



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v J. R.*, 2020 SST 375

Tribunal File Number: AD-20-115

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. R.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: April 29, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The General Division made legal and factual errors. The Claimant did not have just cause for leaving his part-time job. He is disqualified from receiving Employment Insurance benefits.

OVERVIEW

[2] The Appellant, Canada Employment Insurance Commission (Claimant), is appealing the General Division's decision.

[3] The General Division found that the Respondent, Joseph Richardson (Claimant), had just cause for voluntarily leaving his part-time job. It found that he was therefore entitled to receive Employment Insurance benefits.

[4] The Commission argues that the General Division made legal and factual errors. It argues that the General Division failed to properly consider whether the Claimant had "just cause" under section 29(c)(vi) of the *Employment Insurance Act*. In particular, it argues that the General Division failed to examine whether the Claimant had any reasonable alternatives to leaving his employment. The Commission also argues that the General Division made two factual errors: (1) over the Claimant's explanation for having left his part-time employment, and (2) that the assurance of another job was in the "immediate future."

[5] I am allowing the appeal. The General Division fell short of conducting a full analysis into whether the Claimant had "just cause" to leave his part-time job. It did not consider whether the Claimant had any reasonable alternatives to leaving. As well, it did not consider whether the Claimant left his part-time job when he did so he could focus on his schooling and, if so, whether that constituted "just cause." Finally, it did not consider the backdrop against which the Claimant left his job, when it assessed whether his job was in the "immediate future."

[6] The evidence shows that the Claimant left a secure part-time job for a seasonal job of limited duration that started weeks away. This did not constitute the "immediate future." The Claimant left his part-time job when he did, not because he had a secure job elsewhere, but

because he intended to focus on his schooling. One of the Claimant's reasonable alternatives would have been to continue working at his part-time job.

PRELIMINARY MATTER

[7] The Commission attempted to introduce new evidence regarding the Claimant's work history.¹ However, I am limited to considering only the evidence that was before the General Division. Any new evidence is of no relevance to this appeal. I have not considered any of the new evidence.

ISSUES

[8] The issues are as follows:

Issue 1: Did the General Division fail to analyze what constitutes "just cause" under section 29(c)(vi) of the *Employment Insurance Act*?

Issue 2: Did the General Division make a factual error when it found that the reason the Claimant left his part-time job was because he had secured another job?

Issue 3: Did the General Division make a factual error when it found that the Claimant's upcoming employment was in the "immediate future?"

ANALYSIS

Background Facts

[9] For the past few years, the Claimant left his part-time job at a meat market for a full-time summer job with a federal government ministry. The Claimant suggested that he worked enough hours from the summer job so that he qualified for Employment Insurance benefits. However, in 2019, the ministry delayed the start date, so the Claimant would not begin working until a week

¹ The Claimant testified that he has since returned to his part-time job at the meat market. This is not new evidence, because he gave this evidence at the General Division hearing, at approximately 12:38 to 12:51 of the audio recording of the General Division hearing.

later. The Claimant did not learn of the delay until after he had already left his part-time job at the meat market.

[10] By starting a week later than he had expected, the Claimant was unable to accumulate enough hours of insurable employment from his summer job alone to establish a claim for Employment Insurance benefits. He would have to rely on insurable hours from his part-time job to have enough insurable hours.

[11] However, the Commission decided that the Claimant did not have just cause for having left his part-time job. Because of this, he could not rely on the hours from his part-time job. The Commission determined that the Claimant left his part-time job so that he could focus on studying for school exams. The Commission also determined that the Claimant did not explore whether he had reasonable alternatives to leaving his part-time job. It refused the Claimant's application for benefits.

[12] The Claimant appealed the Commission's decision to the General Division. The General Division allowed the appeal. It found that if the Claimant's summer job had not been delayed by a week, the Claimant would have had enough hours to qualify for benefits. The General Division wrote:

I am not going to penalize the [Claimant] for wanting to do well in his exams when his decision to leave his employment when he did would have, at that time, no effect on his upcoming employment and the number of hours of insurable employment available to him. It was only a few weeks before his scheduled start date with [the federal government ministry] that he was informed of the delay in the start date.

[13] The General Division found that the Claimant had just cause for leaving his job because he had "secured another employment in the immediate future."²

Issue 1: Did the General Division fail to analyze what constitutes "just cause" under section 29(c)(vi) of the *Employment Insurance Act*?

[14] Claimants may have just cause for leaving their employment under section 29(c)(iv) of the *Employment Insurance Act*, "when there is reasonable assurance of another employment in

² See General Division decision, at para. 18.

the immediate future, if the claimants had no reasonable alternative to leaving.” If claimants have reasonable alternatives to leaving their employment, they would not have just cause.

