Citation: *X v Canada Employment Insurance Commission and JD*, 2024 SST 1737

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	X
Representative:	Danesh Rana
Respondent:	Canada Employment Insurance Commission
Added Party:	J. D.

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (649532) dated March 23, 2024 (issued by Service Canada)

Tribunal member:	Emily McCarthy
Type of hearing:	Videoconference
Hearing date:	November 5, 2024
Hearing participants:	Appellant Appellant's representative Added Party
Decision date:	December 23, 2024
File number:	GE-24-1550

Decision

[1] The appeal is dismissed. The Tribunal member disagrees with the Appellant, X (employer).

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

Overview

[3] This is an appeal, by the employer, of a decision of the Canada Employment Insurance Commission (Commission) qualifying the Added Party to EI benefits even though he quit his job.

[4] The employer says the Commission didn't properly analyze the Added Party's claims that he was discriminated against on the basis of race. The employer also challenges the fairness and completeness of the Commission's investigation and reconsideration process. The employer is of the view that it took prompt and effective action when the Added Party complained to management about workplace incidents. It also points out that many of the incidents happened a year or more before the Added Party made his complaint.

[5] The Added Party quit his job on April 28, 2023.[1] The (Commission) looked at the Added Party's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job. It also decided that he had just cause. This meant that it decided he wasn't disqualified to receive EI regular benefits.[2]

[6] The employer appealed this decision.[3]

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[1] See GD23-3.
[2] See Notice of Decision dated November 1, 2023, at pages GD3-46 to GD3-47.
[3] See GD2.

[7] I have to decide whether the Added Party has proven that he had no reasonable alternative to leaving his job.

[8] The employer says the Added Party participated in the very activities he complained about, and he didn't complain about them until some time after they had occurred. The employer says it took appropriate disciplinary actions to address the Added Party's complaint. It says that he accepted the results of the investigation and was happy with the outcome. There was no reason for him to leave his job. The employer also says it offered the Added Party an alternative position in a different dealership, but he refused.[4]

[9] The employer also says the Added Party hasn't shown that he experienced harassment after it finished its first investigation. It acknowledges that he made a further complaint but says he resigned before the employer could investigate. So, he didn't have just cause.[5]

[10] The Added Party denies that he participated in his mistreatment. He testified he tried to continue working because he loved his job. In the end, he couldn't continue, and he made a complaint. He says that he never accepted or thought his complaint was resolved. He questions what was done during the investigation as well as the outcome. He also says he experienced ongoing discrimination and harassment after the employer closed his complaint. The toxic nature of the workplace made it impossible for him to continue working for the employer. His mental health was suffering. He has been diagnosed with depression and anxiety arising from his workplace. So, he quit his job to protect himself. He denies that he was offered another position at a different dealership.[6]

[11] The Commission says that the witness statements provided by the employer during the reconsideration process confirm that the incidents of harassment and discrimination that the Added Party describes in his complaint occurred. Even after

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[4] See GD2-10 to GD2-11.
[5] See GD27-6.
[6] See GD11-80 to GD11-81.

making a complaint, which was his reasonable alternative, the employer expected the Added Party to continue working in the same environment. There was no offer of alternate employment made to the Added Party. So, the Commission agreed that the Added Party had no reasonable alternative but to quit his job.[7]

[12] I must decide if the Added Party had just cause to quit his job. To do this I must look at all of the circumstances that existed at the time he quit. And I must consider whether, in these circumstances, he had any reasonable alternatives to leaving his job.

Matters I have to consider first.

Documents sent in after the hearing.

[13] At the hearing both parties said they would send in documents after the hearing. These documents were listed in a letter that I sent to the parties after the hearing.[8] The employer said it would send in the Added Party's resignation letter. The Added Party was told he could send in written witness statements. Both parties were given until November 19, 2024, to send in their documents.[9]

[14] On November 5, 2024, the employer sent in a post-hearing document that wasn't expected. The document is a one-page form acknowledging that the signatory had read the company's Policies and Procedures dated August 20, 2020. The name of the person signing isn't printed on the form. And the document didn't include any other pages.[10]

[15] The employer says that this document shows the Added Party was given the company policies, which was contrary to what he said at the hearing.

