Citation: *JP v Canada Employment Insurance Commission*, 2022 SST 1031

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. P.
Representative:	D. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (460422) dated March 25, 2022 (issued by Service Canada)

Tribunal member:	Glenn Betteridge
Type of hearing:	Teleconference
Hearing dates:	September 1, 2022
Hearing participant:	Appellant's representative
Decision date:	October 17, 2022
File number:	GE-22-1527

Decision

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

[2] The Claimant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Claimant had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Claimant left his seasonal job working on a road paving crew. He had worked four seasons for the same company under the same supervisor. For the last three seasons, he operated a rubber tire machine almost all the time.

[4] He applied for EI regular benefits. In his application, he says that he quit his job for health or medical reasons.

[5] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause because leaving his job was not the only reasonable alternative. So it wasn't able to pay him benefits.

[6] I have to decide whether the Claimant has proven that he had no reasonable alternative to leaving his job when he did.

[7] The Commission says he had reasonable alternatives to leaving. He could have obtained medical advice about treatment and taking a medical leave. Or he could have looked for other work before quitting. Finally, if his supervisor was treating him unfairly, he could have complained to someone higher up or asked his union for help.

[8] The Claimant disagrees. He says he didn't understand his rights or know about his options. He says that he didn't see a doctor because he didn't know he could take a

[1] I will refer to the Appellant as the Claimant, because he made a claim for EI benefits and he is appealing the Commission's decision to refuse his claim.

medical leave. He didn’t make a complaint because he didn't want his supervisor to get into trouble. And because the paving industry is small, he worried he wouldn’t be able to get another job if he complained. He didn’t know the union could help him.

[9] He also says that I should take into account his experiences as a young First Nations man with a grade nine education, with limited employment options.

[10] I have to decide whether he voluntarily left his job and had no reasonable alternatives to leaving his job when he did.

Matter I considered first

The Claimant wasn’t at the hearing

[11] On August 19, 2022, I granted his representative’s request for an adjournment, so he could send the Tribunal written arguments. The Claimant didn't attend that hearing.

[12] The representative, who is the Claimant’s father, said that his son knew about the hearing. But he didn’t participate because he was frustrated with the process and what he had been through.

[13] I told the representative I had reviewed the Appeal documents and had questions for the Claimant. I strongly encouraged the representative to try to get his son to attend the next hearing.

[14] The hearing was rescheduled for September 1, 2022, the hearing went ahead. The representative attended the hearing but the Claimant didn't.

[15] A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.[2] The representative told me his son knew about the hearing, and I had no reason to doubt that.

[16] So, we went ahead with the hearing without the Claimant.

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[2] Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

Issue

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

[18] To answer this, I must first look into whether he voluntarily left his job. If he did, I then have to decide whether he had just cause for leaving.

Analysis

The parties agree that the Claimant voluntarily left

[19] I find that the Claimant voluntarily left his job.

[20] He decided to leave his job. This is what he wrote on his EI application and what he told the Commission.[3]

[21] What he says is supported by what his employer wrote on his record of employment.[4] His employer marked code E (Quit).

[22] And there is no evidence that goes against my finding about this.

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

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

[24] The law says that you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[5] Having a good reason for leaving a job isn't enough to prove just cause.

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[3] See the Claimant`s EI application is at GD3-3 to GD3-27. At GD3-8 he checked off that he quit. At GD3-9 he checked off he quit for health or medical reasons. At GD3-13 he says that he warned his boss three times he would have to quit the rubber tire job to keep his sanity. On the same page he says that he quit rather than lash out at his boss in anger.
[4] See GD3-28.
[5] Section 30 of the *Employment Insurance Act* (EI Act) explains this.

[25] 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.

[26] The Claimant has to show that it is more likely than not that he had just cause (in other words, no reasonable alternatives) to leaving his job when he did. 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.[6]

[27] When I decide whether the Claimant had just cause, I have to look at all of the circumstances that existed when he left his job.[7] The law sets out some of the circumstances I have to look at.[8] I also have to consider any other circumstances raised by the Claimant.

