Citation: *DV v Canada Employment Insurance Commission*, 2023 SST 2122

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	D. V.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (597889) dated July 11, 2023 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Videoconference
Hearing date:	September 28, 2023
Hearing participants:	Appellant
Decision date:	October 3, 2023
File number:	GE-23-2026

Decision

[1] The appeal is allowed.

[2] The Appellant has shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant had just cause because he had no reasonable alternative to leaving. This means he isn't disqualified from receiving Employment Insurance (EI) benefits.

Overview

[3] The Appellant was working as a railway engineer. There were some aspects to the job, such as 12-hour shifts, night shifts, and working in a more remote location, that he disliked.

[4] A friend of his offered him a managerial job in another province for a uniform service company. The company provided uniform cleaning and exchange services, carpet cleaning and exchange services and would provide cleaning products to their clients.

[5] The Appellant took some time off from his railway job and went out to the other province to visit the company facilities and talk more about the position.

[6] He says that he was told he would be doing managerial work. Managing, hiring, and scheduling drivers. Managing the fleet of trucks. Dealing with customers and their accounts. Trying to get new business, and, occasionally, he may have to fill in if they cannot find someone to cover for a driver. His workday was supposed to be 8 hours from Monday to Friday.

[7] This all sounded good to the Appellant, so he accepted the position, even though it was a significant pay cut.

[8] Unfortunately, the Appellant says the job was nothing as described. He spent almost all his time doing heavy manual labour working as an actual driver as they were

always short staffed. But that did not mean he got to abandon his managerial responsibilities; he still had to do those. He just had to find somewhere to squeeze them in around his work as a driver.

[9] The Appellant says that he tried to work with the employer and give them a chance to fix things so he could actually do a managerial job, but nothing ever changed. So, since there was such a massive change in his duties from what he had agreed to at the time he was hired, he quit.

[10] The Canada Employment Insurance Commission (Commission) decided they could not pay the Appellant EI benefits. The Commission decided that the Appellant did not have just cause for leaving his job because he had reasonable alternatives to quitting, so they disqualified him.

[11] I must decide whether the Appellant has proven that he had no reasonable alternative to leaving his job.

Issue

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

[13] 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 agree that the Appellant voluntarily left

[14] I accept that the Appellant voluntarily left his job. The Appellant agrees that he voluntarily left, as it was his choice to quit. I see no evidence to contradict this.

The parties don't agree that the Appellant had just cause

[15] The parties don't agree that the Appellant had just cause for voluntarily leaving his job when he did.

[16] The law says that the Appellant is disqualified from receiving benefits if he left his job voluntarily and didn't have just cause.[1] Having a good reason for leaving a job isn't enough to prove just cause.

[17] The law explains what it means by "just cause." The law says the Appellant will have just cause to leave his job if he had no reasonable alternative to quitting at the time he did.

[18] It is up to the Appellant to prove that he had just cause.[2] He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

Change in duties

The Commission's arguments

[19] The Commission says there was no change in the Appellant's job duties.

[20] The Commission says the Appellant has not provided any evidence to support what job duties were discussed with him at the time of the offer. The Appellant has only provided a copy of a District Service Manager guide that he found online but was not actually provided to him at any point throughout his employment.

[21] The Commission also says the employer confirmed that the District Service Manager is not a position that the company offers any longer so those duties would not be relevant to the Appellant and his position.

[22] The Commission submits that the most likely scenario is that the that the Appellant misunderstood what job duties would be required of him when he accepted the job.

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[1] Section 30 of the *Employment Insurance Act* (Act) explains this.
[2] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

The Appellant's arguments

[23] The Appellant says that he quit the job because the duties he was told he would be performing (managerial) was not at all what he ended up doing. He spent 80% of his time doing manual labour work filling in for absent drivers. He was also working far more hours than he was told his position would require.

[24] The Appellant says he was hired as a District Service Manager, but could not start in that position because the person he was supposed to replace was still occupying the position. He says the company gave him a different title (he thinks they just made up the title and position) because his position could not be the same as the person he was supposed to be replacing.

[25] Further, the job he ended up doing was not mostly managerial as he had been told. Instead, he spent most of his time working as a driver. He would start work somewhere between 4-6 AM and would spend the day dropping off cleaning supplies, picking up dirty uniforms and mats and exchanging them for clean ones. He would end his day somewhere around 3 PM or later.

[26] After all this was finished, he says that he would still have to do his managerial work, which he was squeezing in after he was done working as a driver.

