Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada
[TRANSLATION]

Citation: *EL et al. v Canada Employment Insurance Commission*, 2021 SST 31

Tribunal File Numbers: GE-20-220
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BETWEEN:

E. L. et al.

Appellants

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: December 15, 2020

DATE OF DECISION: January 6, 2021

Canada

DECISION

[1] The appeal is allowed. The Claimants have shown that they had just cause for voluntarily taking a period of leave from their employment.

OVERVIEW

[2] The employer operates a plant that designs and manufactures cash-in-transit vehicles, police tactical vehicles, and vehicles for transporting beer and batteries.

[3] In 2018, the plant grew significantly. It hired more than 40 employees to meet the demand. At the same time, the X region was at full employment, with an unemployment rate of 4.4%.

[4] Because of the nature of the plant and a shortage of employees, turnover was high. When a large vehicle order was delayed in 2019, the employer had to temporarily lay off employees.

[5] Following discussions with union representatives, it was decided that the most senior employees would be laid off on a voluntary basis for up to 10 weeks, to keep the young employees.

[6] The senior employees who agreed to be laid off applied for Employment Insurance benefits. The Commission[1] established a benefit period for about 20 employees.

[7] In March 2019, the Commission investigated the laid-off employees. It obtained the agreement between the union and the employer. According to the Commission, the employees chose to take a leave of absence during that period.[2] It decided that they were disentitled because they had taken a period of leave from their employment without just cause. A reasonable alternative would have been to stay at their jobs.

[8] According to the Claimants, it was not a leave of absence; they were laid off. As a result, the provisions of the Act[3] do not apply. If the provisions of the Act were to apply, then they had

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[1] Employment Insurance Commission.
[2] Section 32 of the *Employment Insurance Act*.
[3] Section 32 of the *Employment Insurance Act*.

just cause for voluntarily taking a leave of absence. They agreed to take a leave of absence to preserve the plant's viability and competitiveness.

PRELIMINARY MATTER

[9] It was agreed with the Claimants' representative that the appeals would be joined and that a single hearing would be scheduled.[4]

ISSUE

1. Are the Claimants disentitled from receiving Employment Insurance benefits because they voluntarily took a period of leave from their employment without just cause?

ANALYSIS

[10] I have to decide whether the Claimants are disentitled from receiving Employment Insurance benefits because they agreed to be temporarily laid off by the employer.

[11] A claimant who voluntarily takes a period of leave from their employment without just cause is not entitled to receive benefits if the employer authorized it and a return date was agreed on with the employer.[5] The disentitlement ends when the claimant resumes the employment, loses or voluntarily leaves the employment, or accumulates hours of insurable employment with another employer.[6]

[12] I note that the plant manufactures armoured vehicles, tactical vehicles, and vehicles for transporting refrigerated goods. In 2018–2019, the company grew. It hired many people to address the order backlog.

[13] V. L., the director of human resources, testified that, because of the plant's rapid growth and a labour shortage, turnover was high. The company manufactures vehicles for police as well as cash-in-transit and beer transport companies that require training in welding, electronics, and

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[4] Section 13 of the *Social Security Tribunal Regulations* permits the joining of multiple appeals.
[5] Section 32(1) of the *Employment Insurance Act*.
[6] Section 32(2) of the *Employment Insurance Act*.

electricity. Employees also have to be safe and reliable. The company itself trains its employees for certain specialties.

[14] There are three production lines for vehicle design and manufacturing. The company wanted to keep the assembly teams to ensure the quality of its products and its viability.

[15] In 2018, the company faced problems hiring staff. Turnover was due to the fact that the company had to recruit workers who were less qualified. Experienced employees had to make sure that new employees were doing their jobs properly. In addition, because of the high demand, the mentoring of recruits by senior employees was put on hold. Experienced employees were very frustrated.

[16] Then, in late 2018, a client delayed its approval of a large vehicle order. A committee was set up to find a solution. They were overstaffed, but the situation seemed temporary. Given the shortage of qualified labour, a solution needed to be found to ensure the plant's production capacity and employee retention.

[17] The committee considered applying to the Commission for an eight-week Work-Sharing agreement. This meant that 167 employees would be on Work-Sharing. If the proposal was rejected, 70 people would be dismissed. The proposal was unpopular with the more senior employees who were supervising new employees.

