



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v T. L. and X*, 2019 SST 453

Tribunal File Number: AD-18-589

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**T. L.**

Respondent

and

**X**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 16, 2019

## DECISION AND REASONS

### DECISION

[1] The Tribunal allows the appeal.

### OVERVIEW

[2] The Appellant, the Canada Employment Insurance Commission (Commission), claims that the Respondent, T. L. (Claimant), did not have just cause to leave his employment when he did, having regard to all the circumstances. The Claimant argues that he left because his employer singled him out from other employees by unilaterally imposing a restriction that he was not to engage in any income-generating activities outside work. The Claimant requested a reconsideration of the Commission's decision. The Commission maintained its initial decision.

[3] The Claimant appealed the Commission's decision to the General Division. The General Division concluded that the Claimant had voluntarily left his employment and that he had no other alternatives available to him prior to leaving his employment, having regard to all of the circumstances. The General Division found that the Claimant had just cause for voluntarily leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[4] The Commission was granted leave to appeal the General Division's decision to the Appeal Division. It argues that there is no justification or intelligibility in the General Division's decision-making process. The Commission also argues that the General Division did not apply the appropriate legal test to the facts of the case.

[5] The Tribunal must decide whether the General Division erred when it concluded that the Claimant had just cause to voluntary leave his employment.

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

## ISSUE

[7] Did the General Division err when it concluded that the Claimant had just cause to voluntarily leave his employment because the employer had unilaterally imposed upon him a restriction that he was not to engage in any income-generating activities outside work?

## ANALYSIS

### **Appeal Division's mandate**

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[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.<sup>2</sup>

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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.

**Issue: Did the General Division err when it concluded that the Claimant had just cause to voluntarily leave his employment because the employer had unilaterally imposed upon him a restriction that he was not to engage in any income-generating activities outside work?**

[11] The issue before the General Division was whether the Claimant had just cause to voluntarily leave his employment pursuant to sections 29 and 30 of the EI Act.

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<sup>1</sup> *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

[12] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances.

[13] Despite the numerous circumstances described in subsection section 29(c) of the EI Act of what would constitute just cause for voluntarily leaving an employment, the primary question remains the same: did the Claimant have no reasonable alternative to leaving his employment?

[14] The General Division concluded that the Claimant had no other reasonable alternatives but to leave his employment because the employer had unilaterally imposed a restriction that he was not to engage in any income-generating activities outside work and a work environment that the Claimant considered toxic and unbearable.

[15] Although the General Division correctly stated the applicable legal test, the Tribunal finds that it failed to apply said test to the facts of the case and ask itself if the Claimant, having regard to all the circumstances, had no reasonable alternative to leaving his employment. The Tribunal is therefore justified to intervene and render the decision that should have been rendered by the General Division pursuant to section 59 of the DESD Act.

[16] The Tribunal undoubtedly agrees with the conclusions of the General Division that the Claimant may have been justifiably frustrated about the employer's imposition of a restriction concerning his activities outside of his work but finds that the Claimant could have kept his job instead of just walking out.

[17] In other words, the Tribunal is not convinced, from the evidence before the General Division, that the working conditions of the Claimant were so intolerable as to leave him no option but to resign when he did.

[18] The Tribunal finds that the Claimant could have stayed and performed his assigned duties notwithstanding the employer's imposition of a restriction on his activities outside work. This would have given the Claimant time to seek alternative employment prior to leaving.

[19] Case law has constantly held that a claimant who is dissatisfied with his working conditions must seek alternative employment prior to leaving.

[20] For the above-mentioned reasons, the Tribunal finds that having regards to all the circumstances, the Claimant had reasonable alternatives to leaving his employment when he did.

### **CONCLUSION**

[21] The Tribunal allows the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	May 9, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Anick Dumoulin, representative of the Appellant  T. L., Respondent