The circumstances that existed when the Claimant quit

[28] The Claimant says that six circumstances set out in the law apply to him. He says that:

- he faced discrimination at work because he is First Nations[9]
- his working conditions constituted a danger to health or safety[10]
- his employer`s practices were contrary to law,[11] specifically health and safety laws
- there was a significant change in his work duties[12]

[6] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[7] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[8] See section 29(c) of the Act.
[9] See section 29(c)(iii) of the Act.
[10] See section 29(c)(iv) of the Act.
[11] See section 29(c)(xi) of the Act.
[12] See section 29(c)(ix) of the Act.

- there was antagonism with his supervisor, and the Claimant was not primarily responsible for it[13]

- he faced undue pressure from his supervisor to leave his job[14]

[29] The Claimant also says that at the time he quit his mental and physical health had deteriorated because of work.

[30] Finally, the Claimant`s representative argued that I should consider the fact that the Claimant has a hard time finding work because he is First Nations and only finished grade nine.

Discrimination

[31] The Claimant argued that he faced discrimination, racism, and hatred at work because he was First Nations.

[32] Under the EI Act I have a duty to consider this argument. Specifically, I have to consider whether there has been discrimination under a federal human rights law.[15]

[33] The legal test for discrimination under human rights law can be complicated. I have found it challenging to lay out the discrimination test, and then apply it to the facts, briefly and using plain language.

[34] When thinking about discrimination law in Canada, it can be helpful keep in mind the three important building blocks:

- discrimination does not have to be intentional

- treating everyone the same can lead to discrimination

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[13] See section 29(c)(x) of the Act.
[14] See section 29(c)(xiii) of the Act.
[15] Section 29(c)(iii) refers to the *Canadian Human Rights* Act (CHRA). A recent decision of the Tribunal's Appeal Division found that the General Division made an error by not applying the legal test for discrimination under the Act. See *CE v Canada (Employment Insurance Commission) and X*, 2021 SST 338, at paragraphs 107 to 115. Although I am not bound by that decision, the reasoning makes sense to me.

- discrimination law is results-oriented, meaning that it focuses on the negative effects or outcomes for a person or a group protected under human rights law

[35] Based on the reasons that follow, ***I find that the Claimant has shown that it is more likely than not he was discriminated against in employment as a First Nations person***. So, I will take this into account when I decide whether he had just cause for quitting when he did.

The law about discrimination

[36] The EI Act says I need to consider whether the Claimant faced discrimination on a prohibited ground within the meaning of the *Canadian Human Rights Act* (CHRA).

[37] The CHRA prohibits discrimination in employment based on First Nations status or identity.[16]

[38] The Claimant doesn't have to show that his employer (or supervisor) intended to discriminate against him.[17]

[39] The test for discrimination under the CHRA has two steps.[18]

[40] Step one: the Claimant has to show all three of the following were more likely than not:

- he has a characteristic protected from discrimination under a human rights law
- he experienced a negative impact or loss
- the protected characteristic was a factor in, or somehow connected to, the negative impact or loss he suffered

[16] See sections 3(1) and 7 of the CHRA.
[17] See *Ontario Human Rights Commission v Simpsons-Sears*, [1985] 2 SCR 536.
[18] The Supreme Court of Canada lays out this test in *Moore v British Columbia (Education),* 2012 SCC 61. And see also *Ottawa (City) v Todd*, 2022 FC 579, at paragraph 70, a recent decision where the Federal Court used the test in a case under CHRA.

[41] If he does, has proven **discrimination on the face of the case**. (In legal language, this is called *prima facie* discrimination.) Then we move to the second step of the test.

[42] Step two: the employer gets to defend or justify the discrimination.[19] The employer has to show it had no reasonable alternative to discriminating against the Claimant. To do so, the employer has to show that not discriminating would create a serious health risk, a serious safety risk, or an unbearable cost.[20] If the employer can show one of these risks or an unbearable cost, there is no discrimination against the Claimant under the CHRA.

