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

[TRANSLATION]

Citation: *A. G. v Canada Employment Insurance Commission*, 2020 SST 127

Tribunal File Number: GE-19-4317

BETWEEN:

A. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: January 16, 2020

DATE OF DECISION: January 24, 2020

Canada

DECISION

[1] The appeal is allowed. I find that the Appellant did not lose his employment because of his misconduct under sections 29 and 30 of the *Employment Insurance Act* (Act). The Appellant's disqualification from Employment Insurance benefits effective August 25, 2019, the start date of his benefit period, is therefore not justified.

OVERVIEW

[2] The Appellant worked as a delivery truck driver for the employer X (employer), from November 27, 2014, to August 23, 2019, inclusive. The employer indicated that it terminated the Appellant's employment because he had missed three consecutive shifts without notifying it.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Appellant had lost his employment because of his misconduct and denied paying him Employment Insurance regular benefits effective August 25, 2019.[1]

[4] The Appellant explained that he had notified the employer that he would be absent from work on August 29, 2019, because he did not feel fit to work and that it was possible that he would also be absent on August 30, 2019. He also explained that the employer later told him not to report to work on September 2, 2019, because he was not on the schedule. Therefore, the Appellant did not report to work as asked and did the same for the two days that followed—September 3 and 4, 2019. The Appellant said that he understood the employer's message to mean that he was not on the schedule for his entire workweek. On September 5, 2019, the Appellant met with the employer to deliver a medical certificate stating that he would be unable to work for one month. The Appellant explained that, when he gave the employer that document, the employer told him that it was too late because he had been dismissed. According to the Appellant, the employer wanted to replace him with another employee. On December 19, 2019, the Appellant disputed the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

[1] GD2-1, GD2-2, GD3-36, GD3-37, GD3-51, and GD3-52.

ISSUES

[5] I must determine whether the Appellant lost his employment because of his misconduct under sections 29 and 30 of the Act.

[6] To make this finding, I must answer the following questions:

a) What is the Appellant alleged to have done?

b) Did the Appellant commit the alleged act?

c) If so, was the Appellant's act conscious, deliberate, and intentional such that he knew or should have known that it would be likely to result in the loss of his employment?

d) Did the Commission meet its burden of proving that the Appellant's act constitutes misconduct?

ANALYSIS

[7] Although the Act does not define the term misconduct, case law states that, to constitute misconduct, the act complained of must be wilful or at least of such a careless or negligent nature that one could say that the employee wilfully disregarded the effects their actions would have on job performance.[2]

[8] There will be misconduct where the conduct of a claimant was wilful, that is, the acts that led to the dismissal were conscious, deliberate, or intentional. In other words, there will be misconduct where the claimant knew or should have known that their conduct was such as to impair the performance of their duties owed to their employer and that, as a result, dismissal was a real possibility.[3]

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[2] *Tucker*, A-381-85.
[3] *Mishibinijima*, 2007 FCA 36.

[9] For conduct to be considered "misconduct" under the Act, it must be wilful or so reckless as to approach wilfulness.[4]

[10] To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant's alleged misconduct and the loss of their employment. The misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment.[5]

[11] For the Tribunal to find that there was misconduct, it must have before it relevant facts and sufficiently detailed evidence for it to be able, first, to know how the employee behaved, and second, to decide whether such behaviour was reprehensible.[6]

What is the Appellant alleged to have done?

[12] In this case, the Appellant is alleged to have missed three consecutive shifts (on Friday, August 30, 2019; Monday, September 2, 2019; and Tuesday, September 3, 2019) without notifying the employer.[7]

[13] In a letter addressed to the Appellant and dated September 4, 2019, the employer gave him the following explanations:

> According to your Warehouse schedule at X, which was provided to you, you have missed three consecutive scheduled shifts; August 30, 2019, September 2, 2019, and September 3, 2019. You did not report to work, nor have we heard from you indicating your absence. We have tried contacting you on each missed shift, but our attempts have gone unanswered. Since your absences were not requested or approved, we have determined that you have abandoned your position with X. In accordance with our policy on job abandonment, we are terminating your employment effective August 23, 2019.[8]

[14] In its statements to the Commission on November 13, 2019, and December 3, 2019, the employer explained that it had imposed a three-day suspension on the Appellant (August 26, 27,

