Citation: *JP v Canada Employment Insurance Commission*, 2024 SST 714

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. P.
Representative:	Philip Cornish
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 22, 2023 (GE-23-1565)

Tribunal member:	Solange Losier
Decision date:	June 23, 2024
File number:	AD-24-83

Decision

[1] Leave (permission) to appeal is refused. The Claimant's appeal will not proceed.

Overview

[2] J. P. is the Claimant in this case. He worked as a technician for a municipality. When he stopped working, he applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he could not get EI regular benefits because he stopped working due to his own misconduct.[1]

[4] The General Division concluded the same.[2] It found that he could not get EI benefits because he was suspended and dismissed from his job due to his own misconduct.[3]

[5] The Claimant is now asking for permission to appeal the General Division's decision.[4] He says that the General Division made several reviewable errors.[5]

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division made a reviewable error?

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[1] See Commission's initial decision at page GD3-34 and reconsideration decision at page GD3-134.
[2] See pages ADN1A-1 to ADN1A-20.
[3] There has been some procedural history with this file. The General Division dismissed the Claimant's appeal on November 29, 2022 (file GE-22-2053). The Claimant appealed that decision to the Appeal Division. The Appeal Division found a procedural error, so the file was returned to the General Division for a new hearing (AD decision dated May 29, 2023 and file AD-23-8). The General Division dismissed the Claimant's appeal and this is the decision that the Claimant is appealing to the Appeal Division (GD decision dated December 21, 2023, at pages ADN1A-1 to ADN1A-20 and file GD-23-1565).

[4] See Application to the Appeal Division at pages ADN1-1 to ADN1-9.
[5] See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.[6]

[9] I must be satisfied that the appeal has a reasonable chance of success.[7] This means that there must be some arguable ground upon which the appeal might succeed.[8]

[10] The possible grounds of appeal to the Appeal Division are that the General Division:[9]

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[11] For the Claimant's appeal to proceed, I have to find that there is a reasonable chance of success on one of the above grounds of appeal.

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division acted unfairly

[12] The Claimant argues that the General Division member questioned him in a prejudicial manner. He says that the line of questioning was aimed towards eliciting unfavourable answers on his understanding of the employer's policy and jeopardy of termination.

[13] The Claimant says that this amounted to an unfair process and in doing so, the General Division failed to meet the standard of a neutral and impartial arbiter.

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[6] See section 56(1) of the DESD Act.
[7] See section 58(2) of the DESD Act.
[8] See *Osaj v Canada (Attorney General),* 2016 FC 115, at paragraph 12.
[9] See section 58(1) of the DESD Act.

– **There is no arguable case that the General Division acted unfairly**

[14] Procedural fairness is about the fairness of the process. The Claimant has a right to be heard and to know the case against him. He also has a right to be given an opportunity to respond and have his case considered fully and fairly by an impartial decision-maker.[10]

[15] If the General Division proceeded in a manner that was unfair or was not impartial, then I can intervene.[11]

[16] I listened to the audio recording from the General Division hearing. The following is a short summary of what I heard.

[17] The hearing was held by videoconference and it lasted approximately 1 hour and 28 minutes. Only the Claimant and his counsel attended the hearing.

[18] The General Division explained that it was a new hearing. It noted that the Commission had imposed a disentitlement and disqualification to EI benefits due to misconduct and so, it had to decide whether the Claimant was entitled to EI benefits.[12]

[19] The Claimant's counsel confirmed receipt of the file documents and Commission's written arguments.[13]

[20] The General Division asked how the Claimant wanted to proceed (i.e., whether the Claimant would testify, or if his counsel would proceed to submissions directly, or a combination of both).[14]

[21] At the beginning of the hearing, the Claimant's counsel asked for a short break to speak with the Claimant and the General Division permitted it.[15]

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[10] See *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121 at para. 41.
[11] See section 58(1)(a) of the DESD Act.
[12] See audio recording at 3:11 to 3:44.
[13] See audio recording at 4:40 to 11:53.
[14] See audio recording at 11:55 to 13:20 and 16:32 to 16:56.
[15] See audio recording at 13:15 to 16:22.

