Citation: *CM v Canada Employment Insurance Commission*, 2024 SST 859

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	C. M.
Representative:	Brenda Hrynuik
Respondent:	Canada Employment Insurance Commission
Representative:	Jonathan Dent

Decision under appeal:	General Division decision dated February 13, 2024 (GE-23-3513)

Tribunal member:	Glenn Betteridge
Type of hearing:	In person
Hearing date:	June 18, 2024
Hearing participants:	Appellant Appellant's representative Appellant's support person Respondent's representative
Decision date:	July 24, 2024
File number:	AD-24-152

Decision

[1] I am dismissing C. M.'s appeal.

[2] The General Division made a legal error. To remedy (fix) that error, I have made the decision the General Division should have made.

[3] My decision doesn't change the outcome in his case. He hasn't shown he had just cause for voluntarily leaving his job. This means he is disqualified from getting Employment Insurance (EI) benefits.

Overview

[4] C. M. is the Claimant in this case. He worked as a truck driver. His supervisor verbally harassed him one morning soon after the Claimant got to work. The Claimant left. A couple hours later he called his employer and quit.

[5] The Canada Employment Insurance Commission (Commission) decided he was disqualified from getting EI benefits because he voluntarily left his job without just cause.[1] In other words, he didn't show that quitting was his only reasonable alternative in the circumstances.[2]

[6] The Claimant appealed to the General Division, which dismissed his appeal. It decided he quit on August 9, 2023. It also decided that at that time three circumstances existed. He had been harassed by his supervisor. His employer was acting contrary to law by failing to properly maintain its trucks. That, combined with the drivers' long hours, made his workplace dangerous to his health and safety. But the General Division decided he hadn't proven just cause for quitting because he had a reasonable

1 Under section 30(1) of the *Employment Insurance Act* (EI Act), a person who chooses to leave their job without just cause is disqualified from getting benefits.
2 Section 29(c) of the EI Act sets out this legal test to prove just cause. This section has been interpreted in leading court cases such as *Canada (Attorney General) v White*, 2011 FCA 109 and *Canada (Attorney General) v Hernandez*, 2007 FCA 320.

alternative. He could have raised the harassment with his employer and given his employer an opportunity to address it.

[7] The Claimant says the General Division made a legal error. The Commission says the General Division made no errors. Both parties agree that if I find an error, I should decide whether he voluntarily left his job without just cause.

Preliminary matter: I haven't considered the Claimant's new evidence

[8] The Appeal Division can't consider new evidence unless it meets a recognized exception to that general rule, or the Claimant otherwise shows it should be accepted.[3]

[9] At the Appeal Division, the Claimant included two types of evidence that weren't before the General Division.[4]

[10] The first type was about the application of Ontario's *Occupational Health and Safety Act*. I can take notice of that law. But the Claimant was relying on statements from an Ontario Ministry of Labour (Ontario MoL) website and made statements about timelines and delays in enforcing that law. The Claimant relies on these statements to argue that complaining to the Ontario MoL wasn't a reasonable alternative.

[11] The second type of evidence was facts about the events and circumstances leading up to, at the time of, and after the Claimant quit. Statements such as "Mr. Mawhinney has a disabled and dependent wife" and "He feared for his life."

[12] At the Appeal Division hearing, I reviewed what I thought was new evidence with the parties. The parties made submissions. And I made rulings. I decided that I would not accept the two types of evidence I set out above.

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[3] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 35 to 40.
[4] This evidence is in the Claimant's written argument, AD9. I allowed the Claimant to send in written arguments after the hearing (see AD11), but that document doesn't include new evidence.

Issue

[13] There are two issues in this appeal:

- Did the General Division make a legal error by not considering two circumstances it had accepted when it decided that an alternative to quitting was reasonable?
- If the General Division made that error, how should I fix the error?

Analysis

[14] I am dismissing the Claimant's appeal. Although he proved the General Division made an error, this doesn't change the outcome in his case. He hasn't shown just cause, in all the circumstances, for quitting when he did. He had a reasonable alternative to quitting.