The Commission doesn't take a position on discrimination in the case before me

[43] The Commission doesn't argue one way or another whether the Claimant experienced discrimination at work because he is First Nations.

[44] The Commission does say that if he was being mistreated at work he had reasonable alternatives to quitting.[21]

Discrimination test part 1: the Claimant is protected under the Act

[45] The Claimant says he is First Nations.

[46] I have no reason to doubt that.

[47] Being First Nations is a characteristic protected from discrimination under the Act.[22]

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[19] See *Moore v. British Columbia (Education)* at paragraph 49, where the Supreme Court briefly summarizes its important cases about the second part of the discrimination test under human rights laws.
[20] See section 15 of the Act. The sections that apply in this Appeal are sections 15(1)(a) and 15(2). Any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer based on a good faith occupational requirement. And to be considered a good faith occupational requirement, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.
[21] See GD4-5.
[22] See, for example, *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2.

[48] The Claimant says that he was the only First Nations worker on his crew.

[49] I find that he would know if any of the other workers on his crew were also First Nations. This makes sense based on the circumstances and what he said about other workers' background. He spent long days working side-by-side with his crew doing manual labour. Co-workers often talk about and sometimes joke with each other about where they are from and who their people are. They hear each other speak. He said some of his co-workers were from Poland and Mongolia, and spoke to each other in their language. So, it stands to reason he would probably know if other workers were also First Nations.

Discrimination test parts 2 and 3: Negative impacts or losses connected to being First Nations

[50] Now I will look at the second and third part of the legal test for discrimination. The Claimant has to prove he suffered a negative impact or loss in employment. Then he has to prove that being First Nations was a factor in, or somehow connected to, his negative impact or loss.

[51] The Claimant says he suffered three negative impacts or losses:

- his co-workers excluded him because he was not part of their ethnic groups[23]
- his supervisor demoted him three times to give non-First Nations workers their jobs back
- he lost his job because his mental health got worse and worse due to the discrimination and racism he faced at work

[52] I find that the Claimant didn't face racism or discrimination because of what he says his **co-workers** did to him (the **first bullet point**). He hasn't proven this.

[23] See the Commission's notes of its phone conversation with the Claimant and his representative at GD3-43 and GD3-43.

[53] He gave one example. He says he was made to feel left out. He says most of the people on his crew were Polish or Mongolian. He wasn't part of their close-knit groups, and didn't understand the languages they would speak. He said only someone from a minority would understand completely.

[54] I accept that the Claimant felt left out. This is his honest belief, and I have no reason to doubt that he believed this. But he could honestly hold that belief even if it isn't factually true.

[55] I don't accept that the other workers treated him badly or unequally because he is First Nations. There is no evidence to support this.

[56] I prefer the evidence of his supervisor about this point. He says the Claimant got along with everyone on the crew without any personality issues.[24] The supervisor had the chance to observe the Claimant and his co-workers for months before he quit. I see no reason why his supervisor would lie about this.

[57] I can't accept the Claimant`s position for another reason, which has to do with discrimination law. In order to prove discrimination in employment based on his co-workers alleged racism, he would have to show that his employer knew or should have known about the racism and didn`t take steps to deal with it. There is no evidence of this.

[58] I will deal with the **second bullet point (being demoted)** and **third bullet point (quitting for mental health reasons)** together because they are linked.

[59] First I will consider whether the Claimant's supervisor was racist towards the Claimant and discriminated against him in a direct or intentional way. Then I will consider whether the supervisor's decisions about assigning work had the effect of discriminating against the Claimant.

[24] See the Commission's notes of its phone conversation with his supervisor at GD3-47 and GD3-48.

[60] The Claimant says that his supervisor was racist, hated him, and discriminated against him over and over.[25] He was the only First Nations person on his crew and was treated the worst. His supervisor was racist towards First Nations no matter how hard they worked. His working conditions were discriminating and racist. So, he could not continue in the job and chose to resign rather than lash out in anger or continue to suffer mental abuse and "almost hatred" from his supervisor.

