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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v M. L.*, 2020 SST 447

Tribunal File Number: AD-20-613

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

M. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 29, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Respondent, M. L., (Claimant), had an employment contract ending on December 20, 2019. A few days before it expired, the employer offered him a contract beginning on December 23, 2019. The employer could not guarantee full-time hours because it depended on weather and road conditions.

[3] The Claimant asked his employer to issue him a Record of Employment indicating “Shortage of work” as the reason for the termination of employment. That way, the Claimant could establish a benefit period and report his earnings if he worked. The employer refused.

[4] The Appellant, the Canada Employment Insurance Commission (Commission), informed him that he was not entitled to Employment Insurance benefits because he had voluntarily left his employment without just cause. The Commission determined that the Claimant had not demonstrated that he had exhausted all reasonable alternatives before leaving his employment. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed to the General Division.

[5] The General Division determined that the Commission had not met its burden of proving that there was voluntary leaving because the termination of employment resulted from a misunderstanding. It found that the Claimant had not voluntarily left his employment.

[6] The Commission was granted leave to appeal. It argues that the General Division did not take into account all the circumstances leading the Claimant to leave his employment when he did. The Commission also argues that the General Division made an

error in law in its interpretation of section 29(c) of the *Employment Insurance Act* (EI Act).

[7] The Tribunal must decide whether the General Division disregarded the evidence before it and made an error in finding that the Claimant had not voluntarily left his employment under sections 29 and 30 of the EI Act.

[8] The Tribunal allows the Commission's appeal.

ISSUE

[9] Did the General Division disregard the evidence before it and make an error in finding that the Claimant had not voluntarily left his employment under sections 29 and 30 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* (DESD 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 in 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.

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

Did the General Division disregard the evidence before it and make an error in finding that the Claimant had not voluntarily left his employment under sections 29 and 30 of the EI Act?

[13] The General Division determined that the Claimant could have waited for an actual interruption of work before requesting his Record of Employment. However, it found that the termination of employment resulted from a misunderstanding and that the Claimant really believed he would return to work because he went to see his supervisor on two occasions. The General Division found that the Claimant had not voluntarily left his employment.

[14] The Commission argues that the General Division disregarded the evidence before it and made an error in its interpretation of section 29(c) of the EI Act. It argues that the Claimant left the office before the end of his contract, never to return. It argues that the evidence demonstrates that it was the Claimant who terminated his employment and not the employer. He had the choice of staying in his employment.

[15] Given the arguments raised on appeal, the Tribunal proceeded to listen to the audio recording of the hearing before the General Division.

[16] The evidence before the General Division demonstrates that the Claimant met with his employer on December 17, 2019. His work contract expired on December 20, 2019. He was then offered a new contract beginning on December 23, 2019. It consisted of full-time work—more than 40 hours per week. However, employees could be required to stay home in the case of a storm or mechanical failure.

[17] The Claimant wanted to have a Record of Employment to establish his claim for benefits and make his statements in the case where he was not working full-time. He therefore asked the employer to issue a Record of Employment with the reason “Shortage of work” so he could keep his claim for Employment Insurance benefits open.

[18] The employer refused to issue the Record of Employment the Claimant asked for because it had work to offer him. It then told the Claimant that it would indicate “Quit” on the Record of Employment if the Claimant refused the work that was offered.

[19] In support of his reconsideration request, the Claimant stated that he did not appreciate his employer's attitude. He admitted to leaving his work on December 17, even though he could have worked until December 20, 2019. Instead, he gathered his personal belongings in his truck and went home because he did not accept the employer's threatening attitude.[2]

[20] The employer stated that the Claimant left his work after the meeting. The employer considered that the Claimant's act constituted an immediate departure. He wrote a letter to the Claimant that same day confirming his leaving.[3]

[21] The Claimant went to see the employer twice after that to discuss the situation with the staff director—on December 18 and 20, 2019. He was informed that the employer had not changed its position. The employer then hired a new employee for the position in question.

[22] It is settled Tribunal case law that a claimant whose employment ends because they informed their employer of their intention to leave their employment, whether verbally or in writing, **or by their actions**, is considered to have voluntarily left their employment under the EI Act, even if they later express their desire to keep their employment or change their mind.[4]

[23] The uncontested evidence before the General Division demonstrates that the termination of employment resulted from the act of the Claimant, who left work because he was unhappy with the employer's refusal to issue a Record of Employment that stated "Shortage of work." Therefore, it is not the employer who initiated the termination of employment. If the Claimant had not left his workplace on December 17, 2019, he would still have his job.

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[2] GD3-36.
[3] GD3-41.
[4] *HH v Canada Employment Insurance Commission*, 2017 SSTADEI 252; *LL v Canada Employment Insurance Commission*, 2017 SSTADEI 72.

[24] It is therefore appropriate for the Tribunal to intervene and make the decision that the General Division should have made in accordance with section 59(1) of the DESD Act.

[25] Because the Tribunal is of the view that the Claimant voluntarily left his employment, it must now determine whether the Claimant had other reasonable alternatives to leaving his employment.

[26] It is true that the General Division did not examine whether the Claimant had other reasonable alternatives to leaving his employment given its finding on voluntary leaving. However, the evidence before the General Division demonstrates that a reasonable alternative for the Claimant would have been to accept the full-time position the employer offered him, despite their differences, or to secure a job elsewhere before leaving. Therefore, the Claimant failed to prove that he had just cause for leaving his employment under the EI Act.

[27] For the reasons stated above, the Tribunal allows the Commission’s appeal.

CONCLUSION

[28] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 26, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Rachel Paquette, Representative for the Appellant M. L., Respondent