[22] The Claimant testified and his counsel asked him questions about his job, the union, the grievance filed, the employer's vaccination policy, the labour arbitrator's decision and his job reinstatement.[16] When his questioning was completed, the General Division had some questions for the Claimant.[17]

[23] The General Division started by asking the Claimant questions about the employer's vaccination policy.[18] It asked if he was notified about the policy by email. It asked about the deadlines in the policy and what his employer expected him to do (i.e., disclose his vaccination status).

[24] The Claimant explained that the employer's policy was "not legal" and "not applicable" to him.[19] He said that everything was already discussed during arbitration, so he wasn't sure why he was being asked these particular questions. He referred the General Division to the binding decision issued by the labour arbitrator.

[25] The Claimant's counsel then objected to the General Division's questioning, noting that her questions suggested a narrow interpretation of what constitutes misconduct.[20] His counsel stated that they would not be addressing these issues today because they are not relevant in light of the labour arbitrator's decision.[21]

[26] The General Division explained that its questions were about the Claimant's understanding of the employer's policy and that even though she had more questions, they could proceed to submissions instead.[22]

[27] In its written decision, the General Division also summarized these events.[23]

[28] The issue in this case was whether the Claimant was entitled to get EI regular benefits from November 7, 2021. The Commission had imposed a disentitlement and

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[16] See audio recording at 24:22 to 57:34.
[17] See audio recording at 57:35 to 1:03.
[18] See audio recording at 57:40 to 1:00.
[19] See audio recording at 58:33 to 1:01.
[20] See audio recording at 1:01 to 1:02.
[21] See labour arbitrator's decision at pages AD1-3 to AD1-46.
[22] See audio recording at 1:02 to 1:03.
[23] See paragraphs 35 to 43 of the General Division decision.

disqualification to EI benefits because it said that he was suspended and lost his job due to his own misconduct.[24] And this was the decision the Claimant appealed to the Social Security Tribunal.

[29] The *Social Security Tribunal Rules of Procedure* allow for Tribunal members to actively adjudicate and that includes asking parties questions.[25]

[30] The General Division had to make findings of fact and come to its own conclusions about why he stopped working in November 2021 and whether his conduct amounted to misconduct according to the *Employment Insurance Act* (EI Act).

[31] The questions posed by the General Division were relevant questions that were directly related to the legal issues it had to decide.

[32] For example, asking the Claimant whether he knew about the compliance deadlines in the employer's policy is a relevant and important question. If the Claimant didn't know about the deadlines in the policy, this would likely be an important factor when assessing whether there was wilful misconduct. Equally important is asking whether the Claimant was notified about the employer's policy and if he understood what the employer expected from him.

[33] The General Division asked the usual questions that would be asked in similar cases where someone has been suspended and dismissed from their job due to alleged misconduct.

[34] The audio recording shows that the General Division asked the Claimant questions in an impartial, respectful manner and with an appropriate tone.

[35] There is no arguable case that the General Division failed to provide a fair process or was not impartial when it asked the Claimant questions. It was entitled to ask

[24] See sections 30 and 31 of the *Employment Insurance Act* (EI Act).
[25] See sections 8(2) and 17(2) of the *Social Security Tribunal Rules of Procedure*.

questions and it did so in a manner that was appropriate. The questions it asked were relevant to the legal issues it had to decide.

– The Claimant argues that the General Division made errors of law and errors of jurisdiction

[36] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.[26] An error of law happens when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.[27]

[37] The Claimant argues that the General Division made the following errors:[28]

- By finding that the declaration that the disciplinary provisions of the employer policy were unlawful was not binding or owed consideration in evidence.
- By relying on the *Canada (Attorney General) v Perusse* decision.
- By misapplying the *Canada (Attorney General) v Boulton* decision.
- By misinterpreting the applicability of the following decisions: *Mishibinijima v Canada (Attorney General); Paradis v Canada (Attorney General) ; Canada (Attorney General) v Bellevance ; Re: Lumber* and *Sawmill Workers and KVP.*
- By failing to render an analysis on the application of *Re Rizzo and Rizzo Shoes Ltd* decision.
- By omitting consideration of the *Canada (Attorney General) v Lemire* decision
- By declining to make a decision on the relevance of the effect of the arbitration decision that the employer disciplinary policy was unlawful and this finding needed to be considered on a retrospective basis.
- By ignoring the inherent labour context of its EI decisions as being subject to the laws of Canada on applicable labour principles (which he says have been considered in *Lemire*).

