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

Citation: *ST v Canada Employment Insurance Commission*, 2020 SST 1018

Tribunal File Number: AD-19-690

BETWEEN:

S. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: December 7, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the Claimant's appeal.

OVERVIEW

[2] The Appellant (Claimant) worked for the same employer for over 25 years, and spent the last seven years as a kitchen worker. The employer suspended the Claimant while it performed an investigation into his conduct. After completing the investigation, the employer wanted to dismiss the Claimant for his conduct in the workplace. However, the union negotiated with the employer a settlement agreement to allow the Claimant to retire from work instead of pursuing a grievance.

[3] The Claimant made a claim for employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), disqualified the Claimant from receiving EI benefits because he voluntarily left his employment without just cause. The Commission upheld its decision after reconsideration. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant voluntarily left his employment and that he did not have just cause for voluntarily leaving his employment. It found that multiple reasonable alternatives to leaving existed: the Claimant could have proceeded with the grievance through his union, or could have seen a doctor to obtain direction on whether it was medically necessary for him to leave his employment.

[5] The Appeal Division granted the Claimant leave to appeal. The Claimant puts forward that the General Division erred in law in making its decision and based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[6] I must decide whether the General Division erred when it concluded that the Claimant did not have just cause to voluntary leave his employment.

[7] I dismiss the Claimant's appeal.

ISSUE

[8] Did the General Division make an error in fact or in law when it concluded that the Claimant did not have just cause to voluntary leave his job?

ANALYSIS

Appeal Division's mandate

[9] 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.[1]

[10] 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.[2]

[11] 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 make an error in fact or in law when it concluded that the Claimant did not have just cause to voluntary leave his job?

[12] The Claimant puts forward that the evidence before the General Division does not support its conclusion that he voluntarily left his employment. He argues that the evidence clearly shows that he had been the subject of harassment for years and that the employer forced him to retire. He argues that he is not the party who decided to end the contract of employment.

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

[13] The issue before the General Division was whether the Claimant had just cause to voluntary leave his employment pursuant to section 29 of the *Employment Insurance Act* (EI Act).

[14] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances.

[15] Despite the numerous circumstances described in section 29(c) of the EI Act of what would constitute just cause for voluntarily leaving an employment, the primary question remains the same: did the Claimant have no reasonable alternative to leaving his employment?

[16] During the Appeal Division hearing, the Claimant reiterated much of what he stated to the General Division. He went through a lot of stress and harassment over his years of employment. He felt that the employer was pushing him to retire. He only agreed to retire because he could not handle the grievance process anymore. He had went through a painful grievance process before and his psychiatrist had to prescribe him medication.

[17] The preponderant evidence before the General Division shows that the employer suspended the Claimant while it performed an investigation into his conduct. After the completion of the investigation, the employer wanted to dismiss the Claimant for his conduct in the workplace. However, the union negotiated with the employer a settlement agreement to allow the Claimant to retire instead of pursuing a grievance.

[18] The General Division found that the Claimant had failed to prove that harassment in the workplace occurred, or that the working conditions were so intolerable that he had no option but to resign immediately. It relied on the Claimant's statement that he would not have left his employment if the investigation and possibility of dismissal had not occurred.

[19] The General Division found that the Claimant voluntarily left his employment and that he had reasonable alternatives to leaving his employment, which was to exercise his

right to go through the arbitration process with the assistance of his union or seeing a doctor to obtain direction on whether it was medically necessary for him to leave his employment. It found that the Claimant was not obligated to quit his employment and ought to have exhausted all reasonable alternatives before he quit.

[20] The evidence shows that the Claimant faced the following options: he could have referred his employer's dismissal decision to arbitration since he felt he had a strong case, or choose to retire. The Claimant's union representative met with the employer and, after discussion between all the parties, the Claimant chose the second option. He did not want to go through another grievance process with the employer.

[21] I find that the General Division did not make an error when it concluded from the preponderant evidence that the Claimant voluntarily left his employment and that he had reasonable alternatives. The Claimant could have exercised his right to go through the arbitration process to contest the employer's decision with the assistance of his union or seek medical advice to support his decision to leave his job.[3]

[22] I am also of the view that the Claimant had an obligation to look for work prior to leaving his employment if his working conditions where intolerable. He admittedly did not do look for work.[4] Case law has constantly held that a claimant who is dissatisfied with his working conditions must seek alternative employment prior to leaving.[5]

[23] The Claimant made the decision, with his union representative, to retire from his employment because he did not want to go through another grieving process. The preponderant evidence does not support a conclusion that the employer forced the Claimant to retire. The Claimant voluntarily chose the option to retire instead of referring the employer's dismissal decision to arbitration even tough he felt he had a strong case.

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[3] *Stavropoulos v Canada (Attorney General)*, 2020 CAF 109.
[4] GD3-25, GD3-34.
[5] *O. P. v Canada Employment Insurance Commission*, 2019 SST 675, *D. H. v Canada Employment Insurance Commission*, 2015 SSTAD 954.

[24] For the above-mentioned reasons, I find that the General Division decision is supported by the facts and complies with the law and the decided cases. There is no reason for me to intervene and change that decision.

CONCLUSION

[25] The Tribunal dismisses the Claimant's appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	December 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. T., Appellant Louise Laviolette, representative for the Respondent