



Citation: *TN v Canada Employment Insurance Commission*, 2023 SST 727

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: T. N.

Respondent: Canada Employment Insurance Commission
Representative: Nikkia Janssen

Decision under appeal: General Division decision dated January 23, 2023
(GE-22-2450)

Tribunal member: Pierre Lafontaine

Type of hearing: In writing

Decision date: June 6, 2023

File number: AD-23-207

Decision

[1] The appeal is allowed. The matter is referred to the General Division for reconsideration of all issues before it.

Overview

[2] The Appellant (Claimant) was suspended from his job because he did not comply with the employer's COVID-19 vaccination policy (Policy). The employer did not grant him an exemption. The Claimant then applied for Employment Insurance (EI) regular benefits.

[3] The Respondent (Commission) determined that the Claimant was suspended from his job because of misconduct, so it was not able to pay him benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant was suspended from his job following his refusal to follow the employer's Policy. He was not granted an exemption. It found that the Claimant ought to have known that the employer was likely to suspend him in these circumstances. The General Division concluded that the Claimant was suspended from his job because of misconduct.

[5] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division hearing process was not fair in some way because he raised Charter arguments, and they were not considered. He submits that he was not informed that he needed to specifically state that he was making a Charter argument ten days before the hearing.

[6] I must determine whether the General Division hearing process was not fair in some way.

[7] I am allowing the Claimants appeal. The matter is referred to the General Division for reconsideration of all issues before it.

Issue

[8] Was the General Division hearing process unfair in some way?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

Was the General Division hearing process unfair in some way?

[12] The General Division had to decide whether the Claimant was suspended from his job because of misconduct.

[13] The Claimant submits that the General Division hearing process was not fair in some way because he raised Charter arguments, and they were not considered. He submits that he was not informed that he needed to specifically state that he was making a Charter argument ten days before the hearing.

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

² *Idem*.

[14] The Commission is of the position that the General Division acted unfairly by failing to explain the Charter Challenge Process to the Claimant and by not informing him of the requirement to file a notice in accordance with section 1 of the *Social Security Regulations, 2022*. In doing so, the General Division failed to observe a principle of natural justice. The Commission recommends that the Appeal Division refer the matter back to the General Division for reconsideration.

[15] The General Division mentions in its decision that the Claimant did not raise during the hearing a Charter argument regarding how the EI Act is violating his Charter rights. However, the General Division had agreed during the hearing to accept documents sent after the hearing raising Charter issues.

[16] A Charter Challenge is part of the appeal process and therefore, the General Division had a responsibility to assist the Claimant in understanding the Charter Challenge Process.³ The General Division failed to do so.

[17] I am therefore justified to intervene.

Remedy

[18] Because the General Division failed to observe a principal of natural justice in deciding the case, I am allowing the appeal.

[19] A fair hearing presupposes adequate notice of the hearing, the opportunity to be heard, the right to know what is alleged against a party and the opportunity to answer those allegations.

[20] In the present circumstances, it is appropriate to refer the matter back to the General Division for reconsideration of all issues before it.

³ See section 17(2)c) of the *Social Security Tribunal Rules of Procedure; A. P. v Canada Employment Insurance Commission*, 2017 CanLII 91677, par. 26.

Conclusion

[21] The appeal is allowed. The matter is referred to the General Division for reconsideration of all issues before it.

Pierre Lafontaine
Member, Appeal Division