[61] The Claimant says that being demoted over-and-over, and being kept on the rubber tire paving machine, had a very negative effect on his mental health. And so he quit when he couldn't take it any more.

[62] His supervisor told the Commission the Claimant is a great guy and great at his job.[26] And if the Claimant didn't like something he would let him know, face-to-face.

[63] The Claimant's representative told the Commission that his son and the supervisor used to hug each other and his supervisor would look after his son. He also said that work was his son's therapy, his supervisor didn't understand, and they both got angry in the end.[27] I believe what the representative said because he said it to the Commission when he was on the call with his son. His son could have corrected him if it was not true. In the context of the phone call, it wasn't said just to support the Claimant's argument why he should get EI benefits. And it doesn't. So, I find what the representative said is more likely than not true.

[64] I find that is it more likely than not there was a breakdown in the relationship between the Claimant and his supervisor and not direct or intentional racism. I arrived at this finding because I prefer the supervisor's evidence over the Claimant's. The Claimant didn't testify at the hearing. I reviewed the file and there weren't any specific examples of obvious or direct racism or hatred by his supervisor. There is no evidence that his supervisor said anything racist to him, or called him racist names. And there is

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[25] For the information in this paragraph, see the Claimant's EI application at GD3-13, GD3-14, and GD3-18, and his reconsideration request at GD3-36.
[26] See the Commission's notes of its call with the supervisor at GD3-48.
[27] GD3-49.

no evidence that his supervisor had negative, biased, prejudiced or stereotypical views or opinions about First Nations people.

[65] My finding that there was a relationship breakdown rather than racism is supported by what the Claimant's father told the Commission. I have no reason to doubt the representative's observations and assessment of the relationship between his son and the supervisor. It is based in part on what his son told him. And it doesn't make sense that the Claimant would mislead his father, or his father would mislead the Commission in phone calls.

[66] Now I will consider whether the **effect of the supervisor's decisions** about work assignments discriminated against the Claimant because he is First Nations.

[67] The Claimant's workplace was unionized. But there is no evidence that his supervisor was following the collective agreement, or union rules about seniority, when he assigned jobs. And there is no evidence the supervisor was following the employer's rules or policy when he assigned jobs.

[68] So, I will focus on whether the supervisor's decisions about assigning work to the Claimant had a negative impact or resulted in a loss for the Claimant.

[69] The Claimant says that three times in 2020, when another worker quit, his supervisor moved him to the big metal roller. He had been trained to operate the big metal roller. He called working the big metal roller a "promotion" and a big move in the industry.[28]

[70] He also says he was "demoted" three times. Each time his supervisor demoted him from the big metal roller, back to the rubber tire machine. He was demoted when the worker who quit came back and his supervisor gave the worker their job back.

[28] GD3-44.

[71] Above I accepted the Claimant statement that he was the only First Nations person on his crew. So, this means that his supervisor demoted him three times and gave the big metal roller job back to someone who was not First Nations.

[72] His supervisor agrees that the Claimant asked to change job roles.[29] He says he was not in a position to switch people around. He told the Claimant it could happen but he didn't know when. He explained that he has a schedule and production goals to meet and chose people to do certain tasks because they are capable and able to do those tasks. He also had a budget he was working with. He said it was normal that people who quit were accepted back. He had left the employer and returned.

[73] The Claimant and his supervisor agree that the Claimant was a hard worker and excellent at his job operating the rubber tire paving machine. The Claimant told the Commission that when he started work with the employer his supervisor got him transferred to his crew. They had worked together at another company, so his supervisor already knew he was an excellent worker.

[74] ***I find that the effect (or outcome) of the supervisor's decisions about assigning work discriminated against the Claimant based on his First Nations status***. There is evidence that the Claimant had a hard time getting work because he was First Nations with a grade nine education. He worked a seasonal job. His supervisor demoted him three times, in favour of workers who were not First Nations. So, the effect of his supervisor's decisions was to disadvantage him in his employment based on his First Nations status.

