



Citation: *AD v Canada Employment Insurance Commission*, 2023 SST 1705

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

Decision

Appellant: A. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (ID: 468940) dated May 5, 2022 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: In person

Hearing date: September 27, 2023

Hearing participant: Appellant

Decision date: September 28, 2023

File number: GE-23-870

Decision

[1] The appeal is dismissed.

[2] The Appellant is disqualified from receiving employment insurance (EI) benefits because he voluntarily left his employment on September 10, 2021 without just cause.

Overview

[3] The Appellant worked as a school bus driver during the 2020/2021 school year¹. He was paid EI benefits over the school summer break in July and August of 2021². In September 2021, at the start of the new school year, he was paid for 4 hours of insurable employment³. Then he stopped working on September 10, 2021 and renewed his claim for EI benefits.

[4] The Respondent (Commission) investigated why the Appellant stopped working.

[5] The Appellant said he quit because the employer only gave him 3 or 4 hours of driving per day starting in September 2021, which wasn't enough hours for him. There was only one other route available to him, and it was longer but involved more interactions with parents and students. He didn't think he could handle the longer route with his developing English language skills, so he quit.

[6] The employer denied there was a shortage of work or hours for the Appellant. It told the Commission that the Appellant quit on September 10, 2021 and his termination form said he quit for full-time work⁴. The employer also reported that the Appellant returned to work for it on January 17, 2022⁵.

¹ The Appellant worked as a school bus driver from September 4, 2020 to December 18, 2020 and then he stopped working due to a shortage of work. He applied for EI benefits and established a claim effective December 13, 2020. He received EI benefits during the annual school Christmas break. He returned to work in January 2021 and continued working until the end of the school year in June 2021, when he was laid off again due to a shortage of work.

² He renewed the claim he established December 13, 2020 and was paid EI benefits over the school summer holidays.

³ These 4 hours were accumulated between September 8 – 10, 2021 (see his Record of Employment at GD3-18).

⁴ See GD3-21.

⁵ See GD3-22.

[7] The Commission decided the Appellant voluntarily left his job without just cause on September 10, 2021 and imposed a retroactive disqualification on his claim. This created a large overpayment of EI benefits on his claim, which he was asked to repay.

[8] The Appellant asked the Commission to reconsider its decision. He said the hours from his “part-time job” as a school bus driver were cut from 5 hours per day in June 2021 to 3 hours per day starting in September 2021⁶. He said he could not earn enough to pay his bills, so he decided to look for another job.

[9] The employer denied the Appellant’s hours were reduced⁷. It told the Commission the Appellant could have asked for a longer route if he wanted more hours because they had the hours and work available for him at the time. But the Appellant didn’t bring any issues or concerns to their attention and only said he had found a full-time job.

[10] The Commission maintained the disqualification, and the Appellant appealed to the Social Security Tribunal (Tribunal).

[11] The Tribunal decided in the Appellant’s favour and said he was not disqualified from EI benefits. But the Commission appealed that decision to the Tribunal’s Appeal Division (the AD). The AD decided the Tribunal made factual and legal errors in deciding the Appellant was entitled to EI benefits. It sent the appeal back to the Tribunal for a fresh hearing.

[12] The appeal was assigned to me. I held a fresh hearing on September 27, 2023.

[13] I must decide if the Appellant voluntarily left his employment when he refused the employer’s offer of employment in September 2021. Then I must consider whether he had just cause for voluntarily leaving when he did.

[14] The Appellant says he was never hired in September 2021 – he just attended an information meeting about the available routes. So, there was no job for him to quit. He

⁶ See GD3-39.

⁷ See GD3-41.

also says he could not have supported his family on 3 hours of work per day and his developing English language skills didn't allow him to take the longer route the employer offered. So, he had no choice but to quit and look for a full-time job.

[15] The Commission says the Appellant voluntarily left his job when he chose not to drive for the employer in September 2021. It also says he had reasonable alternatives to quitting on September 10, 2021, which he did not pursue. This means he has not proven he had just cause for voluntarily leaving and is, therefore, not entitled to EI benefits starting from September 10, 2021.

[16] I agree with the Commission. These are the reasons for my decision.

Issues

[17] Did the Appellant voluntarily leave his job on September 10, 2021?

[18] If yes, did he have just cause for voluntarily leaving when he did?

Analysis

Issue 1: Did the Appellant voluntarily leave his job?

[19] Yes, he did.

[20] The Appellant testified adamantly that he did not quit his bus driver job. He only attended the employer's start up meeting at the beginning of the school year and was paid for his time at the information session. He says he was never hired to drive a route, so he never quit.