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[26] See section 58(1)(a) of the DESD Act.
[27] See section 58(1)(b) of the DESD Act.
[28] See pages ADN1-4 to ADN1-5.

– **The General Division decided that the Claimant was suspended and dismissed from his job due to his own wilful misconduct**

[38] The General Division had to decide whether the Commission had proven that the Claimant was suspended and dismissed due to misconduct for the purposes of EI benefits.

[39] The General Division's key findings about misconduct included the following:[29]

- The Claimant was suspended from his job on November 8, 2021, and dismissed on January 3, 2022.[30]
- He was informed of the employer's vaccination policy and given time to comply with it.[31]
- His failure to comply with the policy was intentional—he made a deliberate personal decision not to be vaccinated.[32]
- He knew his refusal to provide proof of vaccination in the absence of an approved exemption could cause him to be suspended and subsequently dismissed from his employment.[33]
- His failure to comply with the policy was the direct cause of his suspension and his dismissal.[34]
- He remains disentitled to EI benefits from November 8, 2021, to January 1, 2022, because during that time he was suspended from his job due to misconduct.[35]

[29] See paragraph 61 of the General Division decision.
[30] See paragraph 5 of the General Division decision.
[31] See paragraph 61(a) of the General Division decision.
[32] See paragraph 61(b) of the General Division decision.
[33] See paragraph 61(c) of the General Division decision.
[34] See paragraph 61(d) of the General Division decision.
[35] See paragraph 76 of the General Division decision.

- He remains disqualified to EI benefits from January 2, 2022, until the date he was reinstated to his job because during that time he was dismissed from his job due to misconduct.[36]

[40] The General Division concluded that the Claimant wilfully refused to provide proof of vaccination for Covid-19 as required by the employer's policy in the absence of an approved exemption constituted misconduct under the EI Act.[37] Because of that he was not entitled to be paid EI benefits.[38]

– There is no arguable case that the General Division made any errors of law or errors of jurisdiction

[41] Many of the Claimant's arguments alleged under these grounds are that the General Division misinterpreted and misapplied case law. He also argues that the General Division declined to make a decision on the relevance of the effect of the labour arbitration decision.

[42] There is no arguable case that the General Division made any errors of law or errors of jurisdiction. My reasons follow.

[43] The EI Act says that a Claimant who is suspended because of misconduct is not entitled to receive EI benefits.[39] The same applies if you are dismissed for misconduct.[40]

[44] Misconduct is not defined in the EI Act, but the Federal Court of Appeal in *Mishibinijima* defines "misconduct" as conduct that is wilful, which means that the conduct was conscious, deliberate, or intentional.[41]

[45] There is misconduct if the Claimant knew or should have known the conduct could get in the way of carrying out their duty to the employer and that dismissal was a

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[36] See paragraph 77 of the General Division decision.
[37] See paragraphs 68 and 69 of the General Division decision.
[38] See paragraph 74 of the General Division decision.
[39] See section 31 of the EI Act.
[40] See section 30(1) of the EI Act.
[41] See *Mishibinijima v Canada (Attorney General),* 2007 FCA 36.

real possibility.[42] In other words, misconduct is any action that is intentional and likely to result in suspension or loss of employment.

[46] The General Division correctly summarized and relied on the relevant sections of the EI Act.[43]

[47] The General Division correctly stated and relied on the *Mishibinijima* decision, which defines "misconduct" as conduct that is wilful which means that the conduct was "conscious, deliberate, or intentional."[44] The facts of this case might be different from the *Mishibinijima* case, but it doesn't mean that the definition for misconduct doesn't apply to the Claimant's case.

[48] In *Bellavance*, the Federal Court of Appeal decided that a deliberate violation of the employer's policy is considered to be misconduct.[45] The General Division correctly summarized and applied this case.[46]

[49] In *Paradis*, the Federal Court decided that the question of whether an employer's policy or rule has resulted in a breach of an employee's human rights is not relevant to the question of whether an employee's conduct amount to misconduct and there are other avenues to pursue such arguments. The General Division correctly interpreted and relied on this case.[47]

[50] The General Division noted the Claimant's argument about the *KVP* decision.[48] In *KVP*, an employer cannot impose a policy or rule unless it was reasonable and consistent with the collective agreement. The union also has to agree to the policy or rule.

