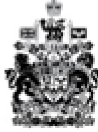

Citation: *RJ v Canada Employment Insurance Commission*, 2022 SST 757

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	R. J.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Villeneuve

Decision under appeal:	General Division decision dated February 16, 2022 (GE-22-88)

Tribunal member:	Charlotte McQuade
Type of hearing:	Teleconference
Hearing date:	June 28, 2022
Hearing participants:	Appellant Respondent Respondent's representative
Decision date:	August 11, 2022
File number:	AD-22-121

Decision

[1] I am allowing the appeal.

[2] The General Division made an error of law.

[3] So, I have made the decision the General Division should have. The Claimant had just cause for voluntarily leaving his employment so he is not disqualified from benefits from July 18, 2021.

Overview

[4] R. J. is the Claimant. He worked as a lower lube technician in a garage. After about a week of work, he gave two weeks' notice that he was quitting. He then applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from benefits for reason he voluntarily quit his job without just cause. The Claimant appealed this decision to the Tribunal's General Division.

[5] The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant did not have just cause for quitting his job because he had reasonable alternatives to leaving.

[6] The Claimant appealed the General Division's decision. He says the General Division didn't follow procedural fairness, made an error of jurisdiction and law, and based its decision on an important error of fact. He says this is because he explained in detail to the General Division why he left his job but the General Division did not completely understand his concerns. He also says the General Division member was biased.

[7] I have decided that the General Division made an error of law. The Claimant raised antagonism with his supervisor as a reason for quitting but the General Division did not decide whether this was one of the circumstances of leaving.[1]

[8] I am allowing the Claimant's appeal. I will give the decision the General Division should have. The Claimant left his employment due to antagonism with his supervisor for which he was not primarily responsible and working conditions that were a danger to his safety. In those circumstances, he had no reasonable alternative to leaving. So, he had just cause to quit.

Issues

[9] The issues in this appeal are:

a) Did the General Division not follow procedural fairness?

b) Did the General Division make an error of law by not deciding whether one of the circumstances in which the Claimant quit his job was antagonism with a supervisor for which he was not primarily responsible?

c) Did the General Division make any other reviewable errors?

d) If the General Division made an error, how should I fix the error?

Analysis

The General Division followed procedural fairness

[10] The Claimant argued that the General Division was biased against him because she was a woman and he would have preferred a man to decide the case.

[1] Section 29(c) of the *Employment Insurance Act* (EI Act) says that just cause exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including any of those listed in section 29(c). Section 29(c)(x) of the EI Act says "antagonism with a supervisor if the claimant is not primarily responsible for the antagonism" is one of the listed circumstances.

[11] The Claimant was unable to explain this argument beyond saying it would have been his personal preference to have had his case decided by a man.

[12] The Commission argues that there is nothing in the General Division's decision to suggest that it was biased against the Claimant in any way, or that it did not act impartially.

[13] The Claimant has not shown the General Division member was biased or did not follow procedural fairness.

[14] The legal test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.[2]

[15] This is a high bar and is not the same thing as the Claimant simply thinking he would have gotten a different result from a male member or thinking that the result is unfair.

[16] Bias is concerned with a decision maker who does not approach the decision-making with an open mind and has approached the decision-making in an impartial manner.

[17] I have listened to the audio recording of the General Division hearing and reviewed the General Division decision. The recording reveals the member gave the Claimant full opportunity to present his case. The member explained the law, gave the Claimant options as to how he wanted to present his case, carefully listened to his evidence, and questioned him in detail on his evidence. There is no evidence whatsoever that the member had prejudged the case or did not approach the decision-making in an impartial manner or in any way breached procedural fairness. The member's gender has nothing to do with how she decided the case.

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[2] See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC).

[18] The Claimant's allegation does not meet the test to prove bias. An informed person viewing the matter realistically and practically would not conclude that the General Division member decided the case in an unfair manner. Aside from bias, there is no evidence of any other breach of procedural fairness.

[19] However, I find the General Division made an error of law.

The General Division made an error of law when it did not consider whether a circumstance in which the Claimant quit his job was antagonism with a supervisor for which the Claimant was not primarily responsible

[20] The General Division made an error of law when it did not consider whether one of the circumstances set out in the law, antagonism with a supervisor for which a claimant is not primarily responsible, was a circumstance in which the Claimant quit his job.[3]

[21] The Commission disqualified the Claimant from benefits from July 18, 2021, for quitting his job without just cause. The Claimant appealed that decision to the Tribunal's General Division.

