



Citation: *AG v Canada Employment Insurance Commission*, 2022 SST 700

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

## Decision

**Appellant:** A. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (437483) dated November 15, 2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** March 8, 2022

**Hearing participant:** Appellant

**Decision date:** March 21, 2022

**File number:** GE-21-2534

## Decision

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

[2] The Canada Employment Insurance Commission (Commission) hasn't proven that the Claimant lost his job because of misconduct within the meaning of the *Employment Insurance Act* (EI Act). This means that the Claimant isn't disqualified from receiving employment insurance (EI) benefits.<sup>1</sup>

[3] The Commission is instructed to reconsider its decision to not antedate (backdate) the Claimant's EI benefits to May 30, 2021. The Claimant is not required to submit a second reconsideration request for that decision as he already did so on October 11, 2021.<sup>2</sup>

## Overview

[4] The Claimant lost his job as a transport truck driver. The Claimant's employer said that he was let go because he used company equipment to transport goods without permission, he had open water in a trailer used to transport food which was against regulations, failed to hand in various reports, falsified daily logs and time sheets, and was habitually late.

[5] The Claimant says that the allegations are not true and, further, he says that these allegations are not the real reason why the employer let him go. The Claimant says that the employer actually let him go because he found out they had not been paying him for the hours he actually worked for some 20 months. It was within a month after he questioned why the employer was taking hours off his cheque that the employer decided to dismiss him. He said that on the day he was let go the owner told him it was because he was late. On the day of his dismissal the employer did not say he was being let go for the other reasons listed in the letter of dismissal. The Claimant received the letter of dismissal two weeks after he stopped working.

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<sup>1</sup> Section 30 of the EI Act says that claimants who lose their job because of misconduct are disqualified from receiving benefits.

<sup>2</sup> See GD3-35 of the Appeal File

[6] The Commission accepted the employer's reasons for the dismissal. It decided that the Claimant lost his job because of misconduct. Because of this, the Commission decided that the Claimant is disqualified from receiving EI benefits.

## **Matters I have to consider first**

### **The Claimant appealed two issues**

[7] The Commission made two decisions about the Claimant's application for EI benefits. First, it decided that it would not antedate (backdate) the Claimant's claim for EI benefits to May 30, 2021 because he did not show good cause from May 30, 201 and August 19, 2021 to apply late for his EI benefits. Second, it decided that the Claimant was disqualified from receiving benefits because he lost his job due to his misconduct.

[8] The Claimant asked the Commission to reconsider both of these decisions. The Commission maintained both decisions.

[9] The Claimant then appealed to the Social Security Tribunal (Tribunal). The Commission provided submissions and representations about the disqualification for misconduct issue but did not provide anything about the antedate issue. In light of this, I asked the Commission if it had reconsidered the antedate issue. If the Commission had reconsidered, I asked it to provide its submissions and representations. If the Commission did not reconsider the antedate issue, I asked that it provide submissions on whether I had jurisdiction to hear the Claimant's appeal on the antedate issue.

[10] The Commission responded that it had not reconsidered its decision that it would not antedate (backdate) the Claimant's request for EI benefits to May 30, 2021. It wrote that it did not reconsider the antedate issue because the Service Canada agent confirmed with the Claimant that his request for reconsideration was for the decision to disqualify him from benefits due to losing his job for misconduct. It also wrote that because it did not reconsider its decision, I did not have jurisdiction to hear the Claimant's appeal on the antedate issue.

[11] At the hearing, the Claimant said that he wanted to have his EI benefits paid from June 4, 2021, when he last worked.

[12] I explained to the Claimant that my jurisdiction, in other words my ability to make a ruling on an appeal, comes only after the Commission makes a decision on reconsideration that the Claimant then chooses to appeal. My jurisdiction is limited to reviewing the reconsideration decisions the Commission has actually made. In this case, the Commission has only reconsidered its decision to disqualify the Claimant from receiving EI benefits because it thinks the Claimant lost his job due to his misconduct. So, I will issue a decision on that issue only.

### **A second reconsideration request is not required**

[13] The Commission said that if the Claimant wishes to submit a request for reconsideration on the antedate issue, that it would reconsider its decision on that issue. For the reasons that follow, I do not think the Claimant needs to submit a second reconsideration request.

