Citation: *GS v Canada Employment Insurance Commission*, 2024 SST 1396

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	G. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision dated March 15, 2024 (issued by Service Canada)

Tribunal member:	Nathalie Léger
Type of hearing:	Teleconference
Hearing date:	October 30, 2024
Hearing participant:	Appellant
Decision date:	November 13, 2024
File number:	GE-24-3039

Decision

[1] The appeal is allowed.

[2] The Appellant did not leave his job voluntarily but was laid off. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant's employment ended on November 14, 2023, and he applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the facts and decided the Appellant voluntarily left his job. It also looked at the Appellant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it wasn't able to pay him benefits.

[4] The Appellant says he did not voluntarily leave his job and therefore should be getting EI regular benefits.

[5] I must decide whether the Appellant has proven that he did not voluntarily leave his job, or if he did, that he had no reasonable alternative to leaving his job.

Matter I have to consider first

The appeal was returned to the General Division of the Tribunal

[6] The Appellant appealed the Commission's reconsideration decision to the General Division of the Tribunal. The General Division granted the Appellant's appeal. The Commission appealed that decision to the Appeal Division of the Tribunal.

[7] On August 14, 2024, the Appeal Division allowed the Commission's appeal. It said the General Division made an error when it did not look at everything that was said and done on the Appellant's last day of work to decide if he had voluntarily left his job.[1] Then, the Appeal Division sent the case back to the General Division to be reconsidered.

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[1] See the Appeal Division's decision at paragraphs 19 and 20.

Issue

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

[9] To answer this, I must first address the Appellant's voluntary leaving. I then have to decide whether the Appellant had just cause for leaving.

Analysis

The parties don't agree that the Appellant voluntarily left

[10] First, I have to decide whether the Appellant voluntarily left his job. It's up to the Commission to prove, on a balance of probabilities, that the Appellant voluntarily left his job.[2] In other words, it must show that it's more likely than not that the Appellant voluntarily left.

[11] The determination of whether an employee voluntarily left is a straightforward one. The question to be asked is this: Did the employee have a choice to stay or to leave?[3] As mentioned by the Appeal Division, I will have to focus on what was said and done by all parties on the last day the Appellant worked.[4]

[12] On his application for benefits, the Appellant wrote that he lost his job because of a shortage of work.[5] He told the Commission that he did not quit but rather was told by his employer they did not have work for him.[6] But, on the Record of Employment (ROE), the employer said the Appellant quit his job. They indicated November 2, 2023, as the last day worked.[7]

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[2] See *Green* v *Canada (Attorney General)*, 2012 FCA 313.
[3] See *Canada (Attorney General)* v *Peace*, 2004 FCA 56.
[4] See the Appeal Division's decision at paragraph 19.
[5] See GD3-6.
[6] See GD3-19.
[7] See GD3-16.

[13] In this case, the Appeal division said it was necessary to decide if the Appellant had the choice, a real choice, to leave or stay in his job.[8] It also said that it is necessary to look at what was said and done on the last day of work.[9]

[14] I will therefore go through all the facts to decide which version of events is the more credible and to decide if it shows the Appellant voluntarily left his employment or not. This means I will go into more detail than what is usually done, because that is where the truth often lies. I must also point out that the testimony of the Appellant at this hearing is consistent with his testimony at the first hearing before the General Division.

The facts

– Appellant's Testimony and Evidence

[15] The Appellant was hired to work as a crane operator. He moved from his old place of residence to this new place because the owner of the company, whom he knew personally, was desperate to find a driver. The Appellant was really happy with the job and planned to retire there in a couple of years. He said he benefits from a grandfather clause to be qualified under the "A" license. For nearly two years, he was the only crane operator for his employer. He specified that there has never been enough work for two operators. But being the only operator made it difficult for him to go on holidays because then the company would have no one to do the deliveries.

[16] A couple of weeks before his last day of work, the company asked the Appellant to train a second operator, called W. W. only had a "B" license, but the company allowed him to work on the truck that required an "A" license by having him work under someone else's license. W. was younger than the Appellant and was paid at a much lower rate than him. W. told him that the company was trying to secure a 5-year contract with him.

