



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *AG v Canada Employment Insurance Commission*, 2020 SST 676

Tribunal File Numbers: GE-20-1409 and GE-20-1410

BETWEEN:

**A. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

---

DECISION BY: Normand Morin

HEARD ON: June 30, 2020

DATE OF DECISION: July 17, 2020

## **DECISION**

[1] The appeal is allowed.

[2] I find that the Appellant had just cause for voluntarily leaving his employment.<sup>1</sup> His disqualification from Employment Insurance benefits, as of October 13, 2019, is therefore not justified.<sup>2</sup>

[3] I find that imposing a penalty on the Appellant for knowingly making false or misleading statements is not justified.<sup>3</sup>

[4] I find that issuing a notice of violation to the Appellant, after a penalty was imposed on him for committing an act or omission, is not justified.<sup>4</sup>

## **OVERVIEW**

[5] From February 2015, to October 18, 2019, inclusive, the Appellant worked several periods of employment as a resilient floor installer for the employer X<sup>5</sup> (employer). His last period of employment was from January 14, 2019, to October 18, 2019. He stopped working after he voluntarily left. On October 23, 2019, he made a renewal claim for Employment Insurance benefits.

[6] On February 24, 2020, the Canada Employment Insurance Commission (Commission) told him that it had reconsidered his claim for Employment Insurance benefits with the start date of January 27, 2019. It told him that it could not pay him Employment Insurance regular benefits as of October 13, 2019, because he had voluntarily stopped working for the employer on October 18, 2019, without good cause within the meaning of the Act. It told him it had found that he had knowingly made false statements, and imposed a \$1,686.00 penalty on him. The Commission also told him that a notice of “very serious” violation had been issued to him.<sup>6</sup>

---

<sup>1</sup> Sections 29 and 30 of the *Employment Insurance Act* (Act).

<sup>2</sup> Sections 29 and 30 of the Act.

<sup>3</sup> Section 38 of the Act.

<sup>4</sup> Section 7.1 of the Act.

<sup>5</sup> X.

<sup>6</sup> See GD3-23 to GD3-26 of file GE-20-1409 and GD3-24 to GD3-26 of file GE-20-1410.

[7] The Appellant explains that, on October 18, 2019, he was tasked with polishing concrete with another employee, but the other employee did not show up for work. He explains that he told the employer that he could not do that job alone. The Appellant says that his boss became angry, yelled at him, and disrespected him by swearing at him and telling him to leave. The Appellant went home after that incident and did not return to work for the employer. He says that his boss had been disrespectful toward him several times in the past. According to the Appellant, his boss frequently lost his temper with employees. He submits that the employer psychologically harassed him. The Appellant also argues that, normally, he was not allowed to polish concrete because he did not have the competency certificate for that type of work. Also, some of his work hours were not reported to the Commission de la construction du Québec [Quebec's construction commission] (CCQ). He says he is certified as a resilient floor installer. Concerning the false statements he is accused of making, the Appellant explains that he reported the amounts he had received in his bank account from the employer. He says that he did not know that he had to report the gross amounts he had received. The Appellant also argues that, when he filled out his claim for benefits, he indicated, out of habit, that he had stopped working due to a shortage of work and not that he had voluntarily left his job. He says he did that because he knew that, that way, he would receive benefits. On April 16, 2020, the Appellant disputed the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

## **PRELIMINARY MATTERS**

[8] I note that the appeals with the file numbers GE-20-1409 and GE-20-1410 were joined<sup>7</sup> because these appeals raise a common question of law or fact. In this case, the question of law or fact common to both appeal files relates to the same benefit period and the same appellant.

## **ISSUES**

[9] In this file, I have to determine whether the Appellant had just cause for voluntarily leaving his job.

---

<sup>7</sup> Provisions set out in section 13 of the *Social Security Tribunal Regulations*.

[10] I have to answer these questions:

- 1) Does the Appellant's termination of employment amount to voluntary leaving?
- 2) If so, was voluntarily leaving the only reasonable alternative in the Appellant's case?

