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

[TRANSLATION]

Citation: *I. C. v Canada Employment Insurance Commission*, 2019 SST 1018

Tribunal File Number: GE-19-2260

BETWEEN:

I. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: September 11, 2019

DATE OF DECISION: September 30, 2019

DECISION

[1] The appeal is allowed. I find that the Appellant had just cause for voluntarily leaving her employment under sections 29 and 30 of the *Employment Insurance Act* (Act). Therefore, the Appellant's disqualification from benefits, as of December 23, 2018, the start date of her benefit period, is not justified.

OVERVIEW

[2] The Appellant worked as a greenhouse employee for the employer X (employer), a greenhouse fruit production company, from April 16, 2007, to December 21, 2018, inclusive. She stopped working for that employer after she voluntarily left.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant did not have just cause for voluntarily leaving her employment with the employer X.

[4] The Appellant explained that she had left her employment with that employer because of changes in her tasks, following the introduction of the pepper crop, which replaced the tomato crop to which she had been assigned. She indicated that the work had become too physically demanding (for example, harvesting and new ways of working). She argued that the working conditions at the employer had become difficult when the new supervisor arrived after the pepper crop was introduced. The Appellant submitted that she had made several attempts to work with the employer to improve the situation, without success. The Appellant argued that the employer wanted to get rid of its Québec employees in favour of foreign workers. On June 10, 2019, the Appellant disputed the decision following the Commission's reconsideration of it. That decision is now being appealed to the Tribunal.

ISSUES

[5] In this case, I must determine whether the Appellant had just cause for voluntarily leaving her employment under sections 29 and 30 of the Act.

[6] To make this finding, I must answer the following questions:

a) Does the Appellant's termination of employment amount to voluntary leaving?

b) If that is the case, was a significant change made to the Appellant's work duties, and, if so, could it justify her voluntary leaving?

c) Was voluntarily leaving the only reasonable alternative in the Appellant's case?

ANALYSIS

[7] The test for determining whether a claimant had just cause for voluntarily leaving their employment under section 29 of the Act is whether, having regard to all the circumstances, the claimant had no reasonable alternative to leaving their employment.[1]

Does the Appellant's termination of employment amount to voluntary leaving?

[8] Yes. I find that, in this case, the Appellant's termination of employment does indeed amount to voluntary leaving under the Act.

[9] I find that the Appellant had the choice of continuing to working for the employer X, but that she chose to leave her employment voluntarily. Case law informs us that, in a case of voluntary leaving, it must first be determined whether the person had the choice of keeping their employment.[2]

[10] In her claim for benefits made on February 4, 2019, the Appellant indicated that she had stopped working for the employer after she voluntarily left.[3]

[11] On December 5, 2018, the Appellant gave her employer a resignation letter to inform it that she would stop working on December 21, 2018.[4] The employer confirmed having received that letter.[5]

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[1] *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92; *Laughland*, 2003 FCA 129.
[2] *Peace*, 2004 FCA 56.
[3] GD3-3 to GD3-21.
[4] GD3-27.
[5] GD3-28 and GD3-29.

[12] The Appellant does not dispute the fact that she voluntarily left her employment.

[13] I find that the Appellant had the opportunity to continue the employment she had with the employer X, but that she took the initiative of ending the employment relationship by informing the employer that she would not continue working for it.[6]

[14] I must now determine whether the Appellant had just cause for voluntarily leaving her employment and whether it was the only reasonable alternative in her case.

Was a significant change made to the Appellant's work duties, and, if so, could it justify her voluntary leaving?

[15] Yes. I find that a significant change was made to the Appellant's duties and that the circumstances justify her voluntary leaving.

[16] I find that the Appellant's credible testimony during the hearing provided a complete and very detailed picture of the reasons for her voluntary leaving. The Appellant's testimony was detailed, free of contradictions, and supported by concrete examples. Her testimony was also supported by relevant documentary evidence (for example, photos illustrating the tasks she had to perform).[7] The Appellant's testimony was also corroborated by that of a former co-worker, with whom she had worked at the employer for about 10 years.

