



Citation: *JN v Canada Employment Insurance Commission*, 2021 SST 721

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	J. N.
Representative:	Sharon Vokey
Respondent:	Canada Employment Insurance Commission
Representative:	Suzanne Prud'Homme
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Decision under appeal:	General Division decision dated April 27, 2021 (GE-21-506)
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Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	November 16, 2021
Hearing participants:	Appellant's representative
Decision date:	December 1, 2021
File number:	AD-21-181

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant (Claimant) was laid off as a deck hand. Shortly afterwards, he accepted a temporary five-week job on a tugboat in the Great Lakes. After about a week on the boat and one sailing to a city in Ontario, the Claimant was advised that the next port of call would be Detroit. The Claimant was concerned about the high number of COVID-19 cases in the United States (U.S.) and afraid of catching COVID-19, so he quit his job rather than crew the boat to Detroit.

[3] When the Claimant applied for Employment Insurance (EI) benefits, the Respondent, the Canada Employment Insurance Commission (Commission), rejected his claim, telling him that he had voluntarily left his job without just cause. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The General Division found that the Claimant voluntarily left his job. It found that the Claimant did not look for work prior to leaving. It also found that it would have been reasonable for the Claimant to speak to the Captain about the cleanliness of the vessel, or to discuss with the Captain his concerns about catching COVID-19 in the port located in the U.S. to see if he could be accommodated prior to leaving his job.

[5] The Appeal Division granted the Claimant leave to appeal on the basis that the General Division might have made an error of law in its interpretation of section 29(c) of the *Employment Insurance Act* (EI Act).

[6] For the following reasons, I am dismissing the Claimant's appeal.

Issue

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

Analysis

Appeal Division's mandate

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 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

[9] 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

[10] 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, I 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 voluntarily leave his employment?

[11] I must decide the present appeal based on the evidence presented to the General Division.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² *Idem*.

[12] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment. This must be determined at the time he left.

[13] 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.

[14] The Claimant accepted a temporary five-week job on a tugboat in the Great Lakes. After about a week on the boat and one sailing to a city in Ontario, the Claimant was informed that the next port of call would be Detroit. After learning of the employer's intention to travel to the U.S., he advised the Captain that the job was not for him and he walked off the boat immediately.

[15] The Claimant was concerned about the high number of COVID-19 cases in the U.S. and afraid of becoming infected and infecting his parents. He was also concerned that if he caught COVID-19, the employer would force him to leave the boat, and that Border Services would not allow him to return to Canada because of the infection. He also expressed concern that he would be placed into an American hospital, where his medical bills could not be paid for as they would be in Canada. He therefore immediately quit his job.

[16] There is no dispute that the Claimant voluntarily left his job. He initially declared to the Commission that the main reason he left his job was because he felt uncomfortable with going to the U.S. during the pandemic.³

[17] During the reconsideration stage, the Claimant stated that the employer implemented measures to protect workers from infection in Canada, that they provided masks and did their best to enforce distancing where possible, but that he still felt some discomfort about his safety despite those efforts. He also

³ See GD3-21.

expressed discontent about the condition of the ship. However, he did not address these issues with the Captain prior to leaving the boat.⁴

[18] I am of the view that the evidence presented to the General Division does not support a conclusion that the Claimant's working conditions constituted a danger for his health or safety once he docked in the U.S. port. The Claimant did not inquire about the employer's U.S. safety protocol prior to leaving his job. He based his decision on personal assumptions. The General Division noted that the Claimant had performed the same work in a Canadian port during the pandemic and there would be no change in duties when he reached the U.S. port.

[19] The General Division found that it would have been reasonable for the Claimant to discuss his concerns about the cleanliness of the vessel or catching COVID-19 with the Captain to see what safety protocols would be in place in the U.S. or to see if he could be accommodated prior to leaving his job. The Claimant could not just assume that the employer would do nothing to address his concerns and immediately leave his job.

[20] A claimant who is dissatisfied with their working conditions must attempt to settle the issues with the employer prior to leaving their job. The Claimant admittedly did not.

[21] Furthermore, the Claimant declared that his contract of employment indicated that there could be travel to the U.S. but that he did not think they would end up going there.⁵ Therefore, the Claimant was aware when he accepted the job the previous week that he might go to the U.S. during the pandemic.

[22] A claimant who accepts a job while aware of the existence of certain conditions required by that position cannot later rely upon the existence of those conditions as just cause for leaving employment.⁶

⁴ See GD3-29.

⁵ See GD3-21.

⁶ Lau, A-584-95,

[23] As explained at the appeal hearing, I am not empowered to retry a case or to substitute my discretion for that of the General Division. Unless the General Division failed to observe a principle of natural justice, erred in law or 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, I must dismiss the appeal.

[24] I find that the General Division's decision is based on the evidence before it and is consistent with the legislation and case law on voluntary leaving.

[25] I have no choice but to dismiss the Claimant's appeal.

Conclusion

[26] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division