[17] At the beginning of November, the Appellant took a planned and approved two weeks' holiday. He agreed to come in on the last day of his holiday (on November 13,

[8] Appeal Division's decision at paragraph 19.
[9] Appeal Division's decision at paragraph 20.

2024) because the employer needed someone to do a delivery.[10] He noticed that the crane he was driving needed some repairs and informed the employer. It was the only crane that was operational.

[18] On the morning of November 14, 2023, he arrived at 7:00 as per usual. He saw that W. was nearly finished getting “his” crane ready to go, even if that crane needed repairs. That meant that W. had previously been scheduled to work on the only truck that was available, leaving the Appellant with nothing. The Appellant admits he was appalled and very upset because “he knew his job was gone”. He got angry. He told W. he was a “scab”, but W. did not react. The Yard Manager, C.M., who is also the owner’s nephew, told the Appellant to go and fire up the other truck. He told him that even though both knew that truck was out of commission because it needed major repairs. The Appellant says he then told the Yard Manager that he was “a piece of crap”.

[19] When things cooled down a bit, the Appellant testified that he asked the Yard Manager what was happening. He was brought into the office and the Yard Manager showed him that they only had two jobs for that day and nothing for the rest of the week, so they had no work for him.[11] When the Appellant asked why he was being sent home over W., the Yard Manager answered: “That’s the way it goes, you don’t own the truck.”

[20] The Appellant testified that he tried talking to many people in the company to understand what was happening, but that he kept getting ignored. He provided copies of numerous texts and emails he sent.[12] Those show he did not get answers to his questions, and no one denied they did not have any work for him. I will review those texts in the next paragraphs.

The Main Manager

[10] See GD3-43 and 44.
[11] See also GD3-47.
[12] See GD3-6.

[21] One of the texts is a long text sent to L., the Main Manager. Unfortunately, the time and date on which it was sent do not show on the copy of the message provided by the Appellant. Since the next message shows that it was sent on November 15, 2023, it is possible to infer that the first one was sent on November 14, 2023.

[22] In this very long text the Appellant says, amongst other things:

> " (…) I was not very happy when I arrived to find the truck departing … he [C.] told me to fire up another truck, but meanwhile, had no work…where agreement was that I would train W. but he was to work under me. But certainly there's other motive … if you have no work, a phone call would have been appreciated... so I have asked for my layoff papers …as you obviously have no work for me that I have been replaced …"[13]

[23] He also writes : " (…) anyhow, just wanted to share that I've been laid off, and would like my EI papers in a respectful manner. Thank you very much. (…)"[14] There is no evidence that this message was answered, at least not by text.

[24] The next day, the Appellant sent another message to L. In it he says : " (…) have the decency to make a phone call to the people that look after you when you don't need them anymore have a little respect that's all I have to say you have no work you have no work but have the decency. I tried calling you no answer."[15] Again, there is no evidence that this text was answered.

[25] On November 22, 2023, the Appellant sent the Main Manager a third text, saying in essence that he was really disappointed to see on his ROE that they had written he had quit when it was not the case. He asked the employer to correct the information.[16] He repeated the same thing in a text sent the next day.[17] Again, he got no answer back.

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[13] See GD6-1 and 2.
[14] See GD6-2.
[15] See GD6-4.
[16] See GD6-5.
[17] See GD6-6 and 7.

[26] The only answer back from the Main Manager was on February 8, 2024, and had nothing to do with that dispute.[18]

R (Office employee)

[27] On November 27, 2024, at 12:17, the Appellant sent a text to R. that reads:

> "[R.] good morning I hope you are doing well so you understand you know that I didn't quit C. sent out the truck and tole me I had no work is pretty humiliating after the long weekend … so you continue around telling contractors that I quit. I am trying to protect you and your integrity so stop telling people that I quit when I never quit."[19]

[28] There is no evidence that this text was answered.

