[TRANSLATION]

Citation: *JN v Canada Employment Insurance Commission*, 2023 SST 1973

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (588897) dated August 24, 2023 (issued by Service Canada)

Tribunal member:	Guillaume Brien
Type of hearing:	In person
Hearing date:	December 8, 2023
Hearing participant:	Appellant
Decision date:	December 20, 2023
File number:	GE-23-2617

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown just cause for leaving his job when he did. The Appellant didn't have just cause because he had reasonable alternatives to leaving. This means that he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant left his librarian job on December 31, 2022, and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] I have to decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[5] The Commission says that, instead of leaving his job when he did, the Appellant could have agreed to work five days a week, at least until a decision was made on his grievance. He also could have continued working until he found another job.

[6] The Appellant disagrees and says that he didn't leave voluntarily. He says he didn't leave to retire. At the hearing, he said he had left because of the bullying and threats he had experienced at work.

Matter I have to consider first

The Appellant submitted a lengthy document just before the hearing

[7] The in-person hearing took place at 10:30 a.m. on December 8, 2023.

[8] On the morning of the hearing, the Tribunal Registry told me that it had received a 20-page document.[1]

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[1] See GD5.

[9] After discussion with the Appellant, the Appellant agreed to go ahead with the hearing as scheduled, on the understanding that I would read the late document later, after the hearing. So, that is what I did.

Issue

[10] Is the Appellant disqualified from receiving benefits because he voluntarily left his job without just cause?

[11] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

The parties don't agree that the Appellant voluntarily left

[12] At the hearing, the Appellant disagreed that he had voluntarily left his job.

[13] On his January 10, 2023, application for benefits, the Appellant:

- indicated that he had been "dismissed or suspended" from his job[2]
- selected "My employer did not tell me why I was dismissed or suspended" as the reason why he was dismissed or suspended[3]

[14] However, in a telephone conversation with the Commission on January 16, 2023, the Appellant explained the circumstances that led to his alleged dismissal:[4]

> [translation]
>
> Two years ago, the union filed a grievance, but we didn't get what we wanted. We had to go through arbitration. Two days before going before the arbitrator, I was contacted by the employer, who said that even if we were to win the case, I wouldn't reap the benefits. I was caught between two lawyers: the union's lawyer and the employer's lawyer. So, it was agreed that my contract

[2] See GD3-6.
[3] See GD3-7.
[4] See GD3-17.

> would end by 2022-12-31 (mutual agreement). As for mandatory retirement, I had no choice but to take it, since I had turned 71 on 2022-11-23.

[15] I note from that conversation that the Appellant confirmed that he had signed a mutual agreement ending his employment contract. He also alleged that he had no choice but to retire because he had turned 71 on November 23, 2022. Lastly, I note his hesitation to share the agreement between him and the employer with the Commission:[5]

> [translation]
>
> The Claimant says that he does not want anyone to talk to the employer about the agreement because, according to him, he signed clauses saying that he has to keep quiet about the agreement and that he is not allowed to share it with anyone. He is afraid to get in trouble with the university's lawyers. He also mentioned that he cannot give us a copy of the agreement because it is confidential.

[16] On March 22, 2023, the Commission spoke with the employer, who testified, among other things, that:[6]

- the client asked to retire
- he was never dismissed
- some employees were 88 years old, and the retirement age depended on people's agreements and pensions

[5] See GD3-17, at the bottom of the page.
[6] See GD3-19.

[17] In light of this contradictory information from the employer, the Commission contacted the Appellant again for explanations. In a telephone conversation between them on March 22, 2023, the Appellant gave the following additional information:[7]

- The Appellant said that two years earlier, an agreement was reached between him and his employer stating that he could retire at any time but not after December 31, 2022, since he would be 71 years old.
- He said that it was a voluntary departure agreement and that both he and his employer had accepted it.
- He said there was a dispute about his working conditions.
- He said his separation from employment was due to an end of contract, not retirement.
- He said he was forced to start taking his pension on December 31, 2022.
- He said that he didn't leave his job to retire, but because of his working conditions. According to him, he didn't resign and wasn't let go. He said he was forced to leave on December 31, 2022, based on an agreement he himself had accepted two years earlier.
- When the Commission asked him whether he had evidence of his employment contract ending or of being forced to retire, the Appellant said that the agreement between him and the employer was confidential and not to be disclosed. So, he could not provide any evidence to support his allegations.

