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

Revised Decision – corrections integrated into the main text of the original decision

Citation: P. S. v Canada Employment Insurance Commission and X, 2019 SST 295

Tribunal File Number: AD-18-617

BETWEEN:

P. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: ~~March 20, 2019~~ **April 29, 2019**

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, P. S. (Claimant), left his employment because he believed that his supervisor X was singling him out for criticism. He believed that X was prejudiced against him because he was a Middle Eastern immigrant, and that the criticism was unjustified. When the Claimant applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission), rejected his claim. It found that the Claimant had voluntarily left his employment without just cause and was therefore disqualified from receiving benefits.

[3] At the Claimant's request, the Commission reconsidered its decision. The reconsideration decision maintained the original decision. The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed the appeal. He is now appealing to the Appeal Division.

[4] I have found several errors in the General Division decision and have given the decision that the General Division should have made. Unfortunately, even after correcting the General Division's errors, I must reach the same result. Therefore, the appeal is dismissed.

PRELIMINARY MATTERS

[5] In the course of the Appeal Division hearing, the employer referred to submissions that he believed had been submitted to the General Division, but which I was unable to locate within the General Division file. The Claimant claimed not to have seen the documents either. The employer acknowledged that the documents contained both evidence and argument.

[6] As I did not wish to overlook any evidence that had been before the General Division, I directed the employ to send a copy of the documents to the Tribunal, and a Tribunal officer would review the General Division file and determine if these documents had been received. If

these documents were before the General Division, I agreed that the Tribunal would forward a copy to the Claimant.

[7] In accordance with my direction, the employer forwarded a copy of the document to the Tribunal. The Tribunal investigated and determined that the General Division had not received this document. That means that the document is new evidence. The Appeal Division cannot consider new evidence that was not before the General Division.[1] I have not seen nor reviewed the new document and I will not be considering it. It is therefore not necessary that the Tribunal forward a copy to the Claimant.

ISSUES

[8] Does the General Division's use of "allegedly" raise a reasonable apprehension of bias?

[9] Did the General Division err in law by finding that the Claimant had no reasonable alternative to leaving without proper regard for "all the circumstances"?

[10] Did the General Division base its decision on an erroneous finding that the Claimant had no reasonable alternative to leaving without regard to the Claimant's testimony?

ANALYSIS

[11] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[12] The grounds of appeal are as follows:

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

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[1] *Mette v. Canada (Attorney General),* 2016 FCA 276

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.

Issue 1: Does the General Division's use of "allegedly" raise a reasonable apprehension of bias?

[13] The Appeal Division member granted leave to appeal because it found an arguable case that the General Division may have been biased. The arguable case rested on the General Division's statement that X had "*allegedly* made the comment". This same comment was described elsewhere in the decision as a "negative"[2] comment or an "insensitive"[3] comment.

[14] The claim of bias is founded on the member's apparent questioning of what should have taken to be established fact, by describing that fact as an allegation only. The employer did not dispute that X made an inappropriate comment or that the Claimant may have overheard the comment, and there was no other evidence to contradict this claim. The employer stated that he does not know about the particular comment that the Claimant cites on his application for benefits: He only knows about general comments made in regard to the Middle East that he feels were "inappropriate for the audience". The employer stated that he understood that these comments were part of a casual conversation and were not directed at the Claimant.[4] In a second conversation with the Commission, the employer again acknowledged that X, made an "inappropriate" comment to another worker, X, about Middle Eastern people, and that X believed the Claimant was close enough to hear the comment.[5]

[15] To find that the member was biased in such a manner as to offend natural justice, I would need to find that the Claimant had a "reasonable apprehension of bias". The courts have defined reasonable apprehension of bias as that circumstance where an informed person, viewing the matter realistically and practically, and having thought the matter through would think it more likely than not that the decision-maker would not decide fairly.

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[2] General Division decision, para. 2
[3] *Ibid*. para. 8
[4] GD3-27
[5] GD3-39

[16] While the Appeal Division member found that there was an arguable case that the Claimant had a reasonable apprehension of bias based on the member's use of the descriptor "allegedly", I cannot reach the same finding on a balance of probabilities standard. In the statement of facts identified as the "Overview" of the decision, the General Division stated definitively that a negative comment had been made by a supervisor to a co-worker in September 2017 about first-generation immigrants from the Middle East."[6] Reading the decision as a whole, including this initial statement, and having thought the matter through, a reasonable person would be more likely to think that the member used the term "allegedly" loosely, than that he was unjustifiably questioning the evidence that X made some kind of comment about first generation, Middle Eastern immigrants.