[15] The Commission argues that the General Division failed to analyze the evidence in a meaningful way. In particular, it argues that the General Division failed to properly apply section 29(c)(iv) of the *Employment Insurance Act* because it failed to examine whether the Claimant had any reasonable alternatives to leaving his job.

[16] In its overview, the General Division referred to the Commission’s argument that the Claimant had reasonable alternatives to leaving his job.

[17] The General Division also noted that just cause for voluntarily leaving an employment exists under section 29(c) of the *Employment Insurance Act* if a claimant had no reasonable alternatives to leaving, having regard to all of the circumstances. For the Claimant to establish that he had just cause, he had to meet the requirements under section 29(c) of the *Employment Insurance Act*. For this reason, the General Division stated that for the Claimant to establish just cause, he had to demonstrate that he had no reasonable alternative to leaving his job.³

[18] Despite setting out the Commission’s position and identifying what constitutes “just cause” under 29(c) of the *Employment Insurance Act*, the General Division did not address whether the Claimant met the requirements under the *Employment Insurance Act*. The General Division did not conduct any analysis regarding any reasonable alternatives that the Claimant may have had to leaving his part-time job. The General Division failed to fully apply and consider section 29(c) of the *Employment Insurance Act* to the facts of the case.

Issue 2: Did the General Division make a factual error when it found that the reason that the Claimant left his part-time job was because he had secured another job?

[19] If the Claimant left his part-time job at the meat market so that he could focus on his studies, then he would not have just cause for having left that job.

[20] The Commission argues that the General Division made a factual error when it found that the Claimant left his part-time job for a summer job with a government ministry. While there is

³ See General Division decision, at paras. 5 and 6.

no dispute that the Claimant had secured other work, initially this other work was going to start at the end of April 2019. This meant there were several weeks between when the Claimant last worked at the meat market and when he was going to start at the other job.

[21] The Commission argues that this evidence—the seven week gap before he was going to start his summer job—shows that the Claimant actually left his part-time job in early March 2019 so that he could focus on his studies.

[22] In his initial phone call with the Commission, the Claimant reported that he left the part-time job earlier that year. He left earlier because he had to study for final exams and he knew that he could not work at the same time.⁴ In another phone call with the Commission, the Claimant confirmed that he left the job early so that he could focus on his “schooling, exams and getting the best marks possible.”⁵ He declared that he wanted to devote his time exclusively to his post-secondary exams. There were no other reasons that he quit at that time.⁶ The Commission argues that the General Division overlooked this evidence.

[23] The General Division noted that the Claimant completed his exams during the gap of unemployment between early March 2019 and early May 2019. Yet, it did not consider any of the evidence that suggested the Claimant left his job at the meat market to allow him to focus on his studies. Instead, it seemed to accept the Claimant’s claims that he left his part-time job for a full-time summer job, even though the summer job started weeks later.

[24] I find that the General Division based its decision on an erroneous finding of fact without regard for the evidence before it, because it did not consider whether the Claimant might have left his part-time job when he did so he could focus on his studies.

Issue 3: Did the General Division make a factual error when it found that the Claimant’s upcoming employment was in the “immediate future?”

[25] For just cause to exist under section 29(c)(vi) of the *Employment Insurance Act*, a reasonable assurance of another employment must be in the “immediate future.”

⁴ See Supplementary Record of Claim, dated October 11, 2019, at GD3-19.

⁵ See Supplementary Record of Claim, dated December 13, 2019, at GD3-27.

⁶ See Supplementary Record of Claim, dated November 4, 2019, at GD3-21.

[26] The Commission argues that while the Claimant clearly had reasonable assurances of another job, it was not in the “immediate future.” The Commission argues that when the Claimant left this part-time job in early March 2019, he would not be starting work at his summer job until many weeks later. The Commission argues that this does not represent the “immediate future,” particularly as there was evidence that the Claimant intended to focus on exams in the interim.

[27] The Commission argues that the General Division based its decision on a factual error when it decided that the Claimant had the assurance of another job in the “immediate future.”

[28] The Claimant points out that the *Employment Insurance Act* does not define the “immediate future.” In his mind, seven weeks was not that far into the future when he was going to be starting his summer job.⁷ The Commission acknowledges that the *Employment Insurance Act* does not define “immediate future.” The Commission argues that, even so, seven weeks is inconsistent with the idea of the “immediate future.”

Comparison to other cases

[29] The Commission referred to two decisions to support its argument that seven weeks does not fall within the “immediate future.” One of these cases, CUB 73482, referred to another decision of the Umpire.

