



[TRANSLATION]

Citation: *JT v Canada Employment Insurance Commission*, 2023 SST 556

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

## Decision

**Appellant:** J. T.  
**Representative:** Nadia Mongeon

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (548297) dated November 23, 2022 (issued by Service Canada)

---

**Tribunal member:** Josée Langlois

**Type of hearing:** Teleconference  
**Hearing date:** April 18, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** April 19, 2023  
**File number:** GE-22-4080

## Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) hasn't proven that the Appellant lost his job because of misconduct (in other words, because he did something that caused him to lose his job). This means that he can receive EI benefits.<sup>1</sup>

## Overview

[3] The Appellant lost his job. He testified that he was let go because he refused to work with a defective machine.<sup>2</sup> His employer said that he was let go because he left his workstation without permission, threatened the supervisor, and didn't attend a meeting to present his version of events.

[4] The Commission accepted the employer's reason for letting him go. It found that the Appellant lost his job because of misconduct. It disqualified him from receiving Employment Insurance (EI) benefits.

[5] The Appellant disagrees with the Commission's decision. He says that he didn't threaten the supervisor and that he didn't want to work with a machine that wasn't working well and wasn't safe. He says that he told the supervisor about that problem, but the supervisor wouldn't listen to him. Also, the Appellant says he told the employer that he could not go to the meeting scheduled for May 28, 2022, but that he wanted to continue working. But, another meeting wasn't scheduled and the employer let him go.

[6] I have to decide whether the Appellant stopped working because of misconduct and whether he can receive EI benefits.

---

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

<sup>2</sup> GD3-7.

## Issue

[7] Did the Appellant lose his job because of misconduct?

## Analysis

[8] To decide whether the Appellant lost his job because of misconduct, I have to decide two things. First, I have to decide why the Appellant lost his job. Then, I have to decide whether the Act considers that reason to be misconduct.

### Why did the Appellant lose his job?

[9] I find that the Appellant lost his job because he didn't go to work after refusing to work with a defective machine, and because he didn't go to the meeting the employer called on May 28, 2022.

[10] On June 2, 2022, the employer's human resources advisor sent the Appellant a letter saying that his file was administratively closed because he had been absent from work for more than a week without permission. This letter also indicates that, on May 24, 2022, the Appellant didn't comply with the company's safety rules issued by his supervisor. The human resources advisor writes that it contacted the Appellant by phone on May 25, 2022, to suggest holding a meeting on May 28, 2022, but the Appellant refused to attend.

[11] The Record of Employment the employer sent the Commission indicates that the Appellant was let go.

[12] The Appellant says that the employer suggested a meeting on May 28, 2022, but that he could not go. He argues that the employer should have suggested another date, but that he didn't hear back about it and that he was let go instead. He says that he stopped working because he refused to work with an unsafe machine.

[13] I find that the Appellant stopped working because he didn't go to work after May 24, 2022, and that he didn't go to the meeting the employer called on May 28, 2022.

## **Is the reason for the Appellant's dismissal misconduct under the Act?**

[14] A worker who is let go because of misconduct can't receive EI benefits.

[15] To be misconduct under the Act, the conduct has to be wilful. This means that the conduct was conscious, deliberate, or intentional.<sup>3</sup> Misconduct also includes conduct that is so reckless that it is almost wilful.<sup>4</sup> The Appellant 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>5</sup>

[16] There is misconduct if the Appellant 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>6</sup>

[17] The Commission has to prove, on a balance of probabilities, that the Appellant lost his job because of misconduct. This means that it has to show that it is more likely than not that the Appellant lost his job because of misconduct.<sup>7</sup>

[18] The Appellant says that he refused to work with a machine that wasn't safe.<sup>8</sup> He says that the start and stop button, as well as the emergency button, weren't working. He says that he could not stop the machine once it was running, that there was no protective barrier, and that he was the only one able to clean it at that time. He says that he never received a copy of the collective agreement and that he wasn't aware of the procedure in place if the equipment was inadequate. However, he told the supervisor about the situation, but he didn't want to listen.

---

<sup>3</sup> See *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

<sup>4</sup> See *McKay-Eden v Her Majesty the Queen*, A-402-96.

<sup>5</sup> See *Attorney General v Secours*, A-352-94.