Owner

[29] On November 14, at 8:37, the Appellant sent a text to X. It reads in part :

> "Good morning X two years of hard work I come into work this morning with another operator running my truck. … so instead of keeping me working, you're operating on a B license I will have to look elsewhere so for the time being, I would not mind my EI papers. (…)"[20]

[30] There is no evidence that this message was answered. A copy of this message was sent by X. to C. at 10:24 on November 14, 2023 with the message "This is his convoluted resignation in writing"[21]

[31] The Appellant sent another message to X. on November 22, 2024 at 4:10 that partly reads :

[18] See GD6-8.
[19] See GD6-13.
[20] See GD6-19 and 20.
[21] See Gd3-25.

> "X., this is G. S. Your employers chose to be dishonest … I trained a young gentleman's to help you out while I was gone away to find when I returned I had no job he was leaving in my truck and C. told me that he had no work so I asked for my EI papers … (…) It was a choice that your company chose if you wish to talk I have no problems doing so but in 35 years I've never seen anything like this. (…)."[22]

Yard Manager

[32] On November 14, 2024, at 2:29, the Appellant sent a text message to the Yard Manager that partly says:

> " (…) I have gone beyond expectations and feel very belittle … If you did not have work for me this morning, a phone call with been appreciated .. Anyhow, I just wanna make sure that I get my eight hours holiday pay +4 hours. … Of work. … I would like my EI papers. (…)"[23]

[33] C. did answer on the same day but we do not know at what time. He only said "OK. I already messaged K. [f]or your ROE. We do not process EI. The employee will have to process it themselves."[24]

[34] More texts were exchanged during that day about personal items that the Appellant wanted to get back. On November 20, 2024, the Appellant sent C. a text saying he missed being at the job with him. The evidence doesn't show if the message was answered or not.[25]

Ex-Colleague (M)

[22] See GD6-21.
[23] See GD6-22 and 23.
[24] See GD6-23.
[25] See GD6-38.

[35] The last series of text messages is with M. He is the operator that the Appellant said he was let go just before the Appellant started working for the employer. I will not take those into consideration because it does not shed light on the question of the choice the Appellant had – or did not have – on November 14, 2024.

– **Employer's Testimony and Evidence**[26]

[36] CM, the Yard Manager, told the Commission they have two crane operators and enough work for both of them.[27] The two operators are the Appellant and W, who is in training.[28]

[37] He told the Commission that on the morning of the incident, the Appellant came in and got very upset when he saw that W was getting the truck ready.[29] The Yard Manager then said that he told the Appellant, "G. S., fire up the other job. We have lots of work. What are you doing?".[30] He also said that he called the Appellant and told him they had other work for him but that the Appellant kept saying they had no work.[31]

[38] The employer also provided to the Commission a copy of an email written by the Yard Manager to the Main Manager and the Owner, amongst others, at 9:49. In it, he related the incident that happened that morning with the Appellant. In this email, the Yard Manager wrote that the Appellant was upset that morning because he said, "he did not have a job anymore". In the email he tells the Main Manager and the owner of the company that he does have work for the Appellant but that it is the Appellant who insisted on going home. He finally wrote that the Appellant left the premises shortly after 8:00 but came back a few minutes later to speak to R.[32]

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[26] I am calling it a testimony to make things easier, but it is important to note that the employer did NOT testify at the hearing. What I relate in the next paragraphs is what is found in the Commission's agents' notes.
[27] See GD3-22.
[28] See GD3-48.
[29] See GD3-48.
[30] See GD3-48.
[31] See GD3-22.
[32] See GD3-29

[39] A few minutes later, the Yard Manager asked accounting, by email, to prepare the Appellant's ROE because he had verbally resigned that morning.[33]

[40] The employer also sent the Commission a copy of a text message received by the owner at 8:37 that morning in which the Appellant supposedly resigned.[34] I will review this text message later as it was also provided by the Appellant to the Tribunal at the first hearing.

