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

Citation: *X v Canada Employment Insurance Commission and MG*, 2020 SST 1064

Tribunal File Number: GE-20-1069

BETWEEN:

X

Appellant (Employer)

and

Canada Employment Insurance Commission

Respondent (Commission)

and

M. G.

Added Party (Claimant)

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: May 26, 2020

DATE OF DECISION: June 11, 2020

Canada

DECISION

[1] The appeal is allowed. The (Appellant) Employer has proven that the Claimant voluntarily left his job. The Added Party (Claimant) has failed to prove that he had just cause to leave his employment as there were reasonable alternatives.

OVERVIEW

[2] The Claimant worked as a driver for a flooring company and quit his job on May 27, 2019 (GD3-22). He quit because the company vehicles were not safe, his employer belittled him and encouraged him to speed while driving.

[3] The Claimant applied for employment insurance (EI) regular benefits (GD3-3 to GD3-21). The Canada Employment Insurance Commission (Commission) looked the Claimant's reasons for leaving and decided that he had just cause to voluntarily leave his employment, so he was entitled to EI benefits (GD3-28).

[4] The Employer asked for a reconsideration of that decision arguing that the Claimant provided no explanation for quitting his job and disputing all of the other accusations (GD3-29 to GD3-30). On reconsideration, the Commission maintained their initial decision because they found both parties equally credible, but gave the benefit of the doubt[1] to the Claimant (GD3-50). The Employer appealed that decision to the *Social Security Tribunal* (Tribunal) and the rest of the procedural history is summarized in the footnote below (GD2-1 to GD2-20; GD2A-1 to GD2A-2).[2]

POST-HEARING SUBMISSIONS

[5] The Claimant testified that he had a copy of his Ministry of Labour (MOL) claim. Since this was relevant to the issues being determined, I asked him to submit a copy to the Tribunal by

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[1] Section 49 of the *Employment Insurance Act*.

[2] Procedural history: This is an employer appeal and was first heard on December 10, 2019 at the General Division (GD) of the *Social Security Tribunal* (Tribunal). The GD issued a decision on December 11, 2019 and it was appealed by the Claimant to the Appeal Division (AD) of the Tribunal. The AD issued a decision on March 30, 2020 and returned it to the GD for a new hearing de novo. The new hearing date was scheduled in consultation with the parties and the case was heard by another GD Member on May 26, 2020.

May 29, 2020. The Tribunal received the Claimant's documents on May 28, 2020 and a copy was sent to the Employer and Commission on May 29, 2020 (RGD5-1 to RGD5-10).

[6] The Employer testified that he had a copy of an internal driver safety form and some other documents related to the above MOL claim. Since these were relevant to the issue being determined, I asked him to submit copies of the documents by May 29, 2020. The Tribunal received the Employer's documents on May 27, 2020 and a copy was sent to the Claimant and Commission on May 28, 2020 (RGD4-1 to RGD4-14).

ISSUE

[7] I must decide whether the Claimant is disqualified from being paid EI benefits because it is claimed that he voluntarily left his job without just cause. To do this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

ANALYSIS

There is no dispute that the Claimant voluntarily left his job

[8] The Claimant agrees that he quit (in other words, voluntarily left the job) but states that he reasons for doing so. He confirmed that he returned the company keys and walked off the job around lunch hour, before his shift was expected to end on May 27, 2019.

[9] This was not disputed between the parties. It is also consistent with his previous statements to the Commission confirming that he quit his employment (GD3-25; GD3-34). The record of employment also identifies that he quit his employment and his last day paid was May 27, 2019 (GD3-22). Accordingly, I find that the Claimant voluntarily left his job on May 27, 2019.

The parties dispute that the Claimant had just cause for voluntarily leaving

[10] The parties do not agree that the Claimant had just cause for voluntarily leaving the job on May 27, 2019.

