



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. K. v Canada Employment Insurance Commission*, 2019 SST 1635

Tribunal File Number: GE-19-3975

BETWEEN:

**R. K.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Katherine Wallocha

HEARD ON: December 10, 2019

DATE OF DECISION: December 16, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant has not shown just cause because he had reasonable alternatives to leaving his job when he did. This means he is disqualified from receiving employment insurance (EI) benefits.

## **OVERVIEW**

[2] The Claimant left his job for reasons that were not work related. He worked as a night auditor at a hotel earning minimum wage. He wanted to move to another province with a higher minimum wage. He applied for EI benefits. The Commission looked at the Claimant's reasons for leaving and decided that he voluntarily left his employment without just cause, so it was unable to pay him EI benefits.

[3] The Commission says that the Claimant left his employment to seek better and higher paying employment opportunities in another province. This decision to leave his job was a personal decision. The Claimant could have remained employed until he secured alternate work in the other province.

[4] The Claimant disagrees and states that he is the main breadwinner. He worked nights but his employer refused to pay the night shift premium. He has health issues and he was concerned about the cold weather. There was a high crime rate and he was concerned for his safety. He does not understand why Service Canada does not see just cause in his case.

## **WHAT I HAVE TO DECIDE**

[5] I must decide whether the Claimant is disqualified from being paid benefits because he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

## **VOLUNTARY LEAVING**

[6] The Claimant agrees that he quit his job on August 29, 2019. I see no evidence to contradict this. I will now decide whether the Claimant has proven just cause to quit his job.

[7] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you did not have just cause<sup>1</sup>. Having a good reason for leaving a job is not enough to prove just cause.

[8] The law says that you have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did<sup>2</sup>. It is up to the Claimant to prove this<sup>3</sup>. The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did. When I decide this question, I have to look at all of the circumstances that existed at the time that the Claimant quit.

### **The Claimant has not proven just cause**

[9] I am satisfied that the Claimant's decision to leave his job for better wages in another province does not meet the test for just cause. The case law says that a claimant's view that a job is not sufficiently well paid cannot justify him abandoning it and compelling others to support him through EI benefits<sup>4</sup>.

[10] The Claimant says that he left his employment because the minimum wage in Manitoba was \$11.00 per hour and it was insufficient to raise a family. His wife has a disability and is unable to work. They have a one-year-old child. His mother also lives with him. He wanted to relocate to Ontario where the minimum wage was \$14.00 per hour, so he could better support his family.

[11] The Claimant stated in his request for the Commission to reconsider its decision that he was working two jobs for three years. He worked seven days a week. He had been looking for another job with better wages, but had not been able to find a better-paying job in Manitoba. It was clear to him there was no future growth in his career. That is when he decided to move.

[12] The Claimant told the Commission that he did not have a job offer prior to moving. He had been looking for work in Ontario, but employers wanted to meet him in person. Their home

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<sup>1</sup> This is set out at s 30 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> This is explained in the Federal Court of Appeal (FCA) decision *Canada (Attorney General) v White*, 2011 FCA 190, and s 29(c) of the EI Act.

<sup>3</sup> This is explained in the FCA decision *Canada (Attorney General) v White*, 2011 FCA 190.

<sup>4</sup> This is explained in FCA decision *Canada (Attorney General) v Tremblay*, A-50-94

rental lease was ending so, he made the decision to move because it would be easier to find a job if they lived locally.

[13] The Claimant quit his part-time job on August 10, 2019 (this quit is not under appeal). He quit his full-time job on August 29, 2019. He moved on September 1, 2019.

[14] The Claimant's decision to move for better pay is reasonable. But reasonableness is not the same as just cause<sup>5</sup>. The Claimant has to show that he had no reasonable alternative but to quit his job.

[15] The Commission says the Claimant had reasonable alternatives to leaving when he did. Specifically, it says the Claimant could have secured work in Ontario.

[16] The Claimant said he had no choice but to relocate to Ontario for the following reasons:

- His full-time employer would not pay him the night shift premium;
- Crime rate is high and he was attacked and harassed while at the bus stop;
- The weather is too harsh for health reasons;
- He could not move after finding a job because the distance involved was huge. His wife has a disability and he could not leave her alone;
- He has three members of his family depending on him for their survival. It was his duty to seek out better opportunities.

[17] I am required to consider all the circumstances at the time the Claimant left his job.

*Non-payment of night shift premium*

[18] The Claimant said his full-time employer would not pay him the night shift premium. The law says night shift workers have to be paid the night premium rate. The Claimant told me that his employer did not want to pay him the premium wage but he did not dispute that. He was just letting me know trying to get me to understand how bad it was.

