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

[TRANSLATION]

Citation: *X v Canada Employment Insurance Commission and W. L.*, 2019 SST 966

Tribunal File Number: AD-19-178

BETWEEN:

X

Appellant

and

Canada Employment Insurance Commission

Respondent

and

W. L.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 11, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Added Party, W. L. (Claimant), worked as an early childhood educator assistant for the Appellant, X (employer), for several months. Her employment ended in August 2018. The Claimant argues that her employer dismissed her after she took several days off to care for her daughter, who was recovering from surgery. The employer argues, however, that the Claimant resigned from her employment because her husband had contacted the employer to tell it his wife would not be returning to work. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had voluntarily left her employment without just cause. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had not voluntarily left her employment because she did not have the choice to stay or to leave. It therefore removed the disqualification of benefits the Commission had imposed on the Claimant.

[4] The employer, who attended the hearing, obtained leave to appeal the General Division's decision. It argues that the General Division did not consider the material before it. It also argues that the General Division failed to observe a principle of natural justice by refusing it the opportunity to present evidence in support of its position.

[5] The Tribunal must decide whether the General Division erred by finding that the Claimant had not voluntarily left her employment within the meaning of section 29 of the *Employment Insurance Act*. It must also decide whether the General Division failed to observe a principle of natural justice.

[6] The Tribunal dismisses the employer's appeal.

ISSUES

[7] Did the General Division fail to observe a principle of natural justice by refusing the employer the opportunity to present evidence in support of its position?

[8] Did the General Division err in law by finding that the Claimant had not voluntarily left her employment within the meaning of section 29 of the EI Act?

ANALYSIS

Appeal Division's Mandate

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

[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.

[11] 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.

PRELIMINARY REMARKS

[12] As the Tribunal noted during the hearing, in deciding the employer's appeal, it will consider only the evidence presented before the General Division because the Appeal Division's jurisdiction is limited under section 58(1) of the DESD Act.

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

Issue 1: Did the General Division fail to observe a principle of natural justice by refusing the employer the opportunity to present evidence in support of its position?

[13] The employer argues that it was surprised by the Claimant's evidence that she had to care for her daughter because her parents were away. The employer submits that the Claimant had never mentioned this fact before. Therefore, the employer had been unable to present evidence contradicting the Claimant's version at the hearing. The employer argues that this constitutes an important fact because the General Division considered it in its decision.

[14] In response to the employer's argument, the Tribunal listened to the audio recording of the General Division hearing. It appears that the employer never mentioned it was surprised by the Claimant's evidence. The employer also failed to question the Claimant about this evidence or request that the hearing be adjourned to allow it to respond to the Claimant's evidence.

[15] Should the Tribunal allow this ground of appeal when one party shows passivity before the General Division? The Tribunal does not believe so.

[16] The employer had the opportunity during the hearing to share its surprise with the General Division, to question the Claimant, or to request an adjournment to respond to this evidence, which it did not do.

[17] The Tribunal finds that, while it was appropriate for the General Division to explain and inform the parties of the issue to be decided and the procedures before it, it is not the General Division member's duty to act as representative for either of the parties.

[18] This ground of appeal fails.

Issue 2: Did the General Division err in law by finding that the Claimant had not voluntarily left her employment within the meaning of section 29 of the EI Act?

[19] The employer argues that the General Division rendered its decision without regard for the material before it, incorrectly finding that there had been no voluntary

leaving on the part of the Claimant. It submits that the General Division erred by finding from the evidence that the Claimant's husband had no authority to resign on her behalf.

[20] Despite statements from both the Claimant and her husband, the General Division found from the evidence that the Claimant's husband had contacted the employer around August 20 to resign on behalf of his wife. The General Division reached this conclusion for three reasons: the employer's appreciation of the Claimant's work, the third-party confirmation of the resignation by the husband, and the husband's statement that, in refusing to understand the Claimant's situation, the employer would push other employees to leave.

[21] The General Division therefore asked whether the husband's actions and words should be interpreted as a voluntary leaving on behalf of the Claimant.

[22] As the General Division noted, the Claimant had contacted the employer during her second day off (August 21) to find out her work schedule for August 22. This action clearly indicates that she had intended to return to work after her two days off. Her actions clearly show that she was not in agreement with her husband's actions and words. There is therefore no evidence on file that the Claimant personally resigned from her employment.

[23] Based on the facts of this case, the General Division found that the Claimant did not have the choice to stay or to leave. When the Claimant contacted the employer on August 21 to find out her work schedule, the employer refused to give it to her on the pretext that her husband had resigned on her behalf the day before. Therefore, the Claimant's termination of employment was imposed on her and was not voluntary.

[24] As stated during the appeal hearing, the Appeal Division does not have the authority to retry a case or to substitute its discretionary power for that of the General Division. The Appeal Division's jurisdiction is limited by section 58(1) of the DESD Act. 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.

[25] The Tribunal finds that the General Division's decision is based on the evidence before it and is consistent with the legislation and case law on voluntary leaving.

[26] This ground of appeal fails.

CONCLUSION

[27] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	August 15, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	Nathalie Raymond (counsel), Representative for the Appellant X, Representative for the Appellant W. L., Added Party X, Representative for the Added Party