[14] The Claimant's request for reconsideration was made on October 11, 2021. That request shows that he was asking for reconsideration of the decision made to disqualify him and "May 30 – Aug 19/21" which is the period that the Commission refused to backdate his claim. This period represents 2.5 months of EI benefits. A Service Canada agent recorded that the reason for reconsideration was confirmed as the decision to disqualify the Claimant for misconduct. But, there is no evidence to show that the impact of the Claimant not continuing with the reconsideration of the Commission's refusal to backdate his claim was discussed.

[15] I have decided that the Claimant is not disqualified from receiving EI benefits due to his misconduct. The Claimant indicated in his October 11, 2021 request for reconsideration, in his appeal to the Tribunal and at the hearing that he is seeking to have his EI benefits paid from June 4, 2021. In my opinion, this is sufficient to establish that the Claimant has already requested the Commission reconsider its refusal to antedate his claim for EI benefits to June 4, 2021. As a result, the Claimant should not be required to make a further request for reconsideration to the Commission.

[16] The Commission is instructed to reconsider its September 28, 2021 decision to not antedate the Claimant's EI benefits to May 30, 2021.

[17] If the Claimant is not satisfied with the Commission's reconsideration decision on the antedate issue he is free to appeal to the Tribunal.

### **The employer is not an added party to the appeal**

[18] Sometimes the Tribunal sends the employer a letter asking if they want to be added as a party to the appeal. In this case, the Tribunal sent the employer a letter. The employer did not reply to the letter.

[19] To be an added party, the employer must have a direct interest in the appeal. I have decided not to add the employer as a party to this appeal, as there is nothing in the file that indicates that my decision would impose any legal obligations on the employer.

### **Issue**

[20] Did the Claimant lose his job because of misconduct?

### **Analysis**

[21] To answer the question of whether the Claimant lost his job because of misconduct, I have to decide two things. First, I have to determine why the Claimant lost his job. Then, I have to determine whether the law considers that reason to be misconduct.

### **Why did the Claimant lose his job?**

[22] I find that the Claimant lost his job because he was late for work on a day when he was to show the owner his route, he used the employer's truck and trailer to transport non-food goods for a company, and he left standing water in the trailer.

[23] The Claimant and the Commission don't agree on why the Claimant lost his job. The Commission says that the reason the employer gave is the real reason for the dismissal. A representative of the employer, one of the owners, told the Commission that the Claimant lost his job for a number of reasons as listed on the letter of termination. The letter of termination says the Claimant lost his job for using company equipment and fuel to make deliveries for a company (I will call the company "X"), not

deducting time from his time sheet for this delivery, having landscape material in a truck that transports food, filling two 50-gallon water drums with metered water for X and leaving the standing water uncovered in the trailer used to transport food, failing to hand in log sheets, maintenance sheets and mileage reports on a weekly basis as requested, falsifying driver logs, falsifying weekly time sheets, and being habitually late or failing to show up on the busiest days, and failing to notify when not coming in so responsibilities could be reassigned.

[24] The Claimant disagrees. The Claimant says that the real reason he lost his job is because he asked the employer why it was deducting hours from his paycheque and within a month of him asking about that he was let go.

[25] The Claimant testified that he works for a company that transports food goods. He has worked for this company for 21 years. Over the course of those 21 years the company has been operated by different owners. The current owners, "P" and "F", took over operation of the company about 5 years ago.

[26] The Claimant testified that the current owners of the company are located in a city that is over 400 km from the location where he worked. "P" wanted to ride along with the Claimant on his route. They arranged for the ride along to take place on June 2, 2021 and P travelled to the work site. The Claimant said that he overslept on that day because there was a power outage. His alarm did not go off, he woke up late and was late getting to the worksite. P was waiting for the Claimant at the work site and when the Claimant did not show up P hooked up the trailer to the cab and went on to make the pickups and deliveries on the Claimant's route.

[27] The Claimant said he spoke to P on the day he was supposed to show him the route. The Claimant said P told him on the phone that he was being let go because he was late.

[28] The Claimant testified that he received the letter of termination about two weeks after he stopped working. It came with the Record of Employment (ROE) which is dated June 14, 2021. He says the list of reasons on the letter of termination was not the reason for dismissal the employer told him on June 2, 2021.