The Appeal Division's role

[15] The law gives the Appeal Division the power to fix a General Division decision where a claimant shows the General Division made one of these errors:

- It used an unfair process or was biased.
- It decided an issue it should not have decided or didn't decide an issue it had to decide. In legal terms, this is an error of jurisdiction.
- It based its decision on a legal error.
- It based its decision on an important factual error.[5]

[16] If the Claimant doesn't show the General Division made an error, I have to dismiss his appeal.

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[5] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls sets out these grounds of appeal. I will call these errors.

The General Division made a legal error when it misinterpreted and didn't use the proper legal test for just cause

[17] The General Division makes a legal error where it misinterprets or doesn't use the proper legal test from the *Employment Insurance Act* (EI Act).

– What the law says about voluntary leaving and showing just cause

[18] Together, sections 29 and 30 of the EI Act say that a person who voluntarily leaves their job without just cause is disqualified from getting EI benefits. It's up to the Commission to show the Claimant had a choice and chose to leave his job. If the Commission can show that, the onus shifts to a claimant to show just cause for leaving.

[19] Section 29(c) of the EI Act says that a claimant has just cause when they show they had no reasonable alternative to quitting having regard to **all their circumstances**, including those listed in that section. Having no reasonable alternative means the same thing as showing that quitting was a claimant's only reasonable option in the circumstances.

[20] The General Division can only consider circumstances that existed at the time the Claimant quit.[6]

– The parties' arguments

[21] The Claimant argued the General Division didn't properly consider all the circumstances when it found he had a reasonable alternative to quitting.[7] He says the General Division narrowly interpreted section 29(c) of the EI Act instead of looking at all of his circumstances in a holistic way. Specifically, he says it failed to give due consideration to the health and safety circumstances.

[22] The Commission argued that the General Division didn't make an error. It says the safety concerns and the employer's failure to follow the law were not the main

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[6] See *Canada (Attorney General) v Lamonde*, 2006 FCA 44; *Canada (Attorney General) v Thompson*, 2007 FCA 391; *Canada (Attorney General) v Furey*, A-819-95 (FCA); and *Tanguay v Unemployment Insurance Commission*, A-1458-84 (FCA).
[7] See AD9-2, and AD11-2 to AD11-4.

reasons the Claimant quit. The General Division accepted both circumstances, which were closely related. And it took them into account in its reasonable alternatives analysis.[8]

[23] The Commission goes on to argue that the General Division, as the trier of fact, was allowed to sift through the facts and weigh them as it saw fit. And the Claimant's reasonable alternatives to quitting were the same for all three circumstances.[9]

– **The General Division made a legal error: it misinterpreted the legal test for just cause**

[24] The General Division made a legal error when it focused on the reason the Claimant quit (harassment) when it assessed whether reporting the harassment was a reasonable alternative. It should have considered all three circumstances it accepted when deciding whether the Claimant had an obligation to report the harassment to the employer and see what could be done before he quit.

[25] The General Division found three circumstances from section 29(c) applied in the Claimant's case:

- He was harassed at work by his supervisor who yelled at him, including swearing at him.[10]

- The employer engaged in practices contrary to law because there were safety issues at work with the trucks, involving a potentially unlicensed mechanic, accidents and incidents, and improper repairs or maintenance.[11]

[8] See AD8-5.
[9] See AD8-6.
[10] See EI Act section 29(c)(i). And see the General Division decision at paragraphs 18, 21, 22, 27, and 44.
[11] See EI Act section 29(c)(xi). And see the General Division decision at paragraphs 18, 30, 36, 37, and 44.

- The Claimant's working conditions were a danger to health or safety because of the accidents and incidents involving the trucks, and the fact employees worked long hours.[12]

[26] Then the General Division decided that reporting the harassment to his employer was a reasonable alternative to quitting for the Claimant.[13]

[27] When the General Division considered whether that alternative was reasonable, it misinterpreted the legal test for just cause under section 29(c) of the EI Act. It focused only on harassment ("the one yelling incident").[14] It did this because it accepted the Commission's argument that this was the reason—or the main reason—the Claimant quit. So, because the safety issues weren't the main reason he quit, the General Division didn't consider these circumstances when deciding whether reporting the harassment to his employer was reasonable. (The General Division used "safety issues" to mean the employer's practices contrary to law **and** the dangerous workplace, because they were closely related.[15])

[28] The General Division's analysis goes against the plain language of section 29(c). That section calls for—to use the Claimant's words—a holistic analysis. It tells the Commission and the Tribunal to have regard to **all the circumstances** that exists when a person quits. It doesn't say to decide whether an alternative to quitting was reasonable having regard to only the main reason a person quit.

