[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2023 SST 891

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	D. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Julie Meilleur

Decision under appeal:	General Division decision dated April 11, 2023 (GE-23-838)

Tribunal member:	Pierre Lafontaine
Type of hearing:	In person
Hearing date:	June 30, 2023
Hearing participant:	The Appellant
Decision date:	July 7, 2023
File number:	AD-23-348

Decision

[1] The appeal is allowed. The Claimant had just cause for voluntarily leaving his job.

Overview

[2] The Appellant (Claimant) left his job with his first employer on August 31, 2022, to go back to work in construction. His job with his new employer ended. The Claimant applied for Employment Insurance (EI) benefits.

[3] The Respondent (Commission) looked at the Claimant's reasons for leaving his job with his first employer. It decided that the Claimant voluntarily left (or chose to quit) his job without just cause. So, it was not able to pay him benefits. The Claimant appealed the decision to the General Division.

[4] The General Division found that the Claimant voluntarily left his job because he had pay issues with his employer and because he had reasonable assurance of another job in the immediate future. But, it found that he left an indeterminate full-time job for one that guaranteed him only 150 hours of work. This means that when he left, he was at risk of becoming unemployed after completing 150 hours of work with the new employer. It also found that the Claimant could have talked to his employer about his pay issues. The General Division found that he did not have just cause for leaving his job.

[5] The Claimant was granted permission to appeal. He argues that the General Division made an important error of fact. He argues that the General Division also made an error of law when it found that he did not have just cause for leaving his job within the meaning of the law.

[6] I have to decide whether the General Division based its decision on an important error of fact, and whether it made an error in its interpretation of section 29(c)(vi) of the *Employment Insurance Act* (EI Act).

[7] I am allowing the Claimant's appeal.

Issue

[8] Did the General Division base its decision on an erroneous finding of fact, and make an error in its interpretation of section 29(c)(vi) of the EI Act?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal (FCA) has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of 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.

Preliminary remarks

[12] It is well established that I have to consider only the evidence that was before the General Division.

[13] A hearing before the Appeal Division is not a new opportunity to present evidence. The powers of the Appeal Division are limited by law.[2]

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

[14] I have listened to the full recording of the General Division hearing to make my decision.

Did the General Division base its decision on an erroneous finding of fact, and make an error in its interpretation of section 29(c)(vi) of the EI Act?

[15] The Claimant argues that the General Division made an important error of fact. He argues that the 150-hour guarantee was only for getting his competency card as a labourer. It was not about the duration of his employment. He says that he has worked more than 600 hours for his new employer since he was hired.

[16] The Claimant argues that the General Division made an error when it found that he had reasonable alternatives to quitting his job and by finding that he did not have just cause for leaving.

[17] The General Division had to decide whether the Claimant had just cause for voluntarily leaving his job when he did.

[18] The notion of "reasonable assurance of another employment" described in section 29(c)(vi) of the EI Act assumes three things: "reasonable assurance," "another employment," and an "immediate future."[3]

[19] The General Division found that the Claimant had assurance of another job when he decided to leave his job. It relied on the hiring letter dated August 31, 2022. This document confirms that the Claimant was hired as a [translation] "skilled labourer" for at least 150 hours over a period of no more than three consecutive months.

[20] The General Division found that, as of August 31, 2022, the new employer expected the Claimant to go work for it. It took into account the reality of the construction industry, which requires the employer to have a project underway, or about to start, to hire the people needed to carry out the project. It found that the

[3] *Canada (Attorney General) v Lessard*, 2002 FCA 469.

administrative steps, which usually take a few days, did not change the fact that the Claimant had been unconditionally hired by the new employer.

[21] But, the General Division found that the Claimant left an indeterminate full-time job for a job that only guaranteed him 150 hours of work. So, when he left, the Claimant risked being unemployed after completing his 150 hours of work with the new employer.

[22] The Claimant argues that the General Division made an important error of fact because the 150-hour guarantee was only for his competency card as a labourer. It was not about the duration of his employment with his new employer.

[23] At the hearing before the General Division, the Claimant said several times that the employer guaranteed him 150 hours so that he could get his competency cards from the Commission de la Construction du Québec [Quebec Construction Commission] (CCQ). He said that a letter of employment with guaranteed hours enables the CCQ to authorize him to work for the employer from the start of the project. The competency cards are then given to the Claimant after 150 hours of work.

[24] I note that the Claimant's hiring letter clearly states that the employer guarantees him **at least** 150 hours of work, which is the minimum number of hours the CCQ requires to get its competency cards.

[25] In an interview with the Commission, the employer confirmed that the hiring guaranteed him 150 hours over three months **to get the competency cards**.[4] The Commission did not ask the employer anything else about that statement to find out whether it was consistent with the duration of the job.

[26] While I must consider the facts when the Claimant decided to leave his job, I cannot ignore the evidence that the Claimant worked 351 hours for the new employer.[5] This supports his version of events that the 150-hour minimum was not about the

[4] See GD3-32.
[5] The Claimant testified at the hearing.

duration of his employment with his new employer, but about the minimum number of hours required to get his competency cards.

[27] I am of the opinion that the General Division based its decision on an erroneous finding of fact. The evidence shows, on a balance of probabilities, that the 150-hour guarantee was only for getting the competency card as a labourer. It was not related to the duration of his new job.

[28] It would be illogical for the CCQ to allow a worker to work on a project from the outset without having a formal guarantee from the employer that the worker would later get their competency cards.

[29] Given this important error of fact, I am of the view that the General Division also made an error of law in its interpretation of section 29(c)(vi) of the EI Act. This case is not one where the Claimant transformed what was only a risk of unemployment into a certainty.[6]

[30] I am therefore justified in intervening.

Remedy

[31] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that it should have given.[7]

[32] As of August 31, 2022, the new employer expected the Claimant to go work for it. The reality of the construction industry must be considered where an employer has to have a project that is underway or about to start to hire the people needed to carry out that project. The administrative steps at the CCQ, which usually take a few days, do not change the fact that the Claimant had been hired by the employer without any conditions.

[33] In this case, the requirements of section 29(c)(vi) of the EI Act have been met. The Claimant had a job offer when he decided to leave, he knew which job it was and

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[6] See *Canada (Attorney General) v Langlois*, 2008 FCA 18 at para 32.
[7] As per section 59(1) of *the Department of Employment and Social Development Act*.

with which employer, and he knew when he would have that job. The Claimant had reasonable assurance of another job in the immediate future.

[34] The Claimant had no reasonable alternative to leaving his job because he could be called to a work site at any moment by his new employer. The new employer also called him to work as soon as the CCQ issued its authorization. Also, his employer refused to give him his pay stubs, contrary to its legal obligations.[8] So, he was not able to verify whether the employer paid him correctly for his hours of work.

[35] I am of the view that, in the particular circumstances of this case, the Claimant had just cause for voluntarily leaving his job within the meaning of the law.

[36] For the reasons I mentioned, the Claimant's appeal should be allowed.

Conclusion

[37] The appeal is allowed. The Claimant had just cause for voluntarily leaving his job.

Pierre Lafontaine
Member, Appeal Division

[8] See section 46 of the *Act respecting labour standards*.