[75] ***I also find that the Claimant's mental health was negatively affected by his supervisor's decision, and these negative effects were linked to his First Nations status***.

[76] I have based these finding on important facts and legal principles recognized by courts in Canada in cases about the equality rights of Indigenous People. I have taken into account the social, political and legal context of Indigenous People. This context

[29] See the Commission's notes of its call with the supervisor at GD3-47.

includes a legacy of stereotyping and prejudice through colonialism, displacement and residential schools.[30]

No defence or justification under the CHRA

[77] I accepted the supervisor's explanation of how he assigned work, and why it made good money and business sense—for him and the company. But "good business sense" isn't a legal defence or justification for discrimination recognized by the CHRA.

[78] After reviewing the documents, **I find the employer had no defence or justification under the CHRA for the discrimination the Claimant experienced**. I make this finding because there is no evidence that assigning the Claimant to work on the big metal roller on a permanent basis would have created a health risk, a safety risk, or an unbearable cost for his employer. The fact that the supervisor promoted the Claimant to that machine three times shows me that there was no legal justification for demoting him and keeping him from working on that machine.

The Claimant's other arguments about discrimination[31]

[79] The Claimant made other arguments about discrimination, so I need to consider them.

[80] The Claimant's representative argued that putting him back on the rubber tire paving machine was discrimination because the employer did it without just cause and for no good reasons. It was also constructive dismissal. Finally, it shows systemic discrimination towards First Nations employees.

[81] I don't agree with this arguments.

[82] Discrimination has a specific legal meaning under human rights laws. The legal test for discrimination is different from the legal tests for unjust (or wrongful) dismissal

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[30] See *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2, at paragraph 402. In this case the Canadian Human Rights Tribunal refers to five Supreme Court of Canada cases about this.
[31] These arguments are set out in GD-6.

and constructive dismissal in employment law. I can only apply the EI Act to the Claimant's circumstances, not employment law.

[83] There is no evidence for me to find that the employer systematically discriminates against First Nations people. The Claimant didn't bring forward any evidence about the effect of the employer's employment practices on First Nations people as a group. The Claimant's evidence was about his situation. And about the decisions one person, his supervisor, made about assigning work on one paving crew.

[84] The Claimant's representative said that I should not believe what the operations manager told the Commission.[32] I agree with the representative for two reasons. First, he didn't have first-hand knowledge of the Claimant situation. Second, because the supervisor, who did have first hand knowledge, said that some things the operations manager told the Commission were not true. So, I have not assigned any weight the operations manager's evidence.

[85] The Claimant's representative also said I should not believe what the supervisor told the Commission. He argued that the supervisor was careful not to accept responsibility for discriminating against the Claimant. He also argued that it was clear that the supervisor and his boss agreed to discriminate by taking away his big metal roller job three times.

[86] I don't agree. These arguments are not supported by the evidence

[87] Above, I found that the supervisor didn't intentionally discriminate against the Claimant. I accept the supervisor's explanation of how he assigned work. I find it makes sense that he would keep the Claimant on the rubber tire paving machine if he was excellent at that job. As a manager, it made good business sense to do so. There is no evidence that the supervisor's boss played a role in assigning work to the Claimant. And there is no evidence the supervisor and his boss go together to plan how to keep the Claimant off the big metal roller.

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[32] See the Commission's notes of its call with Andre Guerts, the operations manager, at GD3-4.

[88] My findings are supported by the Claimant's argument. He says he was kept on the rubber tire paving machine because the supervisor's bonus was tied to the quality of the work his crew did.[33] I have no reason to doubt what he said. There is no evidence that goes against it. And what he said makes sense in the circumstances of the case.

[89] The supervisor and his boss might end up losing money if the supervisor took the Claimant off the rubber tire paving machine. Because the Claimant did excellent work on the rubber tire paving machine, his supervisor made extra money. So it makes sense the supervisor would want to keep him on the rubber tire paving machine.

