



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *RC v Canada Employment Insurance Commission*, 2020 SST 557

Tribunal File Number: GE-20-1261

BETWEEN:

**R. C.**

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: Josée Langlois

HEARD ON: May 21, 2020

DATE OF DECISION: May 21, 2020

## **DECISION**

[1] The appeal is allowed. I find that the Appellant did not voluntarily leave her employment.

## **OVERVIEW**

[2] The Appellant worked at X in X until December 19, 2019. Her new partner also worked at X but got a job opportunity in the Québec region and moved in September 2019. The Appellant planned to eventually move to the city of Québec to join her partner and was looking for another job. On November 4, 2019, the employer hired a new employee to replace the Appellant.

[3] On April 6, 2020, the Canada Employment Insurance Commission (Commission) denied the Appellant's application because it found that she had reasonable alternatives to leaving her employment.

[4] I must determine whether the Appellant voluntarily left her employment, and, if so, whether she had just cause for doing so.

## **ISSUES**

[5] Did the Appellant voluntarily leave her employment?

[6] If so, did the Appellant have no reasonable alternative to leaving her employment?

## **ANALYSIS**

### **Did the Appellant voluntarily leave her employment?**

[7] To determine whether the Appellant voluntarily left her employment, I must answer the following question: Did the Appellant have the choice to stay or to leave her employment?<sup>1</sup>

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<sup>1</sup> This test is explained in *Peace*, 2004 FCA 56.

[8] The Appellant explained that her new partner, whom she had met five months earlier, got a job opportunity in the Québec region. In September 2019, he left X to settle in this new region.

[9] The Appellant's new partner also worked at X. For this reason, the employer asked the Appellant about her intentions. She replied that she planned to eventually join her partner and settle in the city of Québec.

[10] The Appellant did not leave her employment or specify when her last day would be. She first made efforts to get a job with X. However, in November 2019, she learned that this employer had not retained her application.

[11] Meanwhile, the employer hired a new employee, who started her job on November 4, 2019, and it informed the Appellant that it could not keep her on until she found another job.

[12] The Appellant argues that she could have continued working because she was renting a room. She deplores the fact that the employer pressured her to leave her job. Although she intended to eventually settle in the city of Québec with her partner, the plan was to find another job before leaving the one she had. The Appellant started a new job in the city of Québec on January 20, 2020.

[13] On December 19, 2019, the Appellant had not found another job, but the employer had found an employee to replace her.

[14] The Commission says that the Appellant voluntarily left her employment on December 19, 2019, to join her partner in the city of Québec. It argues that even though the employer hired an employee to replace her, this was not just cause for the Appellant to leave her employment. The Commission points out that the Appellant cannot blame the employer for the end of her employment, because she had informed it that she would eventually leave her employment.

[15] Given the circumstances, I am of the view that the Appellant wanted to keep her job. Her testimony has satisfied me that she did not voluntarily leave her employment. It was her intention

to eventually do so, but on December 19, 2019, she did not have the choice to stay at her job, because the employer had hired someone to replace her.

[16] I understand from this situation that the employer was aware of the Appellant's job search efforts with X in the city of Québec and, from then on and before the Appellant could even obtain a formal job offer, it began the process to replace her. The job opportunity with X fell through for the Appellant and, as she pointed out at the hearing, she made several further attempts to find employment.

[17] While the Commission's file contains certain statements by the Appellant indicating voluntary leaving, I am of the view that this is not what actually happened. The Appellant explained voluntarily leaving based on her understanding of the situation and given that she had told the employer that she would eventually settle in the city of Québec. But the fact is that the employer hired an employee to replace her before she could officially announce that she was leaving her employment. Since the employer had hired an employee who started her job on November 4, 2019, the Appellant felt pressured to leave her employment because the employer had told her that it could not give a work schedule to two employees for the same work.

[18] Although the Commission argues that the Appellant did not exhaust all of her options before leaving her employment and that an alternative for her would have been to find another job before leaving the one she had, that was her intention, but the employer replaced her before she could formally resign. Under these circumstances, the Appellant did not leave her employment.

[19] Also, despite her partner's move in September 2019, the Appellant rented a room to keep her job until she found another one.

[20] I must make the decision on a balance of probabilities, and given that the employer did not appear at the hearing to provide its version of events, I give preference to the Appellant's testimony. Her explanations shed light on the statements she made to the Commission, and her version of events strikes me as plausible and coherent.

[21] I find that the Appellant did not voluntarily leave her employment. She did not have the choice to remain at the employment on December 19, 2019, because the employer had hired someone else and had replaced her.

[22] Given that the Appellant did not voluntarily leave her employment on December 19, 2019, she does not have to show that she had just cause to leave.<sup>2</sup>

### CONCLUSION

[23] The appeal is allowed.

Josée Langlois  
Member, General Division – Employment Insurance Section

HEARD ON:	May 21, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	R. C., Appellant É. L., Representative for the Appellant

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<sup>2</sup> As explained in *Green*, 2012 FCA 313; *White*, 2011 FCA 190; and *Patel*, 2010 FCA 95.