



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. M. c Canada Employment Insurance Commission*, 2019 SST 1493

Tribunal File Number: GE-19-2704

BETWEEN:

**M. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Christopher Pike

HEARD ON: August 20, 2019

DATE OF DECISION: August 27, 2019

## **DECISION**

[1] The appeal is dismissed. The result is that the Appellant (Claimant) does not qualify for benefits because she has not proven that she had just cause for choosing to leave her employment. These reasons explain why.

## **OVERVIEW**

[1] The Claimant worked as a teller at a chartered bank. She resigned from her employment on April 8, 2019 after her employer issued a letter that she believed violated her human rights.

[2] The Claimant described to the Commission incidents involving her supervisor's reaction to her efforts to organize her working papers and her cash drawer, a dispute over handing out calendars to clients, assigning her to work in the back office, a dispute over her initiatives to relieve other tellers, and a dispute over her supervisor's direction to improperly cash a post-dated cheque.

[3] The Commission decided that the Claimant did not have just cause for leaving her employment. The Claimant says that she had just cause for resigning because of the ongoing harassment and discrimination by her supervisor and management's refusal to address it. The Commission upheld its decision on reconsideration. The Claimant appealed to the Tribunal.

## **ISSUE**

[4] I have to decide:

- a) if the Claimant voluntarily left her employment; and if so
- b) if the circumstances relating her supervisor's harassment to show just cause under the *Employment Insurance Act* for the Claimant choosing to leave her employment.

## **ANALYSIS**

[5] Employment insurance pays benefits to individuals involuntarily separated from employment and who are without work.<sup>1</sup> The Commission disqualifies a claimant from receiving

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<sup>1</sup> *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle.

benefits if they cannot show that they had just cause for choosing to leave their employment.<sup>2</sup> In this appeal the Claimant says she had just cause for deciding to leave her employment.

[6] The Commission has to prove that the Claimant could have stayed in her job but chose to leave. If I find that the Commission has met this obligation, then the Claimant must prove that she had just cause for choosing to leave her employment.<sup>3</sup>

### **The Claimant chose to leave her employment**

[7] The Claimant did not dispute that she chose to resign after her employer issued a letter to her outlining certain performance expectations. I therefore find that the Claimant chose to leave her employment.

### **The Claimant did not have just cause to leave her employment**

[8] A claimant has just cause for leaving their employment if, considering all of their circumstances, it is more likely than not that they had no reasonable alternative to leaving.<sup>4</sup>

[9] The *Employment Insurance Act* lists circumstances for me and other decision makers to consider when determining whether a claimant had just cause.<sup>5</sup> The list is not closed, so I must weigh all of a claimant's circumstances to determine whether they have established just cause.<sup>6</sup> What a claimant has to prove is that all of their circumstances, whether listed or not, show it is more likely than not that they had had no reasonable alternative to leaving their employment.<sup>7</sup>

[10] One of the circumstances listed in the *Employment Insurance Act* is workplace harassment;<sup>8</sup> another is antagonism with a supervisor provided that the claimant is not primarily responsible for the antagonism.<sup>9</sup> In this context, antagonism has been defined as a form of

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<sup>2</sup> *Employment Insurance Act*, subsection 30(1) set out this principle. The *Employment Insurance Act* sets the legal requirements to make a claim and to appeal the Commission's decisions in relation to them.

<sup>3</sup> *Canada (Attorney General) v Peace*, 2004 FCA 56 explains that if a claimant chooses to leave their employment when they could have stayed, then they have voluntarily left their employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*. *Green v Canada (Attorney General)*, 2012 FCA 313 explains that the Commission must prove that a claimant voluntarily left their employment.

<sup>4</sup> *Canada (Attorney General) v Imran*, 2008 FCA 17 explains this general requirement.

<sup>5</sup> Section 29(c) of the *Employment Insurance Act* section sets out the list.

<sup>6</sup> *Canada (Attorney General) v Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

<sup>7</sup> *Canada (Attorney General) v White*, 2011 FCA 190 says section 29(c) of the *Employment Insurance Act* requires claimants to prove just cause.

<sup>8</sup> *Employment Insurance Act* section 29(c)(i)

<sup>9</sup> *Employment Insurance Act*, section 29(c)(x)

hostility or attitude which in most cases cannot be attributed by what may have occurred in one incident or one dispute.

[11] Without more, the fact that the Claimant was harassed in her workplace or in an antagonistic relationship with her supervisor does not give her just cause for leaving her employment. She must show that, having regard to all of the circumstances, including these circumstances, she had no reasonable alternative to leaving her employment.<sup>10</sup>

[12] Decision makers may only consider the Claimant's circumstances existing at the time she left her employment when assessing whether she has established just cause for leaving her employment.<sup>11</sup>

[13] The Claimant testified to several incidents when her supervisor, K., harassed her.

- In September 2018, K. criticized the Claimant for taking extra steps when taking hydro and gas payments to verify she was correctly entering client account numbers instead of relying on the bank's automated verification process;
- In October 2018, K. criticized the Claimant in front of other employees for fidgeting while she was organizing papers on her desk. The Claimant testified that she discussed this incident with the branch manager, who apologized on K.'s behalf;
- In October 2018, K. took offence at the Claimant's counting cash in her cash drawer before the end of the day;
- On October 29, 2018, K. removed from a recycling bin papers that the Claimant had discarded. The Claimant said K. did this to show that she was manually verifying transactions instead of relying on the bank's automated systems;
- Late in 2018, the bank gave staff calendars to pass out to clients. The Claimant testified that she understood the calendars were to be given to all clients. She said K. took her to task for this and told her to give them only to clients who asked for them. She also said

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<sup>10</sup> *Tanguay v Canada (Unemployment Insurance Commission)*, A-1458-84

<sup>11</sup> *Attorney General of Canada v Lamonde*, A-566-04

that K. reported this to the customer service manager who then told the Claimant to give calendars only to clients who asked for them;

- On December 28, 2019, the Claimant testified that K. became angry at her when she discovered her serving customers at the front counter during a busy period instead of working in the back office. She testified that K. criticized her for leaving the back office and insisted that she return there even after she explained that she needed access to the computer for some of the work assigned. As well, during the time she was assigned to this back-office work, she continued to relieve other tellers when they took breaks. The Claimant testified that it was normal practice in the branch to do so. She testified that K. insisted that she remain in the back office when she attempted to relieve other tellers even if this resulted in no teller being present at the front counter.

