



Citation: *Canada Employment Insurance Commission vs GS*, 2024 SST 1026

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Julie Duggan

**Respondent:** G. S.

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**Decision under appeal:** General Division decision dated  
May 2, 2024 (GE-24-1314)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** Teleconference

**Hearing date:** August 14, 2024

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** August 27, 2024

**File number:** AD-24-397

## Decision

[1] I am allowing the Canada Employment Insurance Commission's appeal (Commission). The General Division made a legal error and an important error of fact.

[2] To remedy (fix) that error, I have done two things. First, I have decided that the Commission has shown G. S. quit his job. Second, I am sending his case back to the General Division to decide whether he had just cause (in other words, a reason the law accepts) for quitting when he did.

[3] He is understandably frustrated with how long it's taking to finally decide his case. When his appeal gets back to the General Division, he can ask it to speed up (in legal language, expedite) his appeal.

## Overview

[4] G. S. is the Claimant in this case. He made a claim for EI regular benefits when he stopped working as a truck driver and crane operator for a big box home store (employer).

[5] The Commission denied his claim. It decided he was disqualified from getting EI benefits because he voluntarily left (in other words, quit) his job and didn't have just cause for doing that.<sup>1</sup> The Commission upheld its decision when he asked it to reconsider.

[6] The Claimant appealed to this Tribunal's General Division. It allowed his appeal. It found the Commission hadn't shown he quit his job, because there was a shortage of work.

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<sup>1</sup> Section 30(1) of the *Employment Insurance Act* (EI Act) says a person is disqualified from getting any benefits if they voluntarily left any employment without just cause. Section 29(c) says what it means to have just cause for voluntarily leaving a job. In other words, what counts as a reason the law accepts.

[7] I gave the Commission permission to appeal. The Commission argues the General Division made a legal error and an important factual error. The Claimant says the General Division didn't make an error. He didn't quit his job.

## **Issues**

[8] I have to decide three issues:

- Did the General Division make a legal error by not applying the correct legal test to decide if he quit?
- Did the General Division make an important factual error by ignoring the evidence from his employer?
- If the General Division made an error, how should I fix it?

## **Analysis**

[9] I am allowing the Commission's appeal because the General Division made a legal error and an important factual error.

[10] The parties said if I found an error, I should make the decision the General Division should have made. I have decided one issue. The Claimant quit his job. I am sending his case back to the General Division to decide the other issue—whether he had just cause for quitting in all the circumstances that existed when he quit.

## **The Appeal Division's role**

[11] The law gives the Appeal Division the power to fix a General Division decision where the Commission 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.<sup>2</sup>

[12] If the Commission doesn't show the General Division made an error, I have to dismiss its appeal.

– **What the General Division had to decide**

[13] Sections 29 and 30 of the *Employment Insurance Act* (EI Act) say that a person who voluntarily leaves their job without just cause is disqualified from getting EI benefits.

[14] The General Division had to decide if the Commission proved the Claimant had a choice and chose to leave his job. If the Commission proved that, the General Division had to decide if the Claimant proved he had just cause for leaving in all the circumstances that existed at the time he left.

**The General Division used the wrong legal test to decide whether the Claimant quit**

[15] The General Division makes a legal error where it doesn't apply the correct legal test or doesn't follow a court decision it has to follow.

[16] The Federal Court has said that deciding whether an employee voluntarily left their job involves answering a simple question: did the employee have a choice to stay or leave?<sup>3</sup>

[17] The General Division says it has to use this test and cites the Federal Court decision in *Peace*.<sup>4</sup> But then it goes off track in its analysis of whether the Claimant had a choice and chose to leave.

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<sup>2</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out these grounds of appeal. I will call these errors.

<sup>3</sup> See *Canada (Attorney General) v Peace*, 2004 FC 56 at paragraph 15.

<sup>4</sup> See paragraph 12 of the General Division decision.

[18] The General Division decided the Claimant hadn't voluntarily left his job because the evidence supported a finding that there was a shortage of work.<sup>5</sup> This finding doesn't answer the question whether the Claimant ended the employment relationship by leaving, or whether the employer ended the relationship. In other words, the General Division didn't use the correct legal test—from the *Peace* decision—to decide whether the Claimant quit.