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[42] See *Mishibinijima,* at paragraph 14.
[43] See paragraphs 9, 26, 28, 58 and 64 of the General Division decision.
[44] See paragraph 26 of the General Division decision, and *Mishibinijima,* at paragraph 14.
[45] See *Canada (Attorney General) v Bellavance*, 2005 FCA 87.
[46] See paragraph 64 of the General Division decision.
[47] See paragraph 56 of the General Division decision.
[48] See paragraph 44 of the General Division decision.

[51] The *KVP* decision is an older case and doesn't apply here because it is about employment and labour law.[49] The General Division correctly stated that it had to consider the legal test established by the decisions that have considered misconduct for the purposes of EI benefits.[50]

[52] The *Lemire* case involved an employee who worked as a delivery person for a restaurant.[51] In his work uniform, he sold contraband cigarettes to another colleague in the employer's parking lot. This was considered a breach of the employer's policy which prohibited the sale of contraband cigarettes on work premises. He was dismissed from his job for misconduct.

[53] Paragraph 14 of the *Lemire* case says:

> To determine whether the misconduct could result in dismissal, there must be a causal link between the claimant's misconduct and the claimant's employment; the misconduct must therefore constitute a breach of an express or implied duty resulting from the contract of employment ...

[54] The Court in *Lemire* says that, deciding whether a dismissal was justified under labour law principles is not the question. Instead, the Tribunal has to determine whether the misconduct was such that the person could normally foresee that it would be likely to result in their dismissal.[52]

[55] The General Division did not specifically refer to the *Lemire* decision, but it didn't need to. It found that the employer had a right to set policies about workplace safety.[53] It established a causal link—that the Claimant's non-compliance with the vaccination policy was the conduct that caused him to lose his job.[54] And it found that the consequences of non-compliance (suspension and dismissal) were foreseeable.[55]

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[49] See *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd*., 1965 CanLII 1009 (ON LA).
[50] See paragraph 48 of the General Division decision.
[51] See *Canada (Attorney General) v Lemire*, 2010 FCA 314.
[52] See *Lemire*, at paragraph 15.
[53] See paragraph 63 of the General Division decision.
[54] See paragraph 24 of the General Division decision.
[55] See paragraph 63 of the General Division decision.

– The General Division wasn't bound by the labour arbitrator's decision

[56] The General Division decided that it was not bound by the labour arbitrator's decision.[56] It correctly noted that it had to apply the legal test set out by the cases that have considered misconduct for the purposes of EI benefits.[57] And it had no jurisdiction to decide whether the employer breached the collective agreement or whether he was wrongfully suspended and dismissed.[58]

[57] The General Division correctly relied on the *Perusse* decision, finding that it was binding on the Tribunal.[59] It found that the outcome of the grievance had no impact on whether or not a claimant lost their employment due to their own misconduct. The Court in *Perusse* also said that it is up to the Tribunal to assess the evidence and come to a conclusion.[60]

[58] The General Division decided that it had to look at the period of time the Claimant was separated from his employment (where he wants EI benefits) and consider whether his conduct amounted to misconduct for the purposes of EI benefits.[61]

[59] The General Division correctly interpreted the *Boulton* decision explaining that even though the Claimant was reinstated back to his job, it does not change the nature of the misconduct that initially led to his suspension and subsequent dismissal.[62]

[60] The Court in *Boulton* confirms that it is for the Board to assess the evidence and come to a decision.[63] Again, it is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has been terminated.

[61] That is exactly what the General Division did, it assessed the evidence and determined that the Claimant was suspended and dismissed for misconduct because he

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[56] See paragraphs 46 and 51–53 of the General Division decision.
[57] See paragraph 28 of the General Division decision.
[58] See paragraphs 56 and 71 of the General Division decision.
[59] See paragraphs 51–55 of the General Division decision.
[60] See *Canada (Attorney General)* v *Boulton*, A-45-96; *Canada (Attorney General)* v *Perusse*, A-309-81.
[61] See paragraph 50 of the General Division decision.
[62] See paragraph 61 of the General Division decision.
[63] See *Canada (Attorney General) v Boulton*, 1996 FCA 1682.

did not comply with the employer's vaccination policy. The fact that the Claimant (with the assistance of his union) was reinstated to his job and his disciplinary record removed by the employer isn't determinative of the issue of whether he was suspended and dismissed for misconduct for the purposes of EI benefits.

