Citation: *X v Canada Employment Insurance Commission and SM*, 2026 SST 167

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	X
Representative:	Denis Manzo
Respondent:	Canada Employment Insurance Commission
Respondent's Representative:	Jessica Murdoch
Added Party	S. M.
Added Party's Representative	Reshida Darrell

Decision under appeal:	General Division decision dated November 13, 2025 (GE-25-2304)

Tribunal member:	Stephen Bergen
Type of hearing:	Videoconference
Hearing date:	February 24, 2026
Hearing participants:	Appellant's representative Respondent's representative Added Party Added Party's representative
Decision date:	March 6, 2026
File number:	AD-25-796

Decision

[1] The appeal is allowed.

[2] The General Division made an error in how it reached its decision. I have corrected that error and made the decision the General Division should have made.

[3] I have decided that the Employer dismissed the Claimant for misconduct, which means that the Claimant is disqualified from receiving Employment Insurance benefits, unless he has accumulated sufficient hours of insurable employment to qualify from some other employment.

Overview

[4] X is the Appellant. I will refer to the Appellant as the Employer. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission. The Added Party is S. M. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits.

[5] All parties are represented. This decision does not distinguish between any submissions a party may have made on their own behalf, and the submissions made by the party's representative.

[6] The Claimant was dismissed from his job on March 28, 2025. The Commission decided that the Claimant was disqualified from receiving benefits because he had been dismissed by his employer for misconduct.

[7] The Commission reversed its decision after the Claimant asked it to reconsider. The Employer appealed the reconsideration decision to the General Division but was unsuccessful. It next appealed the General Division decision to the Appeal Division.

[8] I am allowing the appeal. The General Division made errors of fact and law. I have corrected the General Division's error, and have concluded that the Claimant's employer dismissed him for misconduct, as that term is defined for Employment

Insurance purposes. This means that the Claimant is disqualified from receiving EI benefits.

Preliminary Issue

[9] The Employer submitted two emails from its Human Resources department to the Claimant dated November 21, 2024, and November 22, 2024.[1] This evidence was not available to the General Division, so it is new evidence. He asked that I consider this new evidence under the "general background" exception, citing the *Sharma* decision.[2]

[10] After hearing from the Employer and the other parties, I decided that I would not be considering this new evidence.

[11] The evidence does not fall within the "general background" exception. It was provided to support the Employer's contention that the Claimant was aware that the Employer considered his conduct insubordinate, and/or to show how the Employer responded to his conduct. This evidence was submitted because the Employer believed it helped him to establish facts at issue.

[12] I cannot consider new evidence that that was not before the General Division, when that evidence is offered to help prove facts that are at issue.[3]

Issues

[13] The issues in this appeal are as follows:

Errors of fact

a) Did the General Division ignore or misunderstand evidence that the Employer informed the Claimant that it considered his actions to be insubordination and in violation of its standards of conduct (Standards)?

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[1] See AD7.
[2] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[3] *Mohamed v. Canada (Attorney General*), 2016 FC 482; *Mette v. Canada (Attorney General*), 2016 FCA 276; *Griffen v Canada (Attorney General*), 2016 FC 874.

b) Was it "perverse or capricious" for the General Division to find that the Claimant could not have known that refusing to grant full access to his Outlook work calendar could result in his dismissal?

Error of law

c) Did the General Division make an error of law by failing to follow applicable case law?

Analysis

General legal principles for appeals to the Appeal Division

[14] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.
b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
c) The General Division made an error of law when making its decision.
d) The General Division based its decision on an important error of fact.[4]

Errors of fact

[15] For the purpose of this appeal, an error of fact is where the General Division has based its decision on a finding of fact that it made in a perverse or capricious manner or without regard to the evidence before it.[5]

[16] In this decision, I may occasionally refer to findings on which the decision was based as "key findings." A "perverse of capricious" finding is one that is unsupported by evidence or that is not rationally connected to the evidence. If a finding ignored or

[4] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[5] See section 58(1)(c) of the DESDA.

misunderstood relevant evidence that could have affected it, this is a finding made "without regard to the material before it."

