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

[TRANSLATION]

Citation: *L. R. v Canada Employment Insurance Commission*, 2019 SST 212

Tribunal File Number: AD-18-726

BETWEEN:

L. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 18, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Appellant, L. R. (Claimant), worked as a X for her employer from February 23, 2017, to March 23, 2017, inclusively. The Respondent, the Canada Employment Insurance Commission, determined that the Claimant did not have just cause to voluntarily leave her employment with the employer.

[3] The Claimant stated that, after completing her one-month training period with the employer, she decided to turn down the employment. The Claimant stated that she would not be able to take breaks for meals on the job and that the employer did not follow the minimum labour standards. She also stated that one of her trainers harassed her during her employment period. After reconsidering, the Commission decided to uphold its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division found that the Claimant did not have just cause to voluntarily leave her employment under sections 29 and 30 of the *Employment Insurance Act* (EI Act). In the General Division's view, the problems the Claimant cited regarding her health, the working conditions she was subjected to, and the harassment she experienced as part of her employment did not prove that her voluntary leaving was justified within the meaning of the EI Act. Furthermore, the General Division found that the Claimant had not shown that, despite her job searches, she had obtained reasonable assurance of another employment in the immediate future before voluntarily leaving the employment she had.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant had left her employment without just cause under the EI Act.

[6] The Tribunal allows the Claimant's appeal.

ISSUE

[7] Did the General Division err in law in its interpretation of section 29(c) of the EI Act by requiring the Claimant to accept the employer's illegal practices in order to keep her employment?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[9] 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.

[10] 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 had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err in law in its interpretation of section 29(c) of the EI Act by requiring the Claimant to accept the employer's illegal practices in order to keep her employment?

[11] The issue of whether someone has just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving, having regard to all the circumstances, particularly several specific circumstances listed in section 29 of the EI Act.

---

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

[12] The Claimant told the Commission that the employer was not following the law by requiring employees to not take meal or health breaks. She maintained that the minimum labour standards were not met. Given her precarious health, she could not work under such conditions.

[13] The General Division determined that the evidence was insufficient to prove that the Claimant's situation when performing her work reflected practices of the employer that are contrary to law because she would not be able to take uninterrupted 30-minute breaks.

[14] However, the Claimant stated on her claim for benefits that the employer was not following the law because it required employees to remain at their posts and that they did not have time for meal and health breaks. She stated that other employees had left for the same reason.[2]

[15] The evidence before the General Division also shows that the Claimant spoke to her supervisor and was told that [translation] "that's how it is"[3] because the employer did not want to hire a second person.[4]

[16] This version from the Claimant has not been contradicted because the Commission did not ask the employer whether it was really the employer's policy. The Commission was content instead to ask the employer whether the Claimant had to deal with high traffic in her position.

[17] However, section 79 of the *Act respecting labour standards* does not authorize an employer to force employees to work during the thirty (30) minutes granted for meals under the pretext that it is paying them. Employees are under no obligation to perform their duties during that break period.[5]

---

[2] GD3-12.
[3] GD3-27.
[4] GD3-49.
[5] *Domtar inc. v Syndicat canadien des travailleurs du papier, section locale 1492* (1992, R. L. 420, C. A.).

[18] Contrary to the General Division's findings, the evidence, on a balance of probabilities, shows that the Claimant left her employment because of the employer's practices that are contrary to law.

[19] Did the Claimant have reasonable alternatives to leaving her employment?

[20] The Tribunal is of the view that the Claimant's voluntary leaving was the only reasonable alternative in her situation. The evidence supports the Claimant's account that the employer had no intention of changing its employees' working conditions. The evidence also shows that the Claimant tried to get help from the provincial labour standards board, Normes de travail, but was unsuccessful. It also shows that she looked for another job before leaving the one she had.

[21] The Tribunal is of the view that the General Division erred in law in finding that the Claimant did not have just cause to leave her employment based on her employer's illegal practices. Asking her to stay with this employer in this type of work environment goes against the requirements of section 29(c) of the EI Act.

[22] The Tribunal is of the view that, in the particular circumstances of this case, the Claimant had just cause to leave her employment under section 29(c) of the EI Act.

CONCLUSION

[23] The appeal is allowed.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	March 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Denis Poudrier, Representative for the Appellant Roxanne Bisson, Representative for the Appellant