[22] There was no dispute that the Claimant voluntarily quit his job. The General Division had to decide whether the Claimant had just cause for quitting.

[23] "Just cause" exists if a person had no reasonable alternative to leaving, having regard to all the circumstances, including any of the circumstances set out in the law. [4]

[24] The Claimant's evidence raised three circumstances under the law that may demonstrate he had just cause for leaving his job:

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[3] Section 29(c)(x) of the EI Act lists this circumstance.
[4] See section 29(c) of the EI Act.

1) harassment[5]

2) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism, and[6]

3) working conditions that constitute a danger to health or safety is another circumstance set out in the law.[7]

[25] The Claimant told the General Division that he quit his job because of harassment from the floor supervisor, and working conditions that were a danger to his health and safety. He said this was because he was having headaches from what he believed to be from carbon monoxide due to improper ventilation, and he had suffered burns from exhaust pipes, while working on cars.

[26] The General Division considered whether the Claimant's circumstance of leaving included "harassment" by the floor supervisor but decided they did not. The General Division decided that situation the Claimant described seemed unpleasant, but not violent or threatening. The General Division said that the Claimant described the behaviour as rude and unprofessional. The General Division decided the behaviour did not seem to amount to much more than frustrations in a busy workplace.

[27] The General Division noted in its decision that the Claimant said that his relationship with the floor supervisor was antagonistic, but did not decide whether the antagonistic relationship was a circumstance, in which the Claimant quit his job.[8]

[28] The General Division also decided that the Claimant's working conditions were not a danger to his health and safety. The General Division concluded the Claimant had not proven that the air quality was unsafe or that his headaches resulted from the workplace. With respect to the burns, the General Division decided that the Claimant was not used to the fast-paced work environment. Another employee had suffered

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[5] See section 29(c)(i) of the EI Act.
[6] See section 29(c)(x) of the EI Act.
[7] See section 29(c)(iv) of the EI Act.
[8] See paragraph 20 of the General Division decision.

burns when he started out so the General Division decided that it was likely as the Claimant became accustomed to the job, he would not have had injuries.

[29] The General Division decided that the Claimant did not have just cause for quitting his job because he had reasonable alternatives to leaving. He could have spoken to his employer about the floor supervisor's behaviour because when he did that before, the employer assisted and the situation improved. He could also have asked to work with a different floor supervisor.[9] He could have discussed his air quality concerns with the employer, visited a doctor about the headaches, or complained to outside authorities, prior to giving his notice.[10]

[30] The Claimant argues the General Division erred when it decided he did not have just cause for quitting. He says this is because the General Division did not consider all his circumstances of leaving. He says the General Division never completely understood his concerns and he wants his claim better understood.

[31] The Commission argues that the General Division did not make any reviewable errors. The Commission says that it was open to the General Division, as trier of fact, to sift through the facts and weigh them as it saw fit. The Commission says the General Division considered all of the facts provided by the Claimant and his reasons for leaving. The Commission says the General Division assessed the evidence, made a decision and explained its reasons for that decision. So, the Commission says I cannot interfere with the General Division decision.

[32] I agree with the Commission that I cannot interfere with the General Division's conclusion where it applies the correct law to the facts.[11] However, I can intervene if the General Division has not applied the correct legal test to the facts. I find this is what happened here.

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[9] See paragraph 38 of the General Division decision.
[10] See paragraphs 40 to 42 of the General Division decision.
[11] See *Sherwood v Canada (Attorney General)*, 2017 FC 998; and *Quadir v Canada (Attorney General),* 2018 FCA 21.

[33] The General Division made an error of law by not deciding whether a circumstance in which the Claimant quit his job was antagonism with the Claimant's supervisor for which he was not primarily responsible.