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<sup>5</sup> This is explained in the FCA decision *Canada (Attorney General) v. Laughland*, 2003 FCA 129

[19] I do not consider the Claimant's pay not including the night shift premium to be just cause to leave his job. The Claimant did discuss it with his employer but they said they did not make enough money to be able to pay him the premium. If the premium is required by law, then the Claimant had the reasonable alternative of asking for help from Labour Standards. Receiving the night shift premium would have provided him with an increase in pay. I consider this to be a reasonable alternative than to leaving his job.

*High Crime Rate*

[20] The Claimant had a 45-minute commute to work. He lived in a city with a high crime rate and he used public transit. He would wait at the bus stop at 10:40p.m. On one occasion he was attacked. He has been harassed constantly while waiting for his bus. He does not understand why his safety is not a concern.

[21] The law says that just cause may exist if your job is causing a risk to your safety. But the Claimant was concerned about his safety at the bus stop while on his way to work. It is the Claimant's responsibility to get himself to work safely. He had the reasonable alternative of moving closer to his workplace.

*Harsh weather and his health*

[22] The Claimant says he lives in the coldest city in Canada where the temperature can get to -50 degrees Celsius in the dead of winter. This is no laughing matter especially when you wait at the bus stop and commute to work at night by bus.

[23] In the notice of appeal, the Claimant indicated that he has been diagnosed with hypothyroidism. One of the side effects is an intolerance to extreme cold. He is at greater risk of suffering from hypothermia which is a potential life threatening condition. He felt it was imperative to move to a more suitable place where winter was more tolerable.

[24] The Claimant testified that his doctor did not counsel him to leave or to quit his job.

[25] I am not convinced the Claimant's intolerance of the cold weather provided him with just cause. The Claimant worked as a night auditor in a hotel. He was not expected to work in the cold. He is describing the cold he endured while getting to work. The Claimant had been doing

both jobs for three years. The Claimant had the reasonable alternative of moving closer to his job to limit his exposure.

*Another job*

[26] The case law also holds that remaining in employment until a new job is secured is generally a reasonable alternative to taking a unilateral decision to quit a job<sup>6</sup>.

[27] The Claimant stated that he had applied to about 15 to 20 jobs in Manitoba, but was unsuccessful. He applied at multiple places for jobs in Ontario, but the GM of the X told the Claimant on the phone that they cannot hire anyone without having an interview in person.

[28] The Claimant stated that he could not attend hearings in Ontario for three reasons:

- the job was not a guarantee after the interview
- financially it was hard to fly to Ontario for an interview
- his wife has a disability and he cannot leave her alone.

[29] I understand the Claimant's reasons to relocate to another province. But it was his responsibility to not take actions that would provoke a risk of unemployment<sup>7</sup>. By leaving employment without having another job to go to, the Claimant is causing a greater risk of unemployment.

[30] I also understand that finding a job in another province is challenging. But it was a personal choice to relocate to another province. The Claimant has not shown me that his working conditions were so intolerable that he had no choice but to leave his job immediately. He had the reasonable alternative of remaining employed until he could find another job.

*Financial need*

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<sup>6</sup> This is explained in the FCA decision *Canada (Attorney General) v. Graham*, 2011 FCA 311

<sup>7</sup> This is explained in the FCA decision *Canada (Attorney General) v. Langlois*, 2008 FCA 18

[31] The Claimant stated that he has three people dependent on him. The minimum wage he was being paid was not enough for a family to survive. He told me at the hearing that he has still not found work.

[32] I am sympathetic to the Claimant's situation. However, I am unable to base my decision on financial need. It is implied that a claimant who applies for EI benefits is asking for assistance because of a financial need.

[33] The Claimant also argued that he has paid into the EI system for years and when he needs it, he is denied. However, the EI system was put in place to assist workers who, for reasons beyond their control, find themselves unemployed and unable to find another job. The reasons the Claimant has given for leaving his job were not beyond his control.

[34] I find the Claimant has not proven, on the balance of probabilities, that there were no reasonable alternatives to leaving his job when he did. I am not convinced he was required to leave his employment immediately because of his health concerns. And he had the reasonable alternatives talking to Labour Standards to receive his night shift premium, of relocating to be closer to his job or finding another job before leaving the job he had.

[35] As a result, he does not meet the test of just cause to voluntarily leave his employment.

## **CONCLUSION**

[36] I find that the Claimant is disqualified from receiving benefits. This means that the appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section

HEARD ON:	December 10, 2019
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METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. K., Appellant