[16] I asked the parties for submissions on the admissibility of the document. The Added Party said the document wasn't probative of any issue absent the entire document.[11] But he didn't say that it wasn't his signature on the document. And the

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[7] See GD4.
[8] See GD-21.
[9] See GD-21.
[10] See GD22.
[11] See GD24-1.

Added Party said he hadn't been given the Policy at the hearing. So, I have decided to accept this document.[12]

[17] The employer's representative says this document puts into question the Added Party's recollection and truthfulness because it shows he was given the company policy.[13]

[18] I don't accept that forgetting that he signed a document, at a different dealership, four years ago, after being treated for a workplace mental health injury for a year puts **all** of the Added Party's testimony in question. I accept that he signed this form acknowledging that he had read and understood the Policy on August 8, 2020. But it doesn't say he was **given** a copy.

[19] The employer also provided the Added Party's resignation letter.[14] This is relevant to the issue of voluntary leaving. So, I decided to consider the document. But I gave the Added Party an opportunity to make comments about the content of the document, which he did.[15]

[20] The Added Party also sent in documents after the hearing.[16] His post-hearing document included his reply to the employer's documents and some new information. The new information included:

- A signed written statement by a co-worker
- Emails with the owner of the employer about work possibilities
- An email request for his employment contract after he resigned.
- Emails with the general manager of a dealership owned by the employer to set up a time to speak about a job opportunity.

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[12] See GD22.
[13] See GD22.
[14] See GD23-3.
[15] See GD24-1.
[16] See GD-24.

[21] I have accepted these documents as relevant because they contain information about things that were talked about at the hearing. And I gave the employer an opportunity to comment on the new information.[17]

[22] The employer sent in its reply to the Added Party's documents. It also included new documents in that reply.[18]

[23] The new documents include:

- The full Corporate Policy of the employer with acknowledgements signed by the Added Party
- Emails from the owner to the Added Party about job opportunities
- The Added Party's contract of employment
- Emails about how the Added Party's employment ended at the Y (first dealership) ended.
- Emails between the Added Party and S. U. the General Manager (GM) of X (second dealership) about a negative experience one of the Added Party's customers had.

[24] I will consider this document. It includes documents that:

- the Added Party had previously asked for,
- documents that are already in the Commission's reconsideration record,
- documents that complete correspondence already in the Commission's reconsideration file, or
- documents that relate to testimony at the hearing.

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[17] See GD26
[18] See GD27.

[25] This means I accepted all of the documents sent in by the employer after the hearing.[19] I have also accepted most of the documents sent in by the Appellant.[20]

[26] Even though I didn't give an opportunity to reply to the employer's last document, the Added Party sent in more submissions. I didn't accept this additional document. I decided that the issues addressed in this additional submission weren't relevant to the outcome of this appeal. And I decided that the evidence was closed. For these reasons, I haven't considered this document.

Issue

[27] Is the Added Party disqualified from receiving benefits because he voluntarily left his job without just cause?

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

Analysis

The parties agree that the Added Party voluntarily left his job.

[29] I accept that the Added Party voluntarily left his job. The Added Party sent a resignation by way of email, to the employer on April 28, 2023.[21] I see no evidence to contradict that he left his job. He wasn't dismissed. He initiated the separation from his employment. So, I find the Added Party had a choice to stay or leave. This means I find he voluntarily left his employment.

[19] These documents are: GD22, GD23, and GD27.
[20] These documents are: GD11 and GD24.
[21] See GD23-3.

The parties don’t agree that the Added Party had just cause.

[30] The employer doesn’t agree that the Added Party had just cause for voluntarily leaving his job when he did.

[31] The law says claimants are disqualified from receiving benefits if they leave their job voluntarily and they didn’t have just cause.[22] Having a good reason for leaving a job isn’t enough to prove just cause.

[32] The law explains what it means by “just cause.” The law says a claimant has just cause to leave if there was no reasonable alternative to quitting the job when they did. It says that I must consider all the circumstances.[23]

[33] It is up to the Added Party to prove that he had just cause. 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.[24]

[34] When I decide whether the Added Party had just cause, I have to look at all of the circumstances that existed when the Added Party quit. The law sets out some of the circumstances I have to look at.[25] These include, but are not limited to, harassment and discrimination.[26]

[35] After I decide which circumstances apply to the Added Party when he quit his job, he must show that he had no reasonable alternative to leaving at that time.[27]

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[22] Section 30 of the *Employment Insurance Act* (Act) explains this.
[23] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[24] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 4.
[25] See section 29(c) of the Act.
[26] See section 29(c) of the Act.
[27] See section 29(c) of the Act.

