[TRANSLATION]

Citation: *SB v Canada Employment Insurance Commission*, 2024 SST 90

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	S. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Isabelle Thiffault

Decision under appeal:	General Division decision dated July 4, 2023 (GE-23-717)

Tribunal member:	Pierre Lafontaine
Type of hearing:	In person
Hearing date:	January 16, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	January 30, 2024
File number:	AD-23-749

Decision

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

Overview

[2] The Appellant (Claimant) left his job on August 20, 2022, and applied for Employment Insurance (EI) benefits. The Respondent (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it was not able to pay him benefits.

[3] The Claimant asked the Commission to reconsider. It upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It found that he had reasonable alternatives to leaving. It found that he could have contacted the CNESST [Quebec's labour standards commission] or talked to a lawyer or doctor before leaving his job. The General Division decided that he did not have just cause for voluntarily leaving his job.

[5] The Claimant was given permission to appeal the General Division decision. He argues that the General Division ignored road safety laws and his history of depression in finding that he did not have just cause for leaving his job.

[6] I have to decide whether the General Division 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, and whether it made an error in its interpretation of section 29(c) 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 that it made in a perverse or capricious manner or without regard for the material before it, and did it make an error in its interpretation of section 29(c) of the EI Act?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal 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, the Tribunal 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. This is because 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] See *Canada (Attorney General) v Jean*, 2015 FCA 242; and *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

Did the General Division base 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, and did it make an error in its interpretation of section 29(c) of the EI Act?

[13] The Claimant argues that the General Division ignored road safety laws and his history of depression in finding that he did not have just cause for leaving his job.

[14] The Claimant argues that his employer was putting his safety at risk by not making the necessary repairs to his delivery truck. He says that the truck should not have been allowed on the road. Despite an ultimatum to the employer, there were still repairs to be done when he left.

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

[16] Just cause for voluntarily leaving a job exists if the claimant had no reasonable alternative to leaving, considering all the circumstances.

[17] The General Division found that the Claimant left his job. The evidence shows that his employment did end when he stopped showing up for work.

[18] The Claimant explained that his 40-foot truck was unsafe. He had to repeatedly ask his employer to fix it. He eventually sent his employer an ultimatum email.

[19] This July 14, 2022, email contained a list of requested repairs the employer had to make. The Claimant indicated that, for his own safety, he would not be making deliveries with the vehicle anymore if the repairs were not done.

[20] The employer confirmed to the Commission that the truck had to be repaired. The Claimant explained that the truck was not fully repaired after his ultimatum, since there was still the matter of the tires and the truck's nighttime lights.

[21] The General Division found that it would have been reasonable for the Claimant to contact the CNESST or a lawyer about his working conditions. It found that he could have gotten a medical certificate before leaving his job.

[22] I am of the view that the General Division made its decision without regard for the material before it and that it made an error of law in its interpretation of section 29(c) of the EI Act.

[23] The evidence shows that, after getting an ultimatum, the employer had still not fixed the nighttime lights on the 40-foot truck, except for the flashers. There was still a problem with the tires that kept deflating. Even though the Claimant's truck did not meet basic safety requirements, the employer insisted that he drive it.

[24] This version of events from the Claimant is uncontradicted, since the employer did not return the Commission's calls.

[25] The *Highway Safety Code* (HSC) says that an owner may not allow a vehicle that has a major defect to be operated.[3] Also, under the HSC, the Claimant could not legally drive a heavy vehicle that had a major defect.[4]

[26] It is easy to conclude that a 40-foot heavy vehicle has a major defect if its lights do not work at night and that allowing such a vehicle to be operated endangered the Claimant's safety and that of others.

[27] The evidence shows, on a balance of probabilities, that the Claimant left his job because of the employer's practices that were contrary to law and because his working conditions were a danger to his safety.[5]

[28] I find that it was unreasonable for the General Division to expect the Claimant to contact the CNESST or a lawyer about his working conditions before leaving, since the evidence clearly shows that the employer was running its business while completely ignoring all the problems the Claimant had repeatedly raised and while deliberately disregarding legal requirements in terms of road safety.

[29] This means that I am justified in intervening.

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[3] See section 519.17 of Quebec's *Highway Safety Code*.
[4] See section 519.6 of Quebec's *Highway Safety Code*.
[5] See sections 29(c)(iv) and (xi) of the *Employment Insurance Act*.

Remedy

[30] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.[6]

[31] A claimant has the burden of proving that they had **no reasonable alternative** to leaving their job **considering all the circumstances** of their case, not that their only option was to quit.

[32] In this case, the evidence shows, on a balance of probabilities, that the Claimant had no reasonable alternative to leaving his job because of his employer's unlawful practices that put his safety at risk.

[33] The evidence shows that the Claimant tried everything to save his job. He repeatedly discussed the poor condition of his truck with his employer before finally leaving his job.

[34] The employer was not following the law and had no immediate intention of changing its working conditions, even after getting an ultimatum. It insisted that the Claimant get back on the road knowing that the 40-foot truck's nighttime lights were defective and that the tires were unsafe.

[35] The Claimant had to work irregular hours and could be asked to work short shifts at any time. He did not have time to apply for a job or attend an interview. He had no time for himself because he remained available any time for deliveries. His job kept him very busy, and he had to be available for his employer seven days a week. He also did not need to get a medical certificate, since he recognized some depressive symptoms and was proactive to avoid sinking into another depression.

[36] I find that asking the Claimant to continue working for that employer under such conditions is contrary to the requirements of section 29(c) of the EI Act.

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[6] As per section 59(1) of the *Department of Employment and Social Development Act*.

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

Conclusion

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

Pierre Lafontaine
Member, Appeal Division