



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. R. v Canada Employment Insurance Commission*, 2019 SST 896

Tribunal File Number: GE-19-1902

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: June 11, 2019

DATE OF DECISION: July 15, 2019

DECISION

[1] The appeal is allowed. I find that the claimant had just cause for leaving her employment and she should not be disqualified from receiving benefits.¹

OVERVIEW

[2] The Appellant, M. R. (claimant) filed a claim for employment insurance benefits after she left her employment with X (employer). The claimant indicated that she was dismissed; however, the employer stated that she failed to show up for work and considered she quit.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) determined that the claimant voluntarily left her employment because she walked off the job after being issued a warning letter. The Commission determined it was the claimant, who severed the employment relationship. The claimant disagreed with the Commission's decision and appealed to the *Social Security Tribunal* (Tribunal). She argued she had been constructively dismissed and there were many factors not considered.

PRELIMINARY MATTERS

[4] The claimant was not sure if all the pertinent information had been included in the docket. She confirmed that she did have all of the GD1, GD2, GD3, GD4 and the GD5 but felt the employer had not provided all the emails to the Commission that the employer had reached out to the claimant several times after she left. The claimant agreed to proceed with the hearing. And she would advise me if she felt there were conversations missed in the employer's emails on the file.

ISSUES

[5] Did the claimant voluntarily leave her job? If so.

[6] Did the claimant have just cause to voluntary leave? Because:

¹ Section 30 of the EI Act

- a) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;
- b) working conditions that constitute a danger to health or safety;
- c) significant modification of terms and conditions respecting wages or salary; and
- d) practices of an employer that are contrary to law.

ANALYSIS

[7] An employee will have just cause by leaving a job if this is no reasonable alternative to leaving taking into account a list of enumerated circumstances. The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving her employment when she did.²

[8] A claimant is disqualified from receiving any employment insurance benefits if they lost any employment because of their misconduct or voluntarily left any employment without just cause.³

Issue 1: Did the claimant voluntarily leave her employment?

[9] Yes, I find that the claimant voluntarily left her employment when she left her keys on the desk and walked out.

[10] The onus is on the Commission to prove the claimant voluntarily left her employment. I find that the Commission has met the onus because the claimant admitted that she did in fact, put her keys on her desk, she walked out and did not return.⁴

[11] The record of employment (ROE) was issued because the claimant did not show up for work as scheduled. The Commission contacted the employer who said she entered “K” because

² Section 29(c) of the *Employment Insurance Act* (EI Act)

³ Section 30(1) of the (EI Act)

⁴ *Canada (Attorney General) v. Peace*, 2004 FCA 56

she did not know what to put on the ROE. The employer said the claimant did not show up for work so she considered the claimant had quit.

[12] The claimant told the Commission and myself at the hearing that she does not believe she quit, but rather that she feels she was constructively dismissed. And, leaving her keys on the desk and walking out was a mistake.

[13] Although the claimant believes she was dismissed and that her actions of leaving her keys and walking out was a mistake, I find that because the claimant walked out and never returned, she was the one who severed the employer/employee relationship.

Issue 2: Did the claimant have just cause to voluntarily leave her employment?

[14] The onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time. The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment.⁵

[15] The Commission advised the employer that the claimant has said she had been dismissed after she had been given a letter with complaints and a threat of being fired and the Sharon (manager) asked for the letter back and when she refused because she wanted to read it through the manager became very aggressive.

[16] The employer told the Commission that she was not in the office but she was told by other staff that the manager just asked for the letter back and she needed it back, whether it was signed or not. The employer said that she had reviewed the surveillance video and there were no signs of aggressive behavior. She said the video shows the manager leaving and when she comes back, the claimant had left. She confirmed there was no sound on the video.

[17] The Commission advised the employer of the claimant's statements that here had been a history of aggression with the manager as well as boundary issues. And that the claimant felt the situation was going to escalate quickly so, fearing for her person and property, she put her keys

⁵ *Rena-Astronomo (A-141-97), Tanguay (A-1458-84) Canada (AG) v. White*, 2011 FCA 190

on her desk and left. In addition, the claimant said when she contacted the employer she received no help at all but rather confirmation that her employment was over.