[17] The Appellant provided a number of clarifications about the conditions in which she performed her work as a greenhouse employee, particularly in terms of the changes in her tasks following the introduction of the pepper crop in place of the tomato crop. The Appellant's testimony therefore put in context the events that led to her voluntary leaving.

[18] The Appellant's testimony and statements noted the following:

a) The Appellant worked for the employer for nearly a dozen years (from April 16, 2007, to December 21, 2018). Up to December 2017, the Appellant's work was mainly related to the tomato crop (greenhouse crop). As of December 2017, that crop

[6] *Peace*, 2004 FCA 56.
[7] GD12-56 to GD12-66.

was completely abandoned and replaced with the pepper crop—also grown in greenhouses. The Appellant's work was usually performed between 7 a.m. and 3 p.m., Monday to Friday, that is, 7.5 hours per day or 37.5 hours per week. Until January 2018, she had been able to finish work at noon on Fridays if the tasks were completed.[8]

b) The Appellant's tasks changed with the introduction of the pepper crop. The Appellant's work then consisted of harvesting (cutting peppers and placing them in bins), [translation] "suckering" plants (cutting root suckers), and draining plants at the end of the harvest (cutting the plants' strings, the cubes of sphagnum moss, and the plants' roots). This work became more difficult with the pepper crop. Harvesting peppers was the most difficult task to do. The bins or crates that were used were larger and heavier (15 to 20 pounds), whereas trays had been used for the tomato harvest. Tomatoes were placed in a tray, in a single row. The trays were placed on rail-mounted trolleys. The bins of peppers had to be placed higher than the trays of tomatoes. The bins had to be stacked on either side of the trolley. The Appellant could not lift them at arm's length given their weight.[9] It was more difficult to unload the crates that had been stacked on the trolley. When she arrived at the walkway (end of a row), the Appellant had to unload the crates that were stacked on the trolley herself because there was no one there to do it, which was not the case with the tomatoes.[10] When the tomatoes were grown, other employees, that is foreign workers, took care of unloading the trays. Therefore, the Appellant only occasionally had to lift the trays of tomatoes. With the pepper crop, once a row of crop was done, there were around 10 to 15 crates to unload from the trolley. The Appellant had to stand on the edge of the trolley to reach a bin of peppers because there was no stepladder. The trolley the Appellant had to use was not adapted to pepper crops. The trolleys had been widened. To take a break, the Appellant had to step over the trolley's safety bar because she could not get out through the doors. As the season progressed, the crates

[8] GD3-24 and GD3-25.
[9] GD12-57 and GD12-61.
[10] GD12-62 and GD2-63.

or bins became heavier and the trolley swayed more, which meant that she could not increase her speed or achieve the required production rate. The pepper harvest was continuous, that is, two or three days in a row, whereas with the tomato crop, the harvest was every other day (Monday, Wednesday, and Friday) and sometimes only in the morning. There was more [translation] "suckering" to do with the peppers than with the tomatoes. The Appellant had to use a very stiff string and wrap the plant around the string to remove the suckers. To drain the pepper plants, the strings had to be cut. Everyone had to pick up the plants to tie them, which was not the case with the tomato crop.[11] The plants had to be cut, thrown on the ground, and then picked up; whereas before, there had been bins placed on the rails. The Appellant found herself on [translation] "all fours" to pick up the cubes (cubes of sphagnum moss had to be cut from the roots in order to remove them) that had been thrown on the ground before they were put in the bins.[12] There are 350 cubes per row and 180 rows in the greenhouses. Instead of going to the walkway to carry the bins to a dumpster, as was the case with the tomato crop, the Appellant had to carry them outside in a container (big dumpster) by using wooden pallets as stairs to be able to do so.[13] She needed to use her shoulders and wrists to empty the bins at arm's length. After becoming hot from picking up the cubes, the Appellant had to dress to go out in the cold, to bring them in the container.[14] Before, they were put in a dumpster on the walkway, and another employee used a forklift to put them in the dumpster.[15]

c) With the pepper crop, the heat inside the greenhouse was more extreme. At the beginning of the day, around 7:00 a.m., the heat was 30°C and could reach 38°C to 41°C during the day with the sun and the humidex, whereas with the tomato crop, the temperature could be between 25°C and 32°C. There was also more humidity with the pepper crop; with the tomato crop, there was more ventilation. The ventilation

