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

Citation: *A. L. v Canada Employment Insurance Commission*, 2019 SST 872

Tribunal File Number: GE-19-1760

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

HEARD ON: June 10, 2019

DATE OF DECISION: June 28, 2019

Canada

DECISION

[1] The appeal is dismissed. The Appellant has not proven he had just cause for voluntarily leaving his employment and is, therefore, disqualified from receipt of employment insurance benefits (EI benefits).

OVERVIEW

[2] The Appellant applied for EI benefits on January 29, 2019. The Respondent, the Canada Employment Insurance Commission (Commission), imposed a disqualification on his claim because it determined he voluntarily left his job at XX without just cause. The Appellant argued that he quit because another department received a pay raise but he did not. The Appellant felt the employer was discriminating because his department was unionized and the department that got the raise was not. This made working at X too depressing and unbearable for the Appellant to continue his employment there. The Commission maintained the disqualification on the Appellant's claim, and he appealed to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTERS

[3] The Appellant 's appeal was identified as a potential "Charter" appeal, namely an appeal that could raise an issue that certain rights and freedoms guaranteed to him under the Canadian Charter of Rights and Freedoms had been infringed in the processing of his claim and/or that he had been discriminated against based on a ground prohibited by the "Charter". The Appellant was contacted by the Tribunal and provided with instructions on the requirements for making a "Charter" argument before the Tribunal. He was given until June 10, 2019 to file the constitutional notice required pursuant to paragraph 20(1)(a) of the *Social Security Tribunal Regulations*.

[4] On May 9, 2019, the Appellant advised the Tribunal that he intended to rely on the **Quebec** Charter of Human Rights and Freedoms (Quebec Charter) in support of his appeal, and ***not*** the Canadian Charter of Rights and Freedoms (see GD5-2). As the Quebec Charter is not a constitutional instrument, he would not have to file the constitutional notice required by paragraph 20(1)(a) of the *Social Security Tribunal Regulations* in order to proceed with his appeal. His appeal was then returned to the regular appeal track for consideration.

ISSUE

[5] Is the Appellant disqualified from receipt of EI benefits because he voluntarily left his employment at X without just cause?

ANALYSIS

[6] A claimant who voluntarily leaves their employment is disqualified from receiving EI benefits unless they can establish "just cause" for leaving: section 30 *Employment Insurance Act* (EI Act). Just cause exists where, having regard to all of the circumstances, on balance of probabilities, the Appellant had no reasonable alternative to leaving the employment (see *White 2011 FCA 190, Macleod 2010 FCA 301, Imram 2008 FCA 17, Astronomo A-141-97, Tanguay A-1458-84*).

[7] The initial onus is on the Commission to prove the Appellant left his employment voluntarily; once that onus is met, the burden shifts to the Appellant to prove he left his employment for "just cause" (see *White, (supra); Patel A-274-09*).

[8] The Tribunal finds that the Appellant took the initiative to sever his employment relationship with X when he resigned from his employment after his last day of work on January 23, 2019. On his application for EI benefits, the Appellant stated that he quit his job because of a change in his duties (GD3-7), and because the employer increased the salary for the monitoring department because "they aren't unionized", which made the job "more stressful and unfair" (GD3-9). A copy of the Appellant's undated letter of resignation is at GD3-37. His last day of paid employment was January 23, 2019 (see Record of Employment at GD3-26).

[9] The onus of proof then shifts to the Appellant to prove he had no reasonable alternative to leaving his job when he did.

[10] The Tribunal must consider the test set out in sections 29 and 30 of the EI Act and the circumstances referred to in subsection 29(c) of the EI Act, and determine whether any of these circumstances existed at the time the Appellant left his employment. These circumstances must be assessed, according to *Lamonde A-566-04*, as of the date the Appellant quit his job: January 23, 2019. The Appellant need not fit precisely within one the factors listed in subsection 29(c) of

the EI Act in order for there to be a finding of "just cause". The proper test is whether, on the balance of probabilities, the Appellant had no reasonable alternative to leaving his employment, having regard to all the circumstances, including but not limited to those specified in paragraphs 29(c)(i) to (xiv) of the EI Act (see *Canada (Attorney General) v. Landry (1993) 2 C.C.E.L. (2d) 92 (FCA)*).

[11] The Appellant submitted he had just cause for leaving his job because he was discriminated against when he did not receive a pay increase because he was in the union, which is prohibited by section 9 of the Quebec Charter. The Appellant asserted that section 9 of the Quebec Charter gives him just cause for quitting his employment and establishes his entitlement to EI benefits.