The circumstances that existed when the Added Party quit

[36] The owner of the employer, J. M., (owner) has several car dealerships.

[37] The Added Party worked at a coffee shop at which the owner frequently bought his coffee. When the pandemic closed down coffee shops, the owner offered the Added Party a job as a car detailer.

[38] The parties don't agree about how the Added Party became an employee. But this isn't relevant to the circumstances that existed when he quit. So, I make no finding on how the Added Party came to work for the employer.

[39] The Added Party started as a car detailer at the first dealership in August 2020. He began working at the second dealership as a car detailer as of February 2021 and at the same dealership as a sales representative at the end of 2022.

[40] The Added Party says that two of the circumstances set out in the law apply. Specifically, he says that he was being discriminated against and harassed based on his race.

[41] The employer disagrees and says the Added Party hasn't established that he was discriminated against on the basis of his race. It says the context must be considered. And it relies on statements made by its employees to show that the incidents were light-hearted banter and jokes between friends.[28] And it points out that the Added Party was a willing participant. It also says the delay between some of the incidents and the complaint must be considered. Finally, it denies that these incidents meet the definition of discrimination or harassment based on race.

[28] See GD3-67 to GD3-72.

[42] The legal test for discrimination has two steps.[29] To show that he was discriminated against, the Appellant has to show **all three** of the following things:

- he has a characteristic protected from discrimination under human rights law.
- he experienced a negative impact or loss (direct or indirect); and
- the protected characteristic was connected to the negative impact or loss he suffered.[30]

[43] If the Added Party shows he meets these three factors, the employer has a chance to show why it's conduct isn't discrimination.[31]

[44] The Added Party identifies as a Black man and as a refugee. Both race and national origin are protected characteristics under the *Canadian Human Rights Act*.[32]

[45] The Added Party says he has been treated differently in the workplace and harassed by colleagues because of his race and national origin. **Harassment** is a discriminatory practice.[33] The Added Party has provided documentary evidence of some of the incidents he says are harassment and discrimination based on his race.[34]

[46] The term "harassment" isn't defined in the EI Act. But it is defined in other laws.[35] The *Canada Labour Code* defines harassment as: "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment."[36] The Ontario *Human Rights Code* defines

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[29] See *Moore v British Columbia (Education)*, 2012 SCC 61.
[30] See the factors set out by the Supreme Court of Canada at paragraph 24 of *Stewart v Elk Valley Coal Corp*., 2017 SCC 30 and in *Moore v British Columbia (Education)*, 2012 SCC 61.
[31] See section 15 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.
[32] See section 3 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, which sets out the prohibited grounds of discrimination. Section 29(c)(iii) of the EI Act specifically refers to the *Canadian Human Rights Act*.
[33] See section 14 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, and *Bilac v Abbey, Currie, and NC Tractor Services Inc*., 2023 CHRT 43.
[34] See GD3-43 to GD3-45.
[35] See section 122(1) "harassment" of the Canada Labour Code RSC 1985, c L-2. And Section 10(1) "harassment" of the *Ontario Human Rights Code*, RSO 1990, c H.19.
[36] See section 122(1) "harassment" of the Canada Labour Code RSC 1985, c L-2.

harassment as: "…engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."[37]

[47] On its website, the Canadian Human Rights Commission says: "Harassment is a form of discrimination. It includes any unwanted physical or verbal behaviour that offends or humiliates you. Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also sometimes be considered harassment."[38]

[48] This Tribunal's Appeal Division set out "key principles" for considering whether an EI claimant has experienced workplace harassment[39]:

- harassers can act alone or with others, and do not have to be in supervisory or managerial positions.
- Harassment can take many forms, including actions, conduct, comments, intimidation, and threats.
- Sometimes a single incident will be enough to constitute harassment.
- The focus is on whether the harasser knew or should reasonably have known their behaviour would cause the other person offence, embarrassment, humiliation, or other psychological or physical injury.