[11] GD12-56 and GD12-59.
[12] GD12-58.
[13] GD12-64.
[14] *Ibid*.
[15] GD3-24, GD3-25, and GD12-56 to GD12-66.

worked less often with the pepper crop. The employees were no longer allowed to take [translation] "heat breaks."[16]

d) The new way of doing things with the introduction of the pepper crop and associated working methods were decided by the new supervisor, A. D., who took over in April 2018. The pepper harvest had begun around March 2018, before the new supervisor took over. Before the former supervisor, F. R., was replaced, he provided the Québec employees with a two-week training to familiarize them with the pepper crop. With the former supervisor, it had been easier and less complicated because there had been fewer crates of peppers to handle, but then, in May and June 2018, as the season progressed, there had been more. It was the new supervisor who determined the way of working and the pace of work to follow. The new supervisor had assessed that the Appellant and the other female employees were capable of the same work as the male foreign workers. She asked everyone to do the same thing. The Appellant's workload became physically very heavy. The pace of work imposed by the employer was such that the Appellant was told to go a little faster. The Appellant was also subject to increased supervision by the employer. This increased supervision at the end of the rows started in the summer of 2018 with the arrival of an assistant to the supervisor. This supervision was also demonstrated on the Appellant's last day of work.[17]

e) The accumulation of many things explains the Appellant's voluntary leaving. She was no longer able to continue working when she left her employment. The Appellant no longer felt physically able to work. She discussed the situation with several people within the company, including her superiors, concerning the problems she faced while performing her work. When she discussed the situation with the employer, it responded: [translation] "If I am able to do it and your co-workers are able to do it, you should also be able to do it."[18] Since the pepper crop had been introduced, one of the most difficult aspects of her work was also the new supervisor's lack of understanding. There were communication issues with the supervisor. If the

[16] GD3-24 and GD3-25.
[17] GD3-24, GD3-25, and GD3-35 to GD3-40.
[18] GD3-30.

Appellant or another employee wanted to make suggestions or comments on work methods, she would not accept them. The Appellant was required to work the way the supervisor decided. The supervisor made comments to the Québec employees telling them to go faster. According to the Appellant, there were always things that the supervisor mentioned to them (for example, she would tell them how to sweep). In her case, the supervisor did not make negative comments to her about her work. The meetings held with the employer did not change the problems the Appellant was experiencing while performing her work. It had become physically and mentally unbearable for her. The Appellant was waking up at night thinking about finding a way of working and collaborating with her employer, but the desired collaboration was not possible. The work environment was not easy, given that it had become difficult to talk to the supervisor. The environment was intolerable.[19]

f) In the fall of 2018, during the period of plant draining, the employer asked the employees to work more hours or [translation] "extra work," by extending the length of their shift, in addition to the 37.5 hours that she normally worked. The employer's requests were last minute. For example, on Monday, November 26, 2018, around 2:50 p.m., the employer asked the employees if they could continue to work after the scheduled end of their shift at 3 p.m. The Appellant responded that she was unable to because she had an appointment that day, but that she could do it the next day (Tuesday). The other employees also did not accept this request. The next day, the supervisor asked the employees to provide a reason for which they could not continue to work after the scheduled end of their shift if they had been asked to and to provide evidence to that effect. According to the Appellant, the supervisor did not like that the employees responded "no" when they were asked to stay. On Wednesday, November 28, 2018, the Québec employees' tools were not in their locker as was normally the case. The supervisor had set them aside because, the day before, the employees had refused to work past the end of their shift. On November 28, 2018, the supervisor had therefore decided to assign the foreign workers the task normally