[17] Given that clear initial statement, I find that it is more likely that the member meant to describe the substance of the comments as "alleged" than that he was referring to the fact that the comments were made. The General Division member might reasonably have described the actual substance of the comments as "alleged" without suggesting any bias. The employer and the Claimant are agreed that it was inappropriate of X to make comments about Middle Eastern people in the Claimant's hearing, but the Claimant provided the only version of what was said by X. The employer has not agreed with the Claimant on what was actually said by X.

[18] Furthermore, the Claimant has not been entirely consistent as to what was actually said by X. The Claimant describes the comments in his application for Employment Insurance benefits as "negative comments about [the Claimant] being a first-generation immigrant and [his] background being from the Middle East."[7] This description characterized the comments as negative, but provided no detail. In his February 26 discussion with the Commission on February 26, the Claimant explains that the comments were "about" how first-generation Middle Eastern immigrants do not fit within Canadian society, and included some reference to the 9/11 terrorist attack[8]. In a March 27 conversation with the Commission, the Claimant states that X said that "Middle Eastern immigrants have backward culture and don't assimilate".[9] In this exchange, he says nothing about X having associated Middle Eastern immigrants with terrorism, but he adds that X described the culture of Middle Eastern immigrants as backward. It also appears that the

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[6] General Division decision, para. 2
[7] GD3-12
[8] GD3-26
[9] GD3-38

Claimant does not draw a distinction between "fitting" into society" and being "assimilated" into society. Whatever may have been said along these lines, it is unclear what was implied or intended. In his sworn testimony, the Claimant reverts to the essence of his original application, providing no more detail to the General Division than that X engaged in a conversation "denigrating" first-generation immigrants from the Middle East.[10]

[19] I find that the General Division's use of the term "allegedly" does not result in a reasonable apprehension of bias and that it did not therefore err under section 58(1)(a) of the DESD Act.

Issue 2: Did the General Division err in law by finding that the Claimant had no reasonable alternative to leaving without proper regard for "all the circumstances".

[20] In determining whether the Claimant had no reasonable alternative to leaving, the General Division is required to consider all the circumstances, which specifically include those circumstances listed in sections 29(*c*)(i) to 29(*c*)(xiv) of the *Employment Insurance Act* (EI Act). The General Division determined that the Claimant left because he could not work with the supervisor that made the inappropriate comment in the first place, and who continued to make other unspecified disparaging remarks. However, the General Division did not analyze whether X's actions constituted harassment under section 29(*c*)(i), discrimination under section 29(*c*)(iii) or antagonism with a supervisor where the claimant is not primarily responsible for the antagonism under section 29(*c*)(x) of the EI Act.

[21] The Claimant's evidence is that he is a first-generation immigrant from the Middle East, and that his supervisor, X, made a remark denigrating first generation immigrants from the Middle East. This remark was made in his presence and he believes that X was directing the remark at him. The Claimant also testified that X had always made disparaging remarks about his performance[11] and blaming him without reason for things that might go wrong[12], which the Claimant did not believe were justified. After hearing X's negative comments about Middle Eastern immigrants in September, the Claimant viewed X's behaviour towards him in light of

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[10] Audio recording of General Division decision at 04:40
[11] *Ibid.* at 06:00
[12] *Ibid.* at 11:48

X's apparent bias against people with his ethnic background.[13] This included one incident in which the Claimant believed the supervisor to be accusing him of sabotage,[14] which was apparently the final insult after which the Claimant resigned.

[22] Whether the claimant's circumstances constitute harassment or discrimination is debatable, given that there was only one occasion where he overheard racist/prejudiced comments that he understood to be directed to him and that he continued working for several months afterward. He testified at the General Division that he would not have left his employment if he could have continued reporting to his usual manager instead of X, who made the comments that the Claimant overheard. This suggests that the workplace did not enable or encourage harassment or discrimination more generally. However, I do accept that there is evidence that the circumstance described in section 29(*c*)(x) existed (antagonism with a supervisor), and that this was the Claimant's predominant consideration in his decision to leave.