Summary of findings on discrimination

[90] I have made three findings about discrimination in this section:

- the supervisor's decisions about assigning work kept the Claimant from being promoted permanently to work on the big metal machine, which discriminated against the Claimant based on his First Nations status
- his supervisor's assignment of work negatively affected the Claimant's mental health, which discriminated against the Claimant based on his First Nations status
- the employer has no defence or justification for the discrimination

Working conditions a danger to health and safety & employer practices contrary to law

[91] In this section, I will deal with bullet points two and three from the list of circumstance that I wrote out above. Bullet two is about working conditions that are a danger to health and safety. Bullet three is about employer practices that are contrary to law.

[33] See the Claimant submissions at GD6-8.

[92] The Claimant says that driving the rubber tire paving machine almost non-stop for three years was tiresome, stressful, and dangerous.[34] He worked long hours, wasn't able to take coffee breaks, and couldn't take breaks to urinate.[35]

[93] I find the Claimant hasn't shown that his working conditions were a danger to his health or safety. There is no evidence to support his belief that there was a health and safety risk.

[94] His representative said that at one point the employer sent the Claimant home because he had worked too many hours.[36] This tells me that the employer was aware of health and safety issues and took steps to protect workers' health and safety.

[95] So, I find the employer's working conditions didn't create a health or safety risk.

[96] Other than discrimination (which I dealt with above), the Claimant hasn't shown that any of his employer's practices were against the law.

[97] He says that he didn't get coffee or bathroom breaks when working the rubber tire machine, and the hours were long. But he didn't refer to any laws or standards.

[98] So, I also find that he hasn't proven that it is more likely than not any of his employer's practices were against the law.

Significant change in work duties

[99] The Claimant was promoted to the big metal roller three times. But each time he was demoted and went back to work on the rubber tire paving machine. I reviewed the evidence about this above.

[100] But I find this was not a significant change in his work duties. There is no evidence to support that.

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[34] See his EI application at GD3-11.
[35] See his Reconsideration Request at GD37.
[36] GD3-49.

[101] Both jobs involve operating heavy paving machinery. Both are highly skilled and physically demanding jobs. The Claimant was trained to work both machines.

[102] And there is no evidence that operating the big mental roller and rubber tire machine we different job categories under a collective agreement.

Antagonism with his supervisor & undue pressure to leave his job

[103] I will deal with bullet points five and six from the list above under this sub-heading because those circumstances are closely linked in this appeal. Bullet 5 is about antagonism with his supervisor that he was not primarily responsible for it. Bullet 6 is about undue pressure from his supervisor to leave his job.

[104] Every month in the 2021 season he would ask for a transfer, because keeping him in the job was a safety issue.[37] He warned his supervisor three times that he would have to quit the rubber tire machine to keep his sanity because his mental health was deteriorating and he was having fits of anger due to his work circumstances.

[105] The Claimant says his supervisor made the last two months of his employment unbearable. I have reviewed why they were unbearable when I looked at discrimination, above. He wrote that, "… working under these discriminating and racist conditions made it mentally and emotionally unbearable for me to carry on working there."[38]

[106] The day he quit, everything came to a boil and he saw no other alternative but to quit.[39] That day his supervisor questioned something he had done the day before.

[107] I accept that the Claimant was frustrated and angry, and his mental health had deteriorated by the time he quit. I also accept that his working conditions were the cause of this. He didn't send the Tribunal any medical evidence. But there is no evidence that goes against what he said about his mental health.

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[37] See his EI application at GD3-13.
[38] See his EI application at GD3-13.
[39] See his EI application at GD3-19.

[108] The Claimant's representative argues that the supervisor and his boss put undue pressure in two ways.[40] First, they forced him out of his big metal roller position three times, which was unfair, discriminatory, and amounted to constructive dismissal. And they did that knowing the Claimant had threatened to quit three times because he wanted to go back on the roller. Second, before he quit his supervisor yelled at him that if he didn't like working for the employer he could leave. The Claimant says that his was vicious employer abuse and an abuse of power.

