



Tribunal de la sécurité  
sociale du Canada

Social Security  
Tribunal of Canada

Citation : *C. S. v Canada Employment Insurance Commission and X*, 2019 SST 601

Tribunal File Number: AD-18-877

BETWEEN:

**C. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**X**

Added party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Decision rendered by : Pierre Lafontaine

Date of decision : May 22, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the Claimant's appeal.

### **OVERVIEW**

[2] The Appellant, C. S. (Claimant), was employed as a driver and was responsible to deliver trucks to the United States and Canada. While the Claimant was on duty, he went off his scheduled route with his work truck because his father in-law was terminally ill in the hospital. He parked the truck near his home and it was stolen overnight. The Claimant was suspended from work for three weeks and when he returned to work, the Claimant stated that he quit his employment because the Employer (Added party) was going to dismiss him.

[3] The Commission determined that the Claimant was entitled to benefits because he had no other reasonable alternative but to leave his employment. The Employer appealed that decision to the General Division of the Tribunal.

[4] The General Division found that the Claimant voluntarily left his employment and that he had one reasonable alternative to leaving his employment, which was to exercise his right to go through the arbitration process with the assistance of his union. It found that the Claimant was not obligated to quit his employment and ought to have exhausted all reasonable alternatives before he quit.

[5] The Claimant was granted leave to appeal the General Division's decision to the Appeal Division. He puts forward that the General Division erred in law in making its decision and that it 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.

[6] The Tribunal must decide whether the General Division erred when it concluded that the Claimant did not have just cause to voluntarily leave his employment.

[7] The Tribunal dismissed the Claimant's appeal.

## ISSUE

[8] Did the General Division err in law when it concluded that the Claimant did not have just cause to leave his employment because he could have exercised his right to go through the arbitration process with the assistance of his union?

## ANALYSIS

### Appeal Division's mandate

[9] 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*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[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.<sup>2</sup>

[11] 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 in law when it concluded that the Claimant did not have just cause to leave his employment because he could have exercised his right to go through the arbitration process with the assistance of his union?**

[12] The Claimant's appeal is dismissed.

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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*.

[13] 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 *Employment Insurance Act* (EI Act).

[14] 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.

[15] 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?

[16] The facts are not really in dispute. The Claimant was employed as a driver and was responsible to deliver trucks to the United States and Canada. While the Claimant was on duty, he went off his scheduled route with his work truck because his father-in-law was terminally ill in the hospital. He parked the truck near his home and it was stolen overnight. The Claimant was suspended from work for three weeks and when he returned to work, the Employer advised him that he was dismissed since the Employer had doubts about his initial statement regarding the events that took place.

[17] As a result, the Claimant faced the following options: he could have referred his employer's dismissal decision to arbitration, or he could have, through his union, negotiated his resignation letter. The Claimant and his union representative met with the Employer and, after discussion between the parties, opted for the second option.

[18] The General Division found that the Claimant voluntarily left his employment and that he had one reasonable alternative to leaving his employment, which was to exercise his right to go through the arbitration process with the assistance of his union. It found that the Claimant was not obligated to quit his employment and ought to have exhausted all reasonable alternatives before he quit.

[19] The Tribunal finds that the General Division did not err when it concluded from the evidence that the Claimant voluntarily left his employment and that he had a reasonable alternative, which was to exercise his right to go through the arbitration process to contest the Employer's decision with the assistance of his union.

[20] The Claimant made the decision, with his union representative, to resign from his employment in exchange of a good reference letter from the Employer. He clearly chose this option instead of referring the Employer's dismissal decision to arbitration.

[21] The Tribunal finds that the General Division decision is supported by the facts and complies with the law and the decided cases. There is no reason to intervene and change that decision.

### **CONCLUSION**

[22] The Tribunal dismisses the Claimant's appeal.

Pierre Lafontaine  
Membre de la division d'appel

DATE OF HEARING:	May 14, 2019
TYPE OF HEARING:	Videoconference
APPEARANCES :	Me Kim Bouchard, representative of the Appellant  C. S., Appellant  X, representative of the Employer