Issue 1: Did the Appellant have just cause for leaving his job at X because of discrimination based on his membership in a union?

[12] The Appellant stated he is entitled to EI benefits based on the Quebec Charter (GD2-1). In his written submissions regarding his Quebec Charter argument (GD5), the Appellant stated that he had "just cause" within the meaning of paragraph 29(c)(xi) of the EI Act because his employer engaged in practices "that are contrary to law". The law he is referring to is paragraph 19 of the Quebec Charter, which the Appellant stated provides that "every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place" (GD5-2). The Appellant submits that X illegally discriminated against him when they failed to give him a raise because he was a member of a union, which is prohibited by paragraph 19 of the Quebec Charter.

[13] While the EI Act does provide that a claimant may have just cause for voluntarily leaving an employment if the employer engages in practices that are contrary to the law (see paragraph 29(c)(xi) of the EI Act), the Tribunal has no jurisdiction with respect to the Quebec Charter and cannot make any findings thereunder.

[14] If the Appellant believes his Quebec Charter rights have been violated, his remedy is to make a complaint to the Commission established by the Quebec Charter, which is responsible for investigating possible cases of discrimination on a ground prohibited by the Quebec Charter.

[15] The Tribunal makes no finding as to whether X violated paragraph 19 of the Quebec Charter in the Appellant's case.

[16] The Tribunal can only determine whether the Appellant should be disqualified from receipt of EI benefits under sections 29 and 30 of the EI Act.

[17] The Tribunal therefore considered whether the Appellant had just cause for quitting his job at X because the employer engaged in practices contrary to law within the meaning of paragraph 29(c)(xi) of the EI Act.

[18] The Tribunal finds such circumstances did not exist for the Appellant. There is no evidence that X engaged in any activity that could be considered criminal or quasi-criminal in nature, or that the Appellant was required by X to perform acts which were illegal or contrary to any workplace health or safety standards legislation. There is also no evidence that the employer refused to pay the Appellant's wages or to abide by the collective agreement. As such, the Appellant has failed to demonstrate that he had just cause for voluntarily leaving his employment at X because the employer engaged in practices that were contrary to the law.

[19] The Tribunal next considered whether the Appellant had just cause for quitting his job because of discrimination based on his membership in a union within the meaning of paragraph 29(c)(xii) of the EI Act.

[20] The Tribunal considered the Appellant's evidence, which is summarized in paragraphs 20 to 31 below, and finds such circumstances did not exist for the Appellant.

The Appellant's Evidence

[21] The Appellant described how his title changed from "Technical Support" to "Customer Experience", but that there was no change to his wages even though his duties were expanded (GD3-9 and GD3-27). These changes took place 1 year before he quit, and his union was attempting to negotiate a corresponding pay increase (GD3-9 and GD3-27). But the employer increased the salary for the monitoring department, which the Appellant stated was "because they aren't unionized" (GD3-9).

[22] The Appellant discussed the situation with his Team Manager, who told the Appellant he was free to approach other departments to see if they were interested in having the Appellant work for them, but he did not take this step because there were no openings (GD10) and a freeze on hiring for new positions (GD3-13) and he was not interested in doing that (GD3-27). He spoke to his union representative back in July 2018 and was told to wait until October 2018 to see if his salary would be increased for the additional workload, but he waited until January 22, 2019 and nothing changed, so he quit (GD11 and GD3-27).

[23] He did not file a grievance or seek a remedy under the collective agreement prior to quitting (GD3-12 and GD3-27).

[24] The Appellant told the Commission that the union (but admittedly not the employer) promised there would be a raise in his salary (GD3-27 and GD3-38). But on January 14, 2019, he received an email from his employer advising that the rate of pay was being frozen and there was a hiring freeze because of the company's financial circumstances. He did not speak to the union after this email because he had already talked to them and didn't want to speak to them again (GD3-27).

[25] The Appellant testified that about 1 week before he quit, he found out that the monitoring department had received a pay increase and was now making more money than his department. He did not consult with any outside authorities about his rights prior to quitting (GD3-27). He looked for other work prior to quitting, but could not stay on until he found another job as the work was too stressful and mentally hard because he did not get a raise (GD3-27).

[26] He was not advised by a doctor to quit his job (GD3-27).

[27] The Appellant told the Commission it was a nightmare and he decided he did not want to work for the company anymore (GD3-27).