[19] GD3-6 to GD3-15, GD3-24, GD3-25, and GD3-35 to GD3-41.

assigned to the Québec employees, consisting of cutting the plants with their usual tools. The supervisor then assigned the Québec employees the task of picking up pepper stems from the ground and making bundles—a more physically demanding task than those they normally performed. The supervisor also indicated to the Québec employees that she had had enough and that there would be a meeting the next day (November 29, 2018).[20]

g) A meeting was held on November 29, 2018. The company owner (president and CEO), J. D.; the human resources manager, J. B.; the supervisor, A. D.; the union representative, J. L.; and the four employees, including the Appellant, were present. Despite the fact that the Appellant and the other employees had expressed that things were not going well in their work, the employer found that they were not collaborating enough. The employer told them that it did not understand why they could work only from 7 a.m. to 3 p.m. The employer told them that, by refusing to do so, they were giving the work to foreign workers. The employer told the employees that it was entitled to require them to work more hours and to ask them to work overtime. The employer also informed them that it would require a doctor's note if an employee could not perform the requested tasks. According to the Appellant, the employer made them take the blame for the problems at work and mentioned that the supervisor was doing a good job. The employer explained to them that they were to follow the supervisor's orders. During this meeting, a disciplinary notice was given to the Appellant as well as to the three other employees.[21] In that notice, the employer accused the Appellant of not collaborating with her co-workers and her supervisor regarding certain tasks and her refusal regarding the hours of work. In that notice, the employer noted that her behaviour was unacceptable, that it caused complications for the company, and that it could not be tolerated.[22] The Appellant signed the notice, even though it was not all her fault, given that she performed her job well. After issuing the disciplinary notices to the employees, the employer also informed them

[20] GD3-24, GD3-25, GD3-30, and GD3-41.
[21] GD12-70 to GD2-72.
[22] GD12-70.

that they could come by the office, individually, to discuss everything. Two of the Appellant's co-workers refused to sign the disciplinary notices that they were given and they left their employment after that meeting. The Appellant did not ask the employer to meet with her individually because she considered that there was nothing to do. There was no solution, and there was no understanding on the employer's part.[23]

h) After the meeting on November 29, 2018, the Appellant and the other remaining co-worker were assigned to cutting cubes. The repetitive task that the Appellant had to perform (Thursday, November 29, 2018, and Friday, November 30, 2018), and the tools she had to use (for example, a bread knife and an X-Acto knife),[24] before the immigrant employees came to do the same task, made her hand swell. On Monday, December 3, 2018, she saw a doctor. The Appellant burst into tears when she told the doctor about what was happening at work. The doctor then told her she should leave her job. He offered to give her a doctor's note so that she could take leave until Wednesday, December 5, 2018, but the Appellant did not accept that offer. She did not want to take medication or find herself in a state of burnout.[25]

i) The Appellant returned to work on December 4, 2018, and handed in her resignation letter on December 5, 2018, after her workday at 3 p.m. In that letter, dated December 2, 2018, the Appellant gave the employer two weeks' notice and informed it that she would stop working on December 21, 2018.[26] The Appellant wanted to have a good record when it came time to look for another employment. She said she found writing that letter sad because it represented the end of her 12 years of work for the employer. The Appellant was proud of the work she had performed, but felt disappointed because she saw how her last year had gone. She enjoyed her work.[27]

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[23] GD12-70 to GD2-72.
[24] GD12-56.
[25] GD3-24, GD3-25, GD3-30, GD3-41, and GD12-67 to GD12-69.
[26] GD3-27.
[27] GD3-27 and GD3-41.