<sup>6</sup> See *Mishibinijima v Attorney General of Canada*, 2007 FCA 36.

<sup>7</sup> See *Minister of Employment and Immigration v Bartone*, A-369-88.

<sup>8</sup> GD3-9.

[19] The Appellant initially said that he had left the work site before the situation escalated. Then, he said that the supervisor fired him that evening and told him that they would hire Mexicans to replace him.

[20] The Appellant says that someone from human resources called to tell him that he was suspended and that he had to attend a meeting before returning to work. He first told the Commission that he didn't attend the meeting because he had already said everything he needed to say. Then, he said that his partner worked that day and that, since she was taking the family car, he didn't have a vehicle to go to the meeting. The Appellant says that the employer should have called him back to suggest another date, but he instead received a termination letter in the mail. He explains that, after receiving the termination letter, he went directly to the union representative's residence, who allegedly told him that he was entitled to EI benefits.

[21] The Appellant also says that, on May 18, 2022, an employee cut their finger with the machine and that a glove got stuck in the machine. He also sent images of that situation to the Tribunal.<sup>9</sup> On May 24, 2022, the Appellant noticed that the buttons on the machine weren't working and that there wasn't a safety bar. He then told the supervisor that the machine was defective, but the supervisor would not listen to him and told him that the machine was compliant.

[22] At the hearing, the Appellant's representative explained that crustacean factories were operating at full capacity during the high season and that the employer [translation] "wasn't OK with" the Appellant's statements about the machine since production might have been affected. But, she argues that the safety of employees is essential and that the Appellant's concerns should have been listened to. Also, she argues that the union representative didn't provide the help the Appellant needed, saying, when speaking of the Appellant and his son, that [translation] "they're weird people."

---

<sup>9</sup> GD6-2 to GD6-4.

[23] On September 6, 2022, one of the managers working for the employer said that the Appellant was let go because he was insubordinate several times. She says that he received warnings, but that the situation hadn't changed. She says that on the day he left, he made threats and that the head of human resources could give more details about the incident.

[24] That same day, the director of human resources explained to a Commission employee that the Appellant was let go the same day as his son and for the same reason. They both allegedly refused to comply with direct orders and made threats. After the incident, the Appellant received a letter calling for a meeting, but he didn't attend. The meeting was to be held with the union representative. Because the Appellant stopped going to work, he was let go.

[25] Concerning the possible broken machine, the director explained that, the day before the Appellant left, an employee had been injured, but that the injury was because of human error and not the machine.

[26] On September 12, 2022, the union representative told the Commission that the Appellant, like his son, worked a night shift. The night he left, he came back from his break angry. He raised his voice to show his discontent. They both left because the supervisor didn't want them to stay on the site. He says that the human resources advisor called a meeting to allow him to explain himself and that he was supposed to be there to defend him, but the Appellant didn't attend the meeting.

[27] The union representative says that the Appellant never told him about any defective equipment. He explains that, after they left, the machines hadn't been washed and that he was the one who finished their work. He argues that the machines were fully functional and safe, including the on/off button. He says that, if the Appellant had told him about a safety problem, he would have asked for an inspection of the machine and the protocol would have been followed. He says the collective agreement provides for a process like that and all employees received a copy of the collective agreement when they were hired.

[28] The Commission says that the Appellant hasn't shown how the job he was doing with the machine wasn't safe. It argues that the Appellant was unionized and that he had to follow the procedure if the machine was defective.

[29] The Commission also says that the Appellant sent a text message to the employer and that he refused to attend the meeting scheduled for May 28, 2022. In its view, the Appellant's actions were wilful: he refused to work, he threatened his supervisor, he left the work site during the incident, and he refused to attend a meeting. She argues that these acts constitute misconduct.

[30] After weighing all the statements and arguments, I am of the view that the Appellant's actions don't constitute misconduct under the Act for the following reasons.

[31] First, while it is true that the Appellant didn't go to work after May 24, 2022, the facts show that he wasn't absent without permission, like the director of human resources told the Commission, but because the employer didn't want him to go to work. The union representative indicated that the supervisor no longer wanted the Appellant to stay on the work site on May 24, 2022, and that this is why he left. Also, the facts show that the factory associate told the Appellant that he was suspended the next day and that the director of human resources told the Appellant not to go to work before a meeting took place.