[29] The Claimant doesn't deny that he did some of the things the employer accused him of doing.

[30] The Claimant testified that he did use the company's truck to transport landscape fabric from a supplier to X. He had arranged to buy the landscape fabric from X but was told it would take a week to arrive. He was later told that to get the fabric at the price he was quoted by X would require that he or X buy 10 rolls and pick it up. The Claimant did not want to buy 10 rolls and also did not want to wait for the fabric to be delivered. So, the Claimant agreed to pick up the 10 rolls of fabric from the supplier, pay for and keep what he needed, and deliver the remainder to X.

[31] The Claimant said that he picked up the 10 rolls of fabric on May 13, 2021. The rolls were 10 feet long and 8 inches in diameter. They were stored one on top of the other and held in place against the trailer wall by bars. The Claimant kept four of the rolls for himself and delivered the remaining six to X.

[32] The Claimant explained that he did have two 50-gallon barrels filled with water in the trailer. There was street construction ongoing nearby X that would result in X having no water. The Claimant filled the water barrels, sealed the barrels, and placed the sealed barrels in the truck with the intention of delivering the water the following day. The following day was the day that P was to ride along with hm.

[33] F spoke to a Service Canada agent. F is recorded as saying the Claimant was caught using company equipment, time and gas and billing hours to pick up goods for another company. The Claimant was shipping landscape materials in the same trailers used to transport food goods and that was against regulations. The company found out about that and F stated to the Service Canada agent the Claimant was billing the company and another employer (X) while he used the company's trucks and trailers, gas and also filled water for this other company using their company's metered water. The company found out about it when the Claimant left a bill slip out showing he transported landscape fabric for X.

[34] F is recorded as saying “the formal reason the employee was advised he was being dismissed was related to the company’s policy in relation to time theft, fuel theft and misuse of property.”

[35] In a later conversation with a Service Canada agent, F described the events that took place on June 2, 2021 when the ride along with P was scheduled. F was not present at the work site on that date. F said the Claimant failed to show up for work at 9:00 a.m. When P spoke to the Claimant at 10:00 a.m. on June 2, 2021, they discussed a number of things. They discussed the reason for being late again, extra hours that were being charged, using the company equipment, gas and time for picking up goods for X, filling water barrels and using the company’s metered water for the other X. F said the conversation got heated and that P told the Claimant he had enough, to clear his personal belongings from the truck and it was time for the Claimant to move on.<sup>3</sup>

[36] The Claimant says that he discovered the employer was not paying him correctly. He testified that when his accountant completed his taxes in 2021 the accountant said that his income was a lot lower than it was in prior years. The Claimant checked and found that the company had not been paying him for all the hours he submitted. He found that the employer had been reducing his hours for about 20 months. It started with a reduction of three hours a week, then it was four hours a week. Some weeks it was as high as 16 hours. The Claimant said that he did not notice the loss of hours until his accountant mentioned it because he was involved in some family matters that took up his time. In all, the Claimant determined that he had not been paid for 694 hours that he had worked. The Claimant testified that the employer had not told him that it was reducing the amount of hours it was paying him.

[37] The Claimant said that in mid-May 2021 he asked F about the 694 hours. He asked if the employer had been banking his hours. He wanted to get paid for the hours he worked. It amounted to approximately \$25,000. F said that banking hours was not allowed. The Claimant emailed F on May 19, 2021 that he would be having a discussion with the labour board and repeated that statement in a later email dated May 31, 2021. The Claimant testified that he continued to work with the company but the

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<sup>3</sup> See page GD3-38 of the appeal file



owners started to “poke at him” and their “out” (meaning to get out of paying him the money) was to release him.<sup>4</sup>

[38] There is an email from F to the Claimant dated May 18, 2021, which has a list of items F says were discussed with the Claimant in the prior week. The email speaks to taking unpaid meal breaks and when overtime begins. The email notes that a person who travels more than 160 km is required to complete daily logs and that F and the Claimant agreed the logs would be handed in weekly along with mileages. F notes that she and the Claimant discussed and agreed a record of hourly activities will be kept detailing where the Claimant was and what he was doing would be kept so that the Claimant’s time would be more accountable. F notes that she and the Claimant discussed that “when taking a sick day dispatch needs to be notified” and “that the loan given last week will be deducted from future pay.”