[29] I don't accept the Commission's argument. The General Division's mistake isn't about weighing evidence. The General Division didn't use the proper legal test under section 29(c). As a direct result, it didn't consider relevant evidence about whether reporting the harassment to his employer was a reasonable alternative.

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[12] See EI Act section 29(c)(iv). And see the General Division decision at paragraphs 18, 38, 39, 42, 43, and 44.
[13] See the General Division decision at paragraphs 55 to 57.
[14] See paragraph 60 of the General Division decision.
[15] See paragraph 20 of the General Division decision.

[30] The Claimant relied on the other two circumstances the General Division accepted to explain why reporting the harassment to his employer wasn't a reasonable alternative. He testified that he didn't think his employer would do anything if he reported the harassment.[16] He believed this because of his experience reporting safety issues to his employer many times. He says his employer did nothing.[17] Money was all that matter to his employer.[18]

[31] To summarize this section, the General Division made a legal error when it misinterpreted section 29(c) and didn't use the proper test to decide whether an alternative was reasonable. It didn't consider all the circumstances that existed at the time the Claimant quit.

Remedy: fixing the error by making the decision the General Division should have made

[32] The law gives me the power to fix the General Division's error.[19] In appeals like this one:

- I can send the case back to the General Division to reconsider.
- I can make the decision the General Division should have made (based on the evidence before the General Division without considering any new evidence).

[33] The Claimant and the Commission agreed that if I found an error, I should make the decision. I agree. At the General Division, the Claimant knew the Commission's case, which he had to meet. And the General Division gave him a full and fair opportunity to present evidence and arguments to challenge the Commission's case.

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[16] Listen to the General Division hearing recording at 47:50 to 50:00.
[17] Listen to the General Division hearing recording at 1:10:55. He wrote the same thing in his reconsideration request, as GD3-31 and GD3-32
[18] Listen to the General Division hearing recording at 1:10:55. He also said this to the Commission in a phone call, according to the Commission's notes at GD3-34.
[19] Section 59(1) of the DESD Act gives me these powers.

– The issue I have to decide

[34] I have to decide one issue:

- In all the circumstances that existed when the Claimant quit, did he have just cause for quitting? In other words, was quitting his only reasonable alternative?

– When the Claimant quit, and the circumstances that existed at that time

[35] I am adopting the General Division's finding that the Claimant quit his job on August 9, 2023. The parties didn't challenge this finding at the Appeal Division. The parties agreed on this at the General Division. And that date is supported by the evidence before the General Division.

[36] I am also adopting the General Division's finding that three circumstances listed in section 29(c) existed at the time he quit: harassment; the employer's practices that were contrary to law; and working conditions that were dangerous to the Claimant's health and safety. The parties didn't challenge these findings. And these findings are supported by the evidence before the General Division.

[37] Now I have to decide whether the Claimant has shown he had no reasonable alternative to quitting in those three circumstances.

– The Claimant had a reasonable alternative to quitting: filing a complaint with the Ontario MoL

[38] The Claimant had a reasonable alternative to quitting in all the circumstances that existed when he quit. Making a complaint with the Ontario MoL before he quit was a reasonable alternative.

[39] On his EI application, he said he hadn't contacted any outside agencies to get help with his situation before quitting.[20] He filed his application on August 17, 2023.[21] In his reconsideration request, dated October 10, 2023, he wrote that the truck rollover incident had been "swept under carpet" by the employer, but "I have now spoken with

[20] See GD3-13.
[21] See GD3-21.

the Labour Board and an investigation is pending."[22] At the General Division hearing, he testified he first called the Ontario MoL towards the end of September 2013.[23]

[40] I accept the Claimant's evidence about this. It is consistent, it doesn't go against any other evidence, and I have no reason to doubt it. This means the Claimant complained to the Ontario MoL more than a month after he quit on August 9, 2023.

[41] I find making a complaint with the Ontario MoL was a reasonable option before he quit, in all the circumstances that existed at that time. In other words, under section 29(c) of the EI Act he had an obligation to make a complaint to the Ontario MoL instead of quitting.