[23] Therefore, it was necessary for the General Division to consider the evidence of antagonism with a supervisor and to analyze the effect this antagonism had on the reasonable alternatives to leaving that were available to the Claimant. The General Division failed to do so. By failing to have regard to all the circumstances, and section 29(*c*)(x) in particular, the General Division erred in law under section 58(1)(c) of the DESD Act.

Issue 3: Did the General Division base its decision on an erroneous finding that the Claimant had no reasonable alternative to leaving without regard to the Claimant's testimony?

[24] The Claimant argued that the General Division totally ignored his submissions found at GD9. GD9 is essentially the Claimant's argument to the Review Division. It includes twelve pages describing the Claimant's general dissatisfaction with how he was treated by the employer and with the Commission's decision. It includes a number of citations from the Commission's file contrasted with his own version of the facts.

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[13] *Ibid.* at 10:50
[14] 44:30

[25] As I explained to the Claimant, the General Division is not required to refer to his various arguments by document number or in the manner in which he has raised them. The General Division must consider the legal issues that arise from the appeal and that evidence which is relevant to determining those issues. Therefore, I asked the Claimant to identify what, specifically, it was that he believed the General Division ignored or on which it was mistaken, whether it was presented in GD9, or was before the General Division in some other form.

[26] The Claimant asserted only one error. The General Division stated twice in its decision that the Claimant did not actually hear the supervisor's inappropriate comment but that he learned of it from others[15]. However, the Claimant stated that this had not been his evidence. As noted in paragraph 6 of GD9, the Claimant had asserted that he did, in fact, overhear the initial, negative comments.

[27] This assertion was also broadly supported by other evidence before the General Division. While the Claimant admitted to the Commission that he originally told the employer that he did not hear what was said (which is consistent with the General Manager's statement[16]), he also explained that this was not because it was true but because "he did not want to make the situation worse".[17] He clearly testified at the General Division that he did hear X's comments from X, and that he believed that X intended him to hear it.[18] The member even restated the Claimant's evidence to him: "You overheard it."[19] The Commission records the Claimant as having said that X, in making the comment, "ignored the fact that [he] "was there"; and that he told the Commission he overheard the comments.[20] The Commission also records that a witness to the comments (X) told the employer of his concern about the comments because X, "knew the Claimant was within earshot".[21]

[28] The General Division was clearly mistaken as to this particular fact. The question of whether the Claimant heard the comments is relevant to whether X intended him to hear the comments and therefore also relevant to whether the Claimant was justified in considering the

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[15] General Division decision paras. 2 and 8
[16] GD3-39
[17] GD3-30
[18] *Supra* note 9 at 08:18
[19] *Ibid.* at 09:40
[20] GD3-38
[21] GD3-39

workplace to be toxic or in viewing X's other negative remarks as an expression of prejudice, as opposed to a concern with real performance issues. The fact that the Claimant can speak from personal knowledge to the fact that the comments were made, and the manner in which they were made, is relevant to whether X was antagonistic towards him and to whether X is the one primarily responsible for that antagonism. Whether the Claimant felt that he would be treated fairly in his workplace is also relevant to what kind of alternatives to leaving might have been reasonable. I therefore find that the General Division decision is based, at least in part, on this mistake of fact, and that the General Division erred under section 58(1)(c) of the DESD Act.

CONCLUSION

[29] The appeal is dismissed. I have found that the General Division made errors within the grounds of appeal, and therefore I have given the decision that the General Division should have given to correct those errors. I must still confirm the General Division decision.

REMEDY

[30] The General Division provided submissions in which it acknowledged that there were grounds to appeal the General Division. It recommended that the matter be returned to the General Division for reconsideration.

[31] I have the authority under section 59 DESD Act to refer the matter back to the General Division for reconsideration. I also have authority to give the decision that the General Division should have given, or to confirm, rescind or vary the decision of the General Division in whole or in part. I find that the record is complete on the issues that must be determined. Therefore, I have made the decision that the General Division should have made.

[32] Under section 29(*c*) of the EI Act, a claimant is not disqualified from receiving Employment Insurance benefits if the claimant has "just cause" for voluntarily leaving his employment.