[27] The Appellant says that he understood when he accepted the job that he might have needed to fill in for a driver here or there, and he was fine with that. What he was not told was that they had no extra staff so if a driver was off for any reason, or was fired, then he would have to fill in until the driver was replaced or came back to work.

[28] The Appellant says that they did eventually get rid of the person the Appellant was supposed to be replacing and they gave the Appellant that gentleman's job. The Appellant says this was irrelevant as it did not solve the problem. He continued to spend the majority, around 80% of his time acting as a driver, rather than as a manager.

[29] The Appellant says that it is true that there are no job duties outlined in his employment offer, but that is because all the duties were outlined verbally.

[30] The Appellant argues that the duties outlined in the District Service Manager position are relevant as they demonstrate what the duties should be like for a managerial position. The Appellant also says the employer is incorrect in their statement that they no longer have the title District Service Manager and all positions are just "service manager." He says his offers of employment prove this statement from the employer is false, as his offers contain multiple job titles.

My findings on whether the Appellant's duties changed

[31] I find the Appellant did experience a significant change in his work duties.

[32] I find the Appellant's testimony credible. His testimony is internally consistent, is plausible, and is supported by the evidence.

[33] There are no job duties outlined in either of the Appellant's offers of employment, but I accept the Appellant's testimony that is because all of the job duties were explained to him verbally. It is not plausible that the Appellant would have accepted a job without some knowledge of what this job would entail. As there is no documentary evidence of his job duties, I accept they were explained to him orally.

[34] I also note that the offers of employment do not contain a "whole of the agreement" clause. Such clauses say in general that no representations affect the agreement, in this case the offer of employment, other than what is in the agreement. Basically, that means no matter what may have been said, all that matters is what is in the agreement. Since his offers of employment say nothing of the sort, this is further support for the Appellant's testimony that his job duties were explained to him verbally and never set in writing.

[35] I accept the Appellant's testimony that his job was supposed to be 8 hours a day from Monday to Friday and that he was told the majority of his job duties would be managerial and it would only be rarely that he would fill in for a driver.

[36] The Appellant says that he left his job as a railway engineer to take the job at the uniform service company to have a better work-life balance. I do not find it plausible that

the Appellant, wanting a better work-life balance, would have moved to a different province, and taken a substantial pay cut, to work at a job that required just as many hours as his railway job, but involved more heavy labour.

[37] I further find that the employer is very clear that the Appellant was doing mostly heavy manual labour rather than his managerial work.

[38] The employer told the Commission they were trying to hire another route supervisor “to do the heavy work” in order to keep the Appellant with their company.[3]

[39] I find this statement from the employer confirms that a route supervisor position involves doing “the heavy work.” Since a route supervisor position is the position the Appellant was offered in the July 4, 2022, initial offer of employment,[4] it strongly supports his testimony that he was doing heavy manual labour work.

[40] The employer’s statement also supports that heavy work was the majority of the Appellant’s work with the employer because they said they were looking to hire a route supervisor for the purpose of doing the heavy work. If that is apparently the majority of the work they were hiring the route supervisor to do, it stands to reason that such work was the majority of the work the Appellant was doing in his route supervisor role.

[41] The statement from the employer also confirms that when the Appellant was transferred into the position of Route Service Manager in December 2022, he continued to do heavy manual labour as the majority of his work.

[42] It would make no sense to try and hire a route supervisor to do the heavy work to try and keep the Appellant around if the Appellant was not doing heavy work. The new hire could not take over a task from the Appellant if the Appellant was not doing it.

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[3] GD03-43
[4] GD03-29

[43] Further, the Appellant must have been doing so much heavy work that there was enough of it to occupy someone in another full-time position[5] otherwise they would not hire another route supervisor.

[44] Finally, the fact that the majority of the Appellant's work was heavy manual work while replacing drivers, rather than managerial work, from the moment he started working for the employer does not prevent a finding that he had a significant change in his duties.

[45] He was told that his position would be mostly managerial work, and it was based on this description of his job duties that he accepted the position. Since his duties were vastly changed from what he was told, and agreed to, when he was offered the job, this still constitutes a significant change in his duties since there had been a significant change in the duties he was offered and agreed to.

Reasonable alternatives

[46] Just because I have found the Appellant had a significant change in his work duties, does not automatically mean he has just cause, he still must prove that he had no reasonable alternative but to leave.

[47] The Commission says the employer told them they were trying to hire someone to help the Appellant, so it would have been reasonable for him to stay until the hiring process was completed.

[48] The Commission says it also would have been reasonable for the Appellant to search for and secure an alternative job instead of just quitting.

[49] The Appellant says it was not reasonable for him to continue working while waiting for his employer to hire someone to help him out.

