



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. R. v Canada Employment Insurance Commission and X*, 2019 SST 1399

Tribunal File Number: AD-19-151

BETWEEN:

**D. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**X**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: December 12, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the Claimant's appeal. The file is returned to the General Division for reconsideration.

### **OVERVIEW**

[2] The Appellant, D. R. (Claimant), quit his job and applied for employment insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had demonstrated significant changes to his wages and duties, proving just cause to voluntarily leave his employment. The Added Party, X (employer), disagreed with the Commission's decision and requested a reconsideration. The Commission maintained its initial decision. The employer appealed to the General Division stating the Claimant had reasonable alternatives available.

[3] The General Division found that although the Claimant was asked to accept significant changes to his work duties and to his salary, he had reasonable alternatives to quitting. It found that the Claimant could have discussed his new position with his employer or tried to find another job. The General Division concluded that he had not proven that he had just cause for voluntarily leaving his employment.

[4] The Claimant was granted leave to appeal of the General Division's decision to the Appeal Division. He puts forward that the General Division failed to observe a principle of natural justice, erred in law, and based its decision without regard for the material before it.

[5] The Tribunal must decide whether the General Division failed to observe a principle of natural justice and whether it erred when it concluded that the Claimant did not prove he had just cause to voluntary leave his employment.

[6] The Tribunal allows the Claimant's appeal.

### **ISSUES**

[7] Did the General Division fail to respect a principle of natural justice by not giving the Claimant the opportunity to fully present his case?

[8] Did the General Division err in ignoring contradictory evidence presented by the employer?

## **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.<sup>1</sup>

[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.<sup>2</sup>

[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 1: Did the General Division fail to respect a principle of natural justice by not giving the Claimant the full opportunity to present his case?**

[12] The Claimant submits that he was not given the opportunity to properly explain his position before the General Division since the employer was awarded almost the entire time of the hearing that lasted two and a half hours. He argues that he was constantly interrupted by the employer when attempting to submit his case. He submits that the employer monopolized the hearing without intervention by the General Division.

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

<sup>2</sup> *Idem*.

He argues that the hearing was more an open confrontational debate with the employer instead of a proper hearing where both sides present their respective positions.

[13] The employer disagrees with the Claimant. It submits that the Claimant had ample opportunity to present his side of the story and to argue his case before the General Division. The employer argues that the General Division did not breach a principle of natural justice.

[14] The Commission agrees that the former employer did not respect the General Division's instructions not to interrupt the Claimant when it was his turn to speak and did frequently interrupt him. However, the Commission argues that the Claimant was still presented with every opportunity and length of time to give his testimony.

[15] In view of the Claimant's ground of appeal, the Tribunal carefully listened to the entire recording of the General Division hearing.

[16] The concept of "natural justice" includes the right of a claimant to a fair hearing. So fundamentally important is this right, that there must not exist even the appearance of prejudice to the right of any claimant to make a full presentation before the General Division. The law requires that not only must justice be done, it must manifestly and undoubtedly be seen to be done. The mere suspicion that a claimant has been denied his right is justification in itself for an order returning the matter to the Tribunal's General Division.

[17] After listening to the entire recording of the General Division hearing, the Tribunal has no doubt that the Claimant was not given a fair hearing since he did not have the opportunity to fully present his case. The Tribunal was not capable of understanding the Claimant's position from his testimony since he was constantly interrupted by the employer without intervention by the General Division.

[18] The employer, however, had the opportunity to fully present its position and was awarded almost the entire time of the hearing. In this context, the Claimant was also not provided with the opportunity to cross-examine the employer.

[19] Furthermore, while it is true that the General Division conducts its proceedings informally, it cannot allow the parties to proceed before it with an open and confrontational debate giving way to one party essentially monopolizing the hearing.

[20] The General Division must always have a consideration for fairness and natural justice when conducting its hearings in order to insure that both parties have the opportunity to fully present their case.

[21] For the above-mentioned reasons, the Tribunal has no choice but to refer the matter back to the General Division for reconsideration.

**Issue 2: Did the General Division err in ignoring contradictory evidence presented by the employer?**

[22] In view of its conclusions regarding the breach of natural justice, the Tribunal will not address this ground of appeal.

**CONCLUSION**

[23] The Tribunal allows the Claimant's appeal. The file is returned to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	December 3, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	D. R., Appellant J. V., representative of the Added Party