[49] Although I am not bound to follow these legislative definitions or the "key principles" set out by the Appeal Division, I find them to be persuasive and have applied them to the facts of this appeal.

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[37] Section 10(1) "harassment" of the *Ontario Human Rights Code*, RSO 1990, c H.19.
[38] See: https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-harassment.
[39] See paragraph 34 of the Appeal Division's decision in *ND v Canada Employment Insurance Commission*, 2019 SST 1262. Although I am not bound to follow this decision, I find it persuasive.

[50] The Added Party initially complained of racial discrimination in the workplace to the GM by email dated March 1, 2023. He listed the following:[40]

- Being called JD Black (a modified business card is an example).
- Being told by a sales representative that the garbage on the floor of a car could be his lunch in July 2022.
- Having a picture he had posted online modified by adding an eggplant over his genital area.
- Being told he needed drugs by an employee after the sales manager said he looked tired in July 2022.
- On February 27, 2023, the sales manager cut his tie with chain cutters instead of the usual scissors after he sold his first car.

[51] The Added Party worked at two different dealerships. And he changed positions while working at the second dealership (from detailer to sales representative). All of the incidents he complained about happened when he was working at the second dealership.

[52] The employer argues that these incidents must be considered in context. In its Notice of Appeal,[41] it says the following should be considered in assessing whether there was discrimination or harassment based on race:

- The Added Party encouraged and participated in the activities he complained.
- There was temporal gap between some incidents and the complaint.
- The Added Party didn't provide any witness statements or medical documentation supporting his claim.

[40] See GD3-42.
[41] See GD2.

– **Was the Added Party harassed by the sales representative?**

[53] Yes. I find the actions of the sales representative were harassment based on the Added Party's race.

[54] The Added Party has provided evidence of the harassment he experienced at the hands of the sales representative.[42]

[55] The Added Party says the sales representative told him that the garbage on the floor of a car should be his lunch. The Added Party found this comment to be demeaning and hurtful.

[56] In the Commission's documents, there is a picture of a business card. The original employee's last name is crossed out and "Black" is substituted. The card now reads, "JD Black." I find this is a reference to the Added Party's race. I also find it was unsolicited and unwelcome as the texts between the Added Party and the sales representative about the change show.[43]

[57] The second piece of evidence sent to the Commission by the Added Party is a picture of him, in business dress, with his cell phone and a caption that reads, "I can see you in my …." The picture was on TikTok. The sales representative modified this photograph by adding an eggplant over the Added Party's genital area. The texts that are found with the photograph show that the Added Party didn't find this to be funny.[44] And the behaviour was unsolicited. I find the use of an eggplant was a reference to the Added Party's race. It was also of a sexual nature.

[58] The written statement of the sales representative confirms that these incidents occurred and that he was responsible for them.[45]

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[42] See GD3-91 to GD3-93. And GD3-45.
[43] See GD3-91 to GD3-93.
[44] See GD3-91 to GD3-93.
[45] See GD3-70 to GD3-71.

[59] I accept that the sales representative was given a one-day suspension on March 3, 2023, two days after the Added Party made his complaint to the GM. [46]

[60] At the hearing, the employer's representative mentioned twice that the sales representative was a visible minority. It was unclear how this information is relevant. The fact that a person is also part of a protected group doesn't make them incapable of discriminating or harassing another member of a protected group.

[61] The employer says the conduct of the sales representative mainly involved interactions with the Added Party in a "joking" manner.[47] At the hearing it relied on the statements sent to the Commission during the reconsideration process. The sales representative's statement says their interactions were "light-hearted banter".[48] And the employer says the Added Party and the sales representative had a friendly relationship.[49]

[62] Implicit in this argument is that such behaviour among work colleagues isn't discriminatory or harassing because it was a "joke." It also says that the decision of the Added Party to participate in the activities he complained about which must be considered. [50]

[63] Jokes can be offensive. And jokes can be hurtful. The fact that the sales representative thought he was being funny doesn't change the nature of the conduct. Racially based jokes should not be characterized as light-hearted banter. The documentary evidence in the file shows the sales representative made at least two offensive and race-based "jokes" which got him suspended without pay for a day.