[7] See GD3-20 and GD3-21.

[18] On March 24, 2023, the Commission called the employer back to confirm certain pieces of information:[8]

- There was a grievance between the Appellant and the employer that resulted in an agreement with the union.
- The client accepted the agreement and signed the related documents.
- The retirement agreement said that the client could retire as early as July 1, 2022, and no later than December 31, 2022.
- No one forced him to retire. They could not force an employee to retire. They had employees who were 80 years old. It was a personal decision.
- The client was receiving his full pension.
- If the client's employment contract did end as he alleges, it was because of the voluntary departure agreement that he had accepted and signed a few years earlier.
- The employer confirmed that there was no doubt about the Appellant's voluntary retirement.

[19] So, following those telephone conversations, the Commission made a negative decision, since the evidence showed, on a balance of probabilities, that the Appellant had voluntarily left his job without just cause as defined in the *Employment Insurance Act* (Act).[9]

[8] See GD3-23 and GD3-24.
[9] See GD3-25 and GD3-26.

[20] On or about May 26, 2023, during the request for reconsideration, the Commission contacted the employer again. The employer testified as follows:[10]

- The client did leave his job.
- It wasn't true that the client had to stop working at 71. The employer had employees who were over 80.
- The client made the decision to stop working on December 31, 2022, as a result of a letter of agreement that was signed willingly, without prejudice, freely accepted, and not subject to challenge.

[21] The Commission eventually managed to get a copy of the agreement in question, since the Act requires the employer to cooperate with the Commission by providing documents needed to assess the reasons why a claimant's employment ended.[11]

[22] The letter of agreement between the union, the Appellant, and the employer (Parties) says the following, among other things:

- On September 3, 2020, the employer refused to give the Appellant the work schedule he wanted.
- On September 17, 2020, the Appellant submitted a grievance challenging the employer's refusal.
- Discussions were then held between the Parties to settle the dispute amicably.
- Clause 2 of the letter of agreement reads: [translation] "The Professional agrees to leave his employment with [employer] by December 31, 2022."

[10] See GD3-34 and GD3-35.
[11] See section 126(1) of the *Employment Insurance Act* (Act).

- Clause 3 states that the employer [translation] “agrees that, until the departure referred to in the previous paragraph, the Professional will, for the fall and winter terms, continue to have a work schedule of 35 hours spread over four (4) days, from Monday to Thursday, inclusive.”

- Clause 4 reads: [translation] “The Union and the Professional declare the Grievance settled for all legal purposes.”

- Clauses 5 and 6 grant the employer and the Union a [translation] “full and final release.”

- Clause 10 reads: [translation] “The Parties accept the terms of this Agreement, acknowledge that the contents of this Agreement accurately reflect what they agreed on, and declare that they have signed this Agreement freely and after due consideration.”

- Clause 13 reads: [translation] “This Agreement constitutes a settlement and release and a transaction within the meaning of articles 2631 *et seq*. of the *Civil Code of Québec*.”

[23] After receiving a copy of the agreement, the Commission contacted the employer to find out more about the reasons for the Appellant’s grievance:[12]

- The client’s position involved working 35 hours a week over 5 days.

- A manager had given him permission to work 35 hours over 4 days instead of 5.

- However, needs changed and, to be fair to the other employees, with everyone being subject to the same collective agreement, the client was

[12] See GD3-39.

asked to go back to working 35 hours a week over 5 days. He refused, wanting to work only 4 days a week.

- So, the client filed a grievance on September 17, 2020.
- On May 28, 2021, the parties agreed that, since he didn't want to work five days a week, the client would leave his job by December 31, 2022, and that he would continue to work four days a week until then.