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[4] *McKay-Eden*, A-402-96.
[5] *Lemire*, 2010 FCA 314.
[6] *Meunier*, A-130-96; *Joseph*, A-636-85.
[7] GD3-44, GD3-45, and GD3-47.
[8] GD3-47.

and 28, 2019) because he had refused to make a delivery. It indicated that the Appellant had threatened to quit his job if the suspension was imposed on him. The employer explained that the Appellant had called on Thursday, August 29, 2019, to tell it that he would not be coming to work because he was ill. It also explained that, on August 30, 2019, he was absent, but that time without notifying it. In response to a question from the Commission asking it whether it agreed with the Appellant's statement that he usually worked on statutory holidays, the employer explained that the manager had contacted the Appellant to tell him that he would not be working on Monday, September 2, 2019. The employer did not comment on the indication the Commission gave it that the Appellant had explained that he thought he had been taken off the work schedule for September 2, 3, and 4, 2019, and that that is why he did not contact the employer. The employer also answered yes to a question from the Commission asking it whether the Appellant was scheduled to work on September 2, 3, and 4, 2019. The employer explained that employees have to provide it with medical evidence after three consecutive days of absence. It explained that the Appellant had told it that he had a medical certificate. The employer stated that it did not learn that the Appellant had that document until after telling him that he had abandoned or quit his job. The employer explained that a medical note does not justify not contacting the employer. In response to a question from the Commission asking it whether the Appellant had already had warnings about his attendance at work, the employer said that it would check on that and send the Commission the relevant warnings if there were any. In response to a question from the Commission asking it whether it agreed with the fact that the Appellant had difficulty communicating in English, the employer stated that the issue could have affected the Appellant's comprehension and that it was challenging to have a conversation with him.[9]

[15] The Record of Employment issued by the employer on September 11, 2019, indicates that the Appellant stopped working on August 23, 2019, (last day for which paid) for a reason of "Other," (Code K – Other). The following comment appears in Block 18 (Comments) of the Record: "Job Abandonment."[10]

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[9] GD3-35, GD3-44, and GD3-45.
[10] GD3-23 and GD3-24.

Did the Appellant commit the alleged act?

[16] The Appellant acknowledged not reporting to work on Thursday, August 29, 2019, and Friday, August 30, 2019, as well as Monday, September 2, 2019 (Labour Day), Tuesday, September 3, 2019, and Wednesday, September 4, 2019.

[17] He explained that he had notified the employer on Thursday, August 29, 2019, that he would not be reporting to work because he did not feel well. The Appellant stated that, on September 1, 2019, the employer told him not to report to work on Monday, September 2, 2019.

[18] I must now determine whether the Appellant's alleged act constitutes misconduct.

Was the Appellant's act conscious, deliberate, or intentional such that he knew or should have known that it would be likely to result in the loss of his employment?

[19] No. I find that the Appellant's act was not conscious, deliberate, or intentional and could not be likened to misconduct within the meaning of the Act.[11]

[20] I find that the Appellant's credible testimony during the hearing provided a complete and highly detailed picture of the alleged act. The Appellant's testimony was detailed and free of contradictions. The Appellant described chronologically the events leading up to his dismissal. He provided several details for each of the alleged days of absence. Those details put the alleged act into context.

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

a) The Appellant's work as a delivery truck driver consisted of making food deliveries for grocery stores and restaurants. The Appellant worked Monday to Thursday from 8:00 a.m. to 5:00 p.m. and Fridays from 7:00 a.m. to 4:00 p.m. He also worked on statutory holidays (for example, Labour Day). The Appellant pointed out that he was always available to work on those days. The Appellant also filled in for other employees on weekends. He said that, while he was employed for nearly five years at X, he was always on time for work and was never absent, except to use his

[11] *Mishibinijima*, 2007 FCA 36; *Tucker*, A-381-85; *McKay-Eden*, A-402-96.

