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

[TRANSLATION]

Citation: *S. F. v Canada Employment Insurance Commission*, 2019 SST 1601

Tribunal File Number: GE-19-2706

BETWEEN:

S. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: September 24, 2019

DATE OF DECISION: October 18, 2019

Canada

DECISION

[1] The appeal is dismissed. I find that the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (Act). The Appellant's disqualification from regular Employment Insurance benefits as of March 24, 2019, the start date of his benefit period, is therefore justified.

OVERVIEW

[2] The Appellant worked as a minibus driver for the employer X (employer) from August 13, 2018, to March 20, 2019, inclusive, and he stopped working for it after voluntarily leaving.

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

[4] The Appellant asked the employer for time off, but that request was denied. The Appellant explained that his workload was too heavy because he was working too many hours, and his work schedule was not stable because he had to work night, day, or evening shifts. He said that the employer did not respect the agreement it had reached with him that he would be able to choose his work schedule. According to the Appellant, his working conditions were unsafe. They compromised his safety, as well as the safety of his passengers and others on the road. The Appellant indicated that he was no longer able to do his job. On July 23, 2019, the Appellant disputed the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

ISSUES

[5] In this file, I must determine whether the Appellant had just cause for voluntarily leaving his 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 so, can the Appellant's working conditions justify his voluntary leaving?

c) Did the Appellant have reasonable assurance of another employment in the immediate future before his voluntary leaving?

d) 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, on a balance of probabilities, 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 work for the employer, but he chose to voluntarily leave his employment.

[10] The 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]

[11] In his notice of appeal submitted on July 23, 2019, and in his statements to the Commission on April 16, June 3, June 18, and July 2, 2019, as well as in his claim for benefits, the Appellant indicated that he had left his employment.[3]

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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] GD2-3, GD3-7, GD3-8, GD3-29, GD3-33, GD3-47, GD3-48, GD3-51, and GD3-52.

[12] The evidence on file indicates that the Appellant gave the employer a letter of resignation, on March 7, 2019, to let it know that he was going to stop working on March 21, 2019.[4] The employer confirmed it had received that letter.[5]

[13] The Appellant did not dispute the fact that he had voluntarily left his employment.

[14] I find that the Appellant had the opportunity to continue the employment he had at the employer X, but that he decided to end his employment relationship by telling the employer that he was not going to continue it.[6]

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

Can the Appellant's working conditions justify his voluntary leaving?

[16] No. I find that the Appellant's working conditions are not a circumstance justifying his voluntary leaving.

[17] The evidence on file, and the Appellant's testimony and statements, note the following:

a) As a minibus driver, the Appellant operated a passenger shuttle service between the Sherbrooke region and Montréal-Trudeau International Airport based on a determined schedule.[7]

b) Before he voluntarily left his employment, the Appellant asked the employer for two consecutive days off to be able to rest or to go snowmobiling. That request was denied. The Appellant then submitted a two-week notice to the employer (Appellant's resignation letter, dated March 7, 2019).[8]

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[4] GD3-45.
[5] GD3-37.
[6] *Peace*, 2004 FCA 56.
[7] GD3-29, GD3-47, and GD3-48.
[8] GD3-29, GD3-45, GD3-47, GD3-48, GD3-51, and GD3-52.

c) In his statement to the Commission on July 2, 2019, the Appellant clarified that he had left his employment by personal choice because the employer had refused to give him two days off to go snowmobiling during the week starting March 10, 2019.[9]

d) In his reconsideration request, the Appellant explained that he had left his employment because he was working up to 55 hours a week, at all times and at any hour.[10]

e) The Appellant was hired for a permanent, full-time position. He signed an employment contract with the employer on August 13, 2018, including provisions that he would work on-call, that his schedule would vary depending on the trips assigned to him, and that they could be done at any time of the day, given that the shuttle service runs 24 hours a day.[11] When he was hired, the Appellant explained to the employer that it would not bother him to work 40 hours or more a week in the beginning, but that, over the winter, he would prefer to work part-time, that is, 30 to 40 hours a week. When he signed his contract, the Appellant reached a verbal agreement with the employer that he would have a reduced schedule over the winter and that he would be able to choose it (permanent, part-time employee status), even though there would be more work at that time of the year. The employer told him it had no problem with that and accepted that condition. However, it was not written in the contract. The Appellant told himself he would start working full-time to learn how to do his job well, until the holiday season, and that, after that, his work would be part-time, 30 to 40 hours a week. The Appellant did not want to work 50 to 60 hours a week. The Appellant took the employer at its word and believed it was honest. After signing his contract, the Appellant saw that it no longer worked that way, that is, according to the verbal agreement that was reached with the employer. It was what he had signed that counted, and the employer must have forgotten the rest. Despite the fact that the employer said the Appellant had signed an employment contract indicating that he would work on-call more than 30 hours a week and that he had

[9] GD3-51 and GD3-52.
[10] GD3-33 and GD3-34.
[11] GD3-38 to GD3-41.

knowingly accepted to work overtime or to work more than 50 hours a week, that is not what the employer had told him.[12] The employer did not respect its commitment. The Appellant was stuck with the contract he had signed and no longer had a life. Before he started working at the employer X, the Appellant had heard that, if he worked at that location, he would be able to choose the work schedule that he wanted. However, once a person was hired and their contract was signed, that was no longer the case. The Appellant noted that it was still this way, about two months ago, that the employer described in the job offers, the conditions related to the minibus driver position that he held.[13]

f) In his statement to the Commission, on June 18, 2019, the Appellant indicated that he knew when he was hired that he would have to work various shifts and long days.[14]

g) The Appellant worked mostly nights. In addition to his night shifts, he also had to work day and evening shifts in the same week. Working at night did not bother him, but he found it difficult alternating between night, day, and evening shifts. The Appellant had already worked night shifts in the past. He had also already worked day and evening shifts. However, there had never been variation or change in his work shifts from one week to another.[15]

h) The employer sent him his schedule 48 hours in advance and he had to respect it, no matter how many hours he had to work. The Appellant had no choice. He had to always be available (24 hours a day). The Appellant was required to go in or to do overtime. He could not tell the employer that he would work only eight hours in a day. The Appellant knew what time he was leaving, but he did not know what time he would come back (for example, flight delays). The Appellant often worked six or seven days in a row. However, he did not believe he had worked 10 days in a row. The employer respected the eight-hour rest period he was entitled to after completing a trip. It was an eight-hour period between two trips. However, the length of this

[12] GD3-35, GD3-47, and GD3-48.
[13] GD3-3 to GD3-26, GD3-35, GD3-47, GD3-48, GD3-51, GD3-52, and GD6-4.
[14] GD3-47 and GD3-48.
[15] GD3-29.

eight-hour break was calculated from the office and not from his home (for example, leave Montreal at 10:00 p.m. and return to work the next morning at 6:00 a.m.). Once, when the Appellant had almost reached the workplace, the employer told him that he no longer had to work and that he could have his day off because the transport of passengers he was going to do had been cancelled. In that case, the Appellant lost a part of his day off. Also, if the Appellant finished his shift at 6:00 a.m. and started work at 10:00 p.m., he did not have 24 hours off during that period, even if he was not on the schedule that day. The Appellant rarely had a Saturday or a weekend off. The Appellant said he never had 36 consecutive hours of rest after working for seven days or that it did not happen often (36 consecutive hours of rest after 7 consecutive days of work according to the rules set out by the Société de l'assurance automobile du Québec [Québec's automobile insurance corporation] (SAAQ) concerning driving and rest hours).[16]

i) In his statements to the Commission on April 16 and June 18, 2019, the Appellant indicated that his terms of employment were not illegal. He easily drove 50–60 hours a week. The Appellant never drove more than 13 hours in a day and never drove more than 70 hours in a week. The Appellant said that he took at least 10 hours to rest between each shift.[17]

j) The Appellant no longer wanted to work six- or seven-day periods and always be available. Given his age, he no longer wanted to work at night and do overtime every week. The Appellant wanted to work three or four days a week and not more than 30 hours. He was willing to help the employer, but he wanted to have two consecutive days off every week or as often as possible.[18] According to the Appellant, if the employer had told him that after 40 hours of work, he was not required to do more, he would not have needed to ask for two consecutive days off. The Appellant

[16] GD3-47, GD3-48, GD3-51, GD3-52, GD3-55, and GD3-56.
[17] GD3-29, GD3-47, and GD3-48.
[18] GD3-29.

could work 40 hours over a three-day period. He completed the tasks assigned to him instead of refusing a shift.[19]

k) According to the Appellant, his working conditions had become unsafe because he had difficulty managing his sleep, given the shifts he worked (for example, night, day, and evening). He could no longer sleep the way he wanted to. This situation represented a safety issue. The Appellant was no longer capable of doing his shifts and was falling asleep at the wheel. If he had always worked night shifts, it would not have bothered him because he would have been used to it. He sometimes stopped two or three times during his shifts on the side of the road to sleep or take a 15 to 30 minute break, or to go to a restaurant. The Appellant also consumed energy drinks like "Red Bull" and took "Wake up" (caffeine pills) to stay awake, noting that that was not a good idea. Even while taking these products, he was falling asleep at the wheel. The Appellant did not know that these types of products were prohibited. The employer had never talked to him about that, even though the employer told the Commission that he was not allowed to take them.[20]

l) The Appellant talked to the employer about his fatigue. He talked about it once with his supervisor, Mr. P. D., but he did not want to accommodate him. The Appellant asked the employer about working fewer hours, having a more stable schedule, and having two consecutive days off. All those requests were denied. The employer told him that if he was unhappy, he had only to leave or resign.[21]

m) The work had become too difficult for the Appellant. He was no longer capable of doing it. According to the Appellant, it was urgent that he leave his employment. Several other employees that worked at the employer X had left their job because they were working too much.[22]

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[19] GD3-29, GD3-51, and GD3-52.
[20] GD3-3 to GD3-26, GD3-29, GD3-33, GD3-34, GD3-47, and GD3-48.
[21] GD3-13, GD3-29, GD3-33, GD3-34, GD3-51, and GD3-52.
[22] GD3-29, GD3-47, and GD3-48.

n) The Appellant did not consult a doctor before leaving his employment because he said his problem was not medical. He did not know that he could consult a doctor to obtain a recommendation indicating a leave from work because of his fatigue or to avoid working at night or even to leave his employment. The employer never told him that he could ask for a temporary change in shifts by presenting a medical certificate; otherwise, he would have gone to see his doctor for that reason.[23]

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

a) The Appellant raised several points that demonstrate that it had become more and more difficult for him to do his job. In his claim for benefits, he indicated that he had left his employment because of unsafe working conditions.[24] He explained that he worked many hours (50 to 55 hour weeks), that his schedule was not stable, and that he was not sleeping enough. The Appellant said that he was falling asleep at the wheel and that he was no longer capable of doing his job.[25] The Appellant said he had talked to his immediate supervisor, P. D., about having two consecutive days off and working fewer hours, but that those requests were denied.[26] While they were not inhumane or intolerable, the Appellant's working conditions were quite difficult. The Appellant had a job where he had to be available seven days a week and 24 hours a day, unless he was on leave authorized by the employer, and he received his schedule 48 hours in advance. He had night, day, and evening shifts that could change in the same week. The Appellant's personal situation did not allow him to continue working in these conditions.

b) According to the representative, the Commission seemed to focus on the Appellant's request for days off to find that that was the reason for his voluntary leaving. The representative noted that that reason was part of the circumstances or environment in which the Appellant made the decision to leave his employment. He explained that the Appellant's history and the context in which he accepted the employment must be

[23] *Ibid*.
[24] GD3-9.
[25] GD3-11.
[26] GD3-13.

examined, as well as the conversation he had with the employer when he was hired. The Appellant explained that he had signed a contract, but that he had also reached a verbal agreement with the employer. However, the employer did not respect that agreement. The Appellant had asked the employer when he was hired for reduced hours over the winter. The Appellant said that he had no choice but to do the shifts assigned to him and that he could not refuse work after having worked 40 hours in a week. If he had been able to, the Appellant could have had two days off, given that he would have worked 40 hours. The Appellant also indicated that there was significant staff turnover at the employer.

c) The information the employer provided about the Appellant's hours over his employment period and his days off indicates that he did not have formal leave for a period of 36 consecutive hours (36 consecutive hours of rest after 7 consecutive days of work) under the rules set out by the Société de l'assurance automobile du Québec [Québec's automobile insurance corporation] (SAAQ) concerning driving and rest hours, or a rest period of at least 32 consecutive hours every week, according to the rules set out by the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Québec's labour standards commission] (CNESST), under the *Act respecting labour standards*.[27]

d) Regarding his health problems or sleep problems, the Appellant explained that he was no longer able to work rotating shifts (for example, night, day, or evening) for a long period. Physically, it was too much. The Appellant had sleep difficulties. He said he was not ill but explained that, physically, he was unable to pair his sleep cycle or properly coordinate it with his variable work schedule and the number of hours he worked (for example, 50 to 55 hours a week). The Appellant would not have had this type of difficulty, or he would have had fewer problems, if he had always worked the night shift. In his statements, the Appellant indicated that he had to consume drinks like "Red Bull" or take "Wake up" to prevent drowsiness. This situation had become a danger to his safety and the safety of those he was transporting and others on the

[27] GD3-44, GD3-49, GD3-50, and GD3-55 to GD3-60.

road. Concerning the unsafe conditions the Appellant mentioned, he could provide only his own testimony about his situation at work.

e) According to the representative, there is a problem with the Commission's argument in the following explanation: [translation] "A person must provide a letter from a doctor if they wish to claim they left their employment for health reasons. That letter must mention that the doctor advises that person to leave their employment for health reasons. In this file, no efforts were made to consult a doctor to obtain a temporary leave from work or a recommendation that it was unreasonable to continue in that state."[28]

f) Because the Appellant said he was not ill, a medical certificate would have served no purpose. *Brisebois*[29] and several umpire decisions[30] state that medical evidence is not required in a case of voluntary leaving. If this document is provided, it is a [translation] "plus," but in the absence of a medical certificate, a person can still justify their leaving for health reasons.[31] In the Digest of Benefit Entitlement Principles, the Commission published a list of 40 main circumstances that could justify voluntary leaving (Chapter 6, section 6.8.1). From that list, three circumstances relate to a claimant's health (health adversely affected). One of those three circumstances refers to credible and convincing explanations from the claimant as a justification for voluntary leaving, without having to provide a medical recommendation.[32]

g) Before a person leaves their employment, they are expected to consider the reasonable alternatives available to them. The Appellant tried to solve the problems he was having at work. He talked about them to his employer and told it that he wanted to work fewer hours, but the employer told him there was nothing it could do. The employer did not want to reduce the Appellant's hours or give him two

[28] GD4-5.
[29] *Brisebois*, A-510-96.
[30] CUB 70451, CUB 58966, and CUB 59367; GD6-2.
[31] *Brisebois*, A-510-96; CUB 70451, CUB 58966, and CUB 59367.
[32] GD6-3.

consecutive days off. The employer did not want to accommodate him, despite the fact that it said it was willing to do so. Even though the employer said that there was no mandatory overtime, the Appellant explained that, after working 40 hours, he could not refuse to do more if he was asked to and that it was not an option if he wanted to keep his job. If, as the Appellant indicated, he talked to the employer about the fact that he had to consume "Red Bull" or take "Wake up" to complete his shifts because he had a drowsiness problem, and the employer failed to do anything about that situation, that was a bit problematic. The Appellant's version contradicts that of the employer. Therefore, all the factors must be considered.

h) According to the representative, there was no openness on the part of the employer to solve or try to reduce the Appellant's problems at work, even though it had said when the Appellant was hired that he could have a reduced schedule over the winter. When there is little or no openness on the part of the employer, or if the employer is not ready to listen to or consider a worker's complaints, it is difficult for the worker to have reasonable alternatives. An employee must discuss problems with the employer, but if the employer does not wish to do so, that employee is then justified in leaving their employment.[33] Because there was no way of negotiating anything with the employer to avoid the problems the Appellant was having and the dangers he could have caused for himself and others on the road, he had just cause for leaving his employment. After talking to the employer, the Appellant had no other alternative to leaving his employment. Leaving was the only reasonable alternative in the Appellant's case. In *Bell*,[34] the Court established that the question of urgency or of critical and intolerable conditions were more exigent than the language of the Act and the decision whether there is just cause for voluntarily leaving must not be based on these criteria. Instead, all the circumstances must be considered in determining whether voluntarily leaving was the only reasonable alternative.[35]

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[33] CUB 61466 and CUB 50475; GD6-2.
[34] *Bell*, A-450-95; GD6-2.
[35] *Ibid*.

[19] The employer provided the following explanations:

a) The Appellant left his employment because the time off he had asked for to go snowmobiling had been denied. After taking time off from January 31, 2019, to February 17, 2019, the Appellant had verbally asked his supervisor (P. D.), between March 1, 2019, and March 5, 2019, for an extra two weeks off from the days that followed. That request was denied, and the Appellant made another request to have two days off, which was also denied. After that refusal, the Appellant wanted to resign immediately, on March 6, 2019. The employer asked the Appellant to give it two weeks' notice to give it time to find a replacement. On March 7, 2019, the Appellant submitted a resignation letter in which he gave the employer his two weeks' notice.[36]

b) The working conditions were communicated to the Appellant when he was hired. The Appellant was hired as an on-call employee for more than 30 hours a week. According to his regular work schedule, he worked all different shifts and worked between 40 and 50 hours a week. The Appellant accepted the job with full knowledge of the facts and related conditions, including overtime and working more than 50 hours a week. Among the 35-40 drivers at his work, none of them had a set day schedule. All the drivers have variable schedules. Whenever possible, the employer tries to give two consecutive days off to its employees, or two days during the week. The employer stated that its employees must have one day off a week and cannot work 14 days in a row. The Appellant never raised any objections about his working conditions. The Appellant knew that he would be called to provide night service, and, if he had a problem with that, he could have talked about it with his supervisor. If drivers are tired, they must tell their supervisor so that someone else can be sent to do the drive. The Appellant never told anyone that he was tired and never discussed working at night or his working conditions. The employer could have accommodated him if he had told it that he was tired of working at night. The employer would have taken temporary measures, like scheduling the Appellant's work in the afternoon or

[36] GD3-30, GD3-42, GD3-43, GD3-45, GD3-46, GD3-49, and GD3-50.

> earlier in the evening. The Appellant could have traded shifts with a co-worker, but he never asked the employer about doing that. The Appellant did not submit a medical certificate recommending that he temporarily stop working at night. The Appellant always did the work that was assigned to him. The employer clarified that at no time is a driver allowed to sleep in their vehicle on the side of the road. It also stated that consuming drinks like "Red Bull" or taking "Wake up" to stay awake was formally prohibited. It is stated in the employment contract. An employee that is caught consuming these types of products would be suspended.[37]

[20] I find that the Appellant's decision to voluntarily leave his employment at X was mainly a personal choice.

[21] It is clear from the Appellant's statements to the Commission that his decision to voluntarily leave his employment was mainly related to the employer's refusal to give him two days off to go snowmobiling.[38] I note that, in one of his statements, the Appellant said himself that he had left his employment by personal choice.[39]

[22] The Appellant has failed to show that the conditions in which he worked as a minibus driver could justify voluntarily leaving his employment.

[23] I find that the Appellant cannot point to working conditions that he knew were difficult to justify his voluntary leaving.

[24] The case law informs us that a claimant does not have just cause for voluntarily leaving their employment due to tasks they had to perform if those tasks were part of the employment they had accepted.[40]

[25] In this case, the Appellant knew the conditions in which he had to perform his work.

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[37] GD3-30, GD3-35, and GD3-36 to GD3-46.
[38] GD3-29, GD3-45, GD3-47, GD3-48, GD3-51, and GD3-52.
[39] GD3-51 and GD3-52.
[40] *Lau*, A-584-95.

[26] Even if the Appellant argues that he had reached a verbal agreement with the employer when he was hired, according to which he would be able to work fewer hours over the winter (for example, 30 hours a week, or three to four days a week), he still signed a contract that included the following conditions:

> [Translation]
> [...] The Employee works on call. Their schedule may vary depending on the trip assigned to them. The Employee may do trips at any time of the day; the shuttle service runs 24 hours a day. [...] The length of the trips assigned to the Employee varies depending on the trips assigned, but to a maximum of sixteen (16) hours. The Employee has a minimum eight (8) hour rest period between trips assigned to them. If a trip is assigned less than eight (hours) after the previous trip, the Employee must inform the Employer so that it can assign the trip to another driver. [...]. If the Employee must be absent for two (2) days or less, they must ask the employer, in writing, at least one week in advance. [...] Any absence is subject to the Employer's approval.[41]

[27] I find that the provisions set out in the Appellant's employment contract essentially corroborate the employer's statements about this. Therefore, I give greater weight to the employer's statements about the terms of employment established for the Appellant in his position as minibus driver.

[28] I consider unlikely the Appellant's statements that he had reached a verbal agreement with the employer to work fewer hours or fewer days a week over the winter and that his work schedule would be reduced as a result.

[29] Nothing in the employer's statements indicates that it had reached such an agreement with the Appellant. The employer's statements show that it presented the working conditions to the Appellant when he was hired, that these conditions were described in his employment contract, and that he accepted them with full knowledge of the facts.

[30] The Appellant knew the terms of employment to which he would be subject after signing his contract, including the number of hours he would have to work (for example, on-call work

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[41] GD3-40.

and variable schedule), the shifts, the length of the trips assigned, the rest periods he would be entitled to, and concerning his absences.

[31] I note that, in the Appellant's statement to the Commission on June 18, 2019, he said that he knew when he was hired that he would have to work various shifts and that he would have to work long days.[42]

[32] I find contradictory the Appellant's explanation that he found his shifts difficult because he had to alternate between night, day, and evening shifts, in the same week. In his statement to the Commission on April 16, 2019, the Appellant said that he worked mostly nights.[43]At the hearing, he said that it did not bother him to work at night because, in the past, he had already worked night shifts.

[33] I also note that the Appellant clarified that his terms of employment were not illegal, but that he found his workload too much and no longer wanted to work at night or to work overtime every week.[44]

[34] I do not accept the representative's argument that the Appellant should have been given a rest period of 36 consecutive hours under the rules set out by the Société de l'assurance automobile du Québec [Québec's automobile insurance corporation] (SAAQ) concerning driving and rest hours). That rule states that a driver must take 36 consecutive hours of rest after driving for 70 hours in a period of seven consecutive days.[45] On that point, I note that the Appellant said he had never worked more than 70 hours in a week.[46]

[35] I also do not accept the representative's argument that the Appellant was not given a weekly rest period of a minimum of 32 consecutive hours under the provisions stated in the *Act respecting labour standards*, given the conditions the Appellant had accepted in his employment contract.[47]

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[42] GD3-47 and GD3-48.
[43] GD3-29.
[44] *Ibid*.
[45] GD3-55 and GD3-56.
[46] GD3-29.
[47] GD3-38 to GD3-41 and GD3-57 to GD3-60.

[36] Although the representative argued that there was a lack of openness on the part of the employer about the Appellant's requests for days off or to work fewer hours, the Appellant still knew his terms of employment and had accepted them by signing his contract.

[37] I note that the employer's statements indicate that the Appellant never talked to it about his working conditions, including the fact that he sometimes felt tired from working nights, and that, if he had, accommodations would have been made for him (for example, give the Appellant afternoon or early evening shifts or trade his shifts with a co-worker). The employer stated that the Appellant never asked to do that. The employer noted that at no time is a driver allowed to sleep in their vehicle on the side of the road. It also stated that consuming drinks like "Red Bull" or taking "Wake up" to stay awake was formally prohibited and that an employee who was caught using these types of products would be suspended.[48]

[38] I believe that the Appellant essentially discussed with the employer the days off he wanted. I note that it was after the employer's refusal to give him the two days off he asked for that he left his job. Given the employment conditions the Appellant had accepted when he was hired, I find it unlikely that the Appellant talked to the employer to tell it that those conditions were unsafe and posed a safety risk. I also find it unlikely that the Appellant discussed with the employer the fact that he sometimes consumed drinks like "Red Bull" or took "Wake up" to stay awake, or that he had rested or slept in his vehicle on the side of the road. I cannot accept the Appellant's statement that the employer told him that, if he was unhappy, he had only to leave or resign.

[39] The case law informs us that a claimant who leaves their employment because they fear their working conditions are dangerous, without even discussing with their employer measures that could be taken to address those concerns, has not shown that they had just cause for voluntarily leaving.[49]

[40] I find that the Appellant has failed to show that his working conditions could be dangerous and that they posted a safety risk.

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[48] GD3-30, GD3-35, and GD3-36 to GD3-46.
[49] *Hernandez*, 2007 FCA 320.

[41] I find that the issues the Appellant raised about the fact that he had difficulty managing his sleep, that he sometimes fell asleep at the wheel, and that he consumed energy drinks like "Red Bull" or that he took "Wake up" to stay awake when he worked his shifts does not justify his voluntary leaving.

[42] The representative argued that the Appellant did not use illness to justify his voluntary leaving, but that he had trouble coordinating his sleep, given his variable work schedule, and that for that reason a medical certificate would not have changed his situation.

[43] The representative noted that the Digest of Benefit Entitlement Principles (Chapter 6, section 6.8.1 – health adversely affected) states that circumstances related to a claimant's health may justify voluntary leaving. He stated that one of those circumstances refers to credible and convincing explanations from the claimant as just cause for voluntary leaving, without needing to present a medical recommendation.[50]

[44] On this point, I am of the view that, even if a medical certificate is not necessary to find that a claimant's health condition can justify their voluntary leaving, as long as their credibility is not being challenged, the situation is different in the Appellant's case.

[45] The Appellant cited problems that could be harmful to his health (for example, drowsiness issues or difficulty staying awake for his shifts and problems managing his sleep), due to the situation he was experiencing at work, as well as other reasons to try to justify his voluntary leaving (for example, days off denied by the employer and the number of hours of work).

[46] The case law informs us that a claimant who claims that they left their employment for health reasons must provide objective medical evidence that not only attests to the health problem, but also shows that the claimant was forced to leave their employment for that reason. They must demonstrate that they tried to reach an agreement with the employer to meet their

[50] GD6-3.

specific health needs and prove that they looked for another job before leaving the one they had.[51]

[47] I find that, after mentioning health problems, the Appellant's evidence is not enough to conclusively show that his situation adversely affected his health and that the problems he experienced in that regard could justify his voluntary leaving, or that he was not capable of working for medical reasons, before he left his employment.[52]

[48] I am of the view that the Appellant failed to show that, by continuing to work for the employer, his health could be compromised, or that his voluntary leaving could be explained by the existence of "working conditions that constitute a danger to health or safety," as stated in section 29(c)(iv) of the Act.

[49] Despite the fact that the Appellant could not have the days off he had asked for and felt he was no longer able to do his job, given the number of hours and the shifts he had to work, his employment conditions had not become such that they could justify leaving his employment when he did.

Did the Appellant have reasonable assurance of another employment in the immediate future before his voluntary leaving?

[50] No. The Appellant failed to show that he had obtained reasonable assurance of another employment in the immediate future before he left the employment he had.

[51] I find the Appellant's statements about this to be contradictory.

[52] The Appellant's testimony and statements indicate the following:

a) He stated that he had assurance of another employment before leaving the one he had at X. When he left that employment, he knew that he would be able to return to work at X, a tire distribution company, and knew approximately when he would be able to do so. However, X could not tell him exactly when he would be able to start that job.

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[51] *Dietrich*, A-640-93.
[52] *Ibid*.

The Appellant had previously worked in that field after he retired in July 2017. After leaving his employment at X, the Appellant worked a little in the spring of 2019 at X because there was not a lot of work there. The Appellant went back to work for that employer in September 2019.[53]

b) In his claim for benefits, the Appellant indicated that he had not looked for another job before he resigned because he had not had time, given the number of hours he was working.[54]

[53] The representative made the following arguments:

a) The Appellant indicated that he knew when he left his job that he would have another job, but that he did not know exactly when he would start. It was not a permanent job. It would provide him with 16–17 weeks a year during the tire change period, that is, 8 to 10 weeks in the fall and six or seven weeks in the spring. The employment period at that employer does not always start on the same date because it depends on the temperature. The Appellant started working shortly after his voluntary leaving. He went back to work for that employer in the fall of 2019.

[54] I am of the view that, before he voluntarily left, the Appellant did not have assurance of another employment. I note that, in his claim for benefits, the Appellant indicated that he did not have time to look for another job before he resigned because of the number of hours he was working.[55] I cannot accept his statement that he knew he would be able to start another job before leaving X.

[55] It is clear from the evidence on file and the Appellant's testimony that the employment he had at his new employer X would last only a few weeks. The Appellant said that he had worked little at that employer in the spring of 2019, after his voluntary leaving.

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[53] GD3-47, GD3-48, GD3-51, and GD3-52.
[54] GD3-16.
[55] GD3-16.

[56] The Appellant left his permanent, full-time employment for another seasonal, short-term employment.

[57] I find that the Appellant failed to show that he had reasonable assurance of another employment in the immediate future as stated in section 29(c)(vi) of the Act.

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

[58] No. I find that the Appellant's decision to voluntarily leave his employment cannot be considered, having regard to all the circumstances, the only reasonable alternative in that situation.[56]

[59] I find that a reasonable alternative under the Act, for example, would have been for the Appellant to consult a doctor and submit, as needed, medical proof to the employer indicating that he was unable to work due to health reasons or recommending a leave period, before announcing that he was leaving his employment.

[60] I am also of the view that, if the Appellant found that his working conditions were unsafe and that his safety, as well as the safety of his passengers and others on the road, could be compromised by continuing to work at the employer, he could have formally advised the employer of this and contacted an external organization like the Commission des normes, de l'équité, de la santé et de la sécurité du travail [Québec's labour standards commission] (CNESST).

[61] Another reasonable alternative would have been for the Appellant to make sure he obtained another employment that better corresponded to his interests and expectations. The Appellant could stayed in his employment despite his working conditions.

[62] I find that the Appellant failed to show that he had no reasonable alternative to leaving his employment.[57]

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[56] *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; *Lau*, A-584-95; *Hernandez*, 2007 FCA 320.
[57] *Ibid*.

CONCLUSION

[63] I find that, having regard to all the circumstances, the Appellant did not have just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

[64] The Appellant has failed to show that he had just cause for voluntarily leaving because of his working conditions and the employer's refusal to give him the days off he had asked for. The Appellant knew the conditions in which he had to perform his work. He failed to show that his working conditions were a danger to his safety or that his health could be compromised.

[65] The Appellant did not have reasonable assurance of another employment before leaving the one he had.

[66] The Appellant's disqualification from regular Employment Insurance benefits, as of March 24, 2019, is justified under sections 29 and 30 of the Act.

[67] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	September 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Mr. S. F., Appellant Mr. Denis Poudrier, Mouvement des chômeurs et des chômeuses de l'Estrie (MCCE) [Estrie region unemployed workers movement], Representative for the Appellant