j) During her last two weeks of employment, the Appellant worked less, that is, 4 days out of a possible 10. According to her, the employer kept the work for the foreign workers. The employer was trying to get rid of the Québec employees to replace them with foreign workers who did not seem to have a problem working additional hours. She noted that, when she started with the employer, there had been 12 Québec employees per year and that number could reach 18–20 during the summer. In February 2018, there was a team of 4 Québec employees and around 8 to 10 male foreign workers.[28]

k) The Appellant spoke to her union about her situation at work, but no grievance was filed before she voluntarily left her employment. She did not want to get into a dispute like that, but the union representative told her he was ready to help her. The Appellant did not want to deal with retaliation by the employer. She said that she found the employer intimidating. The Appellant also did not make any efforts to contact an organization like the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) [Québec's labour standards commission] concerning her working conditions.[29]

l) The Appellant did not look for another employment before leaving the one she had because she thought it would be easy to find new employment. She found a new job in March 2019.[30]

[19] The Appellant's representative made the following arguments:

a) The Appellant worked for 12 years and had a clean disciplinary record. Over time, the employer made more room for foreign workers at the expense of hiring local workers and, in the Appellant's last year of work, even at the expense of keeping the remaining four local workers employed. There is a multitude of benefits for the employer in hiring foreign workers.

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[28] GD3-24, GD3-25, and GD3-41.
[29] GD3-6 to GD3-15, GD3-30, and GD3-35 to GD3-41.
[30] GD3-6 to GD3-15, GD3-30, and GD3-41.

b) The Appellant faced significant changes in her last year of work. The accumulation of these changes represents good cause for the Appellant to leave her employment, and leaving was the only reasonable alternative in her case under the Act. There was a significant change in her work duties and methods of working, which were very difficult compared to the tomato harvest. The pepper harvest is continuous, while the tomato harvest was performed in two-day intervals. The pepper crop brought physical demands that exceeded the capabilities of the female employees, given their size and age and the tasks they had to perform (for example, they had to handle 15–20 pound boxes at arm's length). The pepper harvest was also carried out in warmer and more humid temperatures than the tomato harvest. The problem for the female employees was that the significant changes in the work methods had become physically intolerable.

c) The change in supervisor also brought a significant change to the relationship between the supervisors and the employees. Employees were subject to a complete lack of understanding and communication, disciplinary measures, and threats of disciplinary measures to come if they did not do everything the supervisor asked of them, and all of this without being able to speak up. This situation was frustrating for employees, with regard to communications. According to the representative, the only possible outcome in this context was voluntary leaving because, in the end, that is what the employer wanted. The events that followed the November 29, 2018, meeting clearly demonstrate that. During that meeting, the employees hoped, after enduring an escalation of events for eight months, to be heard and to find a solution to their problems. However, the employer refused and took disciplinary measures. The representative noted that the collective agreement states that, even though the Appellant signed the disciplinary notice during the November 29, 2018, meeting, it does not mean that she admits to what she was accused of. It is the signature of an acknowledgement of receipt. The morning after that meeting, the employer had the employees, including the Appellant, perform an unfamiliar and physically difficult task that they had never done before, for two days in a row. This is clear evidence of retaliation in reaction to the November 29, 2018, meeting. It was not the first time

that a situation like this had happened because, the week the employees had all refused to work overtime, their tools had been hidden. When the employer received the resignation of the two remaining employees, including the Appellant, it made them work four days in a two-week period. There had always been a reaction on the employer's part to an action that had been taken. The employer perceived the fact that the employees had refused to work overtime, because they were physically exhausted or because they had an appointment, as an affront or lack of collaboration. What followed were several seemingly insignificant events but, placed chronologically and together, they necessarily created a harmful working environment to the point where, when the Appellant saw a doctor, she burst into tears.[31] The Appellant told herself that the only reasonable alternative to the employer's failure to listen and lack of openness at the November 29, 2018, meeting was to leave her employment. According to the representative, the proof that it was the only reasonable alternative for the Appellant is that the four Québec employees who remained saw leaving as the only reasonable alternative.