vacation time and then during the events that happened the days before the employer announced his dismissal. Therefore, the Appellant never had to ask the employer for leave before he told it on Thursday, August 29, 2019, that he would be absent from work. He was always 100% on the job.[12]

b) The Appellant argued that he was wrongfully dismissed by the employer.[13] He argued that he disagreed with the content of the letter of dismissal that the employer sent him because it states that he had abandoned his job, when that was not the case.[14] The Appellant explained that, in that letter, the employer refers to a "policy on job abandonment," which states that, if an employee is absent from work for three consecutive days without justification, that employee may be dismissed. According to the Appellant, these are lies. He argued that the employer forced him to miss workdays. The employer told him not to come in on Monday, September 2, 2019. The Appellant said that he did not miss three days of work without notifying his employer.[15]

c) The Appellant said that he was suspended for a period of three days—August 26, 27, and 28, 2019. His employer accused him of not wanting to make a delivery. The Appellant explained that the employer had notified him of that suspension verbally on August 23, 2019. The employer asked him to sign a document regarding the disciplinary action.[16] The Appellant refused to do so because he disagreed with that suspension and the reasons for which it had been imposed on him. Nevertheless, that suspension was imposed on him. According to the Appellant, the employer gave him a suspension in preparation for his dismissal.[17]

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[12] GD3-31, GD3-32, and GD3-40 to GD3-43.
[13] GD2-5.
[14] GD3-47.
[15] GD2-5, GD3-40 to GD3-43, and GD3-47.
[16] Document entitled "EMPLOYEE PROGRESSIVE DISCIPLINE FORM" concerning a warning given to the Appellant on August 16, 2019, for the following reasons: "Insubordination" and "Poor work performance." This document was signed by the employer on August 16, 2019. The Appellant did not sign this document—GD3-48 and GD3-49.
[17] GD3-31, GD3-32, GD3-48, and GD3-49.

d) On Thursday, August 29, 2019, following three days of suspension, the Appellant called the manager, Mr. C. A., to tell him that he did not feel well at all, that he was not fit to work, and that he [translation] "had to have a leave of absence."[18] The manager noted his message and told the Appellant that he would pass it on to his supervisor to let him know that he was ill. The manager also asked whether he would be reporting to work the next day—that is, Friday, August 30, 2019. The Appellant then told him that he did not know and that it would depend on how he would be feeling. The manager told him OK and that he would also pass on the message to his supervisor. The manager ended the conversation by telling the Appellant to look after himself.[19]

e) On Friday, August 30, 2019, the Appellant did not report to work because he still did not feel well. He said that he did not notify the employer that day. The Appellant explained that he had already told it, given the discussion that he had had with the manager, Mr. C. A., the day before, and given that there was talk of his possible absence on Friday, August 30, 2019. The Appellant stressed that the manager had told him to look after himself. He explained that he understood from the response his manager gave him that he should look after himself. Afterwards, it was the start of the weekend, and the Appellant does not usually work on Saturdays and Sundays.[20]

f) On Sunday, September 1, 2019, the Appellant received a voicemail message from his supervisor (Mr. B) telling him not to come in on September 2, 2019—that he was not on the schedule for Monday. The Appellant explained that he understood from that message that, since he was not on the schedule for Monday, it also applied for the entire week because his workweek starts on Monday and he usually works from Monday to Friday. The employer told him not to come into work, so he did not go in. He said that he was not going to report to work if the employer told him not to do so.

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[18] GD3-31.
[19] GD3-31 and GD3-32, GD3-33 and GD3-34, and GD3-40 to GD3-43.
[20] GD3-33, GD3-34, and GD3-40 to GD3-43.

Following that message, the Appellant felt more stress and even worse because he had already lost a week of work and he had never gone so long without work.[21]

g) The Appellant explained that he had never been in a situation where he had to be absent, apart from during his last days of work, and that he was therefore not aware of there being an absence policy with the employer. He said that he signed documents when he was hired in 2014 but that he did not know exactly what the documents were about and therefore did not know whether they included an employee absence policy. The Appellant pointed out that, during his entire period of employment, he reported to work on time and carried out the tasks assigned to him. He also pointed out that he filled in for other employees many times.

h) The Appellant explained that he contacted an Alberta employment support service on Tuesday, September 3, 2019, or Wednesday, September 4, 2019, and that a representative of the organization advised him to see a medical doctor and to obtain a recommendation for a leave of absence.[22]

i) The Appellant met with a medical doctor on September 5, 2019, and the doctor gave him a medical certificate recommending he have a one-month leave of absence from September 5, 2019, to October 7, 2019.[23]

j) On September 5, 2019, the Appellant met with the employer to give it the certificate. At that time, the employer did not want to take the document, and the Appellant then learned that he was dismissed. At the time of giving his medical certificate to the employer, the employer told him that it was too late because it had terminated his employment. The employer also told him at that time that it had sent him a letter to that end.[24] The Appellant received that letter on September 6, 2019.[25]