[39] The Claimant testified that the discussion amounted to F speaking to him over the phone while he was pulled over in the truck. He was not allowed to speak. The email asked that he respond with any concerns he might have and if he had no concerns then to respond that everything is in order. The Claimant refused to indicate that everything was satisfactory. The Claimant testified that the \$1,000 was not a loan, it was money that he was owed and that P had said it would be repaid to him.

[40] The Claimant testified that he used to keep maintenance records for the one tractor trailer and four trailers owned by the company. He kept those logs in a filing cabinet at the work site and not in the office where F and P worked. That practice was approved by the administration person at the work site. F asked him for the logs after he spoke to her about the unpaid hours. The logs were sent to F the next Monday in the usual weekly courier package.

[41] The Claimant testified that he never falsified any driver logs. He only had four trips that required logs. As a driver who drove within 160 km of the home yard he was not required to keep driver logs. He kept logs for himself for income tax purposes.

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<sup>4</sup> After his dismissal, the Claimant filed a complaint with the provincial labour board to recover the lost wages. That complaint is not yet resolved.

[42] The Claimant provided cartage sheets with his appeal record. These sheets show the pickups and deliveries that he made on Thursdays and Fridays from December 30, 2020 to May 13, 2021. The sheets show the shipper, consignee, the city, the number of skids, the number skid spots, the number of cases and the weight for each shipper. The Claimant kept these cartage sheets for his own reference as there was shrinkage going on. He was initially told by F that the cartage sheets were not needed. The Claimant kept copies of the sheets in a filing cabinet at the work site. Later when F asked for the sheets he sent them to her. The Claimant said the cartage sheets also support that he did work on the busiest days of the week.

[43] Sometimes it is not clear why a claimant was dismissed from their employment. When there is conflicting information about why they were dismissed, I have to ask myself: which version of events is most likely?

[44] An employer can have more than one reason for dismissing an employee. I think the Claimant's employer dismissed him for failing to arrive on time for work on the day of his ride-along with P, as well as discovering that he transported landscape fabric for X and had water barrels in the trailer of his truck.

[45] I am not satisfied that failing to hand in log sheets, maintenance sheets and mileage reports on a weekly basis, falsifying daily driver logs and falsifying weekly time sheets played any role in the Claimant's dismissal.

[46] I accept the Claimant's testimony, given in a straightforward manner to me while under affirmation that he kept the logs he was required to keep, that he handed in the requested reports when asked, and that he did not falsify his time sheets. There is no evidence in the appeal file showing which logs and time sheets were falsified. There is no evidence in the appeal file that demonstrates the Claimant failed to hand in log sheets, maintenance sheets and mileage reports. As a result, I find the Commission has not proven that the employer dismissed the Claimant for these reasons.

[47] As stated above, I think the triggering events were the Claimant's failure to arrive at work on time on the day of the ride along, the discovery of the water barrels in the trailer, and finding the packing slip for the transport of the landscape fabric.

[48] The Claimant has testified that he did not arrive at work at the scheduled time and the water barrels were in the trailer on the day of the ride along. It is more likely than not that those barrels were discovered by the owner when he decided to do the route without the Claimant. The Claimant testified that the owner left the water barrels in the trailer and proceeded to deliver that water to X. F twice told the Commission that the main reason for the Claimant's dismissal related to using the company equipment to transport the landscape fabric, storing water in the trailer and being late for work.

[49] As a result, I find that it is more likely than not the Claimant was dismissed because he failed to arrive at work on time on the day of the ride along, he had water in barrels in the trailer, and he used the company equipment to transport landscape fabric for X.

[50] The Claimant has said he was let go because he confronted F and P about the missing hours. Although he told F that he was going to the labour board about the hours it was not until after he was dismissed that he made a complaint to the labour board. I understand why the Claimant suspects that he was let go for addressing his unpaid hours, but he has not produced any evidence to support this suspicion.

### **Are the reasons for the Claimant's dismissal misconduct under the law?**

[51] The reasons for the Claimant's dismissal are not misconduct under the law.