[18] The employer told the Commission that there were never any aggression issues with the manager. She said that she emailed the claimant but she did not reply and then she emailed her again and this time the claimant replied but only to say that her last day was December 7, 2018, and she needed her record of employment. The employer agreed to send the Commission the emails and letters that related to the claimant.

[19] The employer told the Commission that the letter, the claimant had been given was for her to change her behavior, it was a warning letter, not a dismissal letter. She said that she did not know what to do with the claimant's ROE and that is why it was late. She said that she did not know if the claimant was coming back and that is why she sent the emails but when the claimant answered the second email, advised her last day of work, and asked for her ROE, she knew she was not coming back.

[20] The employer provided email copies of her correspondence with the claimant along with the warning letters and the customer complaints.⁶

[21] The Commission contacted the claimant who agreed that she had left after receiving the letter. The claimant told the Commission that there had been an incident where someone had used her information to gain access to the Nuance, which was the central database. She said that after the employer was advised by Nuance everything escalated from there. She said the employer berated her in front of everyone, about her communications skills and that she was not to write any letters to anyone until she got some more communication skills. She stated her job was to write letters. The claimant said she then started getting letters about mistakes she was making and clients complaining about mistakes that were not hers.

[22] The claimant told the Commission regarding absenteeism; she was allowed five sick days but believes she was only paid for three. She stated the due an accident two years ago, she has ongoing medical issues, but her employer was well aware of them. And, because she lived at a

⁶ GD3-25 to GD3-31

distance away from work and if roads were bad, she was not able to get into work, but her employer was aware of this.

[23] The claimant said regarding the modified check she does not recall one coming in with a black marker and doubts she would have processed. She confirmed to me at the hearing that she could not say either way.

[24] The claimant explained to the Commission regarding the complaint made by the grieving client and at the hearing elaborated that she did not believe she was rude or insensitive to her. She explained that the client did not have the proper paperwork so she called in to find out how she could help the client. She said she told the client her documentation was not sufficient and she would have to call another government agency, but there could be a delay of over an hour to get a call back. She explained to the client that she would have to be there because the government agency would need to speak directly to her. The claimant agreed the client was not happy but there was nothing else, she could have done. She said she has to follow the policies, procedures and legislation. The claimant agreed that the client was upset when she left.

[25] The claimant told the Commission that her employer had also cut her hours back to three days a week from four days. She said she never had a chance to speak to her employer about the cut because it only happened at the beginning of December. She said the employer had been acting strange lately. She said the employer was telling her that she was making the most mistakes in the office and that the government was watching her and this made her feel like the employer trying to get rid of her.

[26] The claimant told the Commission she did not agree with the employer's statement that there was no aggression issues with the manager. She said witnessed several incidents. She explained about the situation that occurred when the manager called her into her office and started yelling at her and the entire office could hear. She said the employer was called and after she spoke to the manager, the manager came and apologized to her. She said the employer does not come into the office often, maybe once a week for a few minutes.

[27] The claimant told the Commission that she never looked for other work because she had no intention of leaving. She said, for the most part, it was a great place to work. She loved her

job but she did not go back after December 7, 2018, because she feared for her safety and she was experiencing anxiety and stress knowing that she had to deal with the manager. The claimant told the Commission that had no choice but to work with the manager.

[28] The claimant provided copies of emails and warning letters.⁷

[29] The claimant confirmed the incident with the manager ripping the phone off the wall happened prior to 2011, and the D. incident, where the manager yelled at her, was in 2014. She said things build up with the manager and she is sure it is bound to happen again.

[30] The claimant confirmed to the Commission that she did not respond to the employer email on December 7, 2018, and she did not speak to her. She said she was upset and she possibly could have handled it better. She said she believed the employer was going to walk her out the door because she had done it to other staff and because of the two complaints had come close together and because of the wording of the letter.

[31] The claimant reiterated to the Commission that she believed that this all started over the Nuance incident and the employer was still very angry. She said that she was degraded after and the employer started taking away her hours.