[34] To decide whether a person has just cause for quitting their job, a decision maker must first make a finding of fact as to what a person's circumstances of leaving are and whether they include any of the circumstances set out in the law. Only then can a decision then be made about whether a claimant had any reasonable alternatives to leaving, having regard to those circumstances.[12]

[35] The General Division considered whether the Claimant experienced harassment from the floor supervisor and decided he had not. However, despite acknowledging the Claimant's evidence that his relationship with the floor supervisor was antagonistic, the General Division did not make a finding of fact about whether one of the circumstances of the Claimant's leaving was antagonism with the Claimant's supervisor, for which the Claimant was not primarily responsible.[13]

[36] Harassment and antagonism with a supervisor are two distinct circumstances described in the law. It is quite possible that while a set of circumstances might not rise to the level of harassment, they still could be considered antagonistic.

[37] Since the Claimant gave evidence about conflict with the floor supervisor as a reason for leaving, and since the General Division understood that the Claimant perceived this relationship to be antagonistic, the General Division was required to decide not only whether he was harassed by the supervisor but also whether there was antagonism with the supervisor and who was responsible for having created it.

[38] The Commission argues that it doesn't matter how the situation with the floor supervisor was characterized because the Claimant's evidence was that his problem

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[12] See the cases of *Bell v Attorney General of Canada*, A-450-95 and *McFarlane v Her Majesty the Queen*, A-448-96, which explains this requirement.
[13] See paragraph 20 of the General Division decision.

with the supervisor alone would not have prompted him to quit. He said that if it had not been for his headaches, he would have kept his job.[14]

[39] I don't agree because even though the Claimant testified that he would not have quit if the headaches (air quality) problem had been resolved, he also told the General Division that one of the reasons he quit was because of the problems with the floor supervisor. [15]Since the circumstances of leaving must be considered cumulatively, even if the problem with the supervisor was not the main reason for quitting, the General Division still had to decide if antagonism with the Claimant's supervisor for which he was not primarily responsible, was one of the Claimant's reasons for quitting.

[40] The Commission also argues that even if the Claimant's circumstances of leaving came within any of the categories under the law, the onus was still on the Claimant to prove that he had no other reasonable alternatives to leaving when he did. The Commission maintains that General Division decided the Claimant did have reasonable alternatives other than leaving his employment when he did and the evidence before it supported that conclusion.

[41] I agree with the Commission that the onus is on the Claimant to show he had no reasonable alternative to leaving, having regard to all the circumstances, including those set out in the law. However, before deciding whether the Claimant had no reasonable alternatives to leaving, the law requires that a finding of fact must first be made about what the circumstances of leaving are and whether they come within any of the circumstances set out in the law.[16] This is because such a finding will influence the reasonable alternatives analysis.

[42] It is possible the General Division dismissed the Claimant's issues with the supervisor as not amounting to antagonism. But, if that was the case, the General Division needed to explicitly decide that and give reasons for that finding.

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[14] See AD2-5.
[15] See paragraph 6 and paragraphs 16 to 21 of the General Division decision.
[16] See the cases of *Bell v Attorney General of Canada*, A-450-95 and *McFarlane v Her Majesty the Queen*, A-448-96, which explains this requirement.

[43] I find the General Division made an error of law by not explicitly deciding whether the Claimant's conflict with the floor supervisor amounted to antagonism, for which the Claimant was not primarily responsible.

[44] Because the General Division made an error of law, I can intervene in the case.[17] So, I do not have to consider whether the General Division made any other reviewable errors.

Fixing the error

[45] Once I find that the General Division made an error, I can decide how to fix the error.

[46] I can give the decision that the General Division should have given, or I can return the matter to the General Division for reconsideration.[18]

[47] The Commission argues the General Division made no reviewable error and the appeal should be dismissed. The Claimant says that if decide there is an error, I should give the decision that the General Division should have given.

[48] I am satisfied that the Claimant had a full and fair opportunity to present his case before the General Division. So I will give the decision that the General Division should have given. In making this decision, I can make necessary findings of fact.

Circumstances of leaving

[49] The Claimant told the General Division that he left his employment due to harassment from the floor supervisor, headaches from what he believed to be carbon monoxide resulting from improper ventilation and because of burns to his arms from exhaust pipes. He also told the General Division that if the air quality problem had been resolved, he would not have quit.

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[17] Section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) gives me this authority.
[18] See section 59(1) of the DESD Act.