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[46] See GD3-71.
[47] See GD3-59.
[48] See GD3-70.
[49] At the hearing, the Added Party denied he had a friendly relationship with the sales representative that went beyond the usual workplace interactions.
[50] See GD2-11.

[64] I find the actions of the sales representative were unsolicited, repeated and objectively offensive. They caused the Added Party humiliation and distress in the workplace.

[65] The employer also says that I should consider the delay between the incidents and the complaint. The employer argues that because the Added Party's delayed making a complaint, there was no temporal connection between his initial complaint and the incidents.[51] They appear to be arguing that because the Added Party didn't complain right away, he condoned, or accepted, the offensive behaviour.

[66] The employer also says the Added Party accepted the sales representative's apology.[52] At the hearing the Added Party testified that he didn't accept the apology willingly. The sales representative came to his desk, in public, and made the apology. He says he didn't have an opportunity to refuse the apology.

[67] I note that, in the context of employment, an individual can feel powerless or fear reprisals if they complain about so-called "jokes." There is pressure to fit into the culture of the workplace. This is particularly true where a person, like the Added Party, is seeking to advance his career.

[68] I accept that some of the incidents occurred a year before the Added Party complained to the GM. But I don't find that his delay in making his complaint shows that he condoned the behaviour or that it did not offend him.

[69] I refer to a recent decision of the Ontario Divisional Court in *Metrolinx* v *Amalgamated Transit Union, Local 1587* (Metrolinx).[53] Although this decision deals with sexual harassment, I find it is instructive when considering harassment in the workplace more generally. In that case, the Divisional Court said: "A victim's reluctance to report or complain about sexual harassment may be caused by many factors: embarrassment,

[51] See GD2-11.
[52] See GD2-10.
[53] *Metrolinx* v *Amalgamated Transit Union, Local 1587,* 2024 ONSC 1900

fear of reprisal, the prospect of further humiliation, or just the hope that if ignored, the demeaning comments or behaviours will stop."[54]

[70] I adopt this statement and find that may be extended to victims of other forms of workplace harassment, including race-based harassment.

[71] The Added Party has shown that the sales representative sent him two unsolicited pictures targeting his racial identity, which he found offensive. Having looked at these pictures, I find that they are objectively offensive. I also accept that the same sales representative made demeaning comments to the Added Party. As such, I find that the Added Party experienced harassment, based on his race by the sales representative.

[72] The employer hasn't shown that this behaviour wasn't discriminatory or harassing. To the contrary, it chose to suspend the sales representative only two days after the Added Party made his complaint.

[73] And so, because harassment is a form of discrimination, I find the Added Party was experiencing race-based discrimination and harassment from the sales representative in the workplace.

– **Sales manager**

[74] The Added Party says the sales manager treated him differently because of his race.

[75] The evidence shows that A. C., the sales manager (sales manager), told the Added Party that he looked tired. And another employee who was present, said he needed drugs. The sales manager remembers this incident as being made jokingly.[55]

[76] There isn't enough information about this incident for me to find it was race-based harassment. I accept that there are harmful stereotypes about the use of drugs. But the evidence doesn't show that this was the reason the comment was made. It was

[54] See paragraph 59 of *Metrolinx* v *Amalgamated Transit Union, Local 1587,* 2024 ONSC 1900
[55] See page GD3-61.

made in the context of the Added Party being described as tired. And it wasn't part of a pattern of racially based comments made to the Added Party such that it could be considered harassment.

[77] The second incident, involving the sales manager, was the tie-cutting ceremony. The evidence shows that when a sales representative sells their first vehicle, the sales manager cuts their tie. This was usually done with scissors.

[78] After the Added Party sold his first car, the sales manager decided to change the usual tie-cutting ceremony by substituting a tool for the usual scissors. A picture of that tool was put into evidence by the Commission.[56] While the parties don't agree as to what tool this is, I find it isn't scissors. It appears to be a large cutting tool.

[79] The evidence of the sales manager is that he presented the clippers to the Added Party and proposed that they use them for the tie-cutting ceremony[57]. The Added Party said no, and the ceremony proceeded using scissors. The sales manager says that his intention was to inject humour into the occasion. He didn't bring up the Added Party's race and he says it wasn't his intention to make it a focal point.[58] I accept that he didn't mean to make the Added Party's race a "focal point", but this isn't the same as saying that the decision, to change the ceremony, had nothing to do with race.

