finding of misconduct with the meaning of the EI Act.

CONCLUSION

[23] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	January 31, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Anik Dumoulin, Representative for the Appellant A. T., Respondent