- In CUB 65463, the claimant voluntarily left his job on May 20, 2005. He had found another job that was going to start on July 4. The Board of Referees found that the claimant did not conduct himself as a reasonable person because he left his employment and his new position was not going to start until 45 days later, roughly seven weeks. The Umpire agreed with the Board of Referees that 45 days did not represent immediate employment. It also found that the claimant could have stayed in his old job until the new job started.

⁷ When the Claimant left his part-time job, his summer job was scheduled to start in seven weeks. It was only later that he learned that the summer job would start a week later. The Supplementary Record of Claim dated December 13, 2019, shows that the Claimant started his position with the government eight weeks later.

- In *Canada (Attorney General) v. Lessard*,⁸ the Federal Court of Appeal found that employment was contingent on Lessard finishing a training course that had yet to start, and which would last 13 weeks. The Court of Appeal found that this did not represent employment in the “immediate future.”

[30] Decisions of the Umpire or, for that matter, the General Division, are not binding on the Appeal Division. Even so, I have reviewed decisions of the General Division. In *A.P. v. Canada Employment Insurance Commission*,⁹ the member determined that, in the facts of that case, that seven weeks “correspond[ed with] the notion of immediate future.”

[31] The General Division stressed that the determination of what constituted the “immediate future” would depend on the facts of each case. Even though A.P. went on holidays after she left her first job, the General Division determined that A.P. did not have any reasonable alternatives. She did not have any choice but to leave her job when she did because she was going to work for a competitor. It accepted A.P.’s argument that, “having agreed to work for a new competitor, she had to hand in her resignation without delay.” The General Division found that this was A.P.’s only ethical option.

[32] The General Division was also swayed by the fact that A.P. did not seek benefits when she was on holidays. The General Division found that this showed that A.P. did not leave her first job early to take holidays. The General Division also found that construction delays were an important consideration.

[33] I accept that what constitutes the “immediate future” is fact dependent. In other words, the length of any delay before starting a second job is important. But, there may be other considerations that influence whether a job might be in the “immediate future.” In one set of circumstances, a job that is set to begin say, seven weeks away, might not be seen as being in the “immediate future.” But, there may be another set of circumstances in which another job that is set to begin seven weeks away might be in the “immediate future.”

⁸ *Canada (Attorney General) v. Lessard*, 2002 FCA 469.

⁹ *A.P. v. Canada Employment Insurance Commission*, 2016 CanLII 102777 at para. 27 (SST).

[34] The factual circumstances found in *A.P.* are distinguishable from those in the case before me. In *A.P.*, the General Division concluded that A.P. did not have any reasonable alternatives to leaving her job when she did. So, although A.P. would not be starting her new job until weeks later, the General Division accepted that it was in the “immediate future.”

[35] Unlike A.P., there is no suggestion that the Claimant was under any kind of ethical or other duty to resign because he was leaving to work for a competitor. There is no indication that the Claimant did not have any reasonable alternatives to leaving. As the Commission argues, there was no reason why the Claimant could not have continued working at the meat market, other than it would interfere with his studies.

[36] The Claimant also faced a delay in starting his second job. But, I do not find that that the delay made a material difference in whether the second job was in the “immediate future.” The delay meant that instead of starting work in seven weeks, he did not start working at his summer job until after eight weeks.

[37] Once the overall context is taken into account, I find that the General Division erred when it accepted that the Claimant’s upcoming employment was in the “immediate future.” Seven weeks is not particularly long, but there were no compelling reasons why the Claimant necessarily had to leave his employment when he did, or why he could not have continued working, other than to focus on his exams. Seen from that perspective, the summer job was not the “immediate future.”

Findings

[38] I have already found that there were shortcomings in the General Division’s analysis. It did not consider whether the Claimant might have left his part-time job for other reasons. It also did not consider whether he had reasonable alternatives to leaving. So in this section, I will consider what decision the General Division should have given. I note that there is enough evidence in the hearing file to allow me to make my own determination in this matter.

[39] There are three key ingredients to establishing just cause under section 29(c)(vi) of the *Employment Insurance Act*: (1) that there is reasonable assurance of another employment in the

immediate future, (2) that that is the primary reason for a claimant's early departure from his existing work, and (3) that there are no reasonable alternatives to leaving.

[40] There is no dispute that the Claimant had secured other employment. The Claimant was going to be returning to the same summer position that he had held for the past four years. Between jobs, he took time off to write exams.¹⁰ During this time, the ministry moved back the start date of his contract by a week. This was beyond his control.

[41] In his mind, the gap between the two jobs was not very long. The Claimant argues that the *Employment Insurance Act* does not define the "immediate future." For this reason, he suggests that I accept that his summer job was in the "immediate future." He also suggests that I focus on the fact that he had secured other work.

[42] The Commission argues that the Claimant did not have just cause for having left his job at the meat market. There were several reasons for this:

- The Claimant left his job at the meat market to focus on his studies. The Commission argues that the reason the Claimant left his part-time job in March had nothing to do with the fact that he had a summer job lined up.
- The Claimant did not have reasonable assurance of another job. The Commission argues that the Claimant left a "permanent" ongoing job for a job that would last for only the summer. If the Claimant had stayed at the meat market, he could have continued working there indefinitely (even if it was for only a few hours per week). By accepting a summer job, he was certain to be without work after the end of the contract with the government.
- Even if the Claimant had reasonable assurances of another job, it was not in the "immediate future." The Commission argues that his summer job was distant into the future.

¹⁰ See Request for Reconsideration, filed December 6, 2019, at GD3-24.

- The Claimant had reasonable alternatives to leaving. The Commission argues that the Claimant could have continued working at the meat market. He could have continued there until closer to the start date with the federal government ministry.

[43] The evidence in the hearing file shows that the Claimant had a summer job lined up when he left his part-time job. He would have left his part-time job at the meat market anyway because he had a full-time job at the federal government ministry.

[44] As I discussed above, however, I find that the summer job was not in the “immediate future.” It was seven weeks away when the Claimant left his part-time job. Plus, there was no pressing need or any duty on him to leave his part-time job when he did.

[45] I also find that the Claimant likely left his job at the meat market when he did—much sooner than he might have otherwise—because he wanted to focus on his exams, and not because he had another job lined up. The Claimant told the Commission that he wanted to focus on his exams. It also appears that the Claimant told his employer at the meat market that he was leaving that job because he was returning to school.¹¹

[46] There was other evidence that showed the Claimant’s focus was on his exams, rather than on his summer job. The evidence suggests that starting his summer job was secondary to when his exams finished. The Claimant says that he told his new employer that he could work immediately after his exams finished around April 25, 2019.¹² This showed that his exams were a greater priority.

[47] There is also the issue of whether the Claimant had any reasonable alternatives to leaving his job. The Commission argues that the Claimant had reasonable alternatives. The Federal Court of Appeal has held that remaining in one’s job is generally a reasonable alternative to leaving a job.¹³

¹¹ See Supplementary Record of Claim, dated December 12, 2019, at GD3-26.

¹² See Supplementary Record of Claim, dated December 13, 2019, at GD3-27.

¹³ See *Canada (Attorney General) v. Graham*, 2011 FCA 311 at para. 6, and *Canada (Attorney General) v. Campeau*, 2006 FCA 376 at para. 20.

[48] It is unclear why a leave of absence from the job at the meat market was not an option.¹⁴ The Claimant told the Commission that instead of asking for time off from his job at the meat market, he felt it would be easier to quit.¹⁵ He did not consider working with his employer closer to the start date of his new position because he was focused on his exams. He also did not ask for time off, as he knew he would not be returning to the meat market after he finished his exams.¹⁶

[49] The Claimant has not offered any other reasons why he could not have continued working at the meat market. I find that the Claimant could have at least explored alternatives to leaving, such as continuing to work, or asking for a leave of absence. I find that the evidence shows that the Claimant had reasonable alternatives to leaving the meat market.

Disqualification under the *Employment Insurance Act*

[50] The Claimant voluntarily left his employment without just cause. Because of that, he is disqualified from receiving any Employment Insurance benefits.¹⁷

[51] Section 30(1)(a) of the *Employment Insurance Act* provides an exception to being disqualified. An exception is available where a claimant accumulates enough insurable hours after leaving his job.

[52] The Claimant's Record of Employment from his summer job shows that he accumulated 638 insurable hours.¹⁸ Under section 7(2) of the *Employment Insurance Act*, based on the Claimant's regional rate of unemployment, he needed 665 insurable hours. The Claimant did not accumulate enough hours after leaving his part-time job to qualify for benefits.

CONCLUSION

[53] The Commission's appeal is allowed. I have given the decision that the General Division should have given. The Claimant did not have just cause to leave his part-time employment at the meat market. He is therefore disqualified from receiving any Employment Insurance benefits.

¹⁴ See Supplementary Record of Claim, dated December 12, 2019, at GD3-26. The employer stated that they always rehired the Claimant, but "a leave of absence wasn't an option for him."

¹⁵ See Supplementary Record of Claim, dated December 13, 2019, at GD3-27.

¹⁶ *Ibid.*

¹⁷ See section 30 of the *Employment Insurance Act*.

¹⁸ See Record of Employment dated October 2, 2019, at GD3-17 to GD3-18.

He did not have just cause and he did not accumulate enough hours after leaving his job to qualify under section 7(2) of the *Employment Insurance Act*.

Janet Lew
Member, Appeal Division

HEARD ON:	April 22, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Louise Laviolette, Representative for the Appellant J. R., Respondent