d) The *Employment Insurance Act* is social legislation. Potential claimants certainly cannot be asked to remain in employment until they find another employment or have their grievance heard, at the expense of their health. That is not the purpose of the Act. The best evidence of the Appellant's condition at the time of her resignation is the medical appointment she had on December 3, 2018, the day after the letter of resignation was signed. Even the doctor that the Appellant saw considered leaving to be necessary. According to the representative, a person should not have to get sick or ask for leave to see whether they can get back on their feet before leaving an employment. As soon as our employment affects us psychologically, to the point of having difficulty sleeping and crying in a doctor's office, that is enough, without having to venture down the path of an adjustment disorder.

e) There was no possible outcome for the Appellant other than voluntarily leaving because the employer did not intend to find a satisfactory solution for both methods

[31] GD12-67 to GD12-69.

> of work and how to manage the company. A number of alternatives were considered before the Appellant left her employment (for example, she spoke to the union, she tried to have discussions with the supervisor, she tried to meet with the employer, and the union proposed further meetings with the employer), but nothing worked.

[20] N. A., a person who worked with the Appellant at the employer for 10 years, testified to explain the circumstances in which she also resigned, the same day as the Appellant, after having discussed the situation with the Appellant. N. A.'s testimony indicates that the Québec employees were increasingly shown the door and that there was no solution. N. A. explained that she believed that, during the meeting with the employer on November 29, 2018, a discussion would take place to improve the situation regarding their employment. However, according to her, that meeting was an opportunity for the employer to tell the local employees what was expected of them. The employer did not want to hear what they had to say and did not want a discussion. N. A. explained that, with the new methods of working related to the pepper crop, the physical expectations were much greater, even if the tasks were familiar. She noted that the work was physically extremely difficult for a woman. She said that she found it horrible having to cut the pepper stems with a kitchen knife following the meeting with the employer on November 29, 2018. N. A. stated that, when the new supervisor (A. D.) started, the Québec employees were subject to increased supervision to ensure that they were working, while this was rarely the case for the foreign workers. According to N. A., the employer no longer wanted the Québec employees to be there because, unlike the foreign workers who could work from 6 a.m. to 7 p.m., they worked from 7 a.m. to 3 p.m. and they benefitted from various types of leave. N. A. received a disciplinary notice similar to that of the Appellant.[32] She gave her resignation letter at the same time as the Appellant, on December 5, 2018.

[21] During its testimony, the union representative, J. L., explained that the changes in tasks and methods of working with the pepper crop required more time and effort. He noted that a bin of peppers could weigh double the weight of the container (box) used for tomatoes, which was around 10 pounds. The sanitary draining step was also more demanding and heavier because the peppers (plants) are heavier. He explained that, before they left their employment, the Québec

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[32] GD12-72.

employees were physically and psychologically burnt out. The representative also reported to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) [Québec's labour standards commission], in June 2018, the high temperatures at the employer, but no report was made about the incident. The representative said that he found the employer rather aggressive during the November 29, 2018, meeting. The disciplinary notices were given to the Québec employees at the beginning of that meeting. According to the representative, during that meeting, the employer believed that the supervisor was a victim and that the Québec employees did not want to listen to her. Regarding the request that the Québec employees work overtime after the shift ended at 3 p.m., the representative indicated that the employer had explained that it was entitled to manage its company the way it wanted to. The employer ended the discussion by telling the Québec employees that if it did not work, they would have to come by its office. The representative explained that, when the Québec employees started leaving their employment, the union had planned to file a grievance for constructive dismissal at that time, but that it did not happen. There was no discussion with the Appellant regarding the possibility of filing a grievance between the November 29, 2018, meeting and the Appellant's announcement that she was leaving her employment on December 5, 2018. The representative explained that when he became a union representative with the employer in 2017, there had been 12 Québec employees and around 9 or 10 temporary foreign workers. He stated that, over time, the temporary foreign workers had pushed the local workers toward the door. The representative explained that, after they left, the four Québec employees, including the Appellant, were replaced with temporary foreign workers. In the department where the Appellant worked, there are no longer any Québec employees.