[42] Like the General Division, I accept the Claimant's testimony that he would have continued to work—despite the dangerous work environment and his employer's disregard of the law—if the harassment hadn't happened. This tells me the Claimant didn't believe the health and safety issues were so bad that he had to leave the job immediately. This tells me it was reasonable to expect him to make a complaint and wait for the results of the investigation before quitting. So, quitting wasn't his only reasonable alternative in all the circumstances.

[43] The Ontario MoL is mandated to accept and investigate complaints about health and safety at work. This includes complaints about whether an employer has a workplace harassment and violence policy. This means an Ontario MoL inspector has the power to investigate all three circumstances the Claimant relied on to show he had just cause.

[44] The Claimant argued that a complaint to the Ontario MoL wasn't reasonable because the law only gives it the power to investigate whether the employer has a workplace harassment and violence policy. I don't accept that argument. The Claimant testified that his employer lied when it said it had a policy. In other words, it didn't have

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[22] See GD3-31.
[23] Listen to the General Division hearing starting at 38:50. The Claimant: testified that he first called the Ontario MoL at the end of September 2023. The Claimant included a copy of the Ontario MoL inspector's Filed Visit Report with his General Division appeal, at GD2-9 to GD2-11.

a policy. So, it was reasonable for the Claimant to file a complaint to address the harassment he experienced, at least as a first step.

[45] The Claimant also argued I should follow decisions of the Umpire or this Tribunal.[24] I have reviewed those decisions. I don't have to follow them. And none of them convince me that the Claimant's only reasonable alternative in his circumstances was to quit. One recent decision supports my finding that the Claimant had a reasonable alternative. It involved a truck driver faced with significant maintenance and safety issues on his truck. The employer didn't deal with these issues in a timely way. The General Division decided it was a reasonable alternative for the truck driver to complaint to the Quebec equivalent of the Ontario MoL.[25]

– **This decision follows the law and the purpose of EI benefits**

[46] My decision will probably seem unfair to the Claimant. But it follows the law and the purpose of sections 29 and 30 of the EI Act. I understand the Claimant believes that quitting was the smartest thing to do.[26] But the courts have said that having a good reason to leave a job isn't the same as having just cause under the EI Act.[27]

[47] The courts have also said that workers who transform a risk of unemployment into a certainty should not get EI benefits.[28] EI benefits are for people who are involuntarily unemployed.[29] In this case, the Claimant made the risk of his unemployment certain when he chose to quit. But he hasn't shown that making himself unemployed was the only reasonable alternative he had.

[48] The Claimant fundamentally and forcefully disagrees with the obligation that the EI Act puts on him to show just cause. He expressed this at the General Division and

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[24] See *CUB 53401*; *CUB 52364*; *SB v Canada Employment Insurance Commission*, 2023 SST 1909; *SL v Canada Employment Insurance Commission*, 2016 SSTGDEI 29 (CanLII); The Claimant also referred to an Ontario Labour Relations Board decision. That decision isn't legally relevant, so I didn't consider it.
[25] See *SB v Canada Employment Insurance Commission*, 2023 SST 1909 at paragraph 21.
[26] This is what he wrote in his reconsideration request, at GD3-29.
[27] See *Canada (Attorney General) v Imran*, 2008 FCA 17; *Canada (Attorney General) v Laughland*, 2003 FCA 129; and *Tanguay v Unemployment Insurance Commission*, A-1458-84.
[28] See *Canada (Attorney General) v Langlois*, 2008 FCA 18; and *Canada (Attorney General) v Marier*, 2013 FCA 39.
[29] See *Canada (Canada Employment and Immigration Commission) v Gagnon*, [1988] SCR 29.

Appeal Division hearings. He said the Commission's decision and the General Division decision went against common sense. Unfortunately for the Claimant, like the Commission and the General Division, I have to follow the EI Act. And that is what I have done.

Conclusion

[49] I am dismissing the Claimant's appeal.

[50] The General Division made a legal error. So, I made the decision the General Division should have made.

[51] My decision doesn't change the outcome in the Claimant's appeal. He is disqualified from getting EI benefits because he voluntarily left his job without just cause.

Glenn Betteridge
Member, Appeal Division