[18] Meetings between the union and the employer continued. Another solution was proposed: voluntary dismissals, as provided in the collective agreement. The parties agreed to reverse the order of dismissals.

[19] Actually, each position was analyzed based on the company's needs. For example, if an employee had been in their position for three months but their work was essential, they would not be dismissed.

[20] For the employer, this meant 46 layoffs. It issued Records of Employment, indicating that these were layoffs, whether they were voluntary or not. This approach was intended to keep

experienced employees and meet production needs. If an employee refused to be laid off, they could be moved to a lower-paying job.

[21] The laid-off employees were called back a few weeks later. The employer was able to meet the company's needs and save the jobs.

[22] E. L. has a professional background in electricity. He has worked on the plant's armoured vehicle production line since 2011. He controls the quality of the assembly line.

[23] Delivering quality service requires many years of experience and employer-provided training. In 2018, turnover was high. The workload was heavy, since he had to correct errors.

[24] He agreed to be laid off so that qualified staff could stay. He got confirmation that he would receive Employment Insurance benefits. The agreement was verified by lawyers and the union. While unemployed, he looked at other jobs, but none of them paid as much or were as interesting. He enjoys working in this field.

[25] He saw that two employees had left their jobs permanently. It was not much, and it allowed the plant to retain its expertise and continue production.

[26] A. D. is the president of X's Local 700. This local consists of 39 plants, including the employer's plant. He conducted a survey of workers to determine whether it was open to Work-Sharing. According to the workers and the employer, it would not allow them to keep employees in place. This was specialized work, and labour was not easy to find during this labour shortage period. The problem was bigger at this plant because the work was specialized.

[27] I understand that the plant went through a period of tremendous growth. It hired workers and had to lower its requirements. This resulted in high turnover until a client delayed an order and caused production to stop.

[28] Different scenarios were considered to avoid the worst because of this production slowdown. They went with voluntary 10-week layoffs. The aim was to retain the expertise of the oldest employees who would not leave the plant during the unemployment period and to keep the youngest employees to ensure continuity.

[29] Therefore, some employees who had been there longer but were not needed for the time being agreed to be laid off. Others agreed to be laid off but would have been laid off anyway.

[30] According to the Commission, the Claimants were not laid off. In reality, they voluntarily took a period of leave from their employment without just cause. They are not entitled to receive benefits for that period.[7] They made this choice voluntarily.

[31] According to the Claimants, they were laid off by the employer. It was the employer that took the initiative of laying off workers. They did not ask for leave; they were laid off. As a result, the provisions of section 32 do not apply to the Claimants. This was not a situation where a claimant asked for leave.

[32] However, if I were to find that it was a period of leave, the Claimants submit that it was justified and that their choice was the only reasonable alternative.

[33] I note that the decisions made under section 32[8] involve claimants who took an unpaid leave of absence[9] to return to school or obtain a driver's licence.[10]

[34] I accept that, in this case, the Claimants chose to be laid off to preserve the plant's viability and competitiveness. The employer and the Claimants agreed on a return date, that is, no later than 10 weeks[11] after their leave. As explained above, the agreement included reversing the order of layoffs. Therefore, the most senior employees had the choice of being laid off while taking into account the needs of the plant.

[35] With this in mind, I find that the Claimants voluntarily took a leave of absence. There was an agreement between the parties indicating that they could choose to leave their jobs temporarily to help the plant. And they agreed on a return-to-work date.

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[7] Section 32 of the *Employment Insurance Act*.
[8] *Employment Insurance Act*.
[9] *Canada v Lamonde*, 2006 FCA 44 (CanLII): In this case, the claimant and the employer had agreed that he would take a year's leave without pay to return to his studies full-time. The return date had been agreed on.
[10] *LJ v Canada Employment Insurance Commission*, 2019 SST 278 (CanLII).
[11] Third whereas of the letter of agreement concerning the temporary layoffs—GD3-22. See *Canada v Russel*, 2009 FCA 177 for the application of section 32 of the *Employment Insurance Act*.

[36] I cannot find that they were laid off. This is because a layoff is a unilateral move by the employer. Employees do not have a choice when they are laid off by an employer. In this case, the employees had a choice. Not being laid off by their employer was a possibility.