[24] Lastly, on August 24, 2023, the Commission contacted the Appellant again for more explanations:[13]

- The Appellant said that he was forced to resign for trying to ensure compliance with the collective agreement.
- Asked why he had signed the letter of agreement if he disagreed with it, the Appellant reiterated that he was forced to sign it, adding that the union didn't defend him.
- Asked why he didn't want to work five days a week, the Appellant said that the employer had bullied him, that it had twisted his arm to get him to accept the agreement and resign.

[25] After reviewing the entire record, I find that the Appellant voluntarily left his job, given that, on a balance of probabilities, the evidence on file shows the following:

- Block 16 on the Record of Employment clearly says "Quit."[14]
- Throughout this case, the employer has said that the Appellant voluntarily left his job to retire. The employer is a major public and renowned university in Quebec; its testimony is credible, steady, consistent, and disinterested.

[13] See GD3-40 and GD3-41.
[14] See GD3-15.

- The letter of agreement on file is extremely clear. The Appellant agreed to leave his job with the employer by December 31, 2022. The letter of agreement is a settlement and release within the meaning of the *Civil Code of Québec* and has never been challenged in court. The Tribunal is certainly not the appropriate forum to challenge this document. In addition, there is absolutely no evidence on file that the Appellant was forced to sign the agreement.

- The record clearly shows that the Appellant filed a grievance because he didn't want to work five days a week. To resolve the grievance, the parties signed the letter of agreement, which stated that the Appellant would voluntarily leave his job by December 31, 2022.

[26] Given the evidence on file, I find that the Appellant voluntarily left his job.

The parties don't agree that the Appellant had just cause

[27] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[28] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[15] Having a good reason for leaving a job isn't enough to prove just cause.

[29] The law explains what it means by "just cause." The law says that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.[16]

[15] Section 30 of the Act explains this.
[16] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

[30] It is up to the Appellant to prove that he had just cause. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit.[17]

[31] When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit. The law sets out some of the circumstances I have to look at.[18]

[32] After I decide which circumstances apply to the Appellant, he then has to show that he had no reasonable alternative to leaving at that time.[19]

The circumstances that existed when the Appellant quit

[33] The Appellant says that some of the circumstances set out in the Act apply.

[34] Specifically, at the hearing, the Appellant explained that he had left his job because he was being bullied and threatened at work.

[35] In support of this allegation, the Appellant referred me to two documents. I will now review these documents to decide whether they prove that the employer bullied and threatened the Appellant into leaving his job by signing the voluntary departure agreement on file.

- **Document 1: Letter from a former co-worker, a retired librarian who worked for the same university**

[36] The letter is in the document the Appellant submitted just before the hearing, at GD5-10.

[17] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[18] See section 29(c) of the Act.
[19] See section 29(c) of the Act.

[37] After reading the letter, I find that it carries little weight in this case, for the reasons that follow:

- The former co-worker doesn't describe any particular incident of bullying or threats against the Appellant. Instead, the letter contains vague, imprecise, and very broad statements. No specific incidents are mentioned.

- In addition, the former co-worker says that the Appellant had no reasonable alternative to voluntarily leaving and that he had just cause for leaving his job. This former co-worker isn't a Tribunal member. Furthermore, this person's opinion isn't supported by any specific facts. It simply isn't up to this person to decide the Appellant's case.

- On my review, I find, for the reasons set out above, that this document can't in any way show, on a balance of probabilities, that the Appellant was harassed and bullied at work into signing the voluntary departure agreement on file.

– **Document 2: Poster to ridicule the Appellant**

[38] In addition to the above-mentioned letter, the Appellant said that GD5-17 shows he was ridiculed at work. He said that the poster includes a photo of his former co-worker but that his photo was left out to ridicule him.

[39] However, at the hearing, the Appellant spent many minutes repeatedly explaining to me that his employer had tried to get his photo but that he never agreed to give it. He cited his right to the image under the *Civil Code of Québec*. Considering his refusal to give the employer his photo, it is perfectly normal that his photo isn't on the poster at GD5-17.

[40] Moreover, the fact that the employer made a poster without the Appellant's photo can't objectively be considered bullying and threats.

– **The Appellant hasn’t proven that he was bullied or threatened at work**

[41] In his appeal record and during his hearing, the Appellant tried to paint a negative picture of his 30 years working for the employer.