[80] The Added Party understood the use of the tool to be a reference to chain cutters. And that the use of such a tool was also a reference to his identity as a Black man. He was deeply offended. It was the tie-cutting incident that prompted him to make a formal complaint to the GM.

[81] The employer argues that this incident wasn't racially motivated. And it wasn't harassment or discrimination based on race. At the hearing, the owner said that he didn't think this was overtly racist. But it showed a lack of sensitivity. Accordingly, the

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[56] See page GD3-44. The Added Party says this tool was a chain cutter. The employer says it was clippers or sheers.
[57] See GD3-62.
[58] See GD3-62.

sales manager was required to take sensitivity training. Again, not being “overtly racist” isn’t the same thing a saying that the actions had nothing to do with race.

[82] I find the use of the cutting tool treated the Added Party differently because of his race. No other sales representative was singled out for similarly different treatment. It may have been done as a joke, and not consciously intended to be a comment on the Appellant’s race, but it was deeply offensive to the Added Party who was already experiencing race-based harassment from the sales representative.

[83] And the offensive nature of the conduct by the sales manager was recognized by the employer when it decided to suspend him and make him take sensitivity training.[59]

[84] I find the sales manager treated the Added Party differently from other employees based on his race and this had an adverse impact on the Added Party. This was race-based discrimination.

– **Comments made by a detailer.**

[85] The Added Party also says he was offended by a comment made by a detailer (M. F.). The detailer asked him where he was from. When he said he was originally from another country, he says the detailer said, “You’re not a real Canadian.” The Added Party says this same detailer unfairly blamed him for misplacing keys. He yelled at the Added Party in front of their manager. Nothing was done to address this behaviour.

[86] The Appellant relies on a will-say statement signed by the detailer and sent to the Commission.[60] In this statement the detailer says he has no recollection of this incident and denies ever saying that Added Party wasn’t a real Canadian. This statement was signed in February 2024 more than two years after the incident is said to have taken place.

[59] See GD3-63 and GD3-101.
[60] See GD3-66.

[87] The incident with the detailer wasn't included in the Added Party's complaint to the GM. But he referred to it when he was speaking with the Commission after he left his employment.

[88] I find the statement made by the co-worker was inappropriate, hurtful, and was based on the Appellant's origin. This is a protected ground. But I find it was a one-time comment that doesn't rise to the level of harassment. I also find that the evidence doesn't show that the co-worker's outburst about the misplaced keys was racially based or based on the Added Party's country of origin.

– **Was the Added Party experiencing racial harassment in the workplace?**

[89] Yes. I find the Added Party was experiencing harassment and discrimination based on his race in the workplace. I base my findings on the following:

- The picture evidence of the business card and the modified photograph[61]
- The texts between the Added Party and the sales representative about these two incidents[62]
- The picture of the tool that the sales manager proposed to use to cut the Added Party's tie.[63]
- The fact that the sales representative and the sales manager were both suspended for one day and required to take sensitivity training two days after the complaint was made.[64]
- The written statements of the sales representative and the sales manager.[65]
- The written statements and testimony of the Added Party.

[61] See GD3-43 and GD3-45.
[62] See GD3-91 to GD3-93.
[63] See GD3-44.
[64] See GD3-56.
[65] See the statement at pages GD3-61 to GD3-63 and the statement at pages GD3-70 to GD3-72.

[90] The employer says that it addressed the Added Party's complaint, and he hasn't provided any information about further incidents of harassment. So, he had no reason to quit when he did.