[32] The employer provided her explanation to the Commission regarding the issue with Nuance. The employer denied yelling at the claimant and she never told her she was not allowed to write letters.

[33] The employer told the Commission that the claimant's hours were never cut and she was part-time, Monday, Friday and Saturday. She said the claimant would be asked to work on Wednesday if they were short. She said the claimant had been working on Wednesday the past three months.

[34] The Commission asked the employer about the incident of the client who was taking a class 4 test and if they needed a medical. The employer confirmed they did, but she did remember the incident but would look into it.

⁷ GD3-46 to GD3-68

[35] The employer told the Commission that prior to the written warning on November 30, 2018; the claimant had been given several verbal warnings. She said she never wrote them down because they were just talks with the claimant to modify mistakes. The employer told the Commission that she does not like to give warning letters. She said that she should have dismissed the claimant over the interaction she had with the grieving client. She said the claimant made the client cry and others in the office had to console her. She agreed that she was not in the office very often.

[36] The claimant provided the Commission with her work schedule.⁸

[37] The claimant confirmed to the Commission that she was initially hired part-time but for the last 6 months she was working 4 days a week, 30 hours a week, which in Alberta is considered full-time. She disagreed with the employer that she asked to go part-time to go to school.

[38] Following the Commission decision to deny the claimant benefits, she made a request for reconsideration. She told the Commission that she is not saying the complaints did not happen but she did not believe the warnings were warranted. The claimant agreed that she did not look for other employment before leaving because she loved her job. She agreed that that she felt unsafe because of the manager who had a long-term issue aggression and temper. She said she did not know what the manager was capable of. She agreed that major issue occurred in 2011 and 2018 and there were minor subsequent issues. She said she did not speak to the employer when the incident occurred because she was not in the office and it took her a bit of time to settle down after the incident.

[39] The claimant told the Commission that the stress was escalating and the two letters she received came out of the blue. She said she did not know where this was coming from and she felt they were out to get her. She agreed that she did not go to see a doctor or was advised to quit.

⁸ GD3-76 to GD3-99

[40] The claimant told the Commission that she did not feel the employer was operating within the parameters of what they should have been and this made an uncomfortable position to be in. She said things have just gotten worse over time.

[41] At the hearing, the claimant reiterated to me the incident between her and the manager that took place on December 7, 2018.

[42] The claimant was concerned that the employer had told the Commission that she had reached out to her two occasions. However, she disagrees and that the employer only replied to her initial email and from the employer's response, she felt the employer wanted her gone.

[43] The claimant told me that after the Nuance incident happened in October, where someone used her identity to open an account and she was in no way responsible. She said the employer was very angry over the incident and after that could not do anything right. She said after this she was told she was not to send out any letters without approval and she could no longer use her reference books.

[44] The claimant agreed the incidents that occurred that resulted in the customer complaints; however, she was adamant she was not rude. She explained in both cases, the clients did not have the proper documentation for her to perform the tasks they were asking her to do. She said she was doing her best to try to help them.

[45] The claimant told me about the incident with the lady who had lost her son, she was upset but she did not have any documentation to show she was in fact, the next of kin. She said that she had no choice but to ask the lady to wait until the government agency that could help call back.

[46] The claimant said in regard to the other complaint, again she was not rude, but the client did not have a medical report to provide before he took his driver's license. The government required this and she was only doing her job.

[47] The claimant said that within two of her working days she received two warning letters. She said she came to work on November 30th and was given a letter⁹ outlining her unsatisfactory

⁹ GD3-29 to GD3-30

job performance. She said that was a Friday, and she worked the next day, but because she was not feeling well, she did work on her Wednesday shift.

[48] The claimant said when she returned on December 7, 2018, the manager told her to go to her office where she gave her the second letter. The claimant said she read it, and told her she was not going to sign it because she wanted time to review it. The manager told her to keep the letter, so she said she put it in her purse. She said she was very upset and went back to her desk and called her dad.