[33] The General Division did not explicitly confirm that the Commission had met the burden of proving that the Claimant voluntarily left his employment. However, I note that the Claimant did not dispute that he voluntarily left his employment either. Furthermore, when the Claimant

submitted his resignation, the employer made an effort to convince the Claimant to stay, which the Claimant rejected. The test for voluntary leaving is simple: Did the Claimant had a choice to stay or to leave?[22] I find, on a balance of probabilities, that the Claimant had such a choice, and that he therefore voluntarily left his employment.

[34] Having found that the Claimant voluntarily left his employment, the next question is whether he had just cause for doing so. The burden is on that claimant to prove that there was no reasonable alternative to leaving when he did.[23] According to section 29(*c*) of the EI Act, "just cause" is established where a claimant has no reasonable alternative to leaving his employment having regard to all the circumstances. Section 29(c) also lists a number of circumstances that, if present, must be taken into consideration in assessing whether a claimant has no reasonable alternative to leaving.

[35] As noted above, the evidence before the General Division supports some consideration of three of the listed circumstances. Those circumstances are "harassment" under section 29(c)(i), "discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*" under section 29(*c*)(iii) or "antagonism with a supervisor where the claimant is not primarily responsible for the antagonism" under section 29(*c*)(x) of the EI Act. None of the other listed circumstances appear to apply to the Claimant, and the evidence does not suggest any non-listed circumstance that might be relevant to the Claimant's leaving and the question of whether he had reasonable alternatives.

Harassment and discrimination

[36] On one occasion in September or October 2018[24], the Claimant overheard X making negative remarks about first-generation, Middle Eastern immigrants, and the Claimant believed that X intended him to hear the remarks. According to the Claimant, X repeatedly accused him of making mistakes when he was blameless, both before and after the Claimant overheard the remarks. However, after he heard the remarks, the Claimant felt that X was targeting him solely because he was an immigrant from the Middle East. In the only other incident that the Claimant

[22] *Canada (Attorney General) v. Peace*, 2004 FCA 56
[23] *Canada (Attorney General) v. White*, 2011 FCA 190
[24] See GD19 for September; GD3-30 for mid-October

identified, he felt that X singled him out for blame for a computer server problem. According to his testimony at the General Division, the Claimant believed X was accusing him of sabotage. According to the Commission notes, the Claimant felt that X was sabotaging him.

[37] The Claimant did not find that his regular manager's response to X's comments was effective. While it was not the Claimant but a co-worker of the Claimant who actually reported the comments to the manager, the Claimant states that the manager did not do anything to address the comment incident.

[38] The manager's response was to separately interview each person that was present when the remarks were made. The Claimant conceded that, when he was interviewed by the manager, he said that he had not heard the comments, but he explained that he said this because he had not wanted to make the situation worse. Likewise, the Claimant had not confronted X about the comments initially because he felt there was no point, and that he would have just "made them feel they were proving their point".[25]

[39] The manager confirmed that the Claimant had assured him that he did not hear the remarks, that he "didn't even consider [the remarks]", and that he was content with the employer's response. The manager felt that the matter was resolved.[26] At the same time, the manager was aware that the Claimant felt that X was undermining him and that he did not like taking direction from X. In response, the manager said it was a small company and he could not transfer the Claimant. He did allow that the Claimant could report to him instead of X and work independently of X with little interaction. The manager said that he had one cancer treatment one day every three weeks but that he was otherwise available at the office.

[40] The Claimant said that the manager not usually available. According to the Claimant, the manager was only in the office one or two days a week, because the manager suffered side effects from his medical treatments. The Claimant said that he had no choice but to work with X when the manager was gone. He stated that he was forced to quit; that he was constantly provoked to get a reaction.[27] The Claimant said that there were many examples of negative

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[25] GD3-30
[26] GD3-27
[27] *Supra* note 24.

reactions to him, but he also confirmed that X did not make any other inappropriate or offensive comments after the manager had intervened, [28]and he did not identify anyone else who had harassed him in any way. Outside of the computer server incident, the Claimant did not raise any specific examples of other incidents of conflict with X.