[22] In statements made to the Commission on February 18 and 28, 2019, the employer explained that the fact that peppers were being grown in place of tomatoes was new for everyone and that that is why it had asked all employees to do their part and work together. According to the employer, since the Appellant and the other employees on her team did not want to pitch in, a meeting was held on October 26, 2018, with all the employees to ask for their cooperation. The employer explained that if the Appellant needed help lifting her bins, she could have talked to someone on her team. The employer also indicated that it had asked the Appellant, following that meeting, to continue working after her shift ended at 3 p.m. Even though the Appellant was not

required to work overtime, she always refused, and it was therefore the foreign workers who helped out after the end of their shift. The employer stated that it had held another meeting with the Appellant and her working group on November 29, 2018, because disrespectful comments had been made to their immediate supervisor (A. D., supervisor). During that meeting, the employer stated that it had asked the Appellant to cooperate a bit more, that is, by agreeing to work overtime from time to time (for example, do an extra 30 minutes).[33]

[23] In this case, I find that the employer's introduction of the pepper crop in place of the tomato crop resulted in significant changes in the Appellant's work duties.

[24] I am of the opinion that, objectively, it had become too difficult for the Appellant to perform the new tasks to which she had been assigned following the introduction of the pepper crop and new requirements by the employer in this area. I note that, in its statements, the employer did not dispute the fact that changes had been made to the Appellant's duties just like those of the other Québec employees.

[25] I find that, in the months that followed the introduction of that crop, the Appellant made efforts to adapt to the changes in her duties. However, despite her efforts, she had not been able to adapt and continue her work, given the increased physical demands of this work (for example, handling heavier bins, harvesting for several consecutive days, performing tasks to which she was not normally assigned or unfamiliar tasks like picking plants up off the ground, and withstanding a higher temperature inside the greenhouse).

[26] I note that the Appellant worked for the employer for nearly 12 years. It was only when the employer replaced the tomato crop with the pepper crop at the end of 2017 that the Appellant began to have problems performing her work. It was not until several months after the pepper crop was introduced that the Appellant decided to voluntarily leave her employment.

[27] I find that the Appellant's explanations show that she had attempted to discuss with the employer the difficulties she faced in the performance of her work and to find solutions that would enable her to adapt to the changes.

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[33] GD3-26, GD3-28, and GD3-29.

[28] The Appellant's claims, which were not disputed, indicate that, despite her attempts to work things out with the employer, it did not propose a solution regarding the changes in the Appellant's duties.

[29] All indications are that the employer was not receptive to the Appellant's efforts in this regard and that it did not show any interest in allowing her to adapt to the new methods of working related to the pepper crop.

[30] It is clear from the employer's statements that its main concern was that the Appellant do her part for the pepper crop and agree to work overtime after her shift ended.[34] I note that, despite the fact that the employer explained that the Appellant could talk to a co-worker on her team if she needed help lifting the bins,[35] the fact remains that there were no longer any employees assigned to the task of unloading the crates of peppers once they had reached the end of a row.

[31] I also find that the communication issues between her and her new supervisor made the Appellant's situation at work since the peppers were introduced even more difficult.

[32] I find credible the Appellant's explanations regarding the new requirements for work techniques imposed by the new supervisor as well as the increased pace at which the work was to be performed.

[33] The Appellant's situation reached the lowest point during the November 29, 2018, meeting with the employer, during which a disciplinary notice was given to the Appellant and the other Québec employees who were at the meeting.

[34] The Appellant's testimony and statements indicate that she had also been assigned unfamiliar tasks that were not normally assigned to her or that she did not normally have to do for several days in a row (for example, picking pepper plants off the ground and cutting cubes of sphagnum moss).

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[34] *Ibid*.
[35] GD3-28 and GD3-29.

[35] I find that, in its arguments, the Commission did not specifically address the issue of the change in the Appellant's duties in its assessment of whether her voluntary leaving was justified under the Act.

