



Citation: *RC v Canada Employment Insurance Commission*, 2022 SST 277

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: R. C.
Representative: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (441036) dated December 4,
2021 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Videoconference
Hearing date: February 7, 2022
Hearing participants: Appellant/Claimant
Appellant's representative

Decision date: February 21, 2022
File number: GE-22-152

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant no reasonable alternative to leaving his job when he did. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant is a retired long term care residence worker. A special program was in place whereby retired workers could return to work for a maximum of 450 hours. Shortly after he started his contract in January 2020, emergency measures related to the COVID-19 pandemic were put in place that allowed retired workers to work beyond the maximum 450 hours. So, the Claimant continued working.

[4] Effective August 14, 2021 the emergency measures were lifted by the New Brunswick provincial government. The Claimant was told that if he wanted to continue working, he would have to stop receiving his pension payments while he was working. If he didn't want to give up the pension payments, he would have to resign.

[5] The Claimant did not want to give up his pension payments. So, he signed a resignation letter and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[6] I have to decide whether the Claimant left his job voluntarily and if so, has he proven that he had no reasonable alternative to leaving.

[7] The Commission says that, instead of leaving when he did, the Claimant could have continued working and not continued to collect his pension.

[8] The Claimant disagrees and says that his contract came to an end when the emergency measures were lifted. The condition of having to stop collecting his pension was a significant change in the terms and conditions of his employment and he should not have been forced to accept them.

Issue

[9] Is the Claimant disqualified from receiving benefits because he voluntarily left his job without just cause?

[10] To answer this, I must first address the Claimant's voluntary leaving. I then have to decide whether the Claimant had just cause for leaving.

Analysis

The parties do not agree that the Claimant voluntarily left

[11] The onus is on the Commission to show that the Claimant left his job voluntarily. To do this, they must show that the Claimant had a choice to stay at his job.

[12] I find that the Commission has succeeded in showing that the Claimant left voluntarily.

[13] Sometimes it is not clear whether a claimant has quit their job or stopped working for some other reason. The courts have said that a claimant has voluntarily left their job if they have a choice to stay or leave their job and they choose to leave.¹ So I need to decide if the Claimant had a choice of staying in his job.

[14] The Claimant argues that he did not leave his job voluntarily, but that the contract that he was working on had come to an end.

[15] The Commission claims that the Claimant had the option of continuing on with his employer instead of signing a letter of resignation.

¹ This is set out but the Federal Court of Appeal in *Canada (Attorney General) v. Peace*, 2004 FCA 56.

[16] The Claimant did sign a letter of resignation. He explains that he had no choice but to sign this letter because he had finished his 450 hours of work and he could not afford to stay on and give up his pension payments.

[17] I give little weight to this letter of resignation. The Claimant thought he was only being hired for 450 hours. He worked more hours when the emergency measures were in place because there was no talk of change in his conditions of employment, except for authorizing more hours.

[18] He signed this letter because he believed he had no choice. For him, his contract was over, but if he did not sign this letter he would be forced to give up his pension payments.

[19] Despite the little weight I give to the letter, the Claimant does admit he could have continued working for his employer after the emergency measures were lifted. However, for him it would have been under a different contract.

[20] I find that the Claimant did have a choice to stay at his job. Whether or not the conditions of staying on were reasonable is a question I will examine below, but the fact is he did have the option of continuing on. His employer was offering him the choice to remain employed.

[21] I find that the Claimant voluntarily left his job.

The parties don't agree that the Claimant had just cause

[22] The parties don't agree that the Claimant had just cause for voluntarily leaving his job when he did.

[23] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.² Having a good reason for leaving a job isn't enough to prove just cause.

² Section 30 of the *Employment Insurance Act* (Act) explains this.

[24] The law explains what it means by “just cause.” The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.³

[25] It is up to the Claimant to prove that he had just cause. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit.⁴

[26] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when the Claimant quit. The law sets out some of the circumstances I have to look at.⁵

[27] After I decide which circumstances apply to the Claimant, he then has to show that he had no reasonable alternative to leaving at that time.⁶

The circumstances that existed when the Claimant’s employment ended.

[28] The Claimant says that one of the circumstances set out in the law applies. Specifically, he says that there were significant changes in the terms and conditions respecting his wages or salary.