– **Harassment or Antagonism**

[50] The General Division decided the Claimant was having problems with the floor supervisor.[19] The Commission refers to this individual as a "co-worker."[20] I am satisfied and find as a fact that this individual was acting in a supervisory role to the Claimant. The Claimant testified that this individual was training him and he was required to work with him 80% of the time.[21]

[51] The General Division described the floor supervisor's behaviour as:

- failing to train the Claimant properly
- speaking to the Claimant in an unprofessional manner
- being rude and impatient with the Claimant

[52] The General Division said the Claimant gave specific examples of what the floor supervisor would say and do and how it hampered the Claimant's ability to work but did not describe those examples in its decision.

[53] The record reveals some examples of the floor supervisor's behaviour. The Claimant told the Commission's reconsideration agent that when he asked the floor supervisor for help, instead of helping, the floor supervisor would just do it himself and throw the wrench on the floor. As well, an incident is described where the floor supervisor shouted at the Claimant, "I showed you more than a few fu**ing times' really loud toward him, while a customer was sitting in the vehicle above them."[22]

[54] The Claimant testified before the General Division that he spoke to the employer about the floor supervisor's behaviour and the employer spoke to the supervisor. Things improved for a day. However, when the employer went out of town, the supervisor started up again. The Claimant described the floor supervisor making remarks, and

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19 See paragraph 18 of the General Division decision.
20 See AD2-5.
21 This is what I heard from the audio tape of the General Division hearing at approximately 00:20:00 to 00:20:46.
22 See GD3-56.

throwing his wrench down. On one occasion, the floor supervisor, knowing the Claimant was in the pit below, without any warning sprayed him with the hose from above, soaking him. The Claimant said he had to put up with the supervisor's behaviour for a few days until the employer returned.[23]

[55] The Claimant testified that when the employer came back he gave his two weeks' notice. The employer said he thought the situation was solved. The Claimant explained to him about how the supervisor started up again the moment he had left. The employer responded that he didn't see anything wrong with the supervisor that day. The Claimant told him about the hose incident. [24]The Claimant testified he also discussed his burns and the air quality with the employer in this conversation.[25] The employer took the supervisor upstairs to talk with him and after that, he was a bit better.[26]

[56] I accept the behaviour noted by the General Division as well as the specific examples given by the Claimant as to his interactions with the supervisor including throwing a wrench, belittling him in front of a customer using an expletive and spraying him with a hose. The General Division accepted the Claimant's testimony as credible and consistent with what he had told the Commission. [27]The employer did not provide the Commission with any evidence to the contrary as to the incidents in question.

[57] The Commission submits that harassment was likely present. However, the Commission says the reasonable course of action was for the Claimant to report the behaviour again so that the employer could make an intervention, rather than simply making the decision to leave, since after the first report and action from his boss, the harassment had stopped. The Commission argues that if the Claimant had taken that step, and the situation was not resolved then possibly antagonism with his supervisor

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[23] This is what I heard from the audio tape of the General Division hearing at approximately 00:10:20 to 00:13:27.
[24] This is what I heard from the audio tape of the General Division hearing at approximately 00:13:19 to 00:14:39.
[25] This is what I heard from the audio tape of the General Division hearing at approximately 00:14:40 and 00:38.40 to 00:40:00 and also at 00:46:15 to 00:47:00.
[26] This is what I heard from the audio tape of the General Division hearing at approximately 00:22:25 to 00:22:45.
[27] See paragraph 19 of the General Division decision.

for which he was not primarily responsible could be considered a circumstance of leaving.

[58] The Claimant has consistently raised the issues with the supervisor as one of the reasons for leaving, although not the primary one. [28]The Claimant provided his notice directly after the problems started up again with the supervisor, upon his employer's return.

[59] The Commission's position appears to be that the Claimant had a reasonable alternative to correct the problem with the supervisor. However, that does not address whether the Claimant's relationship with the supervisor was antagonistic and was a circumstance of leaving.

[60] I agree with the General Division's conclusion that the Claimant was not being "harassed" by his supervisor, but I find that a circumstance in which the Claimant quit was antagonism with a supervisor for which he was not primarily responsible.