[41] There is insufficient evidence to support a find on a balance of probabilities that the Claimant was harassed. In my view, harassment requires some unwanted and offensive behaviour that persists over time. It is possible that the Claimant experienced some harassment prior to the manager's intervention, but he provided little evidence of this. According to the Claimant, the September or October incident in which he overheard X's comments is the "main incident which led him to quit".[29] After the manager's intervention, X made no additional comments to the Claimant's knowledge. The manager said that he asked the Claimant several times whether he had anything to talk about and the Claimant never raised any issues,[30] although the Claimant said that he did not recall this.[31]

[42] Even if X's comments and actions could be said to be harassment, the manager responded to the initial complaint reasonably, expressed a willingness to accommodate the Claimant's desire to distance himself from X, within the constraints of the workplace[32]—which the Claimant confirmed[33], and the manager appeared to be receptive to hearing of any additional incidents. While the Claimant has asserted that the hostility increased after the incident, there is no evidence that this was communicated to management. The Claimant states that he heard similar comments from other people in the office but he has provided no details and no examples other than his recollection of one occasion in which he once heard "someone say something about the Middle East".[34]

[43] There is also insufficient evidence to support a finding of discrimination on a prohibited ground. Discrimination on the basis of race, or ethnic or national origin is prohibited under the *Canadian Human Rights Act*, and this would include any discrimination against the Claimant

[28] GD3-38
[29] GD3-30
[30] GD3-27
[31] GD3-31
[32] GD3-39
[33] GD3-40
[34] GD3-38

because he is a Middle Eastern immigrant. However, there was no evidence before the General Division of any discriminatory employer policy or practice, and the evidence suggests that the employer appeared to take seriously the third-party complaint of comments that were offensive to the Claimant. There is no evidence that it was any more difficult for the Claimant to access any facility or opportunity within his employment because of his race or ethnic or national origin or that, in the course of employment, the employer otherwise "differentiated aversely"[35] in relation to the Claimant on a prohibited ground.

Antagonism with a supervisor

[44] I accept that the Claimant experienced antagonism with his supervisor, X. I am satisfied that it was reasonable for the Claimant to conclude that X held a negative opinion of him, and I accept the Claimant's evidence that X was continually finding fault in the Claimant's work. The employer told the Commission that it had no issues with the Claimant's performance[36] and I therefore also accept that the Claimant was largely competent. The Claimant did not describe many of his interactions with X and it is impossible to determine whether the Claimant's perception of X's attitude toward him is accurate, but the manager confirms that he knew the Claimant was unhappy working with X. It is plausible that the Claimant would have quit as a result of feeling that he could no longer work under or with X. There is no evidence to counter the Claimant's assertions that his relationship with X was antagonistic, and I am satisfied that it is more likely than not that X was the one primarily responsible.

[45] I turn now to consider whether the Claimant's antagonism with his supervisor affects whether the Claimant had reasonable alternatives to leaving. The General Division decision identified several courses of action that it viewed as reasonable alternatives to leaving and that were available to the Claimant. These included remaining employed while seeking alternative work, approaching senior management and Human Resources about his ongoing concerns, or seeking a leave of absence.

[35] See section 7 of the Canadian Human Rights Act, RSC 1986.
[36] GD3-27

Remaining employed

[46] If it were always reasonable to remain employed while seeking alternative work, then there would likely be no circumstances under which a claimant could have just cause for leaving employment. Whether remaining employed is a reasonable alternative to leaving depends on the circumstances. These would require consideration of the degree to which those work circumstances cause or could cause physical, psychological, economic or other difficulty or harm to a claimant, and the length of time that a claimant could reasonably be expected to continue in light of that difficulty or harm, or risk of harm.

[47] In this case, I find that it would have been reasonable for the Claimant to have continued his job search for some additional period while he looked for work. The Claimant certainly risked additional unjust criticism from X, and this was undoubtedly made more distasteful by the Claimant's belief that X was singling him out because of his race or ethnicity. However, there was no urgency to the Claimant's decision to leave his employment. He returned from vacation, observed that X was still there, felt the "tension"[37] and decided he had had enough. The Claimant had demonstrated the ability to tolerate the same sort of tension for at least six weeks after the incident (measured from mid-October to the beginning of December) before he even began his search for alternate employment. If the incident occurred in mid-October (and not September), it was about three months after the incident before he quit, and the Claimant continued to refer back to that particular incident as his justification for quitting. He has not provided significant detail of any other work difficulties in the meantime. Therefore, I do not accept that his work difficulties had reached the point where he could not reasonably be expected to continue working. Remaining employment while seeking alternate employment was still a reasonable alternative to leaving.