[37] I understand that some of the Claimants would have been laid off anyway. However, the fact is that they chose to be laid off.

[38] I also understand that the solution of suggesting temporary layoffs was initiated by the employer. However, there was an agreement between the union and the employer that allowed temporary layoffs according to the needs of the plant and of the oldest employees.

[39] I am therefore of the view that the agreement between the union and the employer is more indicative of a period of leave for the employees who agreed to be temporarily laid off.

[40] Now, I will decide whether the Claimants had just cause for voluntarily taking a leave of absence to help the employer run its plant efficiently.[12]

[41] The Act[13] sets out a non-exhaustive list of circumstances I must consider when determining whether there is just cause. The Claimants have to show that it was the only reasonable alternative, having regard to all the circumstances.[14]

[42] According to the Commission, by accepting the employer's voluntary layoff offer, the Claimants placed themselves in an unemployment situation. Case law is clear that Employment Insurance is meant to help workers who experience an unemployment situation that is not voluntary or the result of their conduct. A reasonable alternative would have been to stay at their jobs because of their seniority.

[43] The Commission also submits that, while taking that leave of absence is commendable, the Claimants made a choice freely. They cannot force all taxpayers [*sic*] to take responsibility for it.

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[12] Third whereas of the agreement—GD3-22. See *Canada v Lamonde*, 2006 FCA 44.
[13] Section 29(c) of the *Employment Insurance Act*.
[14] *Canada v Lessard*, 2002 FCA 469.

[44] In support of its position, the Commission cited *Martel*[15] to note that Employment Insurance provides compensation for any insured who involuntarily finds himself unemployed.

[45] I make a distinction between that case and the one before me. In *Martel*, the claimant voluntarily left his employment to attend training. The Court[16] found that leaving an employment to take a training course that is not authorized by the Commission does not constitute just cause under the Act. That is not the case here. I agree with the Claimants that *Martel* is not relevant in determining whether the leave was justified.

[46] In *White*,[17] the claimant voluntarily left her job because of significant changes in her duties. The Court noted that determining whether a claimant had just cause for voluntarily leaving an employment involves asking whether, having regard to all the circumstances, the claimant had no reasonable alternative to leaving.

[47] In *Debono*,[18] the claimant lost her job because of her misconduct. That is not relevant to this case.

[48] *Lamonde*[19] is the only case that deals directly with section 32 of the Act. I note that, in *Lamonde*, the claimant asked for a year's leave to return to school. In short, I am of the view that the Commission's decisions are not relevant to this case.

[49] The Claimants, in turn, submit that they had just cause for taking a leave of absence. In fact, it was the only reasonable alternative, having regard to all the circumstances. They wanted to ensure the plant's productivity and competitiveness. Since unemployment was very low in the region, recruiting qualified labour was a problem.

[50] During her testimony, V. L. provided a list of employees who would have been laid off and a list of employees who were [laid off] in accordance with the agreement between the

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[15] *Canada v Martel*, A-1691.
[16] Case law is consistent on this issue: Leaving an employment to take a training course that is not authorized by the Commission does not constitute just cause under the Act: *Canada v Trochimchuk*, 2011 FCA 268.
[17] *Canada v White*, 2011 FCA 190 (CanLII).
[18] *Canada v Debono*, A-434-82.
[19] *Canada v Lamonde*, 2006 FCA 44 (CanLII).

employer and employees. She determined the cost to the Employment Insurance program. Therefore, the difference in cost to all insureds[20] under the insurance program is $27 per worker.

[51] If they had gone with Work-Sharing, the cost would have been more than $209,000[21] compared with $94,000 for the option of selective layoffs.

[52] The Claimants submit that wanting to preserve the plant's viability and competitiveness constitutes just cause under the Act. It was the only reasonable alternative in the circumstances.

[53] The Claimants further submit that it is necessary to consider what the economic context was when the government introduced measures. Also necessary is the ability to adapt those measures to new economic realities.