[21] But **quitting is not the only way** to voluntarily leave an employment.

[22] The law⁸ says that voluntarily leaving an employment **also includes**:

⁸ Section 29(b.1) of the *Employment Insurance Act* (EI Act).

- (i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs;
- (ii) **the refusal to resume an employment**, in which case the voluntary leaving occurs when the employment is supposed to be resumed; and
- (iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred...

[23] I note that the Appellant repeatedly told the Commission that he quit because the route he was offered was only 3 hours and there was no acceptable alternative route available⁹ and because he wanted to look for a full-time job¹⁰. He also said he told the employer that he decided to quit because he wanted to look for a full-time job¹¹. All of these statements are consistent with the Record of Employment issued by the employer as a Quit.

[24] It wasn't until after he appealed to the SST that he argued he didn't quit his job.

[25] At the hearing, the Appellant testified that:

- He worked as a bus driver for this employer for 2 or 3 years before the September 2021 information meeting.
- The cycle of employment was the same: driving the school bus during the school year and getting laid off during the school holidays.

⁹ See GD3-20,

¹⁰ See GD3-42.

¹¹ See GD3-43.

- For the 2020-2021 school year, he started driving one particular route. The employer had trained him on this route and had another driving sitting beside him at the beginning.
- After a while, the employer “added a high school” route to his roster. With these 2 routes, he averaged 4.5 - 5 hours per day. He was very comfortable on these 2 routes.
- When school ended in June 2021, he was laid off for the summer.
- He planned to return to driving for the employer when school started up again in September.
- “I had no other job.”
- He did not look for other employment over the summer. He collected EI benefits and “was trying to come back to the same job”.
- A friend told him about the information meeting in early September 2021 and they went together to hear the employer’s plans for starting up again.
- At the meeting, the employer “gave” him a new, longer route with 10-15 stops on it. This would have been too complicated for him, and most of the passengers on this route would have been Chinese and he didn’t understand their language.
- He told the employer he couldn’t handle the longer route.
- He wanted his old route, which was straightforward, had fewer stops, and most of the passengers spoke his language (Persian).
- But his old route was only 3 hours per day and it didn’t look like the high school route would be added anytime soon.
- He has a family to feed and can’t manage it on 3 hours/day at a wage of \$18/hr.
- At the meeting, the employer only offered him these 2 routes.

- So he decided he would not drive a school bus starting in September 2021 and would start looking for a full-time job instead.
- The Commission can't say he quit because he was never hired. He never started driving for the employer. He only went to the information meeting.
- His job search efforts were not successful.
- In January 2022, he returned to work for the employer because he had no other job and no money to pay his rent.
- He went back to driving a school bus on his original route and drove for 3 hours per day.

[26] I find that the Appellant refused to resume his employment as a bus driver for the employer when he turned down the routes he was offered on September 10, 2021.

[27] The Appellant had been laid off at the end of the school year in June 2021 due to a shortage of work. Working as a school bus driver is seasonal employment. There is little need for school bus drivers over the school summer holidays. But there is a significant need for school bus drivers when school starts up again in September.

[28] The evidence shows the Appellant **had a choice** of accepting a route and continuing to work as a school bus driver for the employer starting in September 2021. This means he could have resumed his employment after being laid off for the school summer holidays. The law says his refusal to do so is considered voluntarily leaving the employment¹².

[29] I find the Appellant ended the employment relationship when he declined to resume working as a school bus driver at a time when the employer had work for him.

¹² Section 29(b.1)(ii) of the EI Act provides that voluntarily leaving an employment includes the refusal to resume an employment.

[30] This means he voluntarily left his job as a school bus driver on September 10, 2022.

Issue 2: Did the Appellant have just cause for voluntarily leaving?

[31] No, he did not.

[32] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so¹³.

[33] Having a good reason for leaving a job isn't enough to prove just cause.

[34] The law explains what it means by "just cause." It says you have just cause to leave if you had ***no reasonable alternative to leaving*** your job when you did.

[35] It is up to the Appellant to prove he had just cause¹⁴. He must prove this on a balance of probabilities. This means he has to show it is more likely than not that his only reasonable option was to leave his employment on September 10, 2022.

[36] When I decide whether he had just cause, I have to look at all of the circumstances that existed at the time he quit¹⁵.

[37] I asked the Appellant why he couldn't try the longer route for a while to see if it might have worked out for him?

- He answered that driving a school bus is a big responsibility and he was afraid to do it.

