Citation: *DR v Canada Employment Insurance Commission*, 2025 SST 459

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (699677) dated January 16, 2025 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Teleconference
Hearing date:	March 7, 2025
Hearing participant:	Appellant
Decision date:	March 18, 2025
File number:	GE-25-315

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant did quit. He hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits.

Overview

The Appellant's employer put him on a layoff from April 22, 2024, until it called him back to work on August 7, 2024. The employees were not represented by a union. The Appellant considered the layoff to be a constructive dismissal. He applied for EI benefits on May 5, 2024. He declined to return to work with the employer when called back on August 7th. He wanted the employer to pay him his wages for the entire layoff period. The Canada Employment Insurance Commission (Commission) looked at the Appellant's reasons for not returning to his job. It decided that he voluntarily left (or chose to quit) his job effective on August 7, 2024, by refusing to return to his job at the end of the layoff. It also decided that he quit without just cause, so it wasn't able to pay him benefits.

[3] I must decide whether the Commission has proven that the Appellant did quit his job, and whether the Appellant has proven that he had no reasonable alternative to leaving his job.

[4] The Commission says that the Appellant did quit and had a reasonable alternative to quitting. That alternative was returning to the job and looking for and getting another job before quitting.

[5] The Appellant disagrees and states that the layoff was in fact a termination of his employment without cause. He did not quit. The employer had treated him unfairly by putting him on layoff. The employer would not pay severance pay because of the short

notice for the layoff. The work environment was so unhealthy and unfair that he should not have to go back to work there.

Matter I have to consider first

I will accept the documents sent in after the hearing

[6] The Appellant told the Commission, and testified, that he had been looking for another job during the layoff. He testified that he continued looking after the layoff on August 7th and obtained another job at the end of September 2024. At the hearing, I asked the Appellant to provide a copy of his job search. That document is GD9 in the appeal file.

Issue

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

[8] 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

[9] I find that the Appellant voluntarily left his job on August 7, 2024, for the following reasons.

[10] The phrase "voluntarily leaving an employment" includes "the refusal to resume an employment in which case the voluntary leaving occurs when the employment is supposed to be resumed".[1]

[11] The determination of whether an employee has voluntarily left his employment is simple: did the employee have a choice to stay or to leave? Whether or not an employee is entitled to treat the employment relationship as having been ended by the

[1] Section 29(b.1)(ii) of the *Employment Insurance Act* (Act).

employer on the grounds of constructive dismissal is a different issue from the issue of whether an employee has voluntarily left employment under section 30(1) of the Act such that he may not be entitled to EI benefits.[2] The Commission and the Tribunal do not have jurisdiction to rule on whether there was constructive dismissal. That is a matter within the jurisdiction of the courts.

[12] The Appellant worked as a fitter/welder for the employer. Effective Friday, April 19, 2024, the employer laid off thirteen employees including the Appellant due to a slowdown in the business. The employer notified the Appellant of the layoff by text message on Monday April 22nd at 10:52am. The employer did not know the expected date of recall. On April 24th at 2:49pm the Appellant texted the employer to say he did not accept the layoff, and asked for severance pay and termination of his position. The employer responded, "So you quit". The Appellant responded "I don't quit, I don't accept your temporary layoff with no return date. I want you to pay me severance." The employer filed an amended Record of Employment (ROE) on August 21, 2024, showing that the Appellant was not returning. The reason for issuing the ROE was the same on both ROEs the employer issued: "Shortage of work/End of contract or season A". The employer had issued the amended ROE as part of a settlement of the Appellant's lawsuit against the employer for constructive dismissal.

[13] The Appellant thought it was unfair that he was laid off by the employer. The employer did not give two weeks' notice of the layoff, or severance pay. Neither was in the employment contract, but he felt the employer should have done both. Because the employer treated him this way, he did not want to work for them anymore. When the employer gave him the recall notice, he returned it to the employer and said he would only accept the recall if they paid him for the entire period of the layoff as if he had worked then. He expected about $15,000.00 from the employer before he would return to work. The employer declined to pay. The Appellant did not return to work.

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[2] *Canada (Attorney General) v Peace*, 2004 FCA 56, para. [17].