– **The General Division didn't need to address every case the Claimant provided**

[62] The Claimant says that the General Division erred because it failed to render an analysis on the application of *Re Rizzo and Rizzo Shoes Ltd* decision.[64]

[63] If the General Division failed to provide adequate reasons that can amount to an error of law.[65]

[64] The General Division referred to the Claimant's argument about *Rizzo* in its decision.[66] He argued that benefits conferring legislation (such as the EI Act) is to be interpreted in the broadest and most favourable fashion. Because of that, he submitted that misconduct is to be interpreted in the broadest and most favourable fashion in favour of the Claimant.

[65] The issue in the *Rizzo* decision was whether employees who lost their employment due to their employer's bankruptcy could make a claim for termination pay and severance pay under the *Employment Standards Act*. The Supreme Court of Canada looked at what the words "terminated by an employer" meant.

[66] The General Division doesn't have to address every case reference made by the Claimant.[67] In this particular case, the General Division didn't need to render an analysis of the *Rizzo* decision in its reasons. The Rizzo decision doesn't directly deal with EI benefits and misconduct.

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[64] See *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 SCR 27.
[65] See section 58(1)(b) of the DESD Act.
[66] See paragraph 44(k) of the General Division decision.
[67] See *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62.

[67] The important part is whether the General Division's reasons explained to the Claimant why it made the decision it did and why it decided the Commission had proven that he had been suspended and dismissed due to misconduct.

[68] The General Division explained with detailed reasons why it found the Claimant had been suspended and dismissed from his job due to misconduct.[68] It found that he had been informed of the employer's vaccination policy and made a deliberate person decision to not comply. He knew that a failure to provide proof of vaccination (without an approved exemption) could cause him to be suspended and lose his job.

[69] I am satisfied that the General Division was aware of the key issues and arguments the Claimant was making and addressed the majority of the Claimant's arguments in its reasons. Its reasons were adequate. There is no arguable case here.

– **The Federal Court and Federal Court of Appeal's decisions in similar cases**

[70] The Federal Court and Federal Court of Appeal has rendered a number of recent decisions on similar cases involving misconduct, vaccination policies and EI benefits.

[71] Here are just a few of them: *Cecchetto; Kuk* and *Hazaparu* decisions*.*

[72] Mr. Cecchetto worked at a hospital and was suspended and dismissed for misconduct for failing to comply with his employer's Covid-19 vaccination policy (Directive 6). [69] The General Division dismissed his appeal, which resulted in not being entitled to get EI benefits.[70] The Appeal Division denied him leave to appeal and Mr. Cecchetto appealed to the Federal Court.

[68] See paragraphs 61 and 62 of the General Division decision.
[69] See *Cecchetto v* Canada (Attorney General), 2023 FC 102, at paragraph 49.
[70] The General Division referred to the Federal Court's decision in *Cecchetto* at paragraph 64 of its decision.

[73] In paragraph 48 of the *Cecchetto* decision, the Federal Court said:

> Despite the Applicant's arguments, there is no basis to overturn the Appeal Division's decision because of its failure to assess or rule on the merits, legitimacy, or legality of Directive 6. That sort of finding was not within the mandate or jurisdiction of the Appeal Division, nor the SST-GD (*Canada (Attorney General) v* Caul, 2006 FCA 251 at para 6; *Canada (Attorney General) v Lee*, 2007 FCA 406 at para 5).

[74] Mr. Cecchetto appealed that decision to the Federal Court of Appeal and it dismissed his application for judicial review. It agreed with the Federal Court's decision that found the Appeal Division's decision was reasonable and noted that it was consistent with other Court decisions in similar circumstances.[71]

[75] In another similar case. Mr. Kuk worked as an Information Technologist for a hospital network. He was dismissed from his job for failing to comply with the employer's Covid-19 vaccination policy. He applied for EI benefits. He also argued that he had no obligation to comply with the vaccination policy, and so his failure to comply was not misconduct.

[76] The General Division dismissed Mr. Kuk's appeal because it found that he made a deliberate choice not to comply with the policy, and that his misconduct resulted in his dismissal. The Appeal Division also refused leave to appeal.