[17] A claimant who is dismissed for misconduct is disqualified from receiving benefits. The test for whether a claimant's conduct is misconduct as it is defined for the purpose of the EI Act, requires the Employer to show that the claimant

- engaged in the conduct for which they were dismissed,
- did so willfully, or was so reckless as to have been almost willful,
- knew or ought to have known that their conduct interfered with a duty they owed to their employer and,
- knew or ought to have known that their dismissal was a real possibility.[6]

[18] A claimant cannot be disqualified unless all of these elements are proven. So, the General Division's findings on any of these elements is a key finding.

[19] The General Division decision does not address whether the Claimant acted willfully when he refused the Employer full access to his work calendar. Its decision was based on other key findings.

[20] It found that the Employer had not shown that the Claimant knew or should have known that he could be dismissed for refusing full access. And it also found that the Employer had not shown that his refusal would interfere with carrying out his duties.

– **Did the General Division overlook or misunderstand the evidence when it found that the Claimant could not have known he would be dismissed?**

The November 7, 2024, letter that was in evidence

[21] The Employer's first argument is that the General Division made an error of fact when it said that the Claimant's manager told his team in March that they had to give him full access to their work calendars. The Employer says that this ignores the November 7, 2024, letter.[7] He states that the letter shows that March 2025 was not the

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[6] See *Mishibinijima v Canada (Attorney General),* 2007 FCA 36.
[7] See GD3-55.

first time the Employer informed the Claimant that he was required to provide full access to his work calendar.

[22] I do not accept this argument.

[23] First, this General Division finding is actually accurate. It was correct to say that the Claimant's manager had communicated in March 2025, that it was requiring the team members to share the details of their Outlook calendars.[8]

[24] The decision does not say that this was the Employer's **first** communication of such a requirement. In addition, the November 7, 2024, letter was addressed to the Claimant individually. It was not addressed to the **team**.

[25] Second, the General Division did not ignore the letter. It addressed the November letter when it considered whether the Claimant had been warned. It said that the letter "regard[ed] his performance and conduct in his role with the employer."

[26] This is a fair characterization of the substance of the letter. It is true that the letter touches on the Claimant's use of his Outlook calendar. But it is not obvious that it was any kind of warning about his refusal to provide full access. The letter informed him that the Employer expected him to maintain an accurate calendar that would allow colleagues to book him for meetings based on availability. The letter did not specify what kind or level of access to the Claimant's calendar this required, or whether this would entail "full access."

The March 25, 2025, email in evidence

[27] The Employer also argues that the General Division's finding ignored or misunderstood the March 25, 2025, email (the March email).

[28] I agree that the General Division made an error of fact.

[8] See GD2-19—GD2-20.

[29] The General Division did not **ignore** the March email – it is apparent that it was aware of the March email and of its contents. In fact, it cites the contents of the email.[9] However, the General Division misunderstood its significance.

[30] The General Division said that the Claimant asked his manager what the consequences would be if he did not comply and that his manager did not respond. It also said that there was "no warning or reminder from the [employer] to the Claimant that if he didn't give his manager full access to his calendar that would be viewed as insubordination."[10]

[31] The General Division was correct that the manager did not directly address the Claimant's question about the specific consequences for his refusal to provide full access to his calendar. However, the manager did respond to the Claimant's inquiry. Initially, it sent him a copy of its Acceptable Use Policy. When the Claimant said the policy does not specifically address the manager's access requirement, the manager responded with the March email.

[32] The General Division was incorrect when it stated that the Employer did not inform the Claimant of how it viewed the Claimant's continued refusal. In fact, the March email warned or reminded the Claimant that his continued refusal "[was] insubordination" and a "violation of [its] standards of conduct." Those Standards are in evidence.[11] They specify that the consequences of insubordination may include termination.

[33] The Claimant argues that the March email was irrelevant or unimportant to the General Division's analysis or findings, so it does not matter whether the General Division was aware of it or understood it.