[19] The General Division had to consider evidence that was relevant to whether the Claimant had a choice to stay or leave on the last day he worked (November 14, 2023). And if he did, whether he chose to leave. It had to focus on what he said and what he did on his last day of work. It could also consider whether someone else did or said something that took away his choice to leave.

[20] But it didn't do that. Instead, the General Division looked at his explanation of why he left the job site in anger and frustration and demanded his ROE. And it gave great weight to his argument about why he would not, and didn't, quit. But it should have focused on what he said and did on his last day of work. It needed to do that to decide whether he had a choice to stay or leave, and if he had a choice, the choice he made.

[21] Because it didn't focus on the question from the *Peace* decision, the General Division mixed up the two parts of the legal test for voluntary leaving cases. It mixed up voluntarily leaving with just cause for leaving. This led the General Division to improperly consider just cause circumstances under its voluntary leaving analysis.

[22] In its voluntary leaving analysis, the General Division focused on the Claimant's employer's actions and alleged motivations. It also focused on the Claimant's "realization" that his employer had a plan to train and replace him with a lower-paid worker. It seems to accept that the family members who owned the business came up with a plan to avoid paying him severance and avoid paying him for overtime worked. It considered whether he was getting the hours that had been promised to him in his

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<sup>5</sup> See paragraph 31 of the General Division decision.

original contract. And it took into account his belief his employer had no work for him. It decided there was a shortage of work, which meant he didn't quit.

[23] These facts that the General Division considered raise circumstances listed under the just cause test in section 29(c) of the EI Act. For example, these facts might count as a significant modification respecting wages or salary, a significant change in work duties, a refusal to pay for overtime work, undue pressure by his employer to quit, or that his employer's practices were contrary to law.

[24] So, the General Division used the wrong legal test to decide whether the Claimant voluntarily left his job. It didn't answer the simple question from the *Peace* decision. And it improperly considered just cause circumstances from section 29(c) of the EI Act.

[25] This shows me that the General Division made a legal error.

### **The General Division made an important factual error when it ignored the employer's evidence**

[26] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.<sup>6</sup> In other words, if the evidence goes squarely against or doesn't support a factual finding the General Division had to make to reach its decision.

[27] The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.<sup>7</sup> I can put aside the presumption where it is highly probable the evidence it didn't refer to in its decision would prove a relevant fact.<sup>8</sup>

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<sup>6</sup> Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.

<sup>7</sup> See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

<sup>8</sup> See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498 at paragraph 51.

[28] The employer gave the Commission evidence about what happened on the Claimant's last day of work.<sup>9</sup> The General Division refers to one email from the employer.<sup>10</sup> But only to make the point it was sent two hours after the events occurred on the Claimant's last day of work. The General Division doesn't refer to what the email says. And the General Division didn't refer to other documents the employer sent to the Commission.

[29] The employer's evidence was highly relevant to the issue that the General Division had to decide: on November 14, 2023, did the Claimant have a choice to stay or leave, and did he choose to leave?

[30] The employer's evidence directly contradicts the Claimant's evidence and argument that he could not have quit because there was no work for him to do and because he needed the job. So, the General Division should have considered this evidence, and weighed it against the other relevant evidence. But it didn't. It accepted the Claimant's evidence and based its decision on it.

[31] Overall, the employer's evidence doesn't support the General Division's decision that the Claimant didn't quit. It contradicts it. The General Division ignored that evidence and based its decision on a finding it made by ignoring that evidence. This means the General Division made an important factual error.

**Remedy: I will decide whether the Claimant quit, and send his case back to the General Division to decide whether he had just cause**

[32] The law gives me the power to fix the General Division's error.<sup>11</sup> In appeals like this one, there are two powers I would usually use.

- I can send the case back to the General Division to reconsider.

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<sup>9</sup> See GD3-25 to GD3-29.

<sup>10</sup> See paragraph 28 of the General Division decision, and footnote 5.

<sup>11</sup> Section 59(1) of the DESD Act gives me these powers.

- 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 the General Division should have made.

[34] I disagree with the parties. It would not be fair to the Claimant for me to decide his appeal. I will write more about this, below.