[14] Based on that review of the evidence, the Appellant did quit his job, despite his messages saying that he didn't quit. His demand for severance pay and termination of his employment clearly show that he intended to end his employment if he was not paid. But he did not quit immediately following the layoff. Even with the lawsuit against the employer started while he was on layoff, the employment relationship continued. Neither the Appellant nor the employer took steps during the layoff to end the employment. It was only on August 7, 2024, when the Appellant refused to return to work on being notified by the employer of the end of the layoff, that the employment ended. The Appellant's job ended because he made the choice not to resume the employment. That is the Appellant voluntarily leaving his employment as defined in the Act.[3]

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 you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.[4] 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 that you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says that you have to consider all the circumstances.[5]

[18] It is up to the Appellant to prove that he had just cause.[6] 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.

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[3] Section 29(b.1)(ii) of the Act.
[4] Section 30 of the Act explains this.
[5] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.
[6] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

Remaining in employment until a new job is secured is, without more, generally a reasonable alternative to taking a unilateral decision to quit a job.[7]

[19] The Appellant says that he left his job because the employer treated him unfairly in laying him off without notice, and in not paying him for the time he was on layoff. He feared that the employer would lay him off again if he returned to the job. That concern was worsened because the Appellant had sued the employer for constructive dismissal. The work environment was so unhealthy. The Appellant says that he had no reasonable alternative to leaving at that time for these reasons.

[20] The Commission says that the Appellant didn't have just cause, because he had reasonable alternatives to leaving when he did. Specifically, it says that the Appellant could have returned to work when the layoff ended and looked for another job before quitting.

[21] I find that the Appellant has not proven that he had just cause for quitting. He had the reasonable alternative of returning to the job, continuing his job search for a new job, and then quitting when he did get a new job.

[22] The fact that the employer imposed a temporary layoff without advance notice, and did not pay the Appellant during the layoff are not just cause. Employers are permitted to make adjustments to their workforce based on economic conditions. Lack of advance notice in the absence of a term in the employment contract for such notice does not by itself constitute just cause. Employers are not required to pay employees while on a layoff unless there is a term of the employment contract requiring such payments. There is no evidence of either term in this case. The fact that the Appellant thinks that the employer treated him unfairly in the layoff does not meet the test for having just cause. The employer's refusal of the Appellant's demand that the employer pay him in full for all the time he was on the layoff does not create just cause. That is a matter for a lawsuit for wrongful or constructive dismissal such as the Appellant pursued. It is not a matter that the Commission or the Tribunal have jurisdiction to deal

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[7] *Canada (Attorney General) v Graham,* 2011 FCA 311.

with in EI claims. None of these matters show that there was no reasonable alternative to quitting by refusing to return to work on August 7th.

[23] The Appellant expressed fear that the employer might lay him off after he returned to work. That fear was heightened because the Appellant had sued the employer during the layoff for constructive dismissal. The reasonable alternative for the Appellant here would be to return to work when recalled, continue his job search for a different job, and deal with the employer's actions, if any, when they happened. It may have been uncomfortable for both Appellant and employer, but it does not meet the test for just cause: no reasonable alternative to quitting.

[24] The Appellant said that the work environment was so unhealthy, and the employer had treated him unfairly. Because of that he didn't think that he should have to go back to work with the employer. The Appellant's evidence of an unhealthy environment was slim and focused mainly on a new manager. That manager was micromanaging, rude, made fun of the Appellant and was constantly watching him and other employees. The Appellant did not discuss these complaints with the manager or with the employer. Other than that complaint, the Appellant had no issues with the employer prior to the layoff. Those complaints do not support that the Appellant had no reasonable alternative to quitting when he did. A reasonable alternative would have been discussing the problem with the manager and/or the employer to try to resolve the issue. If the issue could not have been resolved, that might have been just cause if there was further evidence of the unhealthy environment and the employer's failure to correct the problem.

[25] The Appellant testified to his efforts to look for work prior to quitting. He provided a list of the job applications he made on Indeed from May 2 to September 1, 2024. He did not hear back in response to any of those applications. He did find a new job at the end of September 2024. The Commission said that he should have returned to work and continued looking for another job before quitting.

[26] The reasonable alternative to quitting was for the Appellant to return to work on August 7, 2024, and to continue to look for another job while he continued working for

the employer. The Appellant did not take that reasonable alternative and therefore did not have just cause to quit when he did.

Conclusion

[27] I find that the Appellant is disqualified from receiving benefits effective August 7, 2024.

[28] This means that the appeal is dismissed.

Paul Dusome
Member, General Division – Employment Insurance Section