[41] The Main Manager told the Commission that this message was understood to mean that the Appellant was "done with the company, and best of luck".[35]

[42] Finally, the Yard Manager told the Commission's agent that he called the Appellant to tell him they had more work but that the Appellant kept saying they did not have work.[36] The note does not say when that call, or calls, would have been made. But then, in the same note, it is written that the Yard Manager told the Commission that the employer did not call the Appellant after that day for him to come back to work.[37]

Analysis

[43] I find that the Appellant's version of events is more probable than the employer's version, for the following reasons.

[44] First, the Appellant has maintained, in all of his communications, that he was told there was no work for him and that he never chose to quit. This is what he wrote in the different text messages sent on November 14, 2023, and in the following days, in his application for EI benefits, when he spoke with the Commission and when he testified at two different hearings.

[45] Second, I do not find credible the statement made by the Yard Manager to the effect that he called the Appellant to offer him work. I find it impossible to believe he would have done that when he was writing to all members of upper management at

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[33] See GD3-25.
[34] See GD3-25-27.
[35] See GD3-20.
[36] See GD3-22 at point 1.
[37] See GD3-22 at point 5.

9:49 on that same day to say that the Appellant had quit. Furthermore, if he really did have work for the Appellant, why not send him a text, or tell him that in his answer to the text sent by the Appellant at 14: 29 that same day?[38] The only reasonable answer is that there was no work to give.

[46] Third, I find telling the fact that no one in upper management answered any of the Appellant's text messages, or calls. This is not the way an employer who wants to keep a good employee that is known to be "volatile" would react. The evidence shows that everyone ignored the Appellant, except to say that his ROE would be prepared soon. No one disputed the claim that the employer had no work for him, and no one made any gesture to try to keep the Appellant on board.

[47] Fourth, the employer never explained how he was able to do the job he supposedly had with only one operator if two were needed. It needs to be noted that the company is in a very small town more than 2 hours away from Vancouver. Finding another certified crane operator would certainly not have been easy for the employer. Yet, both the employer and the Appellant testified that the Appellant was not called back by the employer after November 14, 2023. This points to a finding that the employer did not really need another crane operator and could operate only with W.

[48] Fifth, I find it hard to believe that the Appellant would insist that the least that could be done if the employer did not have work for him would have been to call him before he arrived if the employer had indeed offered him a delivery to do.

[49] I find that it is more probable that the Yard Manager did tell the Appellant that they had practically no other jobs planned that week and that he "wasn't the one who owned the truck" and therefore the employer could choose which of the two operators the work was given.

[50] Finally, I find that every time the Appellant told the employer he wanted his EI papers, it was because he believed he had been laid off because the employer had no

[38] See paragraph 30, above.

work for him. This is something he said to L. in his text that very morning.[39] That is what is implied in the message sent to X. that morning when he says, "*so instead of keeping me working*, you're operating on a B license".[40] Finally, this is what was said to C. that same afternoon when he says : "… If you did not have work for me this morning, a phone call with been appreciated".[41]

Conclusion on the Voluntary Leaving

[51] I have to decide here if the Appellant had a choice to stay in his job or if his only option was to leave. But that choice must not be an empty one. What I mean by that is that choosing to stay but being told no work would be given is not a real choice. For the choice to be real, the Appellant would have had to be able to do real work.

[52] Considering everything, I find it more probable than not that the Appellant was laid off because there was no work available for the Appellant, the only work available being given to the other crane operator. In other words, I find that the Appellant did not have a choice to stay because the employer made him clearly understand that there was not, and would not be in the immediate future, work for him.

[53] Therefore, I find that the Commission did not meet its burden of proving the Appellant voluntarily leave his job. I find he was laid off for lack of work.

[54] Considering this conclusion, I do not need to decide if the Appellant had just cause to leave.

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[39] See paragraphs 21 and 22, above.
[40] See paragraph 27, above.
[41] See paragraph 29, above.

Conclusion

[55] I find that the Appellant isn't disqualified from receiving benefits because he did not voluntarily leave his job.

[56] This means that the appeal is allowed.

Nathalie Léger

Member, General Division – Employment Insurance Section