[42] I asked the Appellant whether he had submitted a grievance about the alleged threats and bullying he now claims to have experienced. He told me that he hadn’t, that he had tried but that his union had never agreed to proceed.

[43] If he really was bullied and threatened into eventually signing the voluntary departure agreement on file, the Appellant should have gone to his union. The fact that his union didn’t agree to file a grievance over this shows how weak his allegations are on this point.

[44] Moreover, if the Appellant was unhappy with his union’s decision not to submit a grievance about the alleged bullying and threats, he could have contacted the Commission des normes, de l’équité, de la santé et de la sécurité du travail [Quebec’s labour standards commission] (CNESST) for help with next steps.

[45] Since the Appellant testified at the hearing that he had been a union representative for some time, he was well aware of his union rights and his rights under the collective agreement.

[46] So, I find that the Appellant hasn’t proven, on a balance of probabilities, that he was threatened or bullied during his employment. There is no evidence to support this.

[47] The Appellant also hasn’t proven that he was forced to sign the voluntary departure agreement letter because of threats and bullying. He was free to sign the letter of agreement concerning his voluntary departure, as evidenced by the very words of the document.

[48] The fact that the Appellant may now regret signing this document, of his own free will, doesn’t change the situation.

[49] Lastly, the Appellant mentioned in several places that, in his view, the employer was violating the collective agreement. The Tribunal isn't the place to decide such allegations. What the Appellant's file shows is that two days before going before the arbitrator to have his grievance dealt with in the appropriate forum, the Appellant instead made a free and informed decision to sign the letter of agreement concerning his voluntary departure, an agreement that constitutes a settlement and release under the *Civil Code of Québec*.

The Appellant had reasonable alternatives

[50] I must now look at whether the Appellant had no reasonable alternative to voluntarily leaving his job when he did.

– **Reasonable alternative 1: The Appellant could have agreed to work five days a week, at least until a decision was made on his grievance**

[51] At the hearing, I asked the Appellant why he could not have agreed to work five days a week to keep his job, at least until a decision was made on his grievance.

[52] The Appellant replied that:

- he had the words [translation] "irrevocable" and "retirement" removed from the draft letter of agreement so that they would not appear in the final version
- he hadn't taken any legal action to terminate the letter of agreement on file
- the letter of agreement should not be seen as a resignation but rather as an end of contract

[53] I don't accept the Appellant's explanations on this point.

[54] This is because the Appellant's answer to my question doesn't explain anything. He also testified that he didn't have any evidence of a medical impediment to working five days a week. He explained to me that, since his house was in X and his job in X, he preferred to work only four days a week given the commute. This was clearly a personal choice for him.

[55] In addition, when the Appellant voluntarily decided to sign the letter of agreement on file only two days before his grievance was to be decided in the appropriate forum, it was clearly a personal and deliberate choice on his part.

[56] So, I find that it would have been reasonable for the Appellant to agree to work five days a week to keep his job.

– **Reasonable alternative 2: The Appellant could have continued working until he found another job**

[57] At the hearing, I asked the Appellant why he could not have continued working until he found another job.

[58] He replied that:

- he would have had to retire on December 1, 2022, because of his pension
- he could not stay because of the bullying and harassment

[59] Again, I don't accept the Appellant's explanations.

[60] First, as determined above, there wasn't a mandatory retirement age at the employer. So, the Appellant is wrong in saying that he had to retire because of his age or pension.

[61] Second, as determined above, the Appellant hasn't proven that his employer bullied or harassed him.

[62] So, the Appellant has failed to show why it would not have been reasonable for him not to sign the letter of agreement and to stay with the employer until he could find another job.

[63] Considering the circumstances that existed when the Appellant quit, the Appellant had reasonable alternatives to leaving his job, for the reasons set out above.

[64] This means the Appellant didn't have just cause for leaving his job.

Conclusion

[65] I find that the Appellant is disqualified from receiving benefits.

[66] This means that the appeal is dismissed.

Guillaume Brien

Member, General Division – Employment Insurance Section