[61] The Appeal Division has previously decided that the concept of "harassment" requires consideration of the following key principles:[29]

- harassers can act alone or with others and do not have to be in supervisory or managerial positions;
- harassment can take many forms, including actions, conduct, comments, intimidation, and threats;
- in some cases, a single incident will be enough to constitute harassment; and

[28] See GD3-22, GD3-56, GD2-7. The Claimant also described the issues with the supervisor as a reason for quitting in his testimony. I heard this from the audio tape of the General Division hearing at approximately 00:10:27 to 00:25:00.
[29] See *ND v Canada Employment Insurance Commission* 2019 SST 1262.

- there is a focus on the alleged harasser, and whether that person knew or should reasonably have known that their behaviour would cause offence, embarrassment, humiliation, or other psychological or physical injury to the other person.

[62] The Appeal Division has previously defined "antagonism" as involving "hostility or opposition between individuals."[30]

[63] I adopt the above definitions of "harassment" and "antagonism."

[64] The General Division said that the supervisor's behaviour does not seem to amount to much more than frustrations in a busy workplace.[31] Respectfully, I cannot agree with that characterization of the facts. Belittling an employee in front of a customer while using an expletive and spraying an employee with a hose goes beyond what would be considered acceptable in any workplace, busy or not.

[65] There is a somewhat grey area when what might be considered "antagonism" turns into "harassment". While these incidents could potentially be considered harassment, I find the better characterization of this situation is that of hostility directed by the supervisor at the Claimant. So, I find this was an antagonistic relationship.

[66] There is some evidence in the record that the Claimant may have played a role in the antagonism. The employer confirmed to the Commission that the Claimant was treated rudely by one of the floor supervisors but he addressed it right after it happened and all was well. He was away for a few days and the Claimant submitted his notice. The employer said that the Claimant had conflict with other people in the shop as well and he thinks he came in with a certain mindset. The employer said he has never had personality conflicts develop so quickly in the workplace.[32]

[67] I find it more likely than not, however, that the floor supervisor was primarily responsible for the antagonism. I find this because the employer confirmed that the floor

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[30] See *VD v Canada Employment Insurance Commission and X*, 2021 SST 1, at paragraph 22.
[31] See paragraph 20 of the General Division decision.
[32] See GD3-28.

supervisor treated the Claimant rudely. The employer addressed this with the supervisor but there is no evidence the employer ever spoke to the Claimant about his attitude or behaviour. Further, the employer provided no details as to how the Claimant's mindset might have contributed to the problem. On the other hand, the Claimant's evidence to the General Division as to what occurred between himself and the supervisor was detailed and I, as the General Division did, find the Claimant's testimony to be credible.

[68] Even if the antagonism was not the primary reason for quitting, this does not mean the antagonistic relationship can be disregarded. This circumstance, along with the other circumstances in which the Claimant quit, must be considered when deciding whether the Claimant had reasonable alternatives to leaving.

– **Working conditions that constitute a danger to health or safety**

[69] The Claimant raised two safety concerns with the General Division. He said he was having headaches, which he attributed to high levels of carbon monoxide. [33]He also said that he didn't have proper safety equipment and suffered burns from the work he was doing.[34]

Air quality concern

[70] The Claimant testified that he was having headaches from what he believed was carbon monoxide due to improper ventilation. He was working in a pit in a basement and there was no HVAC system.

[71] The Claimant gave evidence that, after he gave his notice, in that same conversation, he told the employer about the air quality. The employer's response was that they had fans in the lower level.[35]

[72] After the Claimant quit, he reported his issues with the employer, including the air quality, to Occupational Health and Safety. The employer confirmed to the Commission

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[33] See paragraph 23 of the General Division decision.
[34] See paragraph 24 of the General Division decision.
[35] This is what I heard from the audio tape of the General Division hearing at approximately 00:38:21 to 00:40:00.

that he was required to post a harassment policy but they were not required to address air quality concerns as they passed.[36] The Claimant testified that he had learned from a subsequent discussion with Occupational Health and Safety that no air quality readings had been taken.[37]

[73] The General Division decided the Claimant had not proven that the air quality was a danger to his health or safety because:

- the Claimant hadn't submitted any evidence that there were high levels of carbon monoxide in his workspace;
- the Claimant did not see a doctor about his headaches, so he couldn't confirm that it was the air qualify at work was causing them after only a week on the job;
- there were other employees in the basement with the Claimant and there is no indication they were experiencing the same problems;
- the employer told the Commission that there was ventilation in the basement and a carbon monoxide detector in the shop. The Claimant did not supply any evidence that these measures were not in place or that they were insufficient to create a safe workplace;
- the employer told the Commission that Ontario Health and Safety did an inspection after the Claimant quit and did not report any issues related to the air quality in the shop. The Claimant did not provide any air quality inspection reports showing otherwise.