[32] On this point, I am dealing with contradictory statements and the employer wasn't present at the hearing to present its version of events. The Appellant denies that he threatened the supervisor. He argues that the supervisor didn't want to hear about the machine that he had to clean and which was dangerous. The Appellant refused to work with a machine that he said was defective. The Appellant and his co-worker, who is also his son, left the work site because the supervisor didn't want him on the work site anymore.

[33] The facts show that, on May 25, 2022, the employer's director of human resources contacted the Appellant to call him to a meeting on May 28, 2022. That meeting was supposed to take place with the union representative, and the Appellant

could then have presented his version of events. But, the Appellant could not go to the meeting that day. He usually works at night, so he can use the family car. But, during the day, his partner uses the car to go to work.

[34] The Appellant says that the employer should have called him back to suggest another date for the meeting, but that he instead received a termination letter in the mail a few days later. That letter, dated June 2, 2022, also mentions a possible meeting scheduled for June 28, 2022.

[35] Although the employer says that the date of June 28, 2022, is an error and that it wanted to enter May 28, 2022, this situation is confusing. The Appellant's statements suggest that he would not have been let go for the real reason the employer gave. The Appellant says that the supervisor wasn't listening to what he was saying about the defective machine, since it affected production at the factory.

[36] The Appellant explained that he didn't know that there was a procedure to follow under the collective agreement when a machine was defective, and his explanations are plausible. He may not have spoken in an appropriate tone when he told the supervisor that the machine was defective, but I can't conclude that he made threats to his supervisor. The Appellant's images of an incident involving the machine on May 18, 2022, explain the concerns he voiced to the supervisor.

[37] While I agree with the Commission that the photos submitted don't establish whether the machine was truly safe and that my role isn't to do so, I find that the Appellant raised concerns with his supervisor about the machine being dangerous, that an incident causing injuries took place at the work site on May 18, 2022, and that he was afraid to use the machine. His submissions show, above all, that he may not have been let go for the reason the employer mentioned and—given the contradictions in the employer's statements about the reasons that led it to let the Appellant go—I accept the Appellant's representative's explanations in this regard.



[38] Although the head of human resources says that the Appellant missed work without authorization, he also said that he was suspended and that the employer didn't want him to go to work until after a meeting was held.

[39] It is true that the Appellant also indicated that he didn't attend the meeting because he had already said everything he needed to say. But, he made this statement after the incident. I have to make this decision on a balance of probabilities. On this point, I accept the Appellant's explanations when he says that he expected to attend a meeting but that, four days later, he received a termination letter.

[40] The information given to the Appellant, whether it was wrong or not, referred to a meeting on June 28, 2022. Also, if he wasn't going to work, it isn't because he hadn't been authorized to be absent, as the employer argued. Rather, it was because he was suspended and the supervisor didn't want him to go to work before a meeting took place. But, the meeting didn't take place. A few days after the Appellant spoke with the human resources advisor, who told him that he was suspended and that he could not go to work until a meeting took place, he was let go.

[41] Given the circumstances surrounding the Appellant being let go, the employer's absence from the hearing to present its version of events, and the contradictions in the statements it gave the Commission, I can't find that the Appellant was let go for the reasons it gave. I accept the Appellant's version of events that he could not go to the May 28, 2022, meeting and that he was waiting for the employer to call him to come in at another time. In fact, the text message he sent to the employer says that he still wanted to work. The Appellant could not go to the May 28, 2022, meeting, but he didn't refuse to attend a meeting.

[42] After weighing all the statements, I am of the view that the Appellant's actions don't constitute misconduct under the Act. I find that [*sic*] was no longer going to work because he was suspended and that, even though he could not go to the meeting scheduled for May 28, 2022, he didn't refuse to attend a meeting with the employer.

### **So, did the Appellant lose his job because of misconduct?**

[43] As mentioned, I don't have to determine whether being let go was an appropriate penalty, but whether the act amounts to misconduct.

[44] Based on my findings above, I find that the Appellant didn't lose his job because of misconduct. He acted as the employer says he did, but it is not without authorization that he didn't go to work—he was suspended and, while he wasn't able to attend the May 28, 2022, meeting, he didn't refuse to attend.

### **Conclusion**

[45] The Commission hasn't proven that the Appellant lost his job because of misconduct. He can receive EI benefits.

[46] The appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section