



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. P. v Canada Employment Insurance Commission*, 2019 SST 1268

Tribunal File Number: AD-19-611

BETWEEN:

R. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 23, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal grants leave to appeal and allows the appeal. The matter is referred back to the General Division for reconsideration.

OVERVIEW

[2] The Applicant, R. P. (Claimant), worked for a few years as a scraper at X, in X. He lost his employment. The employer accused him of smoking a cigarette near explosives in a moving wagon inside the mine. The Claimant applied for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) determined that the Claimant had lost his employment because of his misconduct. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed to the General Division.

[3] The General Division determined that the Claimant had smoked a cigarette near dynamite in a moving wagon inside the mine and that he knew or should have known that he would be dismissed for acting in that manner. The General Division found that the Claimant had lost his employment because of his misconduct.

[4] In support of his application for leave to appeal, the Claimant argues that the General Division proceeded in his absence while he was on vacation. He submits that he did not have the opportunity to be heard by the General Division.

[5] The Tribunal held a settlement conference to potentially settle the file without having to follow the formal appeal process before the Appeal Division. The parties reached an agreement.

[6] The Tribunal grants leave to appeal and allows the appeal. The file is referred back to the General Division for reconsideration.

AGREEMENT

[7] In his application for leave to appeal, the Claimant cited section 58(1)(a) of the DESD Act.

[8] The Claimant argues that the General Division proceeded in his absence while he was on vacation. He submits that he did not receive the notice before the hearing and did not have the opportunity to be heard by the General Division.

[9] The Commission agrees with the case being sent back to the General Division because there was a failure to observe a rule of natural justice. It considers the period between the mailing of the notice of hearing and the hearing to have been too short to allow the Claimant to prepare his case properly. Furthermore, the hearing date was set during the busy vacation period while the Claimant was on vacation.

REASONS

[10] The Tribunal notes from the file that the notice of hearing was mailed on Thursday, July 25, 2019, and that the hearing took place on Wednesday, July 31, 2019. The General Division was not able to reach the Claimant by telephone on July 25, 2019, and left him a message on July 31, 2019, so that he could confirm his attendance at the hearing, which he did not do. The Claimant immediately contacted the Tribunal on August 7, 2019, and explained that he had been on vacation during the hearing.

[11] For the reasons stated above, the Tribunal is of the view that leave to appeal should be granted and the appeal should be allowed.

CONCLUSION

[12] Leave to appeal is granted and the appeal is allowed. The matter is referred back to the General Division for reconsideration.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES	Louiselle Luneau, Representative for the Applicant Isabelle Tiffault, Representative for the Respondent
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