



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. G. v Canada Employment Insurance Commission*, 2020 SST 150

Tribunal File Number: AD-19-846

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 19, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, M. G. (Claimant), filed an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed him that he was not entitled to Employment Insurance benefits because he voluntarily left his employment without just cause.

[3] The Commission determined that the Claimant chose to take time off work without his employer's permission. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant's vacation had not been approved by the employer and that he chose not to show up for work. It determined that the Claimant had reasonable alternatives to leaving and chose not to show up for work, therefore causing the termination of his employment.

[5] The Claimant was granted leave to appeal the General Division decision. He argues that the General Division failed to observe a principle of natural justice. He submits that it ignored the evidence before it and made an error of law in its interpretation of section 29(c) of the *Employment Insurance Act* (Act).

[6] The Tribunal must decide whether the General Division failed to observe a principle of natural justice. It must also decide whether the General Division ignored the evidence before it and made an error in its interpretation of section 29(c) of the EI Act.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUES

[8] Did the General Division fail to observe a principle of natural justice by giving greater weight to the employer's evidence when it did not attend the hearing and could not be cross-examined?

[9] Did the General Division make an error by ignoring the evidence before it and in its interpretation of section 29(c) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[10] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[11] 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.

[12] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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 observe a principle of natural justice by giving greater weight to the employer's evidence when it did not attend the hearing and could not be cross-examined?

[13] The Tribunal is of the opinion that this ground of appeal is without merit.

[14] The Claimant accuses the General Division of giving greater weight to the employer's evidence when it did not attend the hearing and could not be cross-examined.

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

He also argues that the General Division ignored the fact that the Commission did not question the supervisor who authorized his vacation.

[15] The Tribunal is of the opinion that the mere fact that one party attended the hearing and that the other party did not must not be a determining factor. The General Division is free to prefer the credibility of one over the other.

[16] Furthermore, the Federal Court of Appeal decided that the Board of Referees (now General Division) is not bound by strict rules of evidence applicable in criminal or civil courts and that they can accept and retain hearsay evidence.² The General Division therefore cannot reject the employer's evidence simply because the Claimant did not have the opportunity to cross-examine the employer.³

[17] The Tribunal is of the opinion that the Claimant was aware of the evidence on file before appearing before the General Division and that he had ample time to prepare his defence. The General Division allowed him to present his arguments about the entire case before it, and the Claimant had the opportunity to contradict the employer's position. There was no breach of natural justice.

[18] This ground of appeal fails.

Issue 2: Did the General Division make an error by ignoring some of the evidence and in its interpretation of section 29(c) of the EI Act?

[19] The Tribunal is of the opinion that this ground of appeal is without merit.

[20] The General Division determined that the Claimant's vacation was not approved and that he chose not to show up for work. It determined that the Claimant had reasonable alternatives to leaving and chose not to show up for work, therefore causing his termination of employment.

² *Caron v Canada (Attorney General)*, 2003 FCA 254.

³ *Olivier*, A-308-81.

[21] The Claimant argues that the General Division ignored the evidence before it. He submits that the employer unilaterally terminated his employment after initially approving his two weeks of vacation. The Claimant submits that the employer acted this way because it knew he was looking for a new job.

[22] The undisputed evidence before the General Division shows that the employer called the Claimant into its office to discuss his vacation. The employer informed the Claimant that it was not giving him the second week of vacation and that he had to show up for work. The Claimant made his dissatisfaction known to the employer, being of the opinion that he had already been authorized two weeks of vacation. The employer informed him that, if he did not show up for work, the employment relationship would be broken. Disagreeing with the employer's final position, the Claimant responded: [translation] "do what you have to do and I'm going to do what I have to do." He chose not to show up for work and to continue his vacation.⁴

[23] As noted by the General Division, the Claimant was formally advised before the beginning of the second week of vacation that it was not authorized and that he would break the employment relationship if he did not show up for work. As a result, he chose to ignore the employer's direction and terminated his employment himself because he knew the consequences associated with his decision not to show up for work.

[24] It is settled law that when a claimant takes unauthorized leave, the event that leads to the loss of employment is the claimant's wilful act. In this case, the Claimant's insistence on taking leave without the employer's permission.

[25] The Federal Court of Appeal has already made clear that the loss of an employment can be interpreted as having been caused by voluntary leaving without just cause or by dismissal for misconduct. In both cases, these reasons result in a disqualification.⁵

⁴ GD3-24.

⁵ *Jamieson v Canada (Attorney General)*, 2011 FCA 204; *Canada (Attorney General) v Desson*, 2004 FCA 303.

[26] The Tribunal is of the opinion that the General Division decision is consistent with the evidence on file and the case law. The Claimant was informed that he could not take an additional week of vacation and that, if he did not show up on the scheduled date, he would break the employment relationship. The Claimant certainly had the right to disagree with the employer's decision, but he could not ignore it.

[27] For the reasons stated above, the Tribunal dismisses the appeal.

CONCLUSION

[28] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	February 13, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. G., Appellant Yvan Bousquet, Representative for the Appellant Manon Richardson, Representative for the Respondent