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[21] GD3-40 to GD3-43.
[22] GD3-33 and GD3-34.
[23] GD8A-1 and GD9-1.
[24] GD3-47.
[25] GD3-38 to GD3-43 and GD3-47.

k) The Appellant argued that the employer wanted to replace him with another employee.[26] According to the Appellant, his supervisor did not like him and he acted unfairly towards him. He submitted that the employer put him in a situation to harm him. After he lost his employment, the Appellant had to move. He asks that the Tribunal take into account the difficult situation he found himself in because of that.[27]

l) The Appellant explained that he received sickness benefits (special benefits) for the period of his incapacity (September 5, 2019, to October 7, 2019). Afterwards, he asked the Commission to convert his sickness benefits to get regular benefits starting October 8, 2019, but it refused to pay them to him.[28]

[22] From the Appellant's testimony and statements, it appears that the Appellant's alleged act is not in any way the result of his carelessness or negligence.[29]

[23] Regarding the Appellant's alleged act, I find that the Appellant did not breach an express or implied fundamental duty resulting from the contract of employment.[30]

[24] I find entirely credible the Appellant's explanation that, when he notified the employer on August 29, 2019, that he would be absent that day because he was not fit to work, he could conclude that he would not need to notify it again if he had to be absent on Friday, August 30, 2019, too. On that point, the Appellant's testimony indicates that, when he spoke to his manager on August 29, 2019, he explained to him that he did not know whether he would be absent on August 30, 2019, too and that the employer then told him to look after himself.

[25] I find that the Appellant made it a point to notify the employer that he would be absent the day of August 29, 2019. I find that there is no indication that, on the following day, he would have deliberately or intentionally chosen not to notify it, if he had thought it necessary to do so. I am of the view that the fact that the Appellant did not contact his employer again on August 30,

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[26] GD3-31 and GD3-32.
[27] GD3-31 and GD3-32, and GD3-40 to GD3-43.
[28] GD3-28, GD3-29, GD3-36, and GD3-37.
[29] *Tucker*, A-381-85; *McKay-Eden*, A-402-96.
[30] *Lemire*, 2010 FCA 314.

2019, to say that he would be absent that day too represents more of a misunderstanding than a deliberate or intentional act on his part.

[26] Regarding his alleged absence the day of September 2, 2019, as indicated in the letter of dismissal that was addressed to him,[31] the Appellant explained that on Sunday, September 1, 2019, his supervisor left him a voicemail message telling him that he would not be working on Monday, September 2, 2019, and that he was not on the schedule.

[27] I also find credible the Appellant's explanation that, when he received the message, he concluded that he would not be on the schedule for the entire week. I am of the view that there may have also been a problem with the Appellant's understanding or interpretation of the message the employer left him.

[28] I note that, in its statements to the Commission, the employer itself acknowledged that the issue of the language of communication with the Appellant, English, could be a problem when it had to communicate with him.[32] This factor may have been in addition to the fact that there were comprehension issues when the Appellant and the employer communicated with one another.

[29] As a result, the Appellant did not report to work on September 3 and 4, 2019. He saw a medical doctor on September 5, 2019, and met with the employer the same day to give it the medical certificate that the medical doctor had given him.

[30] In this context, I find it contradictory that the employer claimed that the Appellant was absent for three days (Friday, August 30, 2019; Monday, September 2, 2019; and Tuesday, September 3, 2019) without notifying it and that he had therefore missed three of his shifts.[33]

[31] According to its own statements, the employer said that it had contacted the Appellant to tell him that he would not be working on Monday, September 2, 2019.[34]

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[31] GD3-47.
[32] GD3-44.
[33] GD3-35, GD3-44, GD3-45, and GD3-47.
[34] GD3-45.

[32] I am of the view that the employer cannot accuse the Appellant of missing three consecutive shifts, including the one on September 2, 2019, as indicated in the letter of dismissal that it sent him on September 4, 2019.[35]

[33] I note that this is the specific reason given by the employer in that letter to tell the Appellant that it was terminating his employment and advising him that that was why it had applied its "policy on job abandonment."[36]

[34] Such contradictions undermine the credibility of the employer's version of the facts about the Appellant's termination of employment.