[11] I also have to determine whether imposing a penalty on the Appellant for committing an act or omission by knowingly making false or misleading statements is justified.

[12] I have to answer these questions:

- 1) Did the Appellant make false or misleading statements?
- 2) If so, did the Appellant know his statements were false or misleading?
- 3) Did the Commission exercise its discretion judicially when it imposed a penalty on the Appellant?

[13] I also have to determine whether issuing a notice of violation to the Appellant, after a penalty was imposed on him for committing an act or omission, is justified.

[14] I have to answer this question:

- 1) Did the Commission exercise its discretion judicially when it issued a notice of violation to the Appellant?

## **ANALYSIS**

### **Voluntary Leaving**

[15] Federal Court of Appeal (Court) decisions indicate that the test for determining whether a claimant had just cause for leaving their employment is whether, having regard to all the

circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving.<sup>8</sup>

**Issue 1: Does the Appellant's termination of employment amount to voluntary leaving?**

[16] Yes. I find that, in this case, the Appellant's termination of employment does amount to voluntary leaving under the Act.

[17] I find that the Appellant had the choice of continuing to work for the employer, but he chose to voluntarily leave his job.

[18] The Court informs us that, in a case of voluntary leaving, it must first be determined whether the person had the choice of staying at their job.<sup>9</sup>

[19] The Appellant's statements indicate that he voluntarily left his job.<sup>10</sup>

[20] I find that the Appellant had the opportunity to continue the employment he had with the employer. He took the initiative of ending the employment relationship when he stopped going to work after October 18, 2019.

[21] I now have to determine whether the Appellant had just cause for voluntarily leaving his job and whether it was the only reasonable alternative in his case.

**Issue 2: Was voluntarily leaving the only reasonable alternative in the Appellant's case?**

[22] Yes. I find that voluntarily leaving was the only reasonable alternative in the Appellant's case.

---

<sup>8</sup> The Court established this principle in the following decisions: *White*, 2011 FCA 190; *Macleod*, 2010 FCA 301; *Imran*, 2008 FCA 17; *Peace*, 2004 FCA 56; *Laughland*, 2003 FCA 129; *Astronomo*, A-141-97; *Landry*, A-1210-92.

<sup>9</sup> The Court established this principle in *Peace*, 2004 FCA 56.

<sup>10</sup> Notice of Appeal, request for reconsideration, Appellant's statement to the Commission—GD2-3, GD2-4, GD3-21, GD3-22, and GD3-27 of file GE-20-1409; GD2-3, GD2-4, GD3-21 to GD3-23, and GD3-29 of file GE-20-1410.

[23] In this case, I find that the Appellant had just cause for voluntarily leaving his job because of “undue pressure by an employer” to do so.<sup>11</sup>

[24] I find the Appellant’s testimony credible. The Appellant gave complete and detailed reasons for his voluntary leaving. His testimony is precise and without contradictions. The Appellant gave reasons why he could not do the concrete polishing work the employer asked him to do on October 18, 2019, and said that he told the employer this in a respectful way.

[25] The Appellant’s testimony and statements to the Commission indicate the following:

- 1) The Appellant argues that handing in his resignation was the reasonable alternative for him.<sup>12</sup>
- 2) The Appellant explains that, when he went to work on October 18, 2019, he had to continue the concrete polishing work that he had started the day before with a co-worker. This co-worker did not show up for work. The Appellant told his boss, J. M., that he did not want to do the polishing job alone. He asked the boss whether another employee could help him with the job. He said he talked to his boss the right way. The Appellant notes that this type of work requires two people. The Appellant explains that it is normal that he refused to do this work alone. He has to lift machines that weigh several hundred pounds (more than 300 pounds) and transport them using a trailer and truck. According to the Appellant, the boss was unorganized.<sup>13</sup>
- 3) The Appellant explains that the boss, who was angry about the situation, gave him hell and was [translation] “in [his] face”. The boss yelled at him, told him to leave, and told him to [translation] “fuck off.” The Appellant says that, three times, the boss disrespected him and [translation] “told [him] off” with [translation] “foul language” or [translation] “swear words,” talking to him a few inches from his face. The Appellant explains that the boss told him to [translation] “fuck off,” because he did not respond to what he was saying, and that he let him [translation] “say his piece.”

---

<sup>11</sup> Section 29(c)(xiii) of the Act.

<sup>12</sup> See GD2-3 and GD2-4 of files GE-20-1409 and GE-20-1410.

<sup>13</sup> See GD3-21, GD3-22, and GD3-29 of file GE-20-1409 and GD3-21 to GD3-23 of file GE-20-1410.

He submits that the boss made veiled threats to him and that he was arrogant and aggressive toward him. The Appellant says that he was respectful to his boss and did not swear at him. The Appellant says that he did not say a word while his boss was disrespecting him, which made the boss even angrier. He says that he does not remember everything his boss said to him but that he told him, among other things: [translation] “Fuck you, asshole [...]. The best job you’ve ever had in your life [...].”<sup>14</sup>

- 4) The Appellant explains that he let the boss [translation] “say his piece,” as he often did when his days were not going the way he wanted. He then gave his boss the company credit card and the truck keys, got in his car, and went home. He says that he made the decision to stop going to work after the incident on October 18, 2019. He explains that he hoped that his boss would call him back, apologize to him, and talk to him like an adult. His boss did not do that and gave him his “4%” (vacation pay) the next week. The Appellant says that his job ended like that, after several years of friendship with his boss.<sup>15</sup>
- 5) The Appellant explains that, contrary to what the employer said,<sup>16</sup> he was not negative when he arrived at work and did not swear because of the work he had to do. He says that he never cursed at his boss, or he would have been fired or given a warning. The Appellant notes that he does not curse in general. He says that he never received any disciplinary warnings or complaints during his four or five years with the employer. The Appellant notes that the employer called him back to work after his periods of unemployment and that he worked for the employer for four or five years because he was a good employee. The Appellant says that his boss is telling lies. He also says that, even though J. O. (administrative assistant) said that she witnessed the incident between him and his boss on October 18, 2019,<sup>17</sup> she was not in the office that morning. The Appellant argues that the Commission relied on a

---

<sup>14</sup> See GD2-3, GD2-4, GD3-21, GD3-22, GD3-27, and GD3-29 of file GE-20-1409 and GD2-3, GD2-4, GD3-21 to GD3-23, and GD3-29 of file GE-20-1410.

<sup>15</sup> See GD2-3, GD2-4, GD3-27, and GD3-29 of file GE-20-1409 and GD2-3, GD2-4, and GD3-29 of file GE-20-1410.

<sup>16</sup> See GD3-30 and GD3-31 of file GE-20-1409.

<sup>17</sup> See GD3-30 of file GE-20-1409.

telephone conversation with the employer during which the employer was able to deny what it said.<sup>18</sup>

- 6) The Appellant explains that it was not the first time that his boss had been disrespectful toward him. He frequently lost his temper. The Appellant notes that, some days his boss could be [translation] “really nice,” and others all he did was shout. He explains that, the morning of October 18, 2019, was the [translation] “final straw” and that things [translation] “exploded.” The Appellant says that it was the accumulation of things because he had endured this situation for four years. He says that his boss had been disrespectful toward him dozens of time. The Appellant explains that he had already told his boss that he did not have to curse at him or [translation] “flip out” when he talked to him. He says that, when his boss was angry with him or used inappropriate language toward him (for example, cursing, throwing tools at the wall, kicking garbage bins), he let him do it. The Appellant explains that he liked his job but that he was no longer able to endure this situation and work in that environment. He states that the situation caused him to have depression. According to the Appellant, he was being psychologically harassed. He submits that he was a [translation] “punching bag” for his boss, as was the case for other employees. He says that, in the summer of 2019, during his shift and before the break, he had to go to the bathroom, and the boss told him that he was not allowed to go at that time. The Appellant says that he did not complain about or report his boss’s behaviour to an organization like the Commission des normes, de l’équité, de la santé et de la sécurité du travail [Quebec’s labour standards commission] (CNESST) about his boss’s behaviour. He did not want to cause problems for the employer. He notes that his boss was his childhood friend.<sup>19</sup>
- 7) The Appellant says that the boss was also disrespectful toward other employees and that several of them had left their jobs because of the way he was. The Appellant says

---

<sup>18</sup> See GD2-3 and GD2-4 of files GE-20-1409 and GE-20-1410.

<sup>19</sup> See GD2-3, GD2-4, GD3-21, GD3-22, and GD3-29 of file GE-20-1409 and GD2-3, GD2-4, and GD3-21 to GD3-23 of file GE-20-1410.



he believes that the work of a construction contractor can be very stressful but that there is a way to speak to employees, which his boss does not know how to do.<sup>20</sup>

- 8) The Appellant explains that he does not have his competency card (competency certificate from the Commission de la construction du Québec [Quebec’s construction commission]—CCQ) for performing concrete polishing work. He says that, normally, he is not allowed to do that type of work because you have to have a competency certificate as a [translation] “cement finisher,” which he did not have. The Appellant notes that he is a resilient floor installer and that he has an [translation] “apprentice 1” competency card (apprentice competency certificate—CCA) for this trade. He has worked in this field for 10 years. The Appellant notes that he has done concrete polishing, even though it was not his area of expertise, and that he did not like the work. The Appellant says that the hours he worked polishing concrete were not reported or registered with the Commission de la construction du Québec [Quebec’s construction commission] (CCQ). According to the Appellant, that is why he still had [translation] “apprentice 1” status and not [translation] “journeyman” status (journeyman competency certificate—CCC) or [translation] “apprentice 3” status after five years of work. He says the employer was taking advantage of the situation. The Appellant says that he did not tell the CCQ or the Syndicat québécois de la construction [Quebec’s construction union] (SQC) because he did not want to hurt his boss or get him in trouble because he was one of his friends and out of respect for him. He did not want it to come to that.<sup>21</sup>

[26] The employer’s statements to the Commission indicate the following:

- 1) On February 11, 2020, the employer (J. O., administrative assistant) explained that the Appellant had left his job because he did not want to do the concrete polishing work he had been assigned. It explained that the Appellant was a resilient floor installer. The employer said that, when there was no resilient floor to lay, employees

---

<sup>20</sup> See GD3-21, GD3-22, and GD3-27 of file GE-20-1409 and GD3-21 to GD3-23 and GD3-29 of file GE-20-1410.

<sup>21</sup> See GD2-3, GD2-4, GD3-21, and GD3-22 of file GE-20-1409 and GD2-3, GD2-4, and GD3-21 to GD3-23 of file GE-20-1410.

polished concrete. They know that this type of work is part of their duties. The employer said that, when the Appellant left his job, there was no floor to lay. It said that the Appellant had a discussion with his boss, and the boss told him that he was in a dilemma and that, if he was unhappy, it was his decision. The employer said that the Appellant was a good employee, but he did not return to work.<sup>22</sup>

- 2) On March 25, 2020, the employer (J. O.) explained that it had witnessed a dispute between the Appellant and his boss (J. M.). The employer said that, the morning of October 18, 2019, the Appellant arrived at work complaining because he did not like the type of work he had to do. The employer said that the Appellant said: [translation] “That job is shit. [...] I don’t want to do that fucking job,” using profanities the whole time. The employer explained that his boss tried to reason with him and explain without shouting that, because it was the off-season, this was the type of work (concrete polishing) they had to do. The employer said that the Appellant and his boss knew each other well. The employer explained that the Appellant went to his truck, and before he left, the boss went to see him to try to reason with him and get him to come back to work. The employer said that it did not know what was said at that time but that the Appellant did not come back after that. The employer said that the Appellant was a [translation] “complainer” and that he created a bad atmosphere at work, like a [translation] “bad apple.” The employer said that the boss expected the Appellant to call him back but that he never did.<sup>23</sup>
- 3) On March 25, 2020, J. M., the Appellant’s boss, told the Commission that a dispute had occurred between him and the Appellant on October 18, 2019. J. M. said that, that day, the Appellant had arrived at work and was complaining about the work to do. He says that the Appellant said: [translation] “Fucking boring job. Why are you calling me to do that shit job [...] I don’t have my tools.” J. M. said it was the Appellant who was disrespectful and shouted at him in front of other employees. J. M. said that it was the final straw and that things had become intolerable. So, he

---

<sup>22</sup> See GD3-19 and GD3-20 of files GE-20-1409 and GE-20-1410.

<sup>23</sup> See GD3-30 of file GE-20-1409.

said to the Appellant: [translation] “That’s enough. Either you get lost or you stay and work.” J. M. said that he may have told the Appellant to [translation] “fuck off.” He says he does not remember the exact words he used but that the language was not respectful. J. M. explained that he did not want to [translation] “get rid of” the Appellant because he has a serious worker shortage. He would have preferred that the Appellant stay on, but he did not do that. He noted that the Appellant had left before to take advantage of benefits and then returned to work. J. M. said that the Appellant often threatened that he would not return to work and tell him that he would have to find someone else. J. M. said that the Appellant has had behaviour and attitude problems for a long time. He said that the Appellant often complained, that he was negative, and that he was often disrespectful in front of other employees. J. M. explained that another employer would never have put up with a situation like this for as long as he had. He said that the Appellant had been warned many times about his clothing and the fact that he did not bring his tools to work.<sup>24</sup>

[27] In this case, I put the most weight on the Appellant’s testimony and statements.

[28] The employer does not explain why the Appellant did not want to do the concrete polishing work that he was asked to do on October 18, 2019. The employer just said that it was one of the tasks that the Appellant was required to do as part of his duties.

[29] The Appellant’s testimony, which was not contradicted, indicates that he had done this type of work the day before, on October 17, 2019, with a co-worker’s help, and that he had told the employer that he could not continue the work without another employee’s help, given his co-worker’s absence.

[30] I also find contradictory the employer’s statements about the circumstances that led to the Appellant leaving his job and the nature of the exchanges they had on the subject, as well as about how he felt about his work.

---

<sup>24</sup> See GD3-31 of file GE-20-1409.

[31] In her February 11, 2020, statement to the Commission, J. O. explained that, on October 18, 2019, the Appellant talked to his boss, and the boss told him that, if he was unhappy at work, it was up to him to make a decision about his job. J. O. noted that the Appellant was a good employee.<sup>25</sup>

[32] In her statement to the Commission on March 25, 2020, for the reconsideration of the Appellant's file, J. O. talked about a dispute that occurred on October 18, 2019, between the Appellant and his boss, which she says she witnessed. She said that the Appellant used profanities to indicate that he did not appreciate the work he had to do. J. O. said that the boss, J. M., spoke to the Appellant, without shouting, to reason with him and explain the work to do. She then said that she did not remember whether J. M. told the Appellant to [translation] "fuck off," but she did not deny that he did say that. J. O. also said that J. M. joined the Appellant at his truck before the Appellant left the worksite, but she said she did not know what was said then. In her statement, J. O. compared the Appellant to a [translation] "rotten apple," given that he was a [translation] "complainer" and because he created a bad atmosphere at work.<sup>26</sup>

[33] I find it ironic, to say the least, that J. O., who says she witnessed the incident that occurred between the Appellant and his boss, first talked about a discussion between the two of them. Then, in her later statement, she said that it was a dispute and that the Appellant had used profanities, but she said she did not remember what was said between them. I also find it ironic that the employer compares the Appellant to a [translation] "rotten apple" after noting that he was a good employee. I find that the employer is making this comparison to try to undermine the Appellant's version of events that he gave the Commission.

[34] I find that the employer's contradictions in its version of the incident that occurred on October 18, 2019, between the Appellant and his boss undermine the credibility of its statements. As a result, these contradictions support the Appellant's arguments that he had just cause for leaving his job.

---

<sup>25</sup> See GD3-19 and GD3-20 of files GE-20-1409 and GE-20-1410.

<sup>26</sup> See GD3-30 of file GE-20-1409.

[35] I note that J. M.'s statement indicates that he used curse words when he spoke to the Appellant. J. M. also said that he may have told the Appellant to [translation] "fuck off."<sup>27</sup>

[36] I also find that J. M.'s statement that the incident that occurred with the Appellant on October 18, 2019, was the [translation] "final straw" and that the situation had become [translation] "intolerable," shows that he did not want to keep the Appellant employed, even though he said that he did not want to lose the Appellant. I find that his remarks show that he wanted the Appellant to leave his job.<sup>28</sup>

[37] I also find that the shortcomings that the employer attributes to the Appellant (for example, his clothing, the fact that he does not have his tools), and its opinion that the Appellant did not want to work so he could take advantage of receiving Employment Insurance benefits,<sup>29</sup> were meant to give the Commission reasons to deprive the Appellant of his right to receive benefits.

[38] In this case, I find that, by using inappropriate or disrespectful language to tell the Appellant to leave because he did not want to do the concrete polishing work he was asked to do, the employer put "undue pressure" on the Appellant to leave his job.<sup>30</sup>

[39] I accept the Appellant's statements that the boss was disrespectful toward him by shouting in his face to tell him to leave.

[40] I accept the Appellant's explanation that, on October 18, 2019, he used respectful language with his boss and did not swear when he said he not want to do the concrete polishing work that he had started the day before with another employee.

[41] I find that, objectively, an employer should not use inappropriate language with swear or curse words, when speaking with an employee or commenting on their work. In doing so, the employer breaks the relationship of trust with its employee.

---

<sup>27</sup> See GD3-31 of file GE-20-1409.

<sup>28</sup> See GD3-31 of file GE-20-1409.

<sup>29</sup> See GD3-31 of file GE-20-1409.

<sup>30</sup> Section 29(c)(xiii) of the Act.

[42] I find that telling the Appellant: [translation] “[...] Either you get lost or you stay and work,” as his boss did,<sup>31</sup> is not an acceptable way to ask someone to do a job, but rather a direct invitation for the Appellant to leave his job.

[43] I also accept the Appellant’s statement that he did not reply to his boss after the boss was disrespectful toward him because of the language he used, telling him, among other things: [translation] “Fuck you, asshole [...]”

[44] I find that the Appellant explained to the employer why he could not do the concrete polishing work that it had asked him to do on October 18, 2019. The Appellant’s co-worker was absent that day. I find that the Appellant’s explanations show that he could not do the work without another employee’s help, given the physical demands of the job (for example, the weight of the equipment used). I note that the Appellant had agreed to do the work the day before with his co-worker’s help. He was not automatically opposed to it.

[45] The Appellant’s testimony also indicates that he was not allowed to do the concrete polishing work because he did not have the competency certificate from the Commission de la construction du Québec [Quebec’s construction commission] (CCQ) to do this type of work. The employer did not contradict this testimony. The Appellant notes that a competency certificate as a [translation] “cement finisher” is required to do that type of work, and his certificate indicates that he is a [translation] “resilient floor installer.”

[46] I also accept that the Appellant tried in the past to get his boss to stop shouting at him or disrespecting him but that his efforts were unsuccessful.

[47] I find that the Appellant’s situation at work had become such that he had no choice but to leave his job when he did.

[48] I find that the Appellant’s decision to voluntarily leave his job was the only reasonable alternative in his case.

---

<sup>31</sup> See GD3-31 of file GE-20-1409.

[49] The Court established the principle that, where the claimant has met the burden of proving that they had no reasonable alternative to leaving their employment when they did, the test for just cause under section 29(c) of the Act has been met.<sup>32</sup>

[50] I find that the Appellant has shown that he had just cause for voluntarily leaving his job because of “undue pressure by an employer.”<sup>33</sup>

[51] The appeal is allowed on this issue.

### **False or Misleading Statements**

[52] Court decisions have confirmed the principle that a false or misleading statement is made only where claimants have subjective knowledge of the falsity of the information given or representations made by or about them.<sup>34</sup>

[53] The Court specified how the Commission may have just cause for setting guidelines for the imposition of penalties to guarantee some consistency nationally and avoid arbitrariness in such matters.<sup>35</sup>

#### Issue 1: Did the Appellant make false or misleading statements?

[54] Yes. In this case, I find that the Appellant made false or misleading statements when he reported the amount of money that he received from the employer from the week starting February 3, 2019, to the week starting April 28, 2019.<sup>36</sup>

[55] In its submissions on this issue, the Commission argues that the Appellant made a false statement because he reported that he had stopped working for the employer because of a shortage of work and not because he had voluntarily left his job.<sup>37</sup>

---

<sup>32</sup> The Court established this principle in the following decisions: *White*, 2011 FCA 190; *Taiga Works-Wilderness Ltd. v Lau*, 2008 FCA 275.

<sup>33</sup> Section 29(c)(xiii) of the Act.

<sup>34</sup> The Court established this principle in the following decisions: *Mootoo*, 2003 FCA 206; *Gates*, A-600-94; *Purcell*, A-694-94.

<sup>35</sup> The Court established this principle in *Gagnon*, A-52-04.

<sup>36</sup> See GD3-22, GD3-24, and GD3-25 of file GE-20-1410.

<sup>37</sup> See GD4-4 to GD4-8 of file GE-20-1410.

[56] However, it was not about this that the Commission made its decision concerning the Appellant's false or misleading statements. I note that the Commission's decision on this issue concerns only the fact that the Appellant failed to report some of his earnings from the employer as wages from the week starting February 3, 2019, to the week starting April 28, 2019.<sup>38</sup>

[57] In that decision, the Commission does not state that he was accused of making a false statement because he failed to report that he had voluntarily left his job in his claim for benefits or that a penalty had been imposed on him for that reason.<sup>39</sup>

[58] I do not accept the Commission's finding that the Appellant made a false statement because he reported that he had stopped working for the employer because of a shortage of work.<sup>40</sup> This finding does not correspond to the Commission's decision on this issue.

[59] As a Tribunal member, I am bound by the Commission's reconsideration decision. I cannot comment on an issue that was not before me.

[60] Therefore, I will not give a decision about the fact that, when he filled out his claim for benefits, the Appellant indicated that he had stopped working for the employer because of a shortage of work and not that he had voluntarily left his job. My decision is based on the evidence in the Commission's decision.<sup>41</sup>

[61] I find that the evidence gathered by the Commission shows that the Appellant made false or misleading statements when he reported the amounts of money that he received from the employer for the period in question.

Issue 2: Did the Appellant know that his statements were false or misleading?

[62] No. I find that the Appellant did not know that his statements were false or misleading when he reported the amounts of money that the employer paid him from the week starting February 3, 2019, to the week starting April 28, 2019.

---

<sup>38</sup> See GD3-24 and GD3-25 of file GE-20-1410.

<sup>39</sup> See GD3-24 and GD3-25 of file GE-20-1410.

<sup>40</sup> See GD4-4 to GD4-8 of file GE-20-1410.

<sup>41</sup> See GD3-24 and GD3-25 of file GE-20-1410.



[63] The Appellant explains that he reported the amounts that he had received in his bank account. He says that he did not know that he had to report the gross amounts that he had received. For the week starting March 31, 2019, where no earnings were reported, the Appellant explains that he must have had the wrong week.<sup>42</sup>

[64] In its decision record, the Commission explains that the earnings that the Appellant misreported were not considered an act or omission since he reported the net amounts instead of the gross amounts, and he had failed to report the amounts for only one week.<sup>43</sup>

[65] I find that the Appellant did not knowingly make false or misleading statements.

Issue 3: Did the Commission exercise its discretion judicially when it imposed a penalty on the Appellant?

[66] No. The Commission did not exercise its discretion judicially when it imposed a penalty on the Appellant. The Commission failed to consider the overall relevant facts in the file.

[67] The Court has confirmed the principle that the Commission has the discretion to impose the penalty set out in section 38(1) of the Act. Furthermore, the Court has stated that no court, umpire, or tribunal is authorized to intervene with a penalty decision by the Commission as long as the Commission can prove that it exercised its discretion “judicially.” In other words, the Commission has to show that it acted in good faith, taking into account all relevant factors and ignoring any irrelevant factors.<sup>44</sup>

[68] In this case, I determined that the Appellant did not knowingly make false or misleading statements when he reported the amounts that he received from the employer for the period in question.

[69] I find that the Commission did not consider the fact that the decision it made concerning the Appellant’s false statements dealt with the amounts that he claimed he received from the employer for that period.

---

<sup>42</sup> See GD3-21 and GD3-22 of file GE-20-1409 and GD3-21 to GD3-23 of file GE-20-1410.

<sup>43</sup> See GD3-34 of file GE-20-1410.

<sup>44</sup> The Court established this principle in the following decisions: *Uppal*, 2008 FCA 388; *Tong*, 2003 FCA 281.

[70] The Commission also did not consider its finding that the Appellant's misreported earnings were not considered an act or omission since he had reported the net amounts instead of the gross amounts, and he had failed to report the amounts for only one week.<sup>45</sup>

[71] The appeal is based on the issue of false or misleading statements.

### **Notice of Violation**

#### Issue 1: Did the Commission exercise its discretion judicially when it issued a notice of violation to the Appellant?

[72] No. I find that the Commission did not exercise its discretion judicially when it issued a notice of violation to the Appellant.

[73] The Court has determined that, when a situation requires imposing a penalty, a notice of violation is not required or automatic, and the Commission can exercise its discretion in the circumstances.<sup>46</sup>

[74] Since I determined that the Appellant did not knowingly make false or misleading statements, issuing a notice of violation is not justified in the circumstances.<sup>47</sup>

[75] The appeal has merit on this issue.

### **CONCLUSION**

[76] I find that, having regard to all the circumstances, the Appellant had just cause for voluntarily leaving his job and that it was the only reasonable alternative in his case.<sup>48</sup> His voluntary leaving was justified because of "undue pressure by an employer" to leave his job.<sup>49</sup> The Appellant's disqualification from benefits is therefore not justified.

---

<sup>45</sup> See GD3-34 of file GE-20-1410.

<sup>46</sup> The Court established this principle in *Gill*, 2010 FCA 182.

<sup>47</sup> Section 7.1 of the Act.

<sup>48</sup> Sections 29 and 30 of the Act.

<sup>49</sup> Section 29(c)(xiii) of the Act.

[77] I find that the Appellant did not knowingly make false or misleading statements.<sup>50</sup>  
Imposing a penalty on the Appellant is therefore not justified.<sup>51</sup>

[78] I find that the notice of violation that was issued to the Appellant after a penalty was imposed on him for committing an act or omission is not justified.<sup>52</sup>

[79] The appeal is allowed.

Normand Morin  
Member, General Division – Employment Insurance Section

HEARD ON:	June 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. G., Appellant

---

<sup>50</sup> Section 38 of the Act.

<sup>51</sup> Section 38 of the Act.

<sup>52</sup> Section 7.1 of the Act.