



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. M. v Canada Employment Insurance Commission*, 2020 SST 765

Tribunal File Number: AD-20-707

BETWEEN:

**D. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 9, 2020

## DECISION AND REASONS

### DECISION

[1] The Tribunal allows the appeal. The file is returned to the General Division for reconsideration.

### OVERVIEW

[2] The Appellant, D. M. (Claimant), made an initial claim for employment insurance benefits after losing his job. The Respondent, the Canada Insurance Commission of Canada (Commission), determined that the Claimant had lost his job because he was consistently late to work. The Commission decided that the Claimant had lost his job because of his own misconduct. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission decision to the General Division.

[3] The General Division determined that the Claimant had been given a warning about being late. It found that when he was late again, he had deliberately or recklessly created the unemployment situation for which he was dismissed. It determined that punctuality was his own responsibility. He had been warned that being late a second time would result in his dismissal. The General Division concluded that the Claimant's actions constituted misconduct under the *Employment Insurance Act* (EI Act).

[4] The Appeal Division granted leave to appeal to the Claimant. He puts forward that he had the right to have working equipment adequately heated. He submits that he was late because the employer did not respect his rights and failed to give him proper working conditions.

[5] The Tribunal must decide whether the General Division erred in law in its interpretation of sections 29 and 30 of the EI Act.

[6] The Tribunal allows the Claimant's appeal.

## ISSUE

**Did the General Division err in law in its interpretation of sections 29 and 30 of the EI Act?**

## ANALYSIS

### **Appeal Division's mandate**

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[8] 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.<sup>2</sup>

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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.

**Did the General Division err in law in its interpretation of sections 29 and 30 of the EI Act?**

[10] The Claimant puts forward that he had the right to have working equipment adequately heated in cold weather. He argues that he had informed the employer several times of this issue but the employer did not respect his rights and failed to give him proper working conditions. As a result, he became extremely ill. He submits that he was late because of the employer's previous inaction.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242, *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

[11] The Commission is of the opinion that the General Division erred in law in its interpretation of the concept of misconduct, as defined by the Federal Court of Appeal.<sup>3</sup>

[12] The Commission puts forward that the General Division did not analyze the evidence in the file to conclude if the Claimant's act was willful when reaching its decision. The General Division mainly focused on reasonable solutions such as consulting a doctor or calling in sick rather than determining if, the claimant's action of sleeping in, was deliberate or intentional. Therefore, the Commission is of the opinion that the General Division erred in law and that it reached its decision without having regards to the all the facts and evidence of this case.

[13] I also find that the General Division did not appropriately address the Claimant's argument that his tardiness was a direct result of the employer's inaction before the "misconduct". The Federal Court has recently established that, in certain circumstances, the General Division must give some consideration of the employer's conduct prior to the "misconduct" in order to properly assess whether the employee's conduct was intentional or not.<sup>4</sup>

[14] For the above mentioned reasons, I will allow the appeal and return the matter to the General Division for reconsideration.

## CONCLUSION

[15] The appeal is allowed. The file is returned to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

METHOD OF PROCEEDING:	Decision on the record

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<sup>3</sup> *Canada (Attorney General) v Tucker*, [1986] 2 F.C. 329 (F.C.A)

<sup>4</sup> *Astolfi v Canada (Attorney General)*, 2020 FC 30.

APPEARANCES:	D. M., appellant Julie Lachance, representative of the Respondent
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