[35] Even leaving aside the Appellant's reasons for his absences, the evidence on file shows that he did not even miss three consecutive shifts on August 30, 2019, September 2, 2019, and September 3, 2019, without notifying the employer because the employer had told him that he did not have to report to work on the day of September 2, 2019, by indicating to him that he was not on the schedule.

[36] Moreover, even though the employer refers to its "policy on job abandonment" in the letter of dismissal sent to the Appellant, it did not explain what that policy entailed or provide documents specifying the provisions of the policy, including the existence of a rule that, if an employee misses three shifts without notifying the employer, they could lose their job.

[37] I also accept the Appellant's statement that he was not aware that there was an absence policy with the employer stating that an employee could lose their job after three days of absence without notifying the employer.

[38] On this point, I note that the Appellant's testimony, which was not contradicted, indicates that he was never absent from work while he worked for nearly five years for the employer, except starting from August 29, 2019. Therefore, the Appellant was never faced with the application of an absence policy or with a "policy on job abandonment."

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[35] GD3-47.
[36] *Ibid.*

[39] I also note that, in the employer's December 3, 2019, statement when the Commission questioned it to find out whether the Appellant had already had warnings about his work attendance, the employer said that it would check on that and send the Commission the relevant warnings if there were any. The employer never provided the Commission with any documents about that.

[40] I find that the fact that the Appellant did not perform his shifts on August 30, 2019, September 2, 2019, and September 3, 2019, does not constitute reprehensible behaviour on his part.[37]

[41] The Appellant did not wilfully disregard the effects his alleged act would have on job performance.[38]

[42] I do not accept the Commission's argument that the Appellant showed a [translation] "certain negligence by not notifying the employer of his absences" and that, according to the Commission, that behaviour amounted to misconduct within the meaning of the Act.[39] I find that there was no act of negligence on the part of the Appellant regarding his alleged absences.

[43] I also find that the letter of dismissal does not show how the "policy on job abandonment" to which the employer refers could allow it to terminate the Appellant's employment retroactively to August 23, 2019, for absences that occurred several days after that day (August 30, 2019, as well as September 2 and 3, 2019).

[44] The statements collected from the employer also do not explain how, under that same policy, it was able to substitute the three days of suspension that had originally been imposed on the Appellant on August 26, 27, and 28, 2019, for a different reason than his absences,[40] with dismissal on August 23, 2019. A document describing the employer's current "policy on job abandonment" could have provided important clarification on this point.

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[37] *Meunier*, A-130-96; *Joseph*, A-636-85.
[38] *Tucker*, A-381-85.
[39] GD4-3.
[40] GD3-35 and GD3-44.

[45] This situation also leads me to believe that the fact that the Appellant refused to sign a document regarding the three days of suspension that were imposed on him[41] is one of the reasons why the employer decided to dismiss him.

[46] I am of the view that the Appellant's alleged act of not carrying out his shifts on August 30, 2019, as well as September 2 and 3, 2019, was not of such scope that he could normally foresee that it would be likely to result in his dismissal.[42]

Did the Commission meet its burden of proving that the Appellant's act constitutes misconduct?

[47] No. I am of the view that, in this case, the Commission did not meet its burden of proving that the Appellant's act constitutes misconduct.

[48] Case law tells us that the Commission must prove the existence of evidence showing a claimant's misconduct.[43]

[49] Despite the Appellant's act, the evidence gathered by the Commission is insufficient, and that evidence is insufficiently detailed to find, on a balance of probabilities, that the Appellant lost his employment because of his misconduct.

[50] I find that the Commission was quickly satisfied by the employer's statements and its version of the facts and concluded that the Appellant had lost his employment because of his misconduct.

[51] I am of the view that the Commission did not take into account the blatant contradictions of the employer's statements as to the allegation that the Appellant missed three consecutive shifts (on August 30, 2019, September 2, 2019, and September 3, 2019) without notifying it.

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[41] GD3-44, GD3-48, and GD3-49.
[42] *Lemire*, 2010 FCA 314; *Mishibinijima*, 2007 FCA 36.
[43] *Bartone*, A-369-88; *Davlut*, A-241-82; *Crichlow*, A-562-97; *Meunier*, A-130-96; *Joseph*, A-636-85; *Lepretre*, 2011 FCA 30; *Granstrom*, 2003 FCA 485.

[52] The Commission found that the fact that the Appellant had not notified his employer that he would be absent for three days—that is, August 30, 2019, September 3, 2019, and September 4, 2019—was a deliberate act on his part and resulted in his dismissal.[44]

[53] I find that the Commission failed to show that the Appellant's alleged act could be deliberate, conscious, or intentional.

