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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v J. N.*, 2019 SST 669

Tribunal File Number: AD-19-334

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. N.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 24, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Respondent, J. N. (Claimant), worked part-time for her employer while attending high school, but she then worked full-time at the end of the school year. When she was hired, the Claimant had told her employer of her intention to attend university full-time in September. Toward the end of August, the Claimant asked the employer about starting to work part-time again because she was going back to school, but the employer decided to terminate her employment. The Appellant, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not have just cause for voluntarily leaving her employment. After reconsidering, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant had been dismissed by her employer and that, therefore, the Commission had not met its burden of proving that the Claimant had voluntarily left her employment.

[4] The Commission received leave to appeal. It argues that the General Division ignored the Federal Court of Appeal case law and, in doing so, erred in law by finding that the Claimant had voluntarily left.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant had not voluntarily left her employment under sections 29 and 30 of the *Employment Insurance Act*.

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

ISSUE

[7] Did the General Division err in law by finding that the Claimant had not voluntarily left her employment under sections 29 and 30 of the EI Act?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[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.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or 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 by finding that the Claimant had not voluntarily left her employment under sections 29 and 30 of the EI Act?

[11] The Tribunal is of the view that the General Division made its decision by ignoring the evidence before it to find that the Respondent had not voluntarily left. Moreover, the General Division ignored the Federal Court of Appeal's case law and, in doing so, erred in law by finding that the Claimant had not voluntarily left.

[12] The Respondent worked part-time for her employer while attending high school, but she then worked full-time during the summer. When she was hired, the Claimant had told her employer of her intention to attend university full-time in September. Toward the

[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

end of August, the Claimant asked the employer about starting to work part-time again because she was going back to school, but the employer decided to terminate her employment because it was only hiring full-time staff from then on.

[13] The Respondent unsuccessfully attempted to talk with her employer to find a solution because she could not work full-time. However, she was unable to reach an agreement with the employer. The employer decided to terminate the Respondent's employment on August 29, 2018. The Claimant began her studies on September 4, 2018.

[14] The undisputed evidence shows that the Respondent returned to school and that she proposed a change of schedule to her employer. However, the employer did not accept the Respondent's proposed change of schedule and instead decided to terminate the employment before she returned to school. The Respondent could have kept her employment had she not chosen to return to school.

[15] The Federal Court of Appeal teaches that an employee who informs their employer that they are less available than previously is, for all intents and purposes, asking the employer to terminate the employment contract if the employer cannot accommodate the employee's reduced availability. Dismissal is therefore only the sanction of the real cause of the loss of employment, that is, the employee's decision to continue their studies under conditions that do not allow them to be available any longer. Dismissal is only the logical consequence of the employee's deliberate act and cannot erase the fact that there was first and foremost voluntary leaving on the part of the employee.[2]

[16] The General Division also erred in law by failing to follow the Federal Court of Appeal's consistent case law, which has held that a claimant voluntarily leaving their

[2] *Canada (Attorney General) v Côté*, 2006 FCA 219.

employment to return to school does not constitute just cause within the meaning of sections 29 and 30 of the EI Act.[3]

[17] The Claimant's case certainly inspires sympathy, as does any case of a student who works to pay for their studies. However, as soon as circumstances oblige this student to make herself less available to continue her studies, and before the employer's refusal to accept that reduction in availability, she loses the benefit of accumulated hours of work in that employment.

[18] Therefore, the appeal should be allowed for the reasons mentioned above.

CONCLUSION

[19] The appeal is allowed.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	July 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Claudia Richard, Representative for the Appellant J. N., Respondent S. N., Representative for the Respondent

[3] *Canada (Attorney General) v King*, 2011 FCA 29; *Canada (Attorney General) v Macleod*, 2010 FCA 301; *Canada (Attorney General) v Beaulieu*, 2008 FCA 133; *Canada (Attorney General) v Caron*, 2007 FCA 204; *Canada (Attorney General) v Côté*, 2006 FCA 219; *Canada (Attorney General) v Bois*, 2001 FCA 175.