[29] I agree that the conditions regarding the Claimant’s salary were about to be significantly changed.

[30] The contract that the Claimant signed on January 2, 2020 states that the Claimant’s is being hired for a maximum of 450 hours. There is no mention in the contract saying the Claimant would have to stop collecting his pension payments or that there would be any deduction from his salary for a pension contribution.

[31] The Claimant provided a copy of the notice that was sent to his employer, saying that the temporary measures put into place by the NB Association of Nursing Homes,

³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.

⁵ See section 29(c) of the Act.

⁶ See section 29(c) of the Act.

the NB Council of Nursing Homes (CUPE) and General & Service Pension Plan would be coming to an end. This notice says that if a pensioner who had been re-hired had worked 450 hours or more since they had been re-hired, they would have to choose between the two following options:

- a) Continue working, stop receipt of their monthly pension effective August 14, 2021, and start paying pension contributions to the pension plan effective August 14, 2021.
- b) Stop working on or before August 14, 2021 and continue to receive their monthly pension.

[32] The Claimant was faced with a choice of losing his monthly pension payments and having contributions deducted from the pay he was already receiving, or having his employment end. Both of these options are a significant change from the contract he signed on January 2, 2020. Either his wages would be reduced because of the contributions, or he would have to stop working.

[33] The Commission does not make any arguments suggesting that there was not a significant change to the terms and conditions of the Claimant's employment.

[34] From the Commission's evidence, I see that the Claimant's employer told the Commission that with the way the pension is managed for this category of employees, the amount and time of his pension would have been disproportionately affected had the Claimant chosen to stay on once the emergency measures were lifted.

[35] I recognize that a pension payment is not "wages or salary" as set out in the Employment Insurance Act. However, the Federal Court of Appeal has pointed out that case law recognizes that situations listed in the law are not a complete catalogue of the circumstances in which an employee might have just cause for leaving his employment.⁷

⁷ *Canada (Attorney General) v. Peppard*, 2017 FCA 46

[36] In this case, the Claimant's salary would have been affected by the withholding of pension contributions. So I find that one of the circumstances listed under the law, a significant change to salary, existed at the time the Claimant left his job.

[37] As I discuss below, I also find that remaining employed under those conditions was not a reasonable alternative for the Claimant.

The Claimant had no reasonable alternative

[38] I must now look at whether the Claimant had no reasonable alternative to leaving his job when he did.

[39] The Claimant says that he had no reasonable alternative because the lifting of the emergency measures brought his contract to an end. The terms and conditions of the new contract being offered would have been unreasonable.

[40] The Commission disagrees and says that the Claimant could have continued to work and foregone his pension.

[41] I find that the Claimant had no reasonable alternative to leaving his job.

[42] The contract the Claimant signed was limited to 450 hours. Had the emergency measures not been in place, the Claimant's employment would have come to an end after he had finished those 450 hours. It was only extended under special circumstances and without a change to the original terms. At that time it was reasonable for him to continue working.

[43] Once the emergency measures were lifted, the Claimant's contract was no longer being extended on the same terms.

[44] The Commission argues that failure to take advantage of an opportunity to employment through a contract extension or renewal is tantamount to voluntary leaving.

[45] In the Claimant's case, I do not agree that what was being offered to the Claimant was an extension or renewal of his original contract. What he was being offered was a new contract on very different terms.

[46] It was reasonable for the Claimant not to continue with his employer when the result of accepting the new terms would have been a significant drop in his overall income. The Claimant estimates his income would decrease by about 50% without the pension payments and with the deductions from his wages for the pension plan. He would not have gone back to work in the first place under such a contract.

[47] The Claimant was given about two weeks to make a choice. This was not sufficient time to find a new job before leaving. He was also not in a position to renegotiate a contract that would be restrained by conditions set by negotiations between unions, employers and the government. His choice was to take it or leave it and given the impact it would have had on his income, I do not think it was reasonable for the Claimant to continue working under the new terms.

[48] Considering the circumstances that existed when the Claimant left his job, the Claimant had no reasonable alternative to leaving when he did, for the reasons set out above.

[49] This means the Claimant had just cause for leaving his job.

Conclusion

[50] I find that the Claimant isn't disqualified from receiving benefits.

[51] This means that the appeal is allowed.

Leanne Bourassa
Member, General Division – Employment Insurance Section