[54] In 1977, the government passed the *Anti-Inflation Act*. It implemented Work-Sharing, to protects jobs and preserve the competitiveness of businesses.[22]

[55] In 1993, since unemployment was high, it was necessary to come up with new ways to help businesses and workers. The government introduced rules allowing workers not to be disqualified from the program if they voluntarily left their employment so that someone else could remain in employment under a work-force reduction process. The focus of these voluntary separations would be on the competitiveness and viability of the particular firms[23] and on reducing government deficits. Not to mention that Work-Sharing allows businesses to downsize while protecting jobs.

[56] In 1994,[24] the government relaxed the rules for workers who take a period of leave from their employment without just cause. As a result, they are not disqualified from Employment

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[20] I note that the representative rightly pointed out that insureds are the ones contributing to the program, not taxpayers.
[21] GD16-125 *et seq*.
[22] *Re: Anti-Inflation Act*, [1976] 2 SCR 373.
[23] Canada Gazette Part II, Vol. 127, No. 8 SOR/93-177—GD16-44; section 51(1) of the *Employment Insurance Regulations*.
[24] House of Commons Debates, Vol. 133, No. 075, 1st Session, 35th Parliament—GD16-103 *et seq*.

Insurance but are disentitled from receiving benefits during the period of leave.[25] They could then receive benefits afterwards.

[57] Considering the context,[26] the Claimants submit that it was the only reasonable alternative. The agreement between the employer and the workers made it possible to preserve the plant's viability and competitiveness. A sense of solidarity was developed between the young workers and the most experienced ones. In addition, the cost to all insureds was lower. And, in the midst of a labour shortage, 44 of the 46 workers who had been laid off returned to work after a few weeks.

[58] After considering the evidence on file and the parties' testimony and submissions, I am of the view that the Claimants had just cause for agreeing to take a leave of absence. It was the only reasonable alternative in the circumstances.

[59] Of course, they cannot be considered layoffs because of the bungled negotiations between the parties. However, this does not support the finding that they asked for leave without just cause.

[60] I do not agree with the Commission's argument that it was a personal choice. It was a collective choice that was in line with the objective of the Act: preserving the competitiveness and viability of a company and ensuring job retention at the least cost to the Employment Insurance program.

[61] I agree with the Claimants that their choice has to be analyzed in light of the context. There was a shortage of qualified labour in the region of the thriving plant.[27] However, because of order delays, layoffs were necessary. The suggestion was made to the most senior employees to be "laid off"—in reality, to take a leave of absence for a specific period to get the plant out of its predicament while saving jobs.

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[25] Section 32 of the *Employment Insurance Act*.
[26] *Bell ExpressVu v Rex*, [2002] 2 SCR 559.
[27] Regional unemployment rates—GD16-82 *et seq*.

[62] In my view, the *Employment Insurance Act* should not be a problem, but a solution to changes in the labour market. An enactment is deemed remedial and is to be given such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects.[28] Accordingly, over the years, the government has introduced different measures into the Employment Insurance program to help workers in times of crisis.

[63] Work-Sharing, voluntary leaving without penalty to ensure the viability and competitiveness of firms, leave, and anticipated job losses are included in considering the overall context.

[64] The Claimants' situation is also part of that overall context of economic changes and business needs. Their choice was the only reasonable alternative that made it possible to achieve the objectives of the Act.

[65] I do not agree with the Commission when it says that the reasons are commendable but that it was a personal choice and that it cannot be borne by all taxpayers [*sic*]. In reality, it was a collective choice that was the least costly to the Employment Insurance program. In my view, it was the only reasonable alternative. Moreover, only a few workers permanently left the plant.

[66] Furthermore, the list of "just cause" circumstances set out in section 29 of the Act is not exhaustive.[29] Just cause for taking leave from an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances. I find that it is unreasonable not to take a period of leave from employment and, as a result, jeopardize jobs and the viability of a plant. If that had been the only reasonable alternative, I am convinced that the workers and the employer would not have negotiated an agreement. The Commission interpreted the Act in an obtuse way when it found that the leave was not justified.

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[28] Section 12 of the *Interpretation Act*, RSC 1985, c I-21.
[29] *Canada v Campeau*, 2006 FCA 376.

CONCLUSION

[67] I find that the Claimants are entitled to receive benefits because they have shown that taking a 10-week leave of absence was the only reasonable alternative in the circumstances.

[68] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	December 15, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	E. L. et al., Appellants Jean-Guy Ouellet (counsel), Representative for the Appellants