



Citation: *KC v Canada Employment Insurance Commission*, 2023 SST 1377

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: K. C.

Respondent: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Decision under appeal: General Division decision dated July 4, 2023
(GE-23-794)

Tribunal member: Pierre Lafontaine

Type of hearing: In Writing

Decision date: October 12, 2023

File number: AD-23-669

Decision

[1] The appeal is allowed. The file is returned to the General Division for reconsideration by a different member.

Overview

[2] The Appellant (Claimant) worked as a marketing manager for a car dealership, beginning in 2018. On September 6, 2022, he was dismissed from his job. The employer says that the Claimant was let go because he refused to sign an acknowledgement of company policies. It said there was disciplinary action involving the Claimant's conduct that brought about the need for him to sign the employer's policies and code of conduct.

[3] The Respondent (Commission) determined that the Claimant lost 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 refused to sign the warning letter and company policies. It found that the Claimant knew that the employer was likely to dismiss him in these circumstances and that his refusal was willful, conscious, and deliberate. The General Division concluded that the Claimant lost his job because of misconduct.

[5] The Appeal Division granted the Claimant leave to appeal. He submits that the General Division ignored the context in which he was requested to sign the documents. He was abused by his boss, then he sought retaliation against him. The employer wanted him to sign documents that did not reflect what had happened with his superior. The Claimant submits that he did not lose his job because of misconduct.

[6] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration by a different member.

Issue

[7] Did the General Division make an error when it did not consider the employer's conduct prior to the "misconduct" to properly assess whether the Claimant's conduct was intentional or not?

Analysis

Appeal Division's mandate

[8] 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*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[9] 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

[10] 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, the Tribunal must dismiss the appeal.

Did the General Division make an error when it did not consider the employer's conduct prior to the "misconduct" to properly assess whether the employee's conduct was intentional or not?

[11] The General Division found that the Claimant refused to sign the warning letter and company policies. It found that the Claimant knew that the employer was likely to dismiss him in these circumstances and that his refusal was willful, conscious, and

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

² *Idem*.

deliberate. The General Division concluded that the Claimant lost his job because of his misconduct.

[12] The Claimant submits that the General Division made an error by not considering the employer's conduct prior to the "misconduct" to properly assess whether his conduct was intentional or not.

[13] The Commission submits that the General Division did not consider both versions of the event that brought the employer to request that the Claimant sign off on the company's policies and code of conduct. It submits that when the General Division decides that the evidence should be dismissed or assigned little weight or no weight at all, it must explain the reasons for the decision, failing which there is a risk that its decision will be marred by an error of law or be qualified as capricious.

[14] The Commission submits that it is true that once an employee's misconduct is established, there is no obligation for the General Division to question whether the dismissal was justified. However, there is an important distinction between an employer's conduct after alleged misconduct, and an employer's conduct which may have led to the "misconduct" in the first place.

[15] I agree with the parties that the General Division made two errors:

- 1) It did not consider the Claimant's version of events, or at least explain why it dismissed it;³
- 2) It did not consider the employer's conduct prior to the "misconduct" to properly assess whether the Claimant's conduct was intentional or not.⁴

[16] Given these errors, I am justified in intervening in this case.

³ *Bellefleur v Canada*, 2008 FCA 13.

⁴ *Astolfi v Canada (Attorney General)*, 2020 FC 30.

Remedy

There are two ways to fix the General Division's errors

[17] When the General Division makes an error, the Appeal Division can fix it in one of two ways:

- 1) It can send the matter back to the General Division for a new hearing;
- 2) It can give the decision that the General Division should have given.

The record is incomplete, and I cannot decide this case on its merits

[18] Both parties suggest that I send the matter back to the General Division for reconsideration.

[19] I agree with the parties. The record is not complete, and I therefore cannot render the decision that the General Division should have given.

[20] I am returning this matter to the General Division for reconsideration by a different member.

Conclusion

[21] The appeal is allowed. The file returns to the General Division for reconsideration by a different member.

Pierre Lafontaine
Member, Appeal Division