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

Citation: *X v Canada Employment Insurance Commission and J. D.*, 2019 SST 351

Tribunal File Number: AD-18-745

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent

and

J. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: April 9, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] X (Employer) hired J. D. (Claimant), as a long-haul truck driver. When he was first hired, the Claimant was assigned routes from the "open load board", which involved driving throughout Canada and the United States for up to 14 days at a time. After his first year on the job, the Claimant secured a dedicated route between British Columbia and Alberta. This meant that he was away from home for a maximum of five or six days at a time (and sometimes less).

[3] In August 2017, however, the Employer cancelled the dedicated route that the Claimant had been driving for about eight years, and this prompted the Claimant to quit. The Claimant explained that he had to quit because the alternative that the Employer had offered to him—taking trips from the open load board—meant longer and more unpredictable absences from home, which was incompatible with his family obligations.

[4] The Claimant quickly found a different job closer to his home, but it was seasonal and there was no guarantee of full-time hours. As a result, the Claimant eventually applied for regular Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) refused his application. More specifically, the Commission disqualified the Claimant from receiving EI benefits because he had voluntarily left his job with the Employer without just cause, as defined under the *Employment Insurance Act* (EI Act). The Commission later maintained its decision on reconsideration.

[5] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. In short, the General Division concluded that the Employer had significantly and unilaterally changed the Claimant's work duties and that, having regard to all the circumstances, the Claimant had no reasonable alternative but to quit.

[6] The Employer is now challenging the General Division decision to the Tribunal's Appeal Division. I previously granted leave to appeal in this case and have now concluded that the

General Division decision is based on an error of law, that the appeal should be allowed, and that the Claimant's disqualification from receiving EI benefits should be restored. These are the reasons for my decision.

ISSUES

[7] In reaching this decision, I focused on the following issues:

a) Did the General Division commit an error of law by failing to consider the Claimant's obligation to try to resolve issues with the Employer before quitting his job?

b) What is the appropriate remedy in this case?

c) Is the Claimant disqualified from receiving EI benefits?

[8] In passing, I note that the Commission did not attend the Appeal Division hearing in this matter, but relied on its written submissions instead.[1]

ANALYSIS

The Appeal Division's Legal Framework

[9] To succeed at the Appeal Division, the Employer must show that the General Division committed at least one of the recognized errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In this case, I have concentrated on whether the General Division decision contains an error of law.

[10] When considering the degree of scrutiny with which I should review the General Division decision, I have focused on the language set out in the DESD Act.[2] As a result, any error of law could justify my intervention in this case.

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[1] Letter from the Commission dated February 11, 2019.
[2] *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93.

Issue 1: Did the General Division commit an error of law by failing to consider the Claimant's obligation to try to resolve issues with the Employer before quitting his job?

[11] In this particular case, the General Division focused on sections 29 and 30 of the EI Act, which disqualify claimants from receiving EI benefits if they voluntarily leave a job without just cause. In its decision, the General Division asked and answered two main questions: Did the Claimant voluntarily leave his employment, and, if so, did he have just cause for doing so? The General Division answered yes to both questions.

[12] The General Division's answer to the first question is not in dispute.[3] The Employer offered alternative work to the Claimant at the time it cancelled his dedicated route, but the Claimant refused the new position because he felt that the periods away from his family would be too long and unpredictable.

[13] On the second question, the General Division had to assess whether the Claimant had proven, on a balance of probabilities, that he had no reasonable alternative but to leave his job when he did.[4] As part of that assessment, the General Division was required to consider all of the relevant circumstances, including those listed under section 29(c) of the EI Act.

[14] In this case, the General Division accepted that the Claimant had established just cause because the Employer had imposed a significant and unilateral change to the Claimant's work duties, as described under section 29(c)(ix) of the EI Act.[5]

[15] In terms of possible alternatives to the Claimant quitting his job, the General Division considered just one: Could the Claimant have continued to work for the Employer until he found a more suitable position? The General Division answered no to this question, saying that being away for long periods would cause too much stress to the Claimant's family and make it difficult for him to find a new job.[6]

[16] By considering just this one alternative, however, I have concluded that the General Division based its decision on an error of law. In my view, the General Division also had an

[3] General Division decision at paras 17-21.
[4] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[5] General Division decision at paras 22-30.
[6] General Division decision at para 28.

obligation to consider whether the Claimant should have tried to resolve this issue with the Employer, which is something the Federal Court of Appeal has said is required in most cases.[7] In other words, my intervention in this case is justified because the General Division failed to consider binding case law from the Federal Court of Appeal.

[17] While the Commission argued that the appeal should be dismissed, its submissions focused on possible errors of fact and natural justice. It did not specifically address the errors of law raised in my leave to appeal decision, including the one that I have discussed above and find to be determinative in this case.