[28] He testified at the hearing that he didn't want to continue to work under these conditions because he had been working for X for 3 years without a pay increase and because he felt he was doing more work than the monitoring department that had been given a raise. The monitoring department is not part of the union and they received a pay increase to $18/hour; the Appellant –

who was part of the union, and was making $16.61 after 3 years (GD3-34). The Appellant stated:

> "I felt like I was being punished for exercising my right to unionize which made me feel undervalued, unappreciated and unwelcomed. It's a horrible feeling to meet new colleagues when asked how much my department is being paid knowing they make more than I do. This made working at X depressing and unbearable. I could no longer work under these conditions and therefore had no choice but to resign." (GD3-34)

[29] The employer told the Commission that the Appellant resigned because he could not continue under conditions he felt were unfair and stressful (GD3-29). The employer provided a copy of the Appellant's resignation letter (GD3-37), which reads as follows:

> "Hello M.,
>
> I'd like to start off by thank you for all the support and kindness you've shown me throughout my employment X but I feel the time has come for me to move on. My feelings toward the company have changed since X was bought by X. A lot has changed in the company as far as what my job as Technical support now being customer service and the fact the company has increased the Monitoring department salary without considering my department. I can't continue to work under conditions I feel are unfair and stressful, so here's my resignation. I can't thank you enough M. but I believe this is what's best for me moving forward. Take care my friend.
>
> PS Can I use you as a reference when I apply for another job"

[30] In his reconsideration interview, the Appellant told the Commission that he quit his job because another department got a pay increase but he did not (GD3-38). The Appellant felt the other department did less work than his department and, therefore, their raise was not justified. He also felt that the other department got the raise because they were not unionized - whereas his department was. However, he did not file a grievance or make a complaint to the labour board about discrimination because he was a union member (GD3-38).

[31] The Appellant reiterated his allegations about being discriminated against in his Notice of Appeal:

"I believe to have been monetarily punished for exercising my right to unionize. My employer decided to increase the salary for the monitoring department who are not part of the union just to punish those who are unionized. I started working for X in 2016 and at the time the base salary for monitoring department was 14$/h and my department which was Technical Support was at a base salary of 16$/h. Not long before my resignation they decided to raise the monitoring base salary to 18$/hr while we remained at 16$/h. Not only that, they also renamed my department to Customer Experience and added billing and customer service duties on top of the technical support we were already providing the company without any compensation for the additional work. When I addressed my employer I was told the monitoring department had an increase in salary because they are not part of the union and they are waiting to see what happens with our union before joining. He then offered me to sit with other departments but on January 14th I received an e-mail from the finance department informing us there would be a freeze on all hiring for all positions in the company. I believe I had no alternative but to resign from my position and look for a new job rather than stay at a dead end job with no possible advancement for my career. After 3 years of service my salary was at 16.61/h when I was forced to resign.

Here's a link to a decision made where X was found guilty of anti-union actions towards employee (website link).

Based on the past it's no surprise they would make life difficult for unionized employees." (GD2-5)

[32] The Appellant testified that:

a) The act of discrimination was X's failure to give him a pay raise after they changed his title and expanded his duties approximately a year before he quit, and instead gave a raise to a non-unionized department whose employees did less work that he did.
b) He is entitled to equal pay for equal work. By paying the non-unionized department more than him, when they did less work than he did, was a breach of the equal pay for equal work rule and amounts to discrimination.
c) He had just cause because he was entitled to equal pay for equal work and was not required to work under these conditions.
d) He was not aware he could file a grievance or take his concerns to the provincial Labour Relations Board.
e) He brought the issue to his supervisor and that should have been sufficient.
f) The Appellant referred to the Quebec Charter and stated "the law protects me".

[33] The Tribunal finds the Appellant has failed to prove he had no reasonable alternative but to quit his job on January 23, 2019 because X was discriminating against him due to his membership in a union.

[34] The Appellant has failed to prove he was unjustly or prejudicially treated because he was a union member. The mere fact the monitoring department got a pay increase and his unionized department had not yet received one - is not proof of discrimination based on union membership. Unlike the non-unionized monitoring department, any pay increase for unionized employees like the Appellant would have to be negotiated by their union and in relation to their collective agreement. This is a formal and time consuming process – it is not as simple as complaining to one's supervisor and getting a raise. Yet the Appellant only spoke with his union once – back in July 2018. He never consulted his union representative again, and quit his job in January 2019 without availing himself of the union's mechanism for grievances ***and*** before the union's negotiations for a raise for unionized members – including the Appellant - were concluded ("they are waiting to see what happens with our union…" at GD2-5). As a member of the union, it was incumbent on the Appellant to fully participate in their processes before alleging discrimination based on union membership.