[77] The Federal Court in *Kuk* stated that the Tribunal wasn't obligated to focus on the contractual language or determine whether a claimant was dismissed justifiably under labour law principles when it is considering misconduct under the *EI Act.*[72] It restated that the misconduct test focuses on whether a claimant intentionally committed an act (or failed to commit an act) contrary to their employment obligations.

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[71] See *Cecchetto,* at paragraphs 10 and 11.
[72] See *Kuk v Canada (Attorney General)*, 2023 FC 1134, at paragraph 37.

[78] The Federal Court in *Kuk* stated the following, in paragraph 32:

> Like in *Cecchetto*, this Applicant was aware of the consequences of non-compliance with the Policy in light of the multiple communications from the UHN explaining as such. The Applicant also had the opportunity to remedy his situation on multiple occasions. The Applicant was aware that his request for an exemption was denied. His voluntary decision not to comply with the Policy constituted voluntary misconduct in this context.

[79] Ultimately, the Federal Court of Appeal dismissed Mr. Kuk's appeal and found that the Appeal Division's decision was reasonable.[73] It noted that Mr. Kuk had not convinced them his case was distinguishable from other recent decisions in similar circumstances.[74]

[80] In the *Hazaparu* decision, the Federal Court reiterated that "the Federal Court of Appeal has held that it is not the Social Security Tribunal's role to review an employer's policy when ruling on a dismissed employee's claim for employment insurance benefits."[75]

[81] All of these recent decisions from the Federal Court and Federal Court of Appeal confirm that the Tribunal has a narrow and specific role. The only relevant question before the General Division was whether the Claimant knew that his voluntary decision to not comply with the employer's vaccination policy might result in his suspension and dismissal. The Tribunal isn't obligated to focus on the contractual language or determine whether a claimant was dismissed justifiably under labour law principles.

[82] The Tribunal has to follow decisions from the Federal Court and Federal Court of Appeal. This case isn't distinguishable because the Claimant is making the same arguments as other claimants who were in similar circumstances.

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[73] See *Kuk,* at paragraphs 8–9.
[74] The Federal Court of Appeal referred to the following decisions: *Lalancette v Canada (Attorney General)*, 2024 CAF 58 ; *Sullivan v Canada (Attorney General)*, 2024 FCA 7; *Zhelkov v Canada (Attorney General)*, 2023 FCA 240, 2023 A.C.W.S. 6179 and *Francis v. Canada (Attorney General)*, 2023 FCA 217.
[75] See *Hazaparu v Canada (Attorney General),* 2024 FC 928, at paragraph 2.

[83] To summarize, there is no arguable case that the General Division made any errors of law or errors of jurisdiction.[76] The General Division correctly stated the law and interpreted and applied relevant case law for EI benefits. It was not obligated to refer to every case provided by the Claimant. It was not bound by the labour arbitrator's decision. The General Division had no jurisdiction to assess the employer's policy or severity of the penalty under labour law principles. The Claimant has other legal avenues to make those arguments.

– **There is no arguable case that the General Division made an error of fact**

[84] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."[77]

[85] The Claimant argues that the General Division made an important error of fact because it wrongly misinterpreted the Claimant's testimony. However, he hasn't specifically pointed out which answers the General Division misinterpreted.

[86] I listened to the audio recording and when I reviewed the General Division's decision, it is consistent with the Claimant's testimony at the General Division hearing. The General Division accurately summarized the Claimant's responses in its decision.[78]

[87] There is no arguable case that the General Division made an error of fact by misinterpreting the Claimant's answers at the hearing.

– **There are no other reasons for giving the Claimant permission to appeal**

[88] I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.[79] I did not find any relevant evidence that the General Division might have ignored or misinterpreted. As well, the

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[76] See section 58(1)(a)(c) of the DESD Act.
[77] See section 58(1)(c) of the DESD Act.
[78] See paragraphs 38–41 of the General Division decision.
[79] The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General),* 2016 FC 874 and *Karadeolian v Canada (Attorney General),* 2016 FC 615.

General Division applied the relevant section in law and case law. It also followed a fair process and was impartial.

Conclusion

[89] The Claimant's appeal will not proceed. Permission to appeal is refused.

Solange Losier
Member, Appeal Division