[49] The claimant told me that the manager came to her and told her she wanted the letter back but she said, no, she wanted to review it and she told her it was hers to keep. She said at that point the manager became very aggressive and demanded she give it back, and again she said no. She said the manager stormed out and at that point, the claimant said she became afraid for her safety. She said she did not know what the manager was going to do next and because of her past aggression, the claimant left her keys on the desk and left the office.

[50] The claimant told me that after she left she was extremely upset and just started driving around and she ended up getting lost. She said later that evening when she had gathered herself together, she sent her employer an email,¹⁰ explaining what had happened earlier that day. She said the employer answered her back a couple of hours later but the reply¹¹ made her feel the employer had made up her mind and was not going to do anything to help her. She said the employer told the Commission she had reached out to her again but that is not true. The claimant confirmed she never had any further communication with the employer until she sent an email asking for her ROE.

[51] The list of circumstances enumerated as “just cause” in subsection 29(c) of the EI Act is neither restrictive nor exhaustive, but lists the type of circumstances that must be considered.¹²

[52] The claimant had brought forth several reasons, and I will first address:

¹⁰ GD3-52

¹¹ GD3-51

¹² *Campeau* 2006 FCA 376; *Lessard* 2002 FCA 469

a) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.

[53] The claimant indicated on her Notice of Appeal that according to the Digest of Principals, hostile atmosphere created by superiors and abusive treatment should apply in her case.

[54] The Commission submits that the claimant could have gone to her employer to see if the issue could be resolved.

[55] I find from the evidence on the email correspondence, the claimant did contact her employer regarding the situation. However, the employer's response would support that she was not prepared to address the situation, and in my view strongly indicates that the employer was on the side of the manager.

[56] I am not satisfied that the employer was forthcoming in her statements to the Commission and I am preferring the claimant's firsthand testimony to be more credible.

[57] The employer told the Commission that she made two attempts to contact the claimant and would provide proof of the emails. The employer provided the Commission with only one email dated January 21, 2019 that thanked the claimant for her resignation. The employer did not provide the Commission the proof to support she had in fact, reached out to the claimant.

[58] The claimant, however, provided a copy of the email she sent, and the response from the employer, which in my view, strongly indicates that the employer was not prepared to deal with the issue between the claimant and the manager. I am satisfied that the correspondence ended there and that the employer did not make a second attempt to contact the claimant.

[59] The claimant told me that the employer's statements where she told the Commission that she tried to contact her again is not true. She was the one who contacted the employer to get her ROE.

[60] I accept the claimant's submission of the email correspondence supports the claimant's version and that the employer's version lacks credibility.

[61] The employer admitted to the Commission that she was not present when the incident occurred between the claimant and the manager but did not believe there was any hostility that took place. Rather the claimant walked out, because she watched the video.

[62] The employer told the Commission that there is no audio but the video shows the manager walked away and when she returned the claimant was gone.

[63] I am of the view that relying on the video is not sufficient to determine if there was any hostility, or that the employer was completely honest about what she saw on the video. Unfortunately, the video was not included in the file. I find the employer only stated the manager's actions. She never speaks to what the claimant did; only she was gone when the manager returns.

[64] The employer disagreed with the claimant's assertion that the manager was aggressive, however, I am not convinced this to be the case and therefore I find the claimant to be more credible. She was consistent with her testimony and provided several examples of the antagonism she experienced with the manager and provided examples aggressive behavior she encountered over the course of her employment.

[65] I find that the claimant has proven that there was antagonism with her manager and that she made an effort to address the issues directly with her employer as supported by the email conversation. I am satisfied that the claimant was not responsible for the antagonism.

[66] The Commission submits that in regards to the incident on December 7, 2018, the claimant did not contact the employer in an attempt to resolve the situation with her manager. The employer acknowledges this in her email response to the claimant and asks the claimant why if she felt unsafe she not called her (GD3-51). An employer cannot address a situation if they are not aware of it and should be given the opportunity to resolve it.

[67] I am of the view that more likely than not, the employer was aware of the situation before the claimant made the first contact with the employer explaining her side of the story and was making an attempt to address the issue.

[68] I find the employer's response to the claimant support my view as she responded she had spent and wasted her time trying to resolve this and get another staff. However, I am of the view, the evidence clearly, supports she never attempted to contact the claimant.