[35] A reasonable alternative to quitting would have been for the Appellant to continue working and file a grievance through his union representative. Another reasonable alternative would have been for the Appellant to continue working and make a complaint about his pay to the provincial Labour Relations Board and/or the Commission established for investigations of breaches of the Quebec Charter. A further reasonable alternative would have been for the Appellant to continue working until he found suitable alternative employment elsewhere.

[36] The Appellant pursued none of these reasonable alternatives.

[37] The Tribunal therefore finds the Appellant has not met the onus on him to prove he was experiencing discrimination based on union membership within the meaning of paragraph 29(c)(xii) such that he had no reasonable alternative but to quit his job on January 23, 2019. As a result, the Tribunal finds the Appellant did not prove he had just cause for leaving his job at X on January 23, 2019 because of discrimination due to his union membership.

Issue 2: Did the Appellant have just cause for leaving his job at X because of a change in his duties?

[38] Paragraph 29(c)(ix) of the EI Act provides that an employee has just cause where there are "significant changes in work duties" and the employee has no reasonable alternative to leaving the employment.

[39] The Tribunal finds that such circumstances did not exist for the Appellant.

[40] The Federal Court of Appeal has held that, if the terms and conditions of the employment are significantly altered, a claimant may have just cause for leaving their position (*Lapointe v. C.E.I.C. A-133-95*). Just cause has been found where the employer acted unilaterally in any manner which ***fundamentally alters*** the terms of the employment as they existed prior to separation (see *Lapointe, supra,* and *Horslen A-517-94*), or where the employer refused to honour the terms of employment (*CUB 17491*).

[41] The Appellant started working for X on February 22, 2016 (GD3-7) as "Technical Support". His duties included handling incoming and outgoing calls, providing technical support for customers using a security system, scheduling service requests, processing alarm signals according to company procedure and assisting new customers to become familiar with their alarm systems (GD3-27).

[42] In January 2018, about a year before he quit, the Appellant's title was changed to "Customer Experience" and he was tasked with additional duties, including helping clients with billing questions, helping clients with telephone and online payments, and managing customer complaints and escalations (GD3-27). According to the Appellant, the change in duties was because the company wanted all agents to be able to handle any type of incoming call – technical or customer service - so as to limit the need to transfer customers to different departments and improve customer service (GD3-9 and GD3-27).

[43] There was no change in the Appellant's schedule, the hours he was expected to work or his wages (GD3-27).

[44] The word “significant” in paragraphs 29(c)(ix) requires the change initiated by the employer to be something of importance, something outside of the norm. Minor changes in duties will not constitute just cause for leaving an employment.

[45] The new duties that came along with the change in title do not qualify as “significant” because they did not change the nature of the Appellant’s role at X. He continued to be employed in a supporting role responding to client enquiries. There is also no evidence that the Appellant ever objected to performing the expanded list of duties. He just wanted additional compensation because he felt the scope of his supporting role had broadened and because he had been employed at X for 3 years and his wage had only increased from $16 to $16.61. When the desired pay raise was not immediately forthcoming, his Team Manager told him he could sit with other departments to explore alternative positions at X, but there were no current openings and he wasn’t interested in this option anyway (GD3-27). The Tribunal can reasonably conclude from this that the Appellant did not object to the new duties.

[46] The Tribunal finds the Appellant has not proven he experienced a significant change in his work duties at X.

[47] The Tribunal further finds that he had reasonable alternatives to quitting in response to the change in his duties. While the new duties meant the Appellant had to answer an expanded roster of queries from customers, his response – namely to quit when his pay wasn’t increased and another department’s was - was not reasonable. This is especially the case given that the Appellant was a unionized employee and, as such, had access to union processes and support to resolve the issue, namely grievance and contract negotiations. As stated above, a reasonable alternative to quitting would have been for the Appellant to continue working and file a grievance through his union representative for a pay increase. Another reasonable alternative would have been for the Appellant to continue working and make a complaint about his pay to the provincial Labour Relations Board and/or the Commission established for investigations of breaches of the Quebec Charter. A further reasonable alternative would have been for the Appellant to continue working until he found suitable alternative employment elsewhere – especially since he had been handling the new duties for a year already.

[48] The Appellant pursued none of these reasonable alternatives.

