



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *A. B. v Canada Employment Insurance Commission*, 2020 SST 242

Tribunal File Number: AD-20-559

BETWEEN:

**A. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 18, 2020

## DECISION AND REASONS

### DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

### OVERVIEW

[2] The Applicant, A. B. (Claimant), worked as a day labourer for more than 30 years at X. He lives in X. He decided to change careers because the trip to and from work had become longer and more difficult, and he no longer had any quality of life. He therefore found a job closer to home at the Ministère du Transport [Québec's ministry of transportation]. He took unpaid leave to make sure he would like the new job. His experience was positive, so he eventually left his employment at X, on September 26, 2019.

[3] The job with the Ministère du Transport [Québec's ministry of transportation] is seasonal from the spring to the fall. When his contract ended in October 2019, the Claimant applied for Employment Insurance benefits. The Employment Insurance Commission (Commission) decided to impose a disqualification on the Claimant starting September 26, 2019, because it argues that he voluntarily left his employment at X without just cause under the *Employment Insurance Act* (EI Act). The Commission upheld its decision on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant had made the personal choice to leave his employment and that he had caused his unemployment situation because he knew when he left his employment that the job at the Ministère du Transport [Québec's ministry of transportation] would end a few weeks later. The General Division determined that a reasonable solution would have been to keep his employment until his seasonal job resumed in April 2020.

[5] The Claimant now seeks leave to appeal the General Division decision. The Claimant argues that the General Division must consider the arguments presented and not base its decision only on the sections of the EI Act.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

### **ISSUE**

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

### **ANALYSIS**

[9] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division made an error in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

**Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[12] The Claimant argues that the General Division must make an independent ruling by considering the material before it.

[13] The issue under appeal before the General Division was whether the Claimant had voluntarily left his employment without just cause under sections 29 and 30 of the EI Act.

[14] The General Division had to determine whether the Claimant had just cause for leaving his employment at X by considering the facts that existed when he voluntarily left on September 26, 2019.

[15] The General Division determined that the Claimant had made the personal choice to leave his employment. As a result, he caused his unemployment situation because he knew when he left his employment that the job with the Ministère du Transport [Québec's ministry of transportation] would end a few weeks later. The General Division found that a reasonable solution would have been to keep his employment until his seasonal job resumed in April 2020.

[16] The Federal Court of Appeal has established that, in the case of seasonal employment, the time of the voluntary leaving and the amount of time remaining in the seasonal employment are the most important circumstances to consider to determine whether leaving was a reasonable and therefore a justified alternative.<sup>1</sup>

[17] The uncontested evidence before the General Division demonstrates that the Claimant was on leave from his job of 32 years. He decided to hand in his resignation on September 26, 2019. The Claimant knew when he resigned that his seasonal employment

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<sup>1</sup> *Canada (Attorney General) v Langlois*, 2008 FCA 18.

would end a few weeks later, on October 17, 2019. As a result, he caused his unemployment situation.

[18] A late start to seasonal employment, when the season is ending and it is clear that the employee could not meet the requirements of section 30 of the EI Act concerning the number of hours required, creates an unjustified certainty of unemployment. As the General Division noted, it is always open to the employee to leave the employment they had, but they alone must assume the risks of leaving.<sup>2</sup>

[19] The Federal Court of Appeal has also established that, while it is legitimate for a person to want to improve their life by changing employers or the nature of their work, they cannot expect those who contribute to the Employment Insurance fund to bear the cost of that legitimate desire. Leaving his employment to improve his situation does not constitute just cause under section 29(c) of the EI Act.<sup>3</sup>

[20] The Tribunal notes that the General Division stated the relevant legal test correctly. It applied the test to the facts that the Claimant gave and investigated whether, after considering all the circumstances, the Claimant had no reasonable alternative but to leave.

[21] The Tribunal finds that the Claimant has not raised any issue of law, fact, or jurisdiction that could justify setting aside the decision under review.

[22] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Canada (Attorney General) v Langevin*, 2011 FCA 163.

**CONCLUSION**

[23] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	A. B., self-represented
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