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[5] I say the position of Route Supervisor is full-time because the Appellant's initial employment offer is for the position of Route Service Supervisor and he says he worked full-time. Also, the employer says they will be paying this position $60,000, which I do not accept would be for a part-time position, since this is nearly equivalent to the Appellant full-time salary of $65,000.

[50] The Appellant says that one of the things he did in his manager duties, usually on Saturday since all his time during the week was spent doing manual labour, was try to hire new employees.

[51] He says that he was always trying to hire people to fill the driver positions that were open so that he could finally stop having to do all the driving work himself, but it was very hard to find people. The job was very difficult, and the wages were quite poor for the amount of work involved.

[52] The Appellant says that he could not continue working for the employer for an indefinite period of time in the hopes that eventually enough people could be hired to allow him to finally stop doing 80% manual labour.

[53] The Appellant says it was also not reasonable to continue working until he could find or secure another job. He says he had little time to look for new work and it was a small town, so he was worried what his employer would say about him if they learned he was trying to find another job. He also says he could not keep doing the heavy manual labour work at his age.

[54] I accept the Appellant's testimony that one of his duties was to hire new employees and that it was very difficult to find people who would work for the company because it is plausible.

[55] It is completely plausible that a manger would be involved or responsible for hiring new employees. I can also readily accept that the Appellant was working very hard to try and find new employees so that he could finally stop working such long shifts and doing so much heavy manual labour.

[56] I find it was not a reasonable alternative for the Appellant to continue working while more help was hired to try and allow him to finally focus on managerial duties.

[57] First, as per the Appellant's testimony, it was very difficult to find and hire new employees, so it was not reasonable to continue on, with his job duties being heavily

modified, for an indefinite period of time in the hope that eventually enough people could be hired and he would no longer have to cover for so many drivers.

[58] I will now turn to the more explicit point raised by the Commission, that the employer told them that they were looking to hire a route supervisor to try and take over the heavy work to keep the Appellant on, so he should have waited for this to happen and not quit.

[59] According to the Commission's notes of their conversation with the employer, the employer said they have emails, dated April 10, 2023, about plans to hire a route supervisor to take over the "heavy work" from the Appellant.

[60] First, and most importantly, April 10, 2023, is **after** the Appellant quit. The employer confirms he sent in his resignation on April 4, 2023. So, it appears these plans were still in discussion **after** they learned of the Appellant quitting. Since there is insufficient evidence to show that the employer had formulated and acted on this plan before the Appellant quit, their intentions to hire another route supervisor isn't a relevant consideration because only facts that existed at the time the Appellant quit are to be taken into consideration to determine if he had just cause,[6] and the time he quit is when he made up his mind to quit and submitted his resignation.

[61] Even ignoring the above, plans are just that, plans. It is the execution of the plans that matter. The employer did not say they were in the process of hiring or were trying to hire, but merely "planning" to do so. What the timeline of these plans were is unclear, so it would not be reasonable for the Appellant to have waited around for an indeterminate amount of time for some amorphous plans to perhaps crystalize into solid action.

[62] I find it was not reasonable for the Appellant to continue working while trying to find and secure alternative work. The fact that he did work at his job for almost seven months does not mean it was reasonable for him to continue working for as long as it took to find and secure another job.

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[6] *Canada (Attorney General) v Lamonde*, 2006 FCA 44. para 8

[63] I find that the reason he continued working for as long as he did does not mean he accepted the changes in his duties but because he was trying to explore reasonable alternatives with his employer.

[64] He waited until the person he was supposed to replace was dismissed, but that did not improve the situation. He worked with the employer to a transfer to a different position, but that did not make any significant change in his situation. He attempted to wait in the hopes he could hire more people so he could stop having to do all the manual labour, but that did not pan out either.

[65] I find that once he had exhausted what he felt were all his efforts to try and fix his situation, he quit, since he did not accept the drastic changes in his work duties.

[66] The Appellant was hired as a manager and been told that his job duties would primarily be management type work. I find it was not reasonable for him to continue working with the drastic, and apparently permanent, changes to his described duties for an indeterminate amount of time until he possibly found and secured a new job.

[67] So, when I consider all the circumstances that existed at the time the Appellant quit, I find he had no reasonable alternative to quitting. This means he had just cause for his voluntary leaving and is not disqualified from EI benefits.

Conclusion

[68] The appeal is allowed.

[69] The Appellant had just cause for quitting at the time he did. This means he is not disqualified from EI benefits.

Gary Conrad

Member, General Division – Employment Insurance Section