[52] To be misconduct under the law, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>5</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>6</sup> The Claimant doesn't have to have wrongful intent (in other words, he doesn't have to mean to be doing something wrong) for his behaviour to be misconduct under the law.<sup>7</sup>

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<sup>5</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

<sup>6</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>7</sup> See *Attorney General of Canada v Secours*, A-352-94.

[53] There is misconduct if the Claimant knew or should have known that his conduct could get in the way of carrying out his duties toward his employer and that there was a real possibility of being let go because of that.<sup>8</sup>

[54] The Commission has to prove that the Claimant lost his job because of misconduct. The Commission has to prove this on a balance of probabilities. This means that it has to show that it is more likely than not that the Claimant lost his job because of misconduct.<sup>9</sup>

[55] The Commission says that there was misconduct because the evidence indicates there was a breach of trust by time theft, fuel theft and misuse of company property and for lateness. The Commission says that the dismissal resulted after it was found the Claimant was using the company vehicle and fuel for his personal use or unauthorized use, delivering non-food grade articles in the truck which must be used for food grade deliveries, breaking Department of Health safety rules by leaving standing water in a truck and for lateness on many occasions.

[56] The Claimant explained that he has known the owner of X for many years. X is located nearby his former work site. In the past he has helped out X by driving their truck for them on the weekends if a driver is ill. He does not work for X.

[57] The Claimant said that he did not deviate from his route the day he picked up the landscape fabric. The employer provided the Commission with a Google Map showing the location where the landscape fabric was picked up. It also provided a list of the truck's stopping points and the distance and time travelled between each location.<sup>10</sup> This record shows that the Claimant drove 71 km from the worksite to the landscape fabric supplier. He was there for 17 minutes and then drove 7 km to the first company customer. There was no "backtracking" to go from the worksite to the landscape fabric supplier and then on to the first company customer.

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<sup>8</sup> See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

<sup>9</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>10</sup> See page GD3-28 of the appeal file

[58] The Claimant said that when he picked up the landscape fabric he secured it in the truck and that no food was nearby. The food he transported that day was wrapped. The fabric remained in the truck for the duration of his route. The Claimant testified that the landscape fabric was environmentally friendly. By this he means that the fabric does not give off any odours that might permeate any food he was transporting. It does not contain chemicals, rots in the ground and does not contaminate the ground or anything else. He said that he had observed other drivers carrying tires, truck parts and oil in their trailers when also transporting food. Those products do give off chemicals that can harm food. The Claimant had complained about this but was told to ignore it.

[59] The Claimant testified that the landscape fabric was in the truck when he returned to the worksite at the end of the day. He offloaded his four rolls to the loading dock and told another employee he was going over to X to deliver the remaining rolls. The tracking sheet the company sent to the Commission shows that he left the last customer, drove to X, stopped for 6 minutes, then drove 2km to the worksite.

[60] The company sent the Commission a copy of its invoice to X for \$390.98 for the transport of the landscape fabric. The invoice is dated May 10, 2021 while the covering email was sent on June 2, 2021. X was charged \$250 for the pick up and delivery, \$86.50 fuel surcharge, \$9.50 carbon tax and \$44.98 HST. There is no evidence the Claimant charged X for the transport of the landscape fabric.

[61] I do not think that the transport of the landscape fabric using the company truck is misconduct. To be misconduct within the meaning of the EI Act, the Claimant would have to know, or ought to have know that his conduct would lead to his dismissal.

[62] The company monitors the routes driven by the Claimant. It is aware of the distances driven, time taken to drive, locations where stops occur and the amount of time spent at each stop. I find that it is more likely than not the Claimant was aware that his driving activities were being monitored. The Claimant was very open in his actions regarding the landscape fabric. There was no effort by the Claimant to obscure or hide that he was transporting the landscape fabric. The Claimant offloaded the fabric that he was keeping on the employer's loading dock. He told another employee he was delivering the remainder to X.

[63] The employer says that transport of non-food goods in the trailer was against regulations. Yet, when the Claimant complained about others who were transporting tires and truck parts along with food in trailers he was told to ignore it. The Claimant testified that there are no regulations in this regard. I note the employer did not state which regulations applied and the Commission has not provided the regulations in the appeal file.