[74] I see no reason to disturb the General Division's finding concerning air quality. Despite the Claimant's evidence that no air quality readings were done by Occupational Health and Safety, the onus is on him to prove unsafe working conditions. I agree that

[36] See GD3-58.
[37] This is what I heard from the audio tape of the General Division hearing at approximately 00:36:36 to 00:37:00.

the Claimant has not provided sufficient evidence to show, with respect to air quality, that the working conditions were a danger to his health or safety.

Burns to arms

[75] The Claimant told the Commission he had suffered burns from exhaust pipes and the employer had not provided proper personal protective equipment.[38]

[76] The employer told the Commission that the Claimant was given the option to wear coveralls and had he worn them he would not have burnt his arms. He said they all have the PPE but have to use it.[39]

[77] The Commission argued before the General Division that the Claimant could have worn the coveralls to prevent the burns.

[78] The Claimant testified that he had suffered burns on his arms from exhaust pipes on cars. He explained that they had seven minutes to work on the cars and the work area was small. He said the other lube tech had also suffered burns but nothing like those he had. The Claimant explained that this was because the other employee had 10 to 12 years' experience and he was smaller than him, and better able to get up into the smaller work areas.[40]

[79] The Claimant testified that the employer saw his burns before he went away.[41]

[80] He also testified that, when the employer returned after the Claimant had given his notice, the Claimant told the employer the burns on his arms were really sore. The employer offered some cream but the Claimant told him, once he takes the oil plug off or does a transmission level, the cream would get washed off or burnt off because of the hot exhaust. The employer then told the Claimant they had coveralls for that.

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[38] See GD3-26.
[39] See GD3-38.
[40] This is what I heard from the audio tape of the General Division hearing at approximately 00:25:00 to 00:26:00.
[41] This is what I heard from the audio tape of the General Division hearing at approximately 00:46:25.

[81] The Claimant testified that he told the employer that the coveralls would melt or burn as they were made of cotton or polyester and the cloth would stick to the skin and make the burns worse. He told the employer about fire-retardant clothes that could be used on the arms, such as welders use, but the employer did not say one way or another whether he would get them. The Claimant also testified that it was too hot to wear the coveralls as there was no ventilation and he would have fainted if he wore them. The Claimant testified that the employer did not make any report about the burns or offer to take him to the hospital.[42]

[82] The General Division accepted the Claimant had suffered burns and acknowledged the Claimant's testimony that another worker had burns when he started out. The General Division concluded that the Claimant's working conditions were not a danger to his health and safety because it was likely, as he became accustomed to the job, he would not have injuries.

[83] However, respectfully, I cannot accept that conclusion. The question is not whether the working conditions would become safer in the future but whether they were unsafe at the time the Claimant decided to quit.

[84] The General Division also did not address the Claimant's argument that he had not been provided with the proper personal protective equipment.

[85] I find the Claimant's working conditions were a danger to his safety. I make this finding for several reasons. First, the burns happened not just to the Claimant but also to the co-worker when he started out. This suggests that the working environment put employees at risk of burns when they, as the Claimant, were learning the job. Second, I accept the Claimant's credible sworn evidence and prefer it to the employer's unsworn information about when the coveralls were provided. I find the Claimant was only offered the coveralls after he gave his notice and complained about the pain from the burns.

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[42] This is what I heard from the audio tape of the General Division hearing at approximately 00:21:56 to 00:25:38.

[86] It may be that as the Claimant became more adept at the job, his risk of burns would have become reduced. However, at the time the Claimant made his decision to quit, I find the working conditions were a danger to his safety.

[87] So, I find a circumstance of leaving was working conditions that were a danger to the Claimant's safety.

– **No reasonable alternatives**

[88] I find the circumstances in which the Claimant left his job were headaches of an unspecified origin, antagonism with the floor supervisor, for which he was not primarily responsible and working conditions that were a danger to his safety.