[14] The Claimant said that K. was rude and disrespectful in these interactions.

[15] The Claimant raised these ongoing issues with the customer service manager in late December 2018. On January 16, 2019 the branch manager convened a mediation meeting with K. and the Claimant. The Claimant described the session as meaningless. She said little changed in K.'s attitude towards her after the mediation.

[16] On March 22, 2019, one of the Claimant's colleagues accepted and cashed a cheque and asked her to process it. When the Claimant started processing the cheque, she noted that it was post-dated to April 26, 2019. She told her colleague that she could not process the unless it was re-dated to March 22, 2019.

[17] The Claimant testified that K. intervened and insisted that she process the cheque. The Claimant said she pointed out to K. that clearing rules prohibited the negotiation of a post-dated cheque. She said K. continued to insist that the Claimant process the cheque and the Claimant continued to refuse because she did not want to be on record as the employee responsible for the non-compliant transaction. The Claimant testified that another teller eventually agreed to process the cheque and the next day the branch received an enquiry from the clearing system about the transaction.

[18] On March 29, 2019, the employer issued a letter to the Claimant stating that she was not meeting their expectations. The letter noted that the bank required her to accept coaching, take constructive criticism non-defensively, and complete her work quickly and efficiently. The letter also said that the Claimant had to complete an action plan to address these issues by April 5, 2019. The Claimant decided not to develop an action plan and, on April 8, 2019, submitted her resignation effective April 9, 2019.

[19] The Commission contacted the employer to ask for more information about the Claimant's resignation. The employer told the agent "there were performance issues prior to her resignation that had been addressed by the claimant's manager". The agent's notes say that the employer was unwilling to "disclose any further details regarding the claimant's reason for voluntarily leaving her employment".

[20] The employer's unwillingness to provide details means I have to assess the interactions between the Claimant and her supervisor based on the Claimant's testimony. The Claimant's evidence shows that she took initiatives like taking extra steps to organize her workspace and verifying the accuracy of her transactions that from time to time went beyond her employer's expectations. Her evidence shows that K. was rude and disrespectful when this happened.

[21] The Claimant's evidence makes it clear that she felt hurt and embarrassed by K.'s actions, but I am not satisfied that K.'s actions violated the Claimant's dignity to the degree required to be considered harassment.

[22] The Claimant's evidence also shows a degree of antagonism between her and K. Each instance of antagonism that the Claimant described was triggered by the Claimant doing something that prompted K. to attempt to correct her or by the Claimant performing tasks that K. considered unnecessary. I therefore find that the antagonism was a product of the Claimant's actions, although I believe the Claimant took those actions in good faith, believing that she was diligently performing her duties.

[23] The employer's March 29, 2019 letter makes it clear that it was not just K., her immediate supervisor, who felt that the Claimant was not performing to her employer's expectations. This letter was signed by the branch manager and said that the Claimant needed to

be more open to accepting coaching and support, to be less defensive when receiving constructive feedback, and to complete her work efficiently.

[24] The Commission acknowledges that the Claimant felt she was being harassed by her supervisor, K. The Commission also acknowledges that the Claimant found her workplace situation difficult or unpleasant. It says that the issues between the Claimant and K. arose because of her reaction to the direction K. gave her while acting in her supervisory capacity. The Commission asserts that the Claimant's circumstances were not so intolerable as to show just cause for leaving her employment.

[25] I have to decide whether it is more probable than not that leaving her employment was the only reasonable course of action open to the Claimant.<sup>12</sup>

[26] I am not satisfied that K.'s conduct as described by the Claimant was either harassment or antagonism that would justify the Claimant's decision to resign. I find that when the Claimant's employer issued its March 29, 2019 letter, she had the reasonable alternative of completing the action plan requested and using the plan to reconcile with K. while looking elsewhere for an employment opportunity. The Claimant testified that her circumstances on April 8, 2019 had not led to any compromise of her physical or mental health. For that reason, I am satisfied that the Claimant could have tolerated K.'s abrasive conduct, if it continued after April 8, 2019 while she looked for a new employment opportunity.

[27] The Claimant asserted that her employer's March 29, 2019 letter breached her human rights by placing her under a constant threat of dismissal. The *Employment Insurance Act* lists discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act* as a circumstance for decision makers to consider when assessing if a claimant has just cause for leaving their employment.<sup>13</sup>

[28] The Claimant did not elaborate on this assertion or identify the provision of the *Canadian Human Rights Act* her employer breached by issuing its March 29, 2019 letter. As well, the Claimant did not direct me to evidence establishing how the letter discriminated against her in a

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<sup>12</sup> *Canada (Attorney General) v Laughland*, 2003 FCA 12

<sup>13</sup> *Employment Insurance Act*, section 29(c)(iii)

manner prohibited by the *Canadian Human Rights Act*. Without that evidence, I cannot consider the alleged discrimination as a circumstance that might establish just cause for leaving her employment.

**CONCLUSION**

[29] The appeal is dismissed.

Christopher Pike  
Member, General Division - Employment Insurance Section

HEARD ON:	August 20, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. M., Appellant