[64] There is no evidence the company attempted to advise any customers their products were transported with the landscape fabric. In addition, the Company made efforts to recover any costs associated with the transport of the landscape fabric by invoicing X. Included in that invoice is a fuel surcharge. This evidence tells me that the transport of the landscape fabric was acceptable to the company. For it not to be acceptable, the company would have advised its customers and would not expect to be paid by X for the services provided by the Claimant and its truck.

[65] Given the Claimant's openness in transporting the landscape fabric, the lack of any evidence that regulations existed much less were violated and the company's past acceptance of transporting non-food goods in food trucks I find that the Claimant could not have known, nor could he have reasonably known that he could be dismissed for transporting the landscape fabric. Accordingly, I find that the Commission has failed to establish the Claimant's conduct was misconduct within the meaning of the EI Act.

[66] I do not think that filling the water barrels and leaving the barrels in the trailer overnight is misconduct. To be misconduct within the meaning of the EI Act, the Claimant would have to know, or ought to have know that his conduct would lead to his dismissal.

[67] The Claimant testified that he became aware the water was being cut off for X due to construction on its street. The Claimant said he filled two barrels of water the night before the shut off, placed them in the truck and planned to deliver them the next morning. The Claimant testified that two years before the company had okayed the shipment of two barrels of water to X. The Claimant did not think he needed to ask for permission to do this again. The evidence tells me that in the past the filling and transport of the water barrels to X was approved.

[68] The Claimant was aware that he would be doing a ride along with P the day following his filling and storing of the water barrels. This evidence tells me the Claimant did not make any efforts to conceal that he was bringing water to X.

[69] The Claimant testified that the barrels were covered and kept overnight. F told the Commission that this was in violation of regulations. I note the employer did not state which regulations applied and the Commission has not provided the regulations in the appeal file. The Claimant said that on the day the water barrels were discovered in the trailer that P delivered the water to X. This evidence tells me that the transport of water in this fashion was acceptable to the company.

[70] Given the Claimant's openness in filling and storing the water barrels overnight in the trailer, the lack of any evidence that regulations existed much less were violated and the company's past approval of transporting water to X, I find that the Claimant could not have known, nor could he have reasonably known that he could be dismissed for filling the barrels and transporting them to X. Accordingly, I find that the Commission has failed to establish the Claimant's conduct was misconduct within the meaning of the EI Act.

[71] I do not think that being late on the day of the ride along is misconduct. To be misconduct within the meaning of the EI Act, the Claimant would have to know, or ought to have known that his conduct would lead to his dismissal.

[72] F told the Commission that the Claimant was habitually late. She said that he had family issues that they tried to accommodate. The Claimant testified that he had no set time to start work. His start time on any given day depended on when the customers wanted him to arrive to pick up their goods.

[73] The Claimant testified that he overslept on the day of the ride along. He said that he was not late for work. On the day of the ride along his normal start time to leave the work site would have been 10:30 a.m. The Claimant called P to tell him that the power went off and that he overslept but P had left the worksite and started the Claimant's route. It was during this conversation that P told the Claimant he was dismissed.

[74] F also provided the Commission with the email summarizing a discussion she had with the Claimant.<sup>11</sup> The first email is dated May 18, 2021 and refers to a discussion held the week before. There is no discussion of lateness in the email. Nor is there any discussion of the consequences for reporting late to work.

[75] Given that the Claimant's work day depended on when customers required him to pick up goods and there was no evidence that he had been told that he could be dismissed for being late for work I find that the Claimant did not know nor could he have reasonably known that he could be dismissed for being late on the day of the ride along. Accordingly, I find that the Commission has failed to establish the Claimant's conduct was misconduct within the meaning of the EI Act.

### **Did the Claimant lose his job because of misconduct?**

[76] Based on my findings above, I find that the Claimant didn't lose his job because of misconduct.

### **Conclusion**

[77] The Commission hasn't proven that the Claimant lost his job because of misconduct. Because of this, the Claimant isn't disqualified from receiving EI benefits.

[78] This means the appeal is allowed.

[79] The Commission is instructed to reconsider its decision to not antedate (backdate) the Claimant's EI benefits to May 30, 2021.

Raelene R. Thomas

Member, General Division – Employment Insurance Section

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<sup>11</sup> See pages GD3-40 to GD3-43 of the appeal file