



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v Canada Employment Insurance Commission*, 2019 SST 1343

Tribunal File Number: AD-19-485

BETWEEN:

M. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the matter is referred back to the General Division only to allow the Claimant to present a *Canadian Charter of Rights and Freedoms* (Charter) challenge.

OVERVIEW

[2] The Appellant, M. S. (Claimant), worked for a federal government agency as a X. The maintaining of a valid “reliability status security clearance” was a condition of his employment. When hired, he completed a security clearance that only involved providing identification. The security clearance was valid for 10 years. Shortly before the expiry, the Claimant was asked by his employer to have his fingerprints taken as part of his reliability security clearance renewal. The Claimant asserted a religious objection to providing his fingerprints. The Claimant was dismissed from his employment for refusing to undergo a fingerprint check, which was required for him to renew his reliability security clearance.

[3] The Claimant asked the Commission to reconsider its decision but the Commission maintained its original decision. The Claimant appealed to the General Division of the Tribunal.

[4] The General Division found that the Claimant’s refusal to provide his fingerprints was willful. The General Division further found that the Claimant ought to have known he could lose his job by failing to provide fingerprints, which was required to obtain the valid security clearance, a condition of his employment. It concluded that the Claimant’s conduct was misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act*.

[5] The Claimant was granted leave to appeal. He puts forward that the General Division failed to observe a principle of natural justice.

[6] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

[7] The Tribunal allows the appeal. The matter is referred back to the General Division only to allow the Claimant to present a Charter challenge.

ISSUE

[8] **Did the General Division fail to observe a principle of natural justice?**

ANALYSIS

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division fail to observe a principle of natural justice?

[12] The Claimant submits that the General Division's staff did not provide him with a proper or accurate explanation of a Charter challenge. He puts forward that a representative from the General Division misinformed him. The Claimant argues that he

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

² *Idem.*

would have pursued a Charter appeal all along if he had not been misled by a representative of the General Division who told him it was a costly procedure and that it would be of no benefit for him.

[13] The Tribunal accepts the Claimant's version of events since there is no reason to doubt his credibility.

[14] The Tribunal agrees with the Commission that it is not and cannot be the role of the Tribunal staff to provide legal advice to claimants and that it was therefore not incumbent on the staff member with whom the Claimant spoke to explain to him the relevance of pursuing a Charter challenge before the General Division. That said, it was also not open to the staff member to provide incomplete or misleading information to the Claimant.³

[15] In the circumstances, the Tribunal is of the view that the General Division failed to observe a principle of natural justice and will refer the matter back to the General Division only to allow the Claimant to present a Charter challenge.

CONCLUSION

[16] The appeal is allowed and the matter is referred back to the General Division only to allow the Claimant to present a Charter challenge.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	November 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. S., Appellant Suzanne Prud'homme, Representative of the Respondent

³ *Moreau v Canada (Attorney General)*, 2019 FCA 237.