[38] I asked the Appellant why, if he was worried about the longer route - he couldn't ask for training on the longer route like he had received for his old route?

- He answered that he didn't understand the language of the kids on the longer route.

¹³ Section 30 of the EI Act.

¹⁴ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

¹⁵ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.

[39] I asked the Appellant why he couldn't accept his old route and start driving the 3 hours per day and see if the employer was able to add any other routes to his roster, as it had done with the high school in the prior year?

- He answered that he couldn't support his family on this route and needed to look for full-time employment.

[40] I asked the Appellant why he couldn't start driving his old route and still start looking for other work?

- He answered that he wouldn't be able to look for a job if he worked those 3 hours per day.

[41] The question I have to decide is not whether it was understandable for the Appellant to leave his employment, but rather whether leaving was ***the only reasonable course of action open to him***, having regard to all of the circumstances.

[42] I find that a reasonable alternative to leaving would have been for the Appellant to accept one of the routes offered by the employer, resume his employment when school started in September 2021, start looking for other work while remaining employed, and secure a new job before quitting. If he didn't feel up to the challenge of the longer route, he could have resumed driving his old route and still looked for work elsewhere. Three hours of work per day should not interfere with an active job.

[43] Another reasonable alternative would have been for the Appellant to discuss his concerns about the longer route with the employer and ask for training on that route. I'm not sure why he thought that most of the passengers on the longer route would be Chinese-speaking, but it was incumbent on the Appellant to raise this issue with the employer and at least try the route for a while to see if his English language skills really were a barrier. He could also have started driving his old route and let the employer know he was looking for additional hours so that a route could be added to his roster, as had been done the prior school year.

[44] Regular EI benefits are meant for people who lose their jobs through no fault of their own. The expectation is that people will protect their employment by trying to resolve issues with their employer **and** look for work before quitting their jobs, rather than voluntarily put themselves into a position of unemployment.

[45] The Appellant made a personal decision not to resume his employment as a school bus driver with the employer because he wanted more hours and decided he would look for a full-time job instead. I cannot ignore that he voluntarily put himself into a position of unemployment without first asking for additional training to resolve his concerns or securing another job.

[46] A decision to leave a job for personal reasons, such as wanting more hours of work (as described by the Appellant), may be **good cause** for leaving an employment. But the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as the statutory requirement for “**just cause**”¹⁶; and that it is possible for a claimant to have good cause for leaving their employment, but not “just cause” within the meaning of the law¹⁷.

[47] The Federal Court of Appeal has also clearly held that leaving one’s employment to improve one’s personal situation – be it the nature of the work, the pay, or other lifestyle factors – does not constitute just cause within the meaning of the law¹⁸.

[48] I find that the Appellant made a personal decision to leave his employment to look for another job. He clearly thought he had good reasons for doing so. But he cannot expect those who contribute to the EI fund to bear the costs of his unilateral decision to leave his employment for this reason.

[49] A reasonable alternative to voluntarily leaving on September 10, 2021 would have been for the Appellant to resume his employment as a school bus driver and work until he had secured another job. A further reasonable alternative would have been to

¹⁶ See *Laughland* 203 FCA 129

¹⁷ See *Vairumuthu* 2009 FCA 277

¹⁸ See *Langevin* 2001 FCA 163, *Astronomo* A-141-97, *Tremblay* A-50-94, *Martel* A-169-92, *Graham* 2001 FCA 311, *Lapointe* 2009 FCA 147, and *Langlois* 2008 FCA 18.

communicate his concerns about the longer route to the employer and try it out to see if he could manage it. This is especially the case given that the employer provided training and support that could have allowed the Appellant to transition to the longer route. He could also have started driving his old route and asked for an additional route to supplement his hours.

[50] He failed to pursue any of these reasonable alternatives.

[51] I therefore find the Appellant has not met the onus on him to prove he had no reasonable alternative but to leave his job on September 10, 2021. This means he has not proven just cause for leaving his job.

[52] It also means he is disqualified from receiving EI benefits starting from September 10, 2021, and the overpayment on his claim remains in place.

Conclusion

[53] The Appellant voluntarily left his job when he declined to resume his employment on September 10, 2021, at a time when the employer had work for him.

[54] The Appellant had reasonable alternatives to leaving his job on September 10, 2021. He did not avail himself of these reasonable alternatives and, therefore, has not proven just cause for voluntarily leaving his employment.

[55] Since the Appellant did not have just cause for voluntarily leaving his employment, he is disqualified from receiving EI benefits from September 10, 2021.

[56] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section