[109] Antagonism with a supervisor should be taken into account when the situation occurs independently from the will or participation of the claimant and it is beyond their control.[41]

[110] I find that the Claimant hasn't shown there was antagonism which he wasn't primarily responsible for. I reviewed the evidence before me. I find that the evidence shows it is more likely than not there was a breakdown in the relationship between them, which they were both responsible for in equal parts.

[111] He and his supervisor disagreed about the Claimant's job assignment. He asked over and over to be moved, and his supervisor kept telling him he needed more time to do that. But there is no evidence that his supervisor provoked him or criticized him unfairly on an ongoing basis, or was trying to get him to quit. Above, I accepted that his supervisor had good things to say about the Claimant as a person and as a worker.

[112] I accept that the supervisor was frustrated with the Claimant and told him he could quit if he didn't like the supervisor's decisions or the job. The Claimant's evidence is that his supervisor said this one time, in frustration and anger.

[113] But the Claimant also says that he threatened to quit three times, out of frustration. This is consistent with my finding in the discrimination section (above) that there was a breakdown in the relationship between the Claimant and his supervisor.

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[40] These arguments are at GD6-5 and GD6-6.
[41] See *Smith v Canada (Attorney General)*, A-875-96 (FCA).

[114] The Claimant also argued that the supervisor got bonus pay because the Claimant was so good at doing his job.[42] I accepted this in the discrimination section (above). So, it wouldn't make sense for the supervisor to antagonize the Claimant or to try to get him to quit if he risked losing money.

[115] So, based on this evidence, I also find that he hasn't shown that his supervisor put undue pressure on him to leave his job.

[116] My findings in this section don't go against my finding that the Claimant faced discrimination in employment as an effect of his supervisor's decisions. His supervisor didn't intentionally or directly discriminate against him. So that discrimination is not a form of antagonism.

The Claimant had reasonable alternatives

[117] The law says I have to look at whether the Claimant had no reasonable alternative to leaving his job when he did. And when I look at this, I have to take into account the circumstances that existed at the time he left his job.

[118] I find that the Claimant had reasonable alternatives to leaving his job when he did after taking into account these circumstances, individually and cumulatively, that existed when the Claimant quit:

- He faced discrimination at work connected to his First Nations status
- His mental and physical health had deteriorated because of his job
- He has a hard time finding work because he is First Nations and only finished grade nine

[42] See GD3-39.

The Commission's position and the Claimant's position

[119] The Commission says that the Claimant had the following reasonable alternatives:[43]

- he could have seen a doctor to get medical advice about treatment or taking a medical leave
- he could have looked for work before he quit, since he was unhappy with his work situation for two or more years
- he could have complained to his supervisor's boss about being unfairly treated and discriminated against by his supervisor
- he could have gone to his union about being unfairly treated and discriminated against by his supervisor

[120] The Claimant disagrees. He says that he had no reasonable alternative because:[44]

- he didn't know he could ask for a medical leave and his employer never told him he could, he didn't have a doctor, and he felt healthy and fit to work any job except the job he had
- he didn't look for work because he really wanted to keep his job and didn't intend to quit when he did, that was a spur of the moment decision
- he didn't want to complain to his supervisor's boss because he didn't want to get his supervisor in trouble, and the Claimant was scared he might face negative consequences because the paving industry is small

[43] See the Commission's Representations at GD4-4 to GD4-6.
[44] See his EI application at GD3-18 and GD3-19, and his Notice of Appeal at GD2-3 and

- although he knew he paid union dues, he didn't know his union could help him and had never been to a union meeting

[121] The Claimant`s representative argued that the Claimant doesn't have the ability to talk up for himself in the workplace.

Complaining to the boss

[122] I find that complaining to his supervisor's boss was not a reasonable alternative for the reasons the Claimant gives. Although his supervisor told the Commission that the Claimant could have complained to his boss, I prefer the Claimant's evidence. He was scared of possible negative consequences in the small paving industry. It makes sense that fear stopped him from complaining.