Approaching management

[48] The General Division also suggested that the Claimant could approach senior management or the Human Resources department (HR) as a reasonable alternative to leaving. The Claimant acknowledged that he knew he could contact the employer's HR or file a

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[37] GD3-38

complaint with HR, but he rejected that strategy because he thought that X was friends with HR. He did not think it would not help his situation[38] and that he did not want to create unnecessary friction[39]. The Claimant did not say what led him to believe that X had friends in HR or that no one in HR would be able to help him because of that friendship.

[49] The Claimant's approach to raising the issue internally with HR is similar to his approach to the original complaint: He did not confront X about the comments initially. He did not report the comments to the manager or tell the manager he was upset about the comments when the manager investigated. According to the manager, the Claimant did not tell him about any ongoing issues even when the manager asked.

[50] In *Canada (Attorney General) v Hernandez* [40] the claimant left his employment without even discussing whether his conditions of work could be changed, and it was found that he had not exhausted the reasonable alternatives to leaving. These circumstances are somewhat different because the Claimant and the manager actually discussed changes to the Claimant's work conditions. The manager stated that he had earlier offered to minimize the Claimant's interaction with X and had said that the Claimant's "issues [with X] can be fixed"[41]. While the Claimant said he did not recall the manager's offer, the Claimant did not dispute that the manager may have made the offer. In my view, such an offer is consistent with the manager's approach to the Claimant's concerns generally and I accept that the manager offered accommodations. However, according to the Claimant, he did not want to work with X at all[42] and the manager said that he did not take him up on his offer.[43]

[51] The Claimant also did not go to HR or other senior management to seek some further or additional accommodation. Regardless, the Claimant told the Commission at one point that he "could have ignored the situation" if the manager had been at the office more often"[44]but that it was "impossible to have not had any interaction with X"[45]. He testified that when the manager

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[38] *Ibid.*
[39] GD3-30
[40] *Canada (Attorney General) v Hernandez,* 2007 FCA 320
[41] GD3-27
[42] GD3-38
[43] GD3-39
[44] GD3-30
[45] GD3-31

asked him to reconsider his decision to leave, the manager was unwilling to commit to changes in the Claimant's work circumstances that would address his concerns.[46]

[52] Whether or not it would also be reasonable to expect the Claimant to approach HR specifically, or go to "senior management", what is clear is that the Claimant did not take advantage of various opportunities within the employer's management structure to raise and address his concerns. Even if the employer could not, or would not, offer a guarantee that the Claimant would have no interaction with X whatsoever, I find that it was not reasonable for the Claimant to have quit without first cooperating with the manager on a plan to minimize or mitigate the Claimant's conflict, or his interactions, with X. I find that the Claimant could have addressed his concerns in-house and that he did not exhaust his reasonable alternatives before leaving his employment.

Requesting leave

[53] The General Division also found that the Claimant could have requested leave as a reasonable alternative to leaving. Given that I have already accepted that the Claimant had two reasonable alternatives to leaving, I will not address whether it would be reasonable for him to have taken a leave of absence only to return to the same circumstances that caused him to request the leave in the first place.

[54] I have also considered whether the Claimant's perception of harassment and discrimination when taken together with his antagonism with X created a situation where the Claimant had no reasonable alternative to leaving. I find that they do not. By his own evidence, it is clear that the Claimant could have remained working if not for his unwillingness to work under or alongside X. The incident with X was months earlier, and there was no recurrence. He believed X was acting to sabotage him but he had maintained a good relationship with his regular manager. The work atmosphere was not "toxic" in any objective sense.

[55] Having regard to all the circumstances, I still find that it would be reasonable for the Claimant to have worked with his manager to minimize his interactions with X and to stay employed while seeking alternate work. The Claimant has failed to establish that he had no

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[46] *Supra* note 9 at 46:15

reasonable alternative to leaving his employment and I therefore conclude that he did not have just cause for leaving his employment under section 29(*c*) of the DESD Act.

Stephen Bergen
Member, Appeal Division

HEARD ON:	February 28, 2019
METHOD OF PROCEEDING	Teleconference
APPEARANCES:	Appellant, P. S. ~~Representative for the Appellant~~, ~~Brad Fernandez~~ Brad Fernandez, Representative for the Added party, X