[35] I am going to use both of the powers I set out above. I am going to decide one issue—whether the Claimant quit his job. And I am sending his case back to the General Division to decide whether he had just cause for quitting.

– **The Claimant quit his job**

[36] I have reviewed the evidence that was before the General Division—the documents and what the Claimant said at the hearing. I find it is more likely than not the Claimant had a choice to stay or leave his job, and he chose to leave. What he did and what he said and wrote show me these two things.

[37] The evidence from the Claimant and from the employer agree on these facts, or there is no directly contradictory evidence about the following facts:

- The employer called the Claimant into work on November 13, 2023. It was supposed to be a day off. But he went in to work anyway.
- The Claimant went in to work on November 14, 2023. He saw another employee getting ready to drive away with the truck that he called “his” truck. His employer owns the truck.
- His supervisor asked him to use another truck.
- The Claimant felt disrespected. He got angry. He yelled at the supervisor and the employee who was in “his” truck.



- He said there was no work for him to do.
- He asked for his record of employment (EI papers).
- He left the job site and drove away.
- After he left the job site, he texted a manager. He wrote, “ ... so instead of keeping me working, you’re operating on a B licence I will have to look elsewhere so for the time being, I would not mind my EI papers. Thank you so much for the work.”<sup>12</sup> He goes on, “ ... when I arrive to work to do the barge and they were sending someone else ... there’s so much I could tell you, but I give up.”<sup>13</sup>
- Later that morning he texted his employer. He asked for his EI papers and his vacation pay. He asked the employer to return his rain gear, two hard hats, and a tool he had brought to work.

[38] There was no evidence his employer laid him off.

[39] This evidence shows the Claimant had a choice to stay or leave, and he chose to leave. He left the job site, ask for his EI papers at least twice, asked the employer to return his personal property and pay out monies he was owed, and wrote that he gave up and had to look elsewhere for work.

[40] In other words, the evidence shows the Claimant quit his job on November 14, 2023.

– **I am sending his case back to the General Division to decide whether he had just cause for quitting**

[41] I listened to the General Division hearing. The General Division member very briefly sketched out the legal test she had to apply.<sup>14</sup> The vast majority of the hearing

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<sup>12</sup> See GD3-26.

<sup>13</sup> See GD3-27.

<sup>14</sup> Listen to the General Division hearing at 19:20. The member explained the legal test by saying, “ ... the law says I have to look at two things. The first thing I have to look at is how did the job end, what caused your job to end. Then I have to look at what the law says about those circumstances.” This explanation

was spent on what happened on November 14, 2023. In other words, the General Division focused the hearing on what caused the Claimant's job to end.

[42] It seems to me the General Division didn't actively adjudicate the just cause issue. It didn't explain section 29(c) of the EI Act, with its focus on circumstances that existed at the time the Claimant quit. It didn't refer to any of the circumstances listed in that section. And it didn't explain that a person has to show they had no reasonable alternative to quitting in those circumstances.

[43] What the Claimant told the Commission and his arguments and evidence seemed to raise circumstances listed in section 29(c). But the General Division didn't explore these circumstances. And it didn't ask the Claimant to respond to the reasonable alternatives the Commission says he had.

[44] I am not saying that the General Division member had to do all these things. But because the member didn't do any, I don't have the evidence and arguments I need to decide whether the Claimant had just cause for quitting under section 29(c) of the EI Act.

[45] Out of fairness to the Claimant, I am sending his case back to the General Division to decide one issue—whether he had just cause for quitting when he did in all the circumstances that existed at that time. He will have the opportunity to give evidence and make arguments about the circumstances that existed when he quit. And he can argue why these circumstances meant he had no reasonable alternative to quitting.

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seems to mix the two parts of the legal test. And it leaves out important parts of the EI Act section 29(c) just cause test.

## **Conclusion**

[46] I am allowing the Commission's appeal because the General Division made a legal error and an important factual error.

[47] I have decided that the Commission has shown the Claimant quit his job on November 14, 2023.

[48] I am sending his case back to the General Division for a different member to consider and decide one issue—whether he had just cause for quitting under section 29(c) of the EI Act.

Glenn Betteridge  
Member, Appeal Division