Getting medical advice

[123] I find that seeing a doctor, or other health care professional, to get advice was a reasonable alternative. He says he quit his job for health/medical reasons.[45] He really needed a break from the rubber tire paving machine. He warned his supervisor three times that he would have to quit because his mental health was beginning to deteriorate. He was having fits of anger due to his work circumstances. He frames it as a safety issue for him and his co-workers.

[124] Based on what he wrote, I find that by the time he quit his job was having a very negative effect on his mental health. And although he didn't have a family doctor, he could have tried to go to a walk-in clinic or a hospital emergency department. Or he could have used a tele-health or mental health crisis phone service to get a referral. There is no evidence he tried any of these options.

[125] His representative argued that the Claimant felt healthy and fit to work any job except the job he had. But he didn't refer to evidence to support that, and I couldn't find any evidence. So, I don't accept this argument.

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[45] See his EI application at GD3-9 to GD3-14.

Looking for another job

[126] I find that looking for another job was a reasonable alternative for the Claimant. According to the Claimant he had been refused a job transfer all season, despite asking every month. And his working conditions had only gotten worse over time.[46]

[127] I find that if his work was making him frustrated and angry, and he didn't want to complain and didn't know what the union did, looking for another job was a reasonable thing to do. He gave no evidence to explain why looking for another job would be unreasonable in the circumstances.

[128] He could have looked for another job in the paving industry. He had worked for at least one other paving company, and he knew the industry and had job skills and experience in the industry. And he was an excellent worker. His supervisor said so.

[129] Or he could have looked for another job outside the paving industry. His representative says, and I have no reason to doubt, that he also had significant experience working in construction.[47] And his representative says that he could have looked for work. But he chose not to do so because he wanted to stay at his job and wanted things to work out at his job.[48]

[130] So, I find the evidence shows that looking for other jobs was a reasonable alternative to quitting when he did.

Asking the union for help

[131] I find that asking the union for help was a reasonable alternative.

[132] The Claimant knew the union existed. But he says he didn't know they could help him. He had been unsatisfied for at least two years at work and believed he was facing unfairness, discrimination and racism. During that time he could have found out more about his rights and found out more about the union. He could have asked other

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[46] See his EI application at GD3-18.
[47] See GD2-13.
[48] See GD3-49.

workers. He could have called the Ministry of Labour, a human rights commission or legal advice service, or searched the internet for answers—all of which might have pointed him to his union for help.

[133] I don't accept his representative's argument that the Claimant was not able to ask the union for help. He argued the Claimant only graduated grade nine and couldn't stand up for himself in the workplace. But there is no evidence to support that he couldn't stand up for himself. The representative didn't point to evidence to support this argument, and I didn't get the chance to ask the Claimant questions about this issue.

[134] Finally, his representative says that once he suggested to his son that he should to his union.[49] I have no reason to doubt this. The fact his father, who the Claimant relies on for guidance and representation, suggested going to the union confirms to me that it was a reasonable alternative in the circumstances.

Conclusion about reasonable alternatives

[135] Considering the Claimant circumstances, I find he had the following reasonable alternatives to quitting when he did:

- seeing a doctor, or other health care professional, to get advice
- looking for another job was a reasonable alternative
- asking the union for help

[136] I find that the evidence shows the Claimant was capable and able to follow up on these alternatives, but he didn't do so. Above, I accepted his supervisor's evidence that he respected him because if the Claimant didn't like something he would let him know, face-to-face. The Claimant had already moved companies in the paving industry once. He was able to apply for EI benefits on-line when he wasn't working. And his EI

[49] See GD-49.

application, which he completed, is well-written and refers to concepts like racism and discrimination.

[137] So, the Claimant didn't have just cause for quitting when he did because he had reasonable alternatives.

Conclusion

[138] Because I have found that the Claimant voluntarily left his job without just cause, he is disqualified from receiving EI benefits.

[139] This means that his appeal is dismissed.

Glenn Betteridge
Member, General Division – Employment Insurance Section