[36] In this regard, the Commission essentially mentioned only that it was normal that there were changes to the Appellant's work, that she had not been the only person affected by these changes, and that it was a matter of the employer's right to manage.[36]

[37] I note that "significant changes in work duties" are circumstances that can justify voluntary leaving, as stated in section 29(c)(ix) of the Act, but that the Commission failed to assess this circumstance.

[38] The case law informs us that voluntary leaving can be justified if the nature of the duties assigned to a person are no longer what that person and their employer had initially agreed on, and that we must consider that person's version of the facts to find that it was a significant change in duties.[37]

[39] In summary, I find that significant changes were made to the Appellant's duties with the introduction of the pepper crop, in place of the tomato crop. Because of these changes, the Appellant's tasks no longer corresponded to those for which she had been hired more than 10 years ago. The Appellant was no longer able to perform them.

[40] I am of the opinion that the Appellant had just cause for voluntarily leaving her employment because of significant changes in her work duties under section 29(c)(ix).

Was voluntarily leaving the only reasonable alternative in the Appellant's case?

[41] Yes. I find that the Appellant's decision to voluntarily leave her employment with the employer must be considered, having regard to all the circumstances, the only reasonable alternative in that situation.[38]

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[36] GD4-6.
[37] *Chaoui*, 2005 FCA 66.
[38] *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92, *Chaoui*, 2005 FCA 66.

[42] I find that, several months before leaving her employment, the Appellant made efforts to work with the employer to find a solution to the problems she faced in performing her tasks after the significant change in her duties. I find that the Appellant tried to resolve the problems she faced with the employer regarding the significant change in her duties before making the decision to voluntarily leave her employment.[39] However, the Appellant's numerous efforts to work things out with the employer were unsuccessful.

[43] I find that, in this context, the Appellant could not be forced to continue performing tasks to which she had not been able to adapt, given the employer's new requirements and the fact that the employer did not show any interest in finding a solution in this regard. I am of the opinion that the employer's right to manage, to which the Commission refers in order to show that the Appellant did not have just cause for voluntarily leaving her employment, cannot hide the fact that a significant change was made to her duties and that that situation is a circumstance justifying her voluntary leaving.

[44] In addition to her efforts with the employer to find a solution to the problems she had performing her new tasks, the Appellant also consulted a doctor before leaving her employment.[40] I note that it is mainly the significant changes in the Appellant's work duties that justify her voluntary leaving and that a medical opinion was not necessary or required in her case. Since I do not question the credibility of the Appellant's testimony, medical evidence would not have made a difference in this situation.

[45] I also find that the Appellant approached her union, that it was supportive of her, but that filing a grievance would not have changed the Appellant's situation, just as an appeal to an organization like the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) [Québec's labour standards commission] would not have changed anything.

[46] I am also of the opinion that the Appellant did not have to find another employment before leaving the one she had since she stopped working because she was no longer able to continue in the one she had. The Appellant made efforts to keep her employment over a period of

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[39] *White*, 2011 FCA 190.
[40] GD12-67 to GD12-69.

several months. She tried to adapt to her new duties, but she found them too physically difficult to perform.

[47] In summary, I find that the Appellant demonstrated that she had no reasonable alternative to leaving her employment.[41]

CONCLUSION

[48] I find that, having regard to all the circumstances, the Appellant had just cause for voluntarily leaving her employment under sections 29 and 30 of the Act and that it was the only reasonable alternative in her case.

[49] Her voluntary leaving was justified by a significant change in her duties under section 29(c)(ix) of the Act.

[50] Therefore, the Appellant's disqualification from benefits, as of December 23, 2018, is not justified under sections 29 and 30 of the Act.

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[41] *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Astronomo*, A-141-97; *Landry*, A-1210-92; *Laughland*, 2003 FCA 129, *Chaoui*, 2005 FCA 66.

[51] The appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	September 11, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	I. C., Appellant Guylaine Guenette (counsel) (United Food and Commercial Workers Union, Local 501–UFCW), Representative for the Appellant