– **Incidents raised by the Added Party after the March 1, 2023, complaint.**

[91] In his submissions the Added Party also says:

- His sales were disrupted by damage to vehicles.
- He was embarrassed in front of customers.
- He was isolated socially.[66]

[92] The Added Party refers to two other incidents which he says were racially motivated after his complaint was closed by the GM at the end of March 2023.[67]

[93] First, he points to an incident where his clients were unhappy with the condition in which a new car was delivered. The sales manager dismissed his concerns.[68] He forwarded this email to the GM on April 1, 2023. He expressed concern about how his clients were treated. He also commented on the need to be careful when speaking to clients and to other staff members.[69]

[94] Second, he says he was inappropriately excluded from a conversation between the sales manager and his client. In the Commission's evidence, there is an email the Added Party sent to the GM on April 26, 2023. In that email he says he was humiliated by the sales manager in front of his clients. According to the Added Party, this is an example of the further harassment he experienced.[70]

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[66] See GD11-21.
[67] See GD24-1 and GD3-40.
[68] See emails at pages GD3-98 to GD3-100.
[69] See GD27-81 to GD27-84.
[70] See email at page GD3-94 and summary at page GD3-84.

[95] The owner testified that the Added Party was a junior sales representative. He said that at times it is necessary for the sales manager to handle upset clients without an inexperienced sales representative present.

[96] I understand that there may have been valid reasons for excluding the Added Party, but the reasons for this exclusion don't seem to have been given to the Added Party. This left him feeling humiliated by the sales manager. And this happened after he made his first complaint.

[97] I accept that the Added Party believed he was being unfairly treated by the sales manager. In the absence of an explanation, such an incident could be seen as a reprisal for making a complaint.

[98] The Added Party also says he was socially isolated after making the complaint.[71] Social isolation because a person makes a harassment or discrimination complaint can also be a form of reprisal.

[99] I find that the evidence shows the Added Party was excluded and isolated in the workplace after he made his initial complaint.

[100] The workplace had become toxic for the Added Party. Shortly after quitting his job, he was diagnosed with a mental health condition requiring psychotherapy.[72] He has provided extensive medical documentation.[73]. The Workplace Safety and Insurance Board (WSIB) concluded that his psychological injuries arose from his workplace.[74] It allowed his claim for WSIB benefits.

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[71] See GD3-40.
[72] The Added Party provided his medical records at pages GD11-43 to GD11-69.
[73] See document GD11.
[74] See decision of the WCB at pages GD11-2 to GD11-10. I understand the employer has challenged this decision, but I have no other information about that proceeding.

[101] So, when the Added Party left his job, I find the circumstances included:

- He was experiencing racially based harassment and discrimination, including reprisals for making the complaint.
- The workplace was causing him psychological injury.

[102] In summary, his workplace had become toxic because of the ongoing harassment.

The Added Party had no reasonable alternative.

[103] I must now look at whether the Added Party had no reasonable alternative to leaving his job when he did.

[104] The Added Party says that he had no reasonable alternative because he made a complaint. It wasn't investigated seriously. No solutions to the situation were offered to him. The harassment continued, and his mental health suffered as a result.

[105] The Commission agrees that the Added Party had no reasonable alternative. It says he made a complaint. But he felt the investigation by the employer didn't resolve the issue and he had to continue working with those responsible for the harassment.

[106] The Commission decided that making a complaint was the reasonable alternative available to the Added Party. Since the Added Party took that step, the Commission agreed that he had no reasonable alternative but to leave his job.[75]

[107] The employer disagrees. It says that it investigated the Added Party's complaint. And it says he was happy with the outcome. It says if the Added Party had further complaints of harassment, the employer should have been given time to investigate.

[75] See GD4-5.

– **The investigation**

[108] I find asking the employer to investigate his complaint of harassment was a reasonable alternative for the Added Party.

[109] On March 1, 2023, after speaking to the GM the Added Party made a formal written complaint.[76]

[110] The employer says it investigated the complaint and acted appropriately.[77]

[111] After the hearing, the employer sent in its Corporate Policy. This policy includes a Workplace Anti-Harassment Policy.[78] The employer's Policy requires that statements be taken and signed when there are allegations of harassment.[79] And those statements be held on file for future reference.[80]

[112] The employer hasn't provided the investigation file or any statements that it gathered during the **2023** investigation. The only statements in evidence are those written and signed in February **2024**.[81] This is one year after the initial investigation. And there is no written report setting out the outcome of the investigation. [82]

[113] Instead, **five** days after the Added Party sent his complaint to the GM, he was invited to a meeting with the sales manager. This was done **despite** the Added Party having told Human Resources and the GM that he didn't want to meet with the sales manager because he didn't feel comfortable.[83] The GM went ahead with this meeting on March 6, 2023.[84]