[69] I am of the view that the claimant's situation would provide just cause for her to leave her job. I am of the view, and the evidence of the employer's statements supporting the actions of the manager, and considering all the circumstances, the antagonism would have continued had she returned. In particular, the consistent warning letters strongly support the claimant's view that they were trying to get rid of her.

b) working conditions that constitute a danger to health or safety;

[70] The claimant believes that the working conditions were causing her stress and anxiety and that after the Nuance incident she could do nothing right.

[71] The claimant testified that although she did not go to see a doctor, she was attending regular chiropractic appointments and the doctor agreed the added stress from her work was having adverse effects on her.

[72] I considered the claimant's testimony, that the work environment was having an adverse effect on her health, and if a reasonable alternative would have been to seek a medical leave. However, I am of the view that based on all the circumstances, seeking a medical leave would not be a reasonable alternative because on the balance of probabilities, the claimant would have returned to the same conditions.

[73] The Commission submits that a reasonable alternative would have been for the claimant to remain employed until she was able to find other suitable employment.

[74] I disagree, and find that staying employed until she found other work was a reasonable alternative. Based on all the circumstances and the employer's evidence on the file, that had the claimant remained employed, more likely than not, she would have continued to receive warning letters and been dismissed.

c) significant modification of terms and conditions respecting wages or salary

[75] The claimant submitted that she believes wages hiring conditions were not honored and working conditions were unreasonable and restrictive.

[76] The claimant argues that she believes she was entitled to five sick days but was only paid for three. She also believes that her employer also changes her working agreement when she cut her back to three days a week from four. She testified that she had initially been hired for work three days, but after her job-share partner decided to work less, she then picked up the extra day. She said, for the last six months she worked four days a week, but after the employer started questioning her performance, she was cut back to three days a week.

[77] The claimant said this was a significant change in her wages and she needed to work four days a week.

[78] The employer told the Commission that the claimant was hired part-time and sometimes she was asked to come in when they were short-staffed. The employer disagreed that the claimant's hours had been cut.

[79] I considered the claimant's argument that she had only been paid for three sick days and she should have been entitled to five days. However, I only have the claimant's testimony and because there is nothing in the file that this factor contributed to the reason the claimant left, I am of the view, what without evidence I can presume the employer never paid the claimant for these days.

[80] However, I do find that there is evidence to support the claimant's argument that her hours had been cut. The evidence of the time sheets supports the claimant's testimony that she had been initially hired for a job share working three days a week, and then for six months, the claimant was working consistently four days a week. Then in December, the schedule shows the claimant working only three days.

[81] I prefer the claimant's testimony to the employer because she has provided documentary evidence of the schedule for the month of December that clearly shows the employer reduced the claimant to three days a week.

d) practices of an employer that are contrary to law

[82] The claimant indicated on her Notice of Appeal, in relations to the Digest of Principals that the employer practices contrary to professional ethics and illegal activities or contrary to fundamental ethical values would apply in her case.

[83] At the hearing, the claimant explained illegal activities were going on in the office where clients would receive services without the proper documentation that was against policies, procedures and the legislation. She said that she would bring up the incidents to the manager, but she agreed that she never reported activities to the government agencies, or to the professional organizations. The claimant agreed that she was not forced to do illegal activities.

[84] I am of the view that without any evidence on the file to support the claimant's allegations, I cannot conclude that the employer was breaking the law, or acting unethically.

[85] I am of the view that if the claimant believed her employer was breaking the law she had reasonable alternatives available to her. I find the reasonable alternative would have been to advise a higher authority like the governing body and/or professional organization who was responsible for insurance and licensing. I do not find without supporting evidence practices of an employer that are contrary to law can provide the claimant with just cause.

CONCLUSION

[86] I have considered the claimant's antagonism with her manager, she experienced significant changes in her work schedule and the working conditions were having an adverse effect on her health. Having regard to all the circumstances, I find that staying until she found other employment was not a reasonable alternative to leaving her employment; therefore, she had no reasonable alternative to leaving.

[87] The appeal is allowed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	June 11, 2019
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METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant