



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v Canada Employment Insurance Commission*, 2019 SST 1295

Tribunal File Number: AD-19-523

BETWEEN:

A. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: October 31, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] A. S. is the Claimant in this case. She applied for and received Employment Insurance (EI) regular benefits. Later, however, the Canada Employment Insurance Commission decided that she should never have received those benefits because she voluntarily left a job without just cause.¹ As a result, the Commission said that it had overpaid the Claimant by more than \$15,400, and that she should repay this amount.

[3] The Claimant challenged the Commission's decision, but the Tribunal's General Division dismissed her appeal. The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division.

[4] After my leave to appeal decision, the Commission accepted that the General Division breached the principles of natural justice in this case.² The Commission also accepted that the General Division decision contains errors of law and important errors concerning the facts of the case. As a result, the Commission recommended that I allow the appeal and return the file to the General Division for a new hearing.

[5] I agree with the Commission's recommendation. These are the reasons for my decision.

ANALYSIS

[6] The General Division breached the principles of natural justice in this case.

[7] This case engages the principles of natural justice because the Claimant says that she was unable to present her case fully. The courts have decided that tribunals like this one have an

¹ In this context, "just cause" has a very specific meaning. It is defined in section 29(c) of the *Employment Insurance Act* (EI Act). Section 30 of the EI Act establishes the Commission's powers to disqualify claimants from receiving EI benefits.

² See document AD3 for the Commission's written submissions.

obligation to ensure that they conduct hearings fairly and that that duty can be especially important when a party has no legal representation.³

[8] In this case, the Claimant told the General Division that she would have a witness at the hearing. She also said that she wanted to file the statement of another witness who was out of the country during the hearing.⁴

[9] Despite this, and regardless of the Claimant's limited abilities in English, the hearing lasted less than 20 minutes. During that time, the General Division member asked nothing about the Claimant's witness or the witness statement that she said she would file in support of her case.

[10] By acting in this way, the Commission accepts that the General Division breached a principle of natural justice. The Commission also accepts that the General Division decision contains legal errors and important errors concerning the facts of the case. I agree with the Commission's submissions on these points.

[11] Based on these errors, the Commission recommends that I allow the appeal and return the file to the General Division for it to hold a new hearing.⁵ The Claimant has not opposed the Commission's recommendation. Indeed, I accept it as appropriate in this case.

[12] In addition, I am directing the General Division to hold a pre-hearing conference in this case. At that pre-hearing conference, the General Division will provide the Claimant with any information that fairness requires, especially concerning the participation of potential witnesses (either orally at the second hearing or by using written statements).

³ *Nemeth v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 590; *Law v Canada (Citizenship and Immigration)*, 2007 FC 1006 at paras 17-18; *Kohazi v Canada (Citizenship and Immigration)*, 2015 FC 705 at para 12; *Lally v Telus Communications Inc.*, 2014 FCA 214 at para 27.

⁴ GD6. See also telephone conversation logs prepared by Tribunal staff on September 22, and October 14, 2016.

⁵ The Commission's recommendation is based on sections 58(1) and 59(1) of the *Department of Employment and Social Development Act*. Section 58(1) allows me to intervene in a case when the General Division makes one of three mistakes (also known as the grounds of appeal). If the General Division does make one of those mistakes, then section 59(1) sets out my powers to try to fix the mistake.

CONCLUSION

[13] For the reasons described above, I am allowing the appeal and returning the file to the General Division for reconsideration and for a new hearing. I am also directing the General Division to hold a pre-hearing conference in this case. I am hopeful that this pre-hearing conference will give the Claimant a better chance of fully presenting her case.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	A. S., Appellant Angèle Fricker, for the Respondent