[11] The law says that you are disqualified from receiving EI benefits if you left your job voluntarily and you did not have just cause.[3] Having a good reason for leaving a job is not enough to prove just cause. You have just cause to leave if, considering all of the circumstances, you had no reasonable alternatives to quitting your job when you did.[4] It is up to the Claimant to prove this.[5] The Claimant has to show that it is more likely than not that he had no reasonable alternatives but to leave when he did.[6]

[12] When I decide that question, I have to look at all of the circumstances that existed when the Claimant quit. The circumstances I have to look at include some set by law.[7] After I decide which circumstances apply to the Claimant, he then has to show that there was no reasonable alternative to leaving at that time.[8]

The circumstances that existed when the Claimant quit

[13] The Claimant states that the following circumstances existed when he quit his employment:

a) The company trucks had safety issues

b) The Employer belittled him

c) The Employer encouraged to speed while driving

d) The Employer did not accommodate him while his father was ill

Safety issues

[14] The Claimant is arguing that the company trucks had safety issues, so I have considered whether his working conditions were a danger to his health or safety and if the practices of an employer were contrary to the law.[9]

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[3] Section 30 of the *Employment Insurance Act*.
[4] *Canada (Attorney General) v White*, 2011 FCA 190, at para 3, and Section 29(c) of the *Employment Insurance Act*.
[5] *Canada (Attorney General) v White*, 2011 FCA 190, at para 3.
[6] *Canada (Attorney General) v White*, 2011 FCA 190, at para 4.
[7] Subsection 29(c) of the *Employment Insurance Act*.
[8] Subsection 29(c) of the *Employment Insurance Act*.
[9] Subsections 29(c)(iv) and 29(c)(xi) of the *Employment Insurance Act*.

[15] For the reasons set out below, I do not find that the Claimant had just cause to leave his employment due to working conditions that were a danger to his health or safety or because the employer's practices were contrary to the law.

[16] The Claimant worked as a driver for around 1.5 years for a small flooring company. His job was to deliver products to customers. There are two company trucks, one of which is mostly used for product delivery and the other truck is used by the installers. The Claimant agreed that he mostly drove the "2002 GMC savannah" truck, but on occasion he drove the "2000 Chevrolet express" truck. I was told that both trucks are similar.

[17] The Claimant testified that there were no safety issues with the trucks when he quit his employment on May 27, 2019, except for two outstanding issues. The two unresolved issues were: the door of the truck was see-thru and the body of the truck was rotting. He said that he told the Employer about all of the safety issues, including the two that were still outstanding. The Employer argued that these two outstanding issues are not safety issues, but cosmetic only.

[18] The Claimant agreed that the Employer took the trucks to be repaired when issues arose during his employment. In particular, he remembered repairs to the brake lines, alternator, over-revving and tires being replaced because he kept getting flats. The Employer submitted that they completed regular preventative maintenance every few months, as well as repairs as needed or recommended by local mechanics.

[19] The Claimant was also concerned that there was no divider between the truck to prevent product from flying towards the front of the vehicle. Although this never happened to him while driving, he said there should have been a divider for safety reasons.

[20] The Claimant purchased new windshield wipers for the truck on his own initiative because the ones on the company truck were not good in his opinion. He did not ask his employer for reimbursement, but simply offered to replace them. He has no receipt, but estimated he spent $18-20 for them.

[21] The Employer argued that they permitted him to change the wipers on the company truck, but that he brought used wipers from home. He never asked them for reimbursement or gave them a receipt. If so, they would have reimbursed him. The Employer noted that they

actually changed the wipers back to the original ones because in their opinion, they worked better.

[22] I was not persuaded by the Claimant's allegations that there were safety issues with the company trucks putting him in danger. His own testimony confirms that there were only two outstanding issues when he quit his employment, specifically the truck doors being see-thru and the body rotting. While it may have bothered him, it is not enough to prove that it was a safety issue. He also admitted that the Employer's father was attempting to repair some of these issues by covering them and painting over the rust. This tells me that the Employer was taking steps to try to repair the unsightly issue. The Claimant had no supporting evidence or any photos of the trucks to prove that their condition or appearance posed a safety risk to him. Therefore, I find it was more likely than not, that these issues were cosmetic only and posed no danger to his health or safety.

[23] I preferred the Employer's testimony on this issue because I find it more probable since it was supported by third party documentary evidence. The documents in the file show that the Employer actively took steps to deal with repairs issues when they arose. There were several mechanic records and invoices for the 2002 GMC savannah truck, which was primarily driven by the Claimant. The Claimant's testimony confirmed that the truck repairs were resolved before he quit his employment on May 27, 2019.

[24] The following chart is a summary of the maintenance and repairs to the Employer's company vehicles:

January 24, 2018	Oil and filter service	(GD3-37)
May 8, 2018	Door handle replacement and engine rev test	(GD3-38)
May 14, 2018	Replaced alternator assembly	(GD3-40)
May 30, 2018	Stalling and rev check- air flow sensor	(GD3-39)
July 4, 2018	Brake line leak and tire leak	(GD3-41)
July 31, 2018	Oil and filter service	(GD3-42)
October 18, 2018	Oil and filter service	(GD3-43)
February 7, 2019	Rotor replacement and brake line replacement	(GD3-44)
March 18, 2019	Used parts	(GD3-45)
April 2, 2019	Tire leak and repair	(GD3-46)

[25] I find the above mechanic records and invoices reliable documentary evidence. The invoices come from two separate mechanic shops and employing licensed mechanics. It shows that the 2002 GMC savannah was seen for preventative maintenance on a regular basis and repairs as needed. I find that this proves the Employer was diligent in addressing maintenance and repairs on the company truck used primarily by the Claimant.

[26] There are also two signed letters in the file from two different mechanic shops and mechanics (RGD3-2; RGD3-3). Both letters confirm that the Employer's company trucks are safe to drive and that they have been providing maintenance and periodic mechanical services over from 4 years to 25 years. I have given significant weight to these letters because there are two letters from separate mechanics shops that have experience servicing the Employer's vehicles over an extended period of time. Both of mechanics confirm that the company trucks are safe to drive and I accept that.

[27] The Claimant has also failed to prove that there was a danger to his safety or others because the trucks did not have a divider in them. It is not enough to say there is a safety issue and a divider is required, but he has to provide some evidence to support that statement. A suspicion that divider is required is not enough.

[28] For the above reasons, the Claimant has failed to prove he had just cause on the basis that the company trucks were unsafe and a danger to his safety, or that the practices of an employer were contrary to the law.[10] There was no supporting evidence provided by the Claimant to prove that the Employer was breaching any existing safety rules, policies, regulations or law.

Ministry of Labour (MOL)

[29] The Claimant testified that he submitted an online claim to the MOL after he left his employment. However, I found his testimony on the MOL issue was inconsistent. He initially said that the MOL claim was made only for vacation pay owing. When I asked the Claimant whether he reported all of the other concerns to the MOL, his testimony then changed. He then stated that everything was reported to the MOL, but not the vacation pay issue. The Claimant

[10] Subsections 29(c)(iv) of the *Employment Insurance Act*, 29(c)(xi) of the *Employment Insurance Act*.

asked to review his email account during the hearing. After reviewing his emails and the MOL claim in his email, he clarified that all of the issues were reported to the MOL.

[30] I asked the Claimant about the MOL outcome relating to the safety concerns, speeding and belittling allegations. He stated that he did not know what happened it was reported to the MOL.

[31] The Employer disputes that the MOL investigated them for any of the other concerns raised because they were only aware of the vacation pay issue. That was resolved because it was paid to the Claimant.

[32] I asked both of them to submit any relevant evidence about the MOL claim. Both parties complied and submitted their documents, which were promptly shared with each other and the Commission (RGD4-1 to RGD4-14; RGD5-1 to RGD5-10). I note that none of the parties provided any reply submissions in response to the evidence submitted after the hearing as of the date of this decision.

[33] I reviewed the documentation submitted. The Claimant's MOL claim shows that he filed his claim on June 25, 2019 alleging a contravention under the *Employment Standards Act* (RGD5-1 to RGD5-10). Under the details of the claim, the Claimant wrote that he did not receive payment for his regular pay for $1,080.00 and his vacation pay for $500.00 (RGD5-8). In the background information about his claim, he wrote about being shouted at, that he was not fast enough and felt pressure as a driver (RGD5-10). He also said that he can no longer work for someone who expects him to speed on the roads.

[34] The Employer's MOL documentation shows that the only allegations were about the payment of wages and vacation pay. This was sent by an Employment Standards Officer of the MOL on July 2, 2019 (RGD4-2; RGD4-12 to RGD4-13). There were also several standard blank standard MOL forms included in the documentation sent to the Employer (RGD4-3 to RGD4-8). It does not appear that the Employer was not provided with a copy of the Claimant's MOL application claim forms.

[35] The Commission spoke to the Claimant on October 8, 2019 and their discussion was summarized in the file (GD3-34). The Claimant told them that he did not go to the labour board because the Employer was his friend. He also said that the Employer had been very accommodating and flexible with his schedule when his Dad was sick. However, I note that this is contrary to his testimony and the MOL documentation in the file because he filed the MOL claim several months prior on June 25, 2019 (RGD5-2 to RGD5-3). It remains unexplained why the Claimant advised that the Commission he had not gone to the labour board, when the documentary evidence shows that he did.

[36] Based on my review of the MOL documentation submitted by the Claimant and Employer, it appears that the primary reason for the MOL claim was to obtain payment of his vacation pay and other monies owing.

[37] There is no evidence to show that the Employer was investigated by the MOL or even knew that the Claimant had other concerns such as: being shouted at, he was not fast enough and felt pressure as a driver. I also note that there was nothing in the MOL claim that disclosed safety issues with the company trucks (RGD5-10). I find this problematic because the Claimant's primary argument is that he left for safety reasons, but yet it was not raised to the MOL after he left his employment. The Claimant provided no explanation for not following up with the MOL about his other concerns referenced in the "background information" of his MOL claim.

[38] For these reasons, I find it more likely than not, that the primary reason the Claimant filed his MOL claim was because he was owed vacation pay or other monies by the Employer and not for the other reasons he claimed. While some of his concerns were mentioned in the MOL claim, he made no reference to safety issues as the reason for quitting, he did not ask for any remedies except for payment of his wages and vacation pay. Further, he never followed up with the MOL about any of his other concerns after he received payment from the Employer.

Practices contrary to the law

[39] The Claimant said that one of the mechanics told him that they did favours for the Employer, like passing an emissions test. This was disputed by the Employer. The Employer said

that the mechanics do not favour him and that the emissions test is done by a third party, not his mechanic.

[40] I was not persuaded that the mechanics did favours for the Employer that were contrary to the law as claimed. The Claimant could not provide any details about which mechanic told him that, or when he was told that information. During cross examination the Claimant agreed that the mechanics used by the Employer were proper. Therefore, I find that the Claimant did not have just cause on the basis that the Employer's practices were contrary to the law.[11]

[41] The Claimant said that the employer expected him to break the law by speeding with the company truck. At the hearing, the Claimant agreed that the Employer never told him to speed, but he was told to "hurry to go there".

[42] The Employer testified that he requires all drivers to agree to a driver safety policy. He supplied a copy to the Tribunal. It provides detail information about their policy, expectations, driver eligibility, driving records and cell phone usage (RGD4-9 TO RGD4-11). It also lists various violations including speeding and requires the employee to attest that "understand that it is my responsibility to operate the vehicle in a safe manner and to drive defensively to prevent injuries and property damage". The Claimant said that he does not recall signing one and the employer did not have a signed copy available.

[43] I was not persuaded that the Employer told the Claimant to break the law by speeding because their policy specifically states that speeding is a violation. The Claimant also admitted that he was not told to speed, but to "hurry to go there". This is not the same. Therefore, I find that the Claimant did not have just cause on the basis that the Employer's practices were contrary to the law.[12]

Belittling

[44] I have considered whether the Claimant was belittled or harassed by his Employer.[13]

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[11] Subsection 29(c)(xi) of the *Employment Insurance Act.*
[12] Subsection 29(c)(xi) of the *Employment Insurance Act.*
[13] Subsection 29(c)(i) of the *Employment Insurance Act*.

[45] I asked the Claimant for examples of the incidents and interactions with his Employer. He said his Employer would say things like “hurry up” or “you gotta do this” in front of customers. He could not recall any specific dates, but said that it usually happened everyday.

[46] I asked the Claimant if he spoke to the Employer about these concerns. He said no because he “just let it go”. He remembered speaking to his Manager about it and was told that it is “just the way the owner is”. He could not remember when that discussion took place.

[47] This was disputed by the Manager (Witness #1) who testified that he has never witnessed the Employer belittling the Claimant and was unaware of this issue. He observed good interactions between them because they were all friends. He noted that they had recently attended the Claimant’s stag a few days prior to him quitting. They were also invited to attend his wedding in late June 2019.

[48] The allegations were also disputed by Witness #2, who is married to the Employer and works for the company. I have given minimal weight to her testimony because of the nature of their relationship.

[49] The Employer disputes the Claimant’s allegations that he belittled him at any point during his employment. He argues that they were friends and he would not have been invited to his stag or wedding if he had treated the Claimant in that manner.

[50] I do not find that the Claimant was harassed or belittled by the employer for the following reasons.

[51] I find the Claimant’s evidence about his employer belittling him is lacking detail and insufficient to prove that he had just cause. The Claimant was unable to provide dates or any context about the specific incidents, except for a general statement that it happened everyday at work in front of customers.

[52] Based on the two above examples provided by the Claimant, even if the Employer said those things to him, I would not objectively find those statements belittling or harassing to someone. The statements were not severe and did not have a significant or lasting impact on the Claimant. He admitted that he “let it go” and chose not to discuss it with the Employer.

[53] The Employer said that Claimant often ran late at work or when doing tasks took longer than usual or expected times when off-site. If the employer told the Claimant to "hurry up" or "you gotta do this" in response to the Claimant taking too much time, it may have been impolite, but it does not rise to level of belittlement or harassment. The Employer is permitted to exercise his right to manage tasks or deal with performance issues.

[54] Therefore, I find that the Claimant has failed to prove he had just cause to leave his employment based on the allegation that his employer belittled or harassed him.[14] A reasonable alternative to leaving his employment would have been to raise his concerns directly with the Employer, which the Claimant agreed he could have done.

Failure to accommodate

[55] I have considered whether the Claimant had just cause to leave his employment for this reason, having regard to all the circumstances. Specifically, that his father was ill and it is alleged the Employer did not accommodate him.

[56] The Claimant said that his father's illness was not a reason for leaving his employment, but that his Employer never accommodated him. He provided no specific details, dates or context, except for one example on May 26, 2020. On this date, he says that he told the Employer he had to pick up his father at the hospital the following afternoon on May 27, 2020.

[57] This was disputed by the Employer who stated that they worked around his schedule and scheduled deliveries only around his availability. The Employer denies that the Claimant told him about picking up his father the afternoon of May 27, 2020. If he had been told, he would not have scheduled an afternoon delivery for the Claimant on that date.

[58] I was not persuaded by the Claimant's allegation that the Employer did not accommodate his work schedule while his father was ill because it was not credible.

[59] The Claimant testified that he told his Employer when he had to go to the hospital to pick up his father. This suggests that they already accommodating him because he was not asking permission from his Employer. He also previously told the Commission that the Employer was

[14] Subsection 29(c)(i) of the *Employment Insurance Act.*

his friend and had been very accommodating and flexible with his schedule when his father was sick, which I find is more likely given their friendship (GD3-34).

[60] Even though the Claimant feels like the Employer was not accommodating him, the evidence supports that the Employer did accommodate his schedule involving his father's needs. In any event, an Employer is not legally obligated to accommodate every request.

Reasonable alternatives

[61] I find that the Claimant had the following three reasonable alternatives to quitting his job.

a) He could have talked to the Employer about the belittling, safety issues and speeding

b) He could have asked for a leave of absence from work to care for his father

c) He could have remained employed until he could find another job

[62] The Claimant agreed that he could have talked to his Employer directly about his concerns that he was being belittled by him, but that he chose to let it go instead.

[63] The Claimant agreed that he could have asked his employer for time off to care for his father, but it was never brought to his attention and he never asked.

[64] The Claimant agreed that he could have remained employer looked for alternate employment before quitting, but that he was not available to work in June 2019 because his father was in the hospital.

[65] I acknowledge that he raised some of his concerns to the MOL after his left his employment, but did not appear to follow up on them after the vacation pay was paid.

[66] Considering all of the circumstances that existed at the time that the Claimant voluntarily left his employment, he did not have just cause. There were three reasonable alternatives, which he did not dispute. This means the Claimant is disqualified from receiving EI benefits.

CONCLUSION

[67] The appeal is allowed.

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	May 26, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. B., X Appellant (Employer) M. G., Added Party (Claimant)