[89] I find, having regard to those circumstances, the Claimant had no reasonable alternatives to leaving.

[90] The Claimant told the General Division that he had no reasonable alternative to leaving because the situation at his workplace was affecting his physical and mental health. He said if the air quality problem had been remedied, he would not have quit.

[91] The Commission argues that the Claimant had reasonable alternatives. The Commission says the Claimant could have reported the floor supervisor's behaviour again so that the employer could make an intervention, since after the first complaint and action from his boss, the harassment stopped.

[92] The Commission says the Claimant could have discussed the air quality situation with his employer to see if improvements could be made, or make a complaint to Occupational Health and Safety or seek medical advice about the headaches before quitting.

[93] The air quality concern was the primary reason the Claimant quit. If this had been the only circumstance of quitting, I would agree the Claimant had reasonable alternatives. He could have gone to his doctor to investigate the cause of the headaches. He could have addressed the air quality with the employer before giving his

notice. He could have reported the issue to a third party, as he did after leaving, prior to quitting.

[94] However, the air quality was not the only circumstance of quitting. Considering the circumstances of quitting cumulatively, I find the Claimant had no reasonable alternative to leaving.

[95] I do not find it to be a reasonable alternative for the Claimant to remain working while trying to address the air quality issue, in light of the antagonism with the supervisor and the risk of burns.

[96] After the Claimant's first request of the employer to intervene with the floor supervisor, there was only a brief improvement. The same day the employer left, the behaviour resumed and indeed, appeared to escalate, with the hose incident. So, I find an attempt by the Claimant to have the employer intervene again was not a reasonable alternative.

[97] More likely than not, all that would have done is aggravate an already antagonistic situation. Clearly, the supervisor did not take the employer's first intervention seriously, returning to his behaviour as soon as the employer was away. Even though there was a little improvement after the Claimant gave his notice and the employer again spoke to the supervisor, this may have been as the Claimant had already resigned. I find the supervisor's behaviour when the Claimant was still employed more significant.

[98] The General Division said that the Claimant also could have asked to work with a different upper lube technician. I don't find this to be a reasonable alternative either. The Claimant told the Commission there were only six people working in the garage.[43] It is unlikely in this small environment, even if working with another upper floor technician had been possible that the Claimant would be able to avoid interacting with the floor supervisor.

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[43] See GD3-56.

[99] In any event, such an alternative would not have resolved the safety issue. The Claimant had not been provided with proper safety equipment and had suffered burns.

[100] The law requires the Claimant to raise safety issues with an employer to allow the employer to address those issues.[44]

[101] But, in this case, the employer was already aware of this safety issue. Another employee had suffered burns while learning the job years earlier. The Claimant testified, and I accept, that the employer was aware of his burns, prior to going away for a few days.[45] However, in spite of this, the employer did nothing. No safety report was completed. No medical care was offered. No protective clothing was offered. It was not until after the Claimant gave his notice that coveralls were offered. According to the Claimant's testimony, which I accept, the coveralls would not have solved the risk of burns anyway because they were not made of fire-retardant material and the working environment was too hot to wear them.[46]

[102] I do not think it reasonable for the Claimant to have continued working with the ongoing risk of burns while he became more accustomed to the job. In some jobs that might be reasonable, where there is risk inherent in a job and an employee accepts that risk when taking the job. But there was no evidence that was the case here.

[103] Considering the circumstances cumulatively, I am satisfied the Claimant had no reasonable alternatives to leaving. It was not a reasonable alternative for the Claimant to remain working while seeking resolution to the air quality issue, in the context of an antagonistic relationship with the floor supervisor and working conditions that were a danger to his safety.

[104] So, I find the Claimant had just cause for quitting his job. Having regard to all the circumstances of leaving, the Claimant had no reasonable alternatives to leaving.

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[44] See *Canada (AG) v. Hernandez*, 2007 FCA 320.
[45] This is what I heard from the audio tape of the General Division hearing at approximately 00:46:30.
[46] This is what I heard from the audio tape of the General Division hearing at approximately 00:21:56 to 00:25:00.

Conclusion

[105] The appeal is allowed. The General Division erred in law. The Claimant is not disqualified from benefits from July 18, 2021, as he had just cause for quitting his job.

Charlotte McQuade

Member, Appeal Division