[54] In its arguments, the Commission excluded from its analysis the Appellant's day of absence on September 2, 2019, for which his employer had told him not to report to work even though he was supposed to work.

[55] On this point, I note that the employer's dismissal letter addressed to the Appellant specifies that the three consecutive shifts that the Appellant had missed without notifying it were on August 30, 2019, September 2, 2019, and September 3, 2019.[45] In that letter, the employer specifically referred to the September 2, 2019, shift and that the Appellant had been provided a schedule mentioning that shift.[46]

[56] In its statement to the Commission on December 3, 2019, the employer also stated that it terminated the Appellant's employment for that reason.[47] In that same statement, however, the employer contradicted itself because it said that it did tell the Appellant not to report to work on September 2, 2019, even though he was supposed to work that day in addition to September 3 and 4, 2019.[48] Therefore, the Appellant did not miss three consecutive shifts without notifying his employer.

[57] The Commission did not take this factor into account even though it is the reason on which the employer relied to dismiss the Appellant. In its analysis, it overlooked the Appellant's day of absence—September 2, 2019.

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[44] GD8-1 and GD8-2.
[45] GD3-47.
[46] *Ibid*.
[47] GD3-44 and GD3-45.
[48] *Ibid*.

[58] I am also of the view that the evidence gathered from the employer does not make it possible to assess whether the "policy on job abandonment," on which it relied to dismiss the Appellant, is sufficient to prove the Appellant's misconduct.

[59] Furthermore, there is no evidence that the Commission tried to obtain a document describing this policy or proving its existence. In response to a question from the Tribunal in that regard, the Commission explained that the employer had not sent it a copy of the policy.[49] If it had, it would have been possible to determine its content and to assess the extent to which the Appellant may have breached it. If applicable, the document would have also made it possible to determine whether the Appellant had committed a deliberate or intentional act by being absent from work on the days in question.

[60] I also find that the Commission failed to explain why it had not considered the Appellant's version of events about his absence from work on August 30, 2019, as well as September 3 and 4, 2019, before concluding that his behaviour amounted to, in its view, misconduct within the meaning of the Act.[50]

[61] I am also of the view that the fact that the employer terminated the Appellant's employment effective August 23, 2019, in accordance with the "policy on job abandonment," makes the Commission's finding that misconduct is the basis for that decision illogical and all the more improbable.

[62] In its additional arguments, the Commission also explained that it determined that the Appellant had stopped working on September 4, 2019, because it found that that is the day that the employer terminated his employment.[51]

[63] However, the fact remains that the employer formally told the Appellant that his employment had terminated on August 23, 2019.[52] Despite this inconsistency and considering all

[49] GD8-2.
[50] GD4-3.
[51] GD8-1.
[52] GD3-47.

of the Appellant's alleged acts (for example, refusing to make a delivery and absences), I find that August 23, 2019, is the day of the Appellant's termination of employment.

[64] Although the Appellant lost his employment, the cause of the loss of his employment is not misconduct within the meaning of the Act.

[65] Case law tells us that it must be established that the misconduct was the cause of a claimant's dismissal.[53]

[66] The Appellant was not dismissed because of an act he committed wilfully and deliberately.[54]

CONCLUSION

[67] The Appellant did not lose his employment because of his misconduct under sections 29 and 30 of the Act.

[68] Therefore, the Commission's decision to disqualify the Appellant from receiving Employment Insurance regular benefits effective August 25, 2019, under sections 29 and 30 of the Act, is not justified in the circumstances.

[69] Even though, in its arguments, the Commission indicated that it imposed an indefinite disqualification on the Appellant effective September 4, 2019,[55] the decision it made against him clearly states that he was not entitled to Employment Insurance regular benefits starting on August 25, 2019.[56] Therefore, I find that the Appellant is entitled to receive Employment Insurance regular benefits effective August 25, 2019.

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[53] *Cartier*, A-168-00; *MacDonald*, A-152-96; *Namaro*, A-834-82.
[54] *Mishibinijima*, 2007 FCA 36; *Tucker*, A-381-85; *McKay-Eden*, A-402-96.
[55] GD4-2.
[56] GD3-36 and GD3-37.

[70] The appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	January 16, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. G., Appellant