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[76] See GD3-42.
[77] See GD2-10, GD2-11, GD27-4, and GD27-6.
[78] See GD27-38.
[79] See GD27-17.
[80] See GD27-14.
[81] See GD3-61 to GD3-72.
[82] I note that section 32.07(1) of the Ontario *Occupational Health and Safety Act,* RSO 1990, c. O.1 (OHSA) requires employers to investigate harassment complaints and provide the complainant with a written report setting out the outcome of the investigation. There are similar provisions under the *Canada Labour Code*, R.S.C. 1985, c. L-2.
[83] See GD3-75 and GD3-78.
[84] See GD3-76 and GD3-79.

[114] The Added Party wasn't satisfied with how his complaint was handled.[85] He says despite his dissatisfaction, the GM repeatedly asked him to withdraw his complaint.[86]

[115] The evidence shows the GM:

- Went ahead with a meeting that the Added Party said he wasn't comfortable attending on March 6, 2023.
- Unilaterally closed the complaint.
- Told the Added Party no further action would be taken.
- Asked the Added Party to withdraw his complaint.[87]

[116] The written statement of the GM doesn't address whether he pressured the Added Party into withdrawing his complaint.[88] And he didn't testify at the hearing. So based on all of the evidence, I find the GM unilaterally closed the complaint and asked the Added Party to withdraw his complaint at the end of March 2023.

[117] The Added Party testified that he received an apology from the sales representative.

[118] The sales representative confirms that the apology took place at the Added Party's desk.[89] He says that the Added Party accepted the apology and wanted to move on.

[119] But the Added Party testified that because the apology took place in a public place, he felt he had no choice but to accept it. He also testified that he wasn't happy with how this was done or with the apology.

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[85] See GD3-79.
[86] See GD3-82.
[87] See GD3-79.
[88] See written statement of the GM at pages GD3-67 to GD3-69.
[89] See GD3-77.

[120] When the Added Party felt he was experiencing further incidents of discrimination and harassment, he again wrote to the GM.[90] But he decided to quit soon after.[91] He said he had to quit to protect himself because he was no longer comfortable staying in the work environment.[92]

[121] The employer says the Added Party should have waited for it to investigate his new concerns. And that not allowing it to do an investigation means he didn't have just cause to leave his job.

[122] I find that it isn't reasonable to expect the Added Party to make a second complaint to the employer. He tried complaining. But the GM didn't investigate his first complaint in a fair or effective way. The employer didn't offer any real solution to the situation. I see that the employer required them to take sensitivity training, but the Added Party was expected to continue working with the people he complained about. Following his complaint, he experienced isolation. And he was excluded, without explanation, from a client meeting by the sales manager, which humiliated him.

[123] This means that asking for a new investigation wasn't a reasonable alternative. The Added Party had already made a complaint that wasn't dealt with effectively.

[124] I accept that the owner wanted to deal with the situation as quickly as possible. I also accept that he didn't tolerate harassing behaviour in his business. But his desire to act quickly, resulted in a rushed and incomplete investigation which re-victimized the Added Party. Asking the Added Party to go through this again isn't a reasonable alternative.

[125] The Added Party is also suffering from mental health issues which were diagnosed in May 2023.[93] These mental health injuries were found to be connected to the workplace harassment he experienced by the WSIB.[94]

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[90] See GD3-94 and GD27-81 to GD27-85.
[91] See GD23-3.
[92] See GD3-81.
[93] See GD11-39 to GD11-41.
[94] See GD11-2 to GD11-10.

[126] The toxic nature of his workplace was making him sick. It wasn't reasonable to expect him to continue working at the same dealership. And he wasn't offered a job at another dealership.[95] So, I find the Appellant had no reasonable alternative but to leave his job.

Conclusion

[127] I find, based on the evidence, that given the circumstances that existed when the Added Party quit, he had had no reasonable alternative to leaving his job when he did.

[128] This means I find the Added Party had just cause for leaving his job. And he isn't disqualified from receiving benefits.

[129] The employer's appeal is dismissed.

Emily McCarthy
Member, General Division – Employment Insurance Section

[95] I note that the Notice of Appeal says the Added Party refused an alternative position in a different dealership. But this wasn't accurate.