[TRANSLATION]

Citation: *BB v Canada Employment Insurance Commission*, 2024 SST 648

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	B. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Louis Gravel

Decision under appeal:	General Division decision dated January 28, 2024 (GE-23-3388)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Videoconference
Hearing date:	June 4, 2024
Hearing participants:	Appellant
Decision date:	June 7, 2024
File number:	AD-24-130

Decision

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

Overview

[2] The Appellant (Claimant) left his job on August 2, 2022, and applied for Employment Insurance (EI) benefits. The Respondent (Commission) looked at the Claimant's reasons for leaving. It found that, instead of leaving when he did, the Claimant could have made sure he had another job before leaving. He could also have seen a doctor about his fatigue problem or talked to the employer about the difficulties he was experiencing before leaving.

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

[4] The General Division found that the Claimant left his job. It determined that the reduction in hours was likely temporary given the vacation period. The General Division found that the Claimant should have waited until he had a concrete job offer before leaving. He could also have made inquiries to contact the appropriate person to discuss his work hours.

[5] The Claimant was given permission to appeal the General Division decision. He argues that the General Division made its decision without regard for the material before it and made an error of law in finding that he did not have just cause for leaving his job.

[6] I have to decide whether the General Division made its decision without regard for the material before it and made an error of law in its interpretation of sections 29(c)(iv), (vi), and (vii) of the *Employment Insurance Act* (EI Act).

[7] I am allowing the Claimant's appeal.

Issue

[8] Did the General Division make its decision without regard for the material before it and make an error of law in its interpretation of sections 29(c)(iv), (vi), and (vii) of the EI Act?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[1]

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Preliminary remarks

[12] It is well established that I have to consider only the evidence that was before the General Division. A hearing before the Appeal Division is not a new opportunity to present evidence. The Appeal Division's powers are limited by law.[2]

---

[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.
[2] *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

Did the General Division make its decision without regard for the material before it and make an error of law in its interpretation of sections 29(c)(iv), (vi) and (vii) of the EI Act?

[13] Before the General Division, the Claimant said that the employer didn't comply with the employment contract by not paying him the wage premium and not giving him all the hours advertised in the job offer. He tried several times to contact someone from human resources but was unsuccessful.

[14] The Claimant also said that he was risking his safety by driving after his shift, since he sometimes fell asleep behind the wheel. Finally, he argued that he had assurance of a job when he left.

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

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

[17] The General Division didn't accept the Claimant's argument about the unpaid wage premium. It found that the Claimant left on August 2, 2022, before he had received his first pay. So, when he left, he was unable to determine whether the employer had paid him the premium. The General Division found that the Claimant did not have reasonable assurance of another job in the immediate future when he left his job.

[18] The General Division also found that the Claimant's sleeping while driving problem was not a situation provided for by the law because it did not affect his work.

[19] At the hearing of this appeal, the Claimant did not persuade me that I had reason to intervene with respect to sections (iv) and (vi). The evidence before the General Division amply supports its findings of fact and law.

[20] But the Claimant insists that the employer failed to comply with the employment contract by reducing the hours advertised in the job offer. This had the effect of significantly changing his pay conditions.

[21] I note that the employer's job offer says that the number of hours will be [translation] "about 5 hours per day, Monday to Friday."[3]

[22] The evidence shows that the employer did not comply with the job offer. The Record of Employment issued by the employer indicates that the Claimant worked 24 hours during the two weeks he was employed, which is about half the hours advertised in the job offer. The Claimant worked only two hours on his last day of work.

[23] The General Division found that, given the short time spent at work and the vacation period, it is quite possible that this is simply a temporary reduction in the number of hours required and not a permanent change in working conditions.

[24] In my view, the General Division made its decision based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[25] There are two issues related to the General Division's finding of fact. First, the employer's offer clearly says that the employee will be offered about 5 hours per day. There is no indication that the number of hours will be significantly changed during vacation periods. Second, the General Division's finding assumes a drop in clientele during the vacation period. There is no evidence to support this conclusion.

[26] I am also of the view that the General Division made an error in its interpretation of section 29(c)(vii) of the EI Act.

---

[3] See GD3-25.

[27] Even though the employer did not change the Claimant's salary, the reduced hours it gave him, contrary to the hours advertised in the job offer, had the effect of significantly changing the Claimant's overall earnings.[4]

[28] Given the General Division's errors, I am justified in intervening.

Remedy

[29] Considering that the parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.[5]

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

[31] In this case, the evidence shows, on a balance of probabilities, that the Claimant had no reasonable alternative to leaving his job.

[32] The Record of Employment issued by the employer indicates that 24 hours were worked during the two weeks he was employed, which is about half the hours advertised in the job offer. This had the effect of significantly changing the Claimant's overall earnings.

[33] The Claimant had to drive to work at night to be offered sometimes as little as two hours of work by the employer. There was not a lot of management staff at night. He called human resources three times and left messages and never had a return call. He asked on the floor whether hours were reduced often and was told that it was likely to happen often because the volume of truck to be unloaded is always fluctuating.[6] Talking to the union would not have changed this situation. He made reasonable efforts in the circumstances to discuss the situation with his employer. He also looked for other work before leaving.

---

[4] See *LC v Canada Employment Insurance Commission*, 2021 SST 766.
[5] As per section 59(1) of the *Department of Employment and Social Development Act*.
[6] See GD3-22.

[34] Considering all the circumstances, I find that the Claimant had just cause for leaving his job under section 29(c)(vii) of the EI Act.

[35] The Claimant's appeal should be allowed.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division