Issue 2: What is the appropriate remedy in this case?

[18] The remedies available to me are set out under section 59(1) of the DESD Act. Among the available options, I mostly considered whether to send the matter back to the General Division for reconsideration or to give the decision that the General Division should have given.

[19] In the end, I decided that this is an appropriate case in which to give the decision that the General Division should have given because:

a) the EI Act is meant to provide benefits to people who find themselves without work through no fault of their own and creates a scheme that is intended to provide quick determinations;

b) the Tribunal has broad powers to decide any question of law or fact that is necessary to dispose of an appeal;[8] and

c) doing so promotes the goals of expedient and cost-efficient decision making and is supported by sections 2 and 3(1)(a) of the *Social Security Tribunal Regulations*.

[20] It is also worth highlighting that the evidentiary record before me is complete, and that the parties have had a full opportunity to present evidence and file submissions explaining why the Claimant is or is not entitled to EI benefits. I have also listened to the audio recording of the General Division hearing and, as a result, I see little benefit in sending the appeal back to the

[7] *White*, *supra* note 4 at para 5.
[8] DESD Act, s 64(1).

General Division for yet another member to review the file. Indeed, doing so would create a risk of the file returning to the Appeal Division yet again.

Issue 3: Is the Claimant disqualified from receiving EI benefits?

[21] Yes, the Claimant is disqualified from receiving EI benefits under section 30 of the EI Act because he voluntarily left his job without just cause.

[22] As mentioned above, it was the Claimant's obligation to establish that, having regard to all the circumstances, he had no reasonable alternative but to leave his job when he did.

[23] Before the General Division, and again before me, there was considerable dispute as to whether the Employer's decision to cancel the Claimant's dedicated route amounted to a significant change in his work duties, as described in section 29(c)(ix) of the EI Act.

[24] The Claimant argued that, after working the same dedicated route for eight years, he reasonably expected that route to continue. The Employer argued that it hired the Claimant as a long-haul truck driver, and that the essential nature of his employment remained the same. In addition, the initial terms of the Claimant's employment made clear that, while he could apply to drive a dedicated route, there was never a guarantee of that route continuing. The Employer argued that, for business reasons, it could not be hampered in its ability to change the routes of its drivers.

[25] In my view, this issue does not need to be conclusively decided because, whatever the result, the Claimant had a reasonable alternative to unilaterally quitting his job when he did.[9] More specifically, he could have raised his concerns with the Employer to see whether his family commitments could be accommodated in some way.

[26] The Employer presented evidence indicating that the Claimant could have minimized the effect that the cancellation of his dedicated route would have had on his family.[10] For example, the Claimant could have applied for a different dedicated route and could have requested routes

[9] *White*, *supra* note 4.
[10] GD8.

of no more than a certain length. The Claimant argues that the Employer should have presented these alternatives to him at the time it announced the cancellation of his dedicated route.

[27] Critically, however, the Claimant accepts that he made no attempts to raise his concerns with the Employer at that time either.[11] Instead, he resigned himself to the fact that taking trips from the open load board was incompatible with his family responsibilities and quickly found a new job that involved working closer to home.

[28] Later, the Claimant realized that his new job was seasonal and offered fewer hours than he had expected, but he is not able to share the costs of that choice with other contributors to the EI scheme because he left a better-paying job even when he had a reasonable alternative to doing so. More specifically, when his dedicated route was cancelled, the Claimant could have discussed his family obligations with the Employer to see whether those obligations could be accommodated. Without taking that step, the Claimant failed to show just cause and the Commission correctly disqualified him from receiving EI benefits.

CONCLUSION

[29] I concluded that the General Division based its decision on an error of law, as set out under section 58(1)(b) of the DESD Act. In particular, the General Division failed to consider binding decisions from the Federal Court of Appeal that require claimants who want to establish just cause to try and resolve issues with their employers before unilaterally leaving their employment. In this case, the Claimant made no such attempts. As a result, the Claimant failed to prove just cause for voluntarily leaving his job with the Employer and the disqualification that the Commission initially imposed against the Claimant should be restored.

[30] The appeal is allowed.

Jude Samson
Member, Appeal Division

[11] GD3-26; audio recording of General Division hearing at approximately 9:39 to 10:05.

HEARD ON:	March 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Hartley M. Isenberg, Representative for the Employer/Appellant S. Prud'Homme, Representative for the Commission/Respondent (written submissions only) J. D., Claimant/Respondent

Annex

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) 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.

[…]

Decision

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

Employment Insurance Act

Interpretation

29 For the purposes of sections 30 to 33,

[…]

(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:

[…]

(ix) significant changes in work duties…

Disqualification — misconduct or leaving without just cause

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.

Social Security Tribunal Regulations

General principle

2 These Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of appeals and applications.

Informal conduct

3 (1) The Tribunal

(a) must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit…