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

Citation: *VD v Canada Employment Insurance Commission and X*, 2020 SST 1111

Tribunal File Number: GE-20-1576

BETWEEN:

V. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Noonan

HEARD ON: July 13, 2020

DATE OF DECISION: July 17, 2020

Canada

[1] The Appellant, V. D., a former bakery worker. in ON, was upon reconsideration by the Commission, as requested by the employer, notified that having examined his claim, which became effective on February 23, 2020, they are unable to pay him Employment Insurance regular benefits because he voluntarily left his job with X on February 25, 2020 without just cause within the meaning of the Employment Insurance Act. The Commission is of the opinion that voluntarily leaving his job was not his only reasonable alternative. The Appellant asserts that he had to resign due to working conditions and an antagonistic relationship with his employer. The Tribunal must decide if the Appellant should be denied benefits due to his having voluntarily left his employment without just cause as per section 29 of the Act.

DECISION

[2] The appeal is dismissed.

ISSUES

[3] Issue # 1: Did the Appellant voluntarily leave his employment with X on February 25, 2020?

Issue #2: If so, was there just cause?

ANALYSIS

[4] The relevant legislative provisions are reproduced at GD-4.

[5] A claimant is disqualified from receiving EI benefits if the claimant voluntarily left any employment without just cause (Employment Insurance Act (Act), subsection 30(1)). Just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances (Act, paragraph 29(c)).

[6] The Respondent has the burden to prove the leaving was voluntary and, once established, the burden shifts to the Appellant to demonstrate he had just cause for leaving. To establish he had just cause, the Appellant must demonstrate he had no reasonable alternative to leaving, having regard to all of the circumstances **(Canada (Attorney General) v. White, 2011 FCA**

190; Canada (Attorney General) v. Imran, 2008 FCA 17). The term "burden" is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is "more likely than not" the events occurred as described.

Issue #1: Did the Appellant voluntarily leave his employment with X on February 25, 2020?

[7] For the leaving to be voluntary, it is the Appellant who must take the initiative in severing the employer-employee relationship.

[8] When determining whether the Appellant voluntarily left his employment, the question to be answered is: did the employee have a choice to stay or leave (**Canada (Attorney General) v. Peace, 2004 FCA 56).**

[9] Both parties here agree the Appellant voluntarily left this employment with X on February 25, 2020.

[10] I must now determine the circumstances that led to the Appellant's unemployment.

[11] The Appellant worked in a bakery which is attached to the owner/employer's home.

[12] At GD2 and through the initial application process, the Appellant stated that the work environment caused him stress, physically and mentally.

[13] A number of the Appellant's former co-workers submitted statements regarding the Appellant, the employer and the workplace conditions.

[14] While the Tribunal can accept hearsay evidence, I have to also assign what degree of weight to give to such evidence.

[15] There are a number of inconsistences in the submissions between what the Appellant and the others portray regarding working conditions.

Issue #2: If so, was there just cause?

[16] No.

[17] The Appellant here had indicated that he left his employment due to the conditions outlined at GD2-9-10. I will now address each.

1. No lunch breaks While the Appellant asserts he was not given lunch breaks he further states he sat on the steps and ate his lunch. When he referred to Provincial Standards regarding same, he used the criteria regarding an 8 hour work day which was not the case here. The employer, at the hearing, rebutted the Appellant's claim and stated he was repeatedly told he could use the family dining room to have his lunch and associated break. He did not refute this statement.

2. Reprimanded for entering building early The Appellant had keys to the building and could enter at will. The employer stated that the only incident where she was upset occurred when the Appellant entered the home at 7 AM, while she was still in bed, and used the washroom. This statement was not rebutted by the Appellant.

3. Messy worker This is a trivial matter easily worked out by reasonable adults in the workplace.

4. Washroom This issue did not seem to be an issue during the time the Appellant worked there until he decided to leave. I agree that facing three dogs on your way to or from the washroom would be intimidating, but the onus/responsibility is on the Appellant to attempt to mitigate the situation with the employer. I find that since this situation continued throughout his employment, it was not serious to the degree that it would cause him to impulsively leave when he did and finding himself in a position of having no job or income with which to support his four children.

5. The exhaust fan It is the opinion of the Appellant that these fans should be turned on when ovens are in use. The employer rebutted this when she stated that the fans were used when necessary. The air conditioning system kept the workplace cool as it also protected the product. The fans negated this by exhausting all the cool air which kept the employees comfortable.

6. Bakery door left open Again, if the open door had a negative effect on the quality of the employer's product, responsible workers and management should be able to point out and address the issue, it is not grounds to quit the employment.

7. Name calling The employer denies using any derogatory language towards the Appellant. The written submissions by co-workers assert that the employer is a kind and empathic individual who does not degrade her staff. She has high standards for her product and is demanding in that regard, a trait that is required to maintain the quality of her product and her customer base. The Appellant, I am sure, would be complicit in this endeavour.

8. Belittlement by management All submissions by staff with the exception of the Appellant deny that the employer was anything but respectful towards all in her employ. Her demand for high standards is necessary and to be commended. If the Appellant gave a co-worker an incorrect recipe, it is he who should shoulder the blame. Instead he transfers the blame to H, the store manager who was hired as such and who is much younger than the Appellant and probably less experienced, however, it is totally the employer's prerogative who she hires and in what role.

9. Management power struggle There is no evidence before me of any struggle between H and the owner. There may be some issues between the Appellant and management but, again, the obligation is on him to address these issues in an attempt to lessen any negative effect. Being asked to stay behind for a few minutes to set a rodent trap does not constitute a management power struggle especially when the Appellant is paid for his time.

Regarding asking B to cover for him, the employer explained, unrefuted by the Appellant, that B had requested to leave early and her request had been approved. The Appellant, without authorization from the employer or manager, got B to agree to allow him to leave early instead. He was reprimanded for his actions by the employer. The Appellant states that H wanted to make sure that he knew she was in charge. It is reasonable to believe that he should have known she was in charge when she was hired as manager therefore his supervisor.

10. Deliveries While the Appellant did make deliveries for the employer, unrefuted testimony shows that it was not mandatory and he was compensated for making these deliveries.

11. Bullying Again there is no evidence of bullying that would cause the Appellant to quit his employment. The employer, in an effort to assure consistent quality, demands a certain degree of competency in the preparation of her product following her techniques and guidelines. The old adage is relevant here: Rule number 1; the Captain is always right, Rule number 2; if in doubt refer to rule number 1.

12. Not enough hours Testimony at the hearing indicated that January and February are traditionally slow months in the bakery business. There had been a full lay off of staff and as business picked up they returned to their employment. The Appellant asserts that he had been promised 28 hours per week. The ROE used to file his application for benefits shows that he had exceeded these hours for the four week period before the week he quit. GD3-18

The request to return the keys and credit card were made after the Appellant informed the employer that he quit. It is very reasonable to expect these items would not stay in the possession of an individual no longer employed by the business for which they were intended.

13. Weight loss and stress There is no medical evidence before me that would indicate the Appellant was advised by a medical professional to leave his employment when he did due tor physical or mental health issues.

[18] Then we have the request by the Appellant, in early February, 2020 to his employer that his twin fourteen year old daughters could hopefully avail of opportunities for summer employment in the bakery. If the working conditions and the demeanor of the employer were as bad as the Appellant would have me believe, why would he, as a reasonable person, subject his daughters to such conditions. I find that it is more credible that the Appellant made a rash decision to quit his employment and after-words is attempting to justify his decision.

[19] I am giving more weight to the submissions written by the Appellant's co-workers than to the other submissions given by him for his leaving his employment. The information included in the co-workers submissions is consistent with and serves to verify the employer's version of events which had caused the Commission to reverse its original decision upon reconsideration.

[20] That being said, the obligation/onus is on the Appellant, not the employer, to initiate any attempt to mitigate, with the employer, any situation by seeking reasonable alternatives before placing himself in an unemployed situation needing the support of the EI program.

[21] Everyone has the right to leave / quit an employment but that decision does not automatically qualify one to receive EI benefits. It is inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act.

[22] In this case the Appellant neither sought out any type of employment prior to his quit.

[23] I find that the Appellant made a personal choice to leave his employment when he did and although it may have been a good cause for him, it does not meet the standard of just cause required to allow benefits to be paid.

[24] I find that the Appellant had reasonable alternatives available to him other than leave his employment with X when he did. He could have continued this employment and sought out other employment prior to quitting. His leaving when he did not meet any of the allowable reasons outlined in section 29 (c) of the Act.

CONCLUSION

[25] Having given careful consideration to all the circumstances, I find that the Appellant has not proven on a balance of probabilities that he had no reasonable alternative to leaving his job. The question is not whether it was reasonable for the Appellant to leave his employment, but rather whether leaving the employment was the only reasonable course of action open to him **(Canada (Attorney General) v. Laughland, 2003 FCA 129).** Given the Appellant did voluntarily leave his employment I find he had reasonable alternatives to leaving when he did and thus does not meet the test for having just cause pursuant section 29 or the provisions outlined in section 30 of the Act. The appeal is dismissed.

John Noonan

Member, General Division - Employment Insurance Section

HEARD ON:	July 13, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. D., Appellant A. W., Added Party / Employer