[49] The Tribunal therefore finds the Appellant has not met the onus on him to prove he experienced significant changes to his work duties within the meaning of paragraph 29(c)(ix) such that he had no reasonable alternative but to quit his job on January 23, 2019. As a result, the Tribunal finds the Appellant did not prove he had just cause for leaving his job at X on January 23, 2019 because of significant changes in his work duties.

Issue 3: Did the Appellant have just cause for leaving his job at X because his workplace had become intolerable?

[50] The Tribunal next considered the Appellant's submission that the unfairness of the pay increase for the monitoring department made the work environment intolerable and he had no choice but to quit his job a week after finding out about it.

[51] Unsatisfactory working conditions will only constitute just cause for leaving employment where they are so manifestly intolerable that the Appellant has no other choice but to leave.

[52] For the reasons set out in Issues 1 and 2 above, the Tribunal finds that none of the circumstances described by the Appellant assist him in establishing that he had no reasonable alternative to leaving and, therefore, just cause for voluntarily leaving his employment at X. While the Appellant was clearly upset by the raise given to the monitoring department and perceived it to be unfair and even discriminatory, this fact alone is not indicative of conditions in his workplace that could be considered "manifestly intolerable". Something more than mere unhappiness with one's work or wages is required to raise the level of the Appellant's dissatisfaction with the working conditions to the standard of "manifestly intolerable". The Appellant cannot rely on speculation about the employer's motivation to prove the workplace had become intolerable.

[53] The Tribunal finds that manifestly intolerable working conditions did not exist for the Appellant at X as at January 23, 2019, and that reasonable alternatives to quitting would have been to continue working and file a grievance through his union representative. Another reasonable alternative would have been for the Appellant to continue working and make a complaint about his pay to the provincial Labour Relations Board and/or the Commission established for investigations of breaches of the Quebec Charter. A further reasonable

alternative would have been for the Appellant to continue working until he found suitable alternative employment elsewhere.

[54] The Appellant pursued none of these reasonable alternatives.

[55] There is a high obligation on a claimant to seek solutions to intolerable conditions before leaving (*CUBs 57005, 57605, 57628*) and the Tribunal finds the Appellant had such an obligation as at January 23, 2019 – especially in light of the fact he was a union member. The fact that the Appellant quit his employment without taking any steps whatsoever to avail himself of the union's mechanism for grievances and before the union's pay raise negotiations had concluded is indicative of the Appellant's lack of interest in seeking a solution.

[56] The Tribunal also cannot ignore the Appellant's statement in his resignation letter that he felt "the time has come for me to move on" (GD3-37), or his statement in his appeal materials that he believed he had no alternative but to look "for a new job rather than stay at a dead end job with no possible advancement for my career" (GD2-5). The Tribunal acknowledges that the Appellant believes he had ample reason for leaving his employment at X, and that doing so was the right thing for him. The Tribunal also acknowledges that a decision to leave a job for personal reasons, such as wanting to look for a better job (as described by the Appellant), may well be good cause for leaving an employment. However, the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as the statutory requirement for "just cause" (*Laughland 203 FCA 129*), and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of section 29 of the EI Act (*Vairumuthu 2009 FCA 277*).

[57] The Tribunal finds that the Appellant made a personal decision to leave his employment at X. While the Tribunal acknowledges the Appellant's desire to leave what he considered to be a "dead end job", he cannot expect those who contribute to the employment insurance fund to bear the costs of his unilateral decision to quit his job in an attempt to do so. The Tribunal finds that, in spite of the Appellant's belief he was being treated unfairly at X, a reasonable alternative to leaving his employment would have been to continue working at X while he looked for and secured suitable alternative employment elsewhere. The Appellant failed to pursue this

reasonable alternative (or any of those identified in paragraph 53 above) and, as a result, has failed to prove he was left with no reasonable alternative but to leave his employment.

[58] The Tribunal therefore finds that the Appellant did not prove he had just cause for leaving his job at X on January 23, 2019 because of manifestly intolerable working conditions.

CONCLUSION

[59] The Tribunal finds the Appellant did not prove he had no reasonable alternative but to leave his employment at X on January 23, 2019. The Tribunal therefore finds the Appellant did not prove that he had just cause for voluntarily leaving this employment and that he is, accordingly, disqualified from receipt of EI benefits pursuant to section 30 of the EI Act.

[60] The appeal is dismissed.

Teresa M. Day
Member, General Division - Employment Insurance Section

HEARD ON:	June 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. L., Appellant