[34] He argues that the Employer was required to prove that the Claimant knew or should have known that his **specific** refusal of full calendar access could result in his

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[9] See para 20 of the General Division decision.
[10] See para 42 and 43 of the General Division decision.
[11] See GD3-117.

dismissal.[12] He supports this position by noting that the General Division had addressed itself to the Claimant's specific refusal when it found that there had been no prior warning. [13]This finding had relied on evidence of the Employer's Acceptable Use Policy, which does not specifically require employees to provide full access to their Outlook calendars.[14]

[35] I disagree with the Claimant. The March email is both relevant and important. The Claimant's argument implies that the Employer must prove that the Claimant knew or ought to have known that he could be dismissed for not complying with the Employer's Acceptable Use Policy. But that is incorrect.

[36] The Claimant emphasises that the Acceptable Use Policy has little to say specifically about employees granting access to their work calendars. That is true. But the Employer needed only to prove that the Claimant should have known he could be dismissed for refusing to provide full access, **as directed by his manager**. It did not need to prove that his conduct was in violation of its Acceptable Use Policy. There was evidence before the General Division of what the manager meant by "full access," evidence that the Claimant was also aware of what the manager meant, and evidence that he chose not to comply.[15]

[37] The General Division found that the Claimant lost his job because he failed to give his manager full access to his calendar. That is factually correct: The Claimant would likely not have been dismissed if he had given the Employer full access. But to be precise, the Claimant was dismissed because he failed to follow his manager's direction to give him full access.

[38] The March email was relevant and important to assessing whether the Claimant should have known he could be dismissed. The General Division misunderstood its

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[12] See AD6-4.
[13] See AD6-5.
[14] See GD3-104.
[15] See GD2-17-20.

significance and failed to weigh the March email in its analysis. This was an error of fact.

– **Was the General Division's finding that the Claimant could not have known he would be dismissed make in a perverse or capricious manner?**

[39] The Employer also argues that it was perverse or capricious for the General Division to find that the Claimant could not have known he would be dismissed. He notes that the March email to the Claimant clearly states that the Claimant was being insubordinate and that he was in violation of the Employer's Standards, which set out dismissal as a possible consequence.

[40] The Claimant argues that the March email was nothing more than a statement of the manager's subjective view of his conduct. He suggests that the March email does not challenge the General Division's analysis of what the Claimant knew, or should have known, about how the Employer would respond if he did not give full access to his email.

[41] The Commission supports the Claimant's position that the General Division decision did not make an error. The Commission argues that the General Division simply accepted, or gave weight to, the Claimant's statement that he did not think his conduct would be treated as insubordination. In relation to Claimant's failure to respond to the March email (or comply with the manager's direction after receiving it), the Commission argues that the Employer did not give the Claimant sufficient time before dismissing him.

[42] I have considered the Claimant's and the Commission's arguments. However, I am persuaded that the General Division's finding of fact was made in a perverse or capricious manner.

[43] The General Division may have been able to find that the Claimant did not **know** his conduct would be treated as insubordination, based on the Claimant's statement that he did not know. But this is not an answer to whether he **should have known** his conduct was insubordination. The March email established that- just days before his

dismissal - his manager warned that he considered the Claimant's continued refusal to provide full access to his calendar to be insubordination as well as a violation of the Employer's Standards. The Claimant did not dispute that he received the March email or suggest some plausible alternate interpretation for the email.

[44] Nor has the Claimant ever asserted that he had intended to comply after the March email but that he was not given enough time. His position has been consistent that he did not comply with his manager's demand because he did not believe that he was required by company policy to comply. In a May 2, 2025, discussion with the Commission, he insisted that he did nothing wrong because company policy did not require him to grant full access to his calendar. He referred to the last warning letter, but only to say that it did not state that his job was at risk.[16]

[45] The General Division's finding that the Claimant could not have known he would be dismissed does not follow rationally from the evidence. He was told by his employer that his continued refusal was insubordinate and that it was in violation of its Standards. The Standards were in evidence. They confirm that, "insubordination is grounds for disciplinary action up to and including immediate termination."[17]

[46] The General Division did not reject any of this evidence. Its finding appears to lean on the fact that the manager did not explicitly warn the Claimant that it was going to fire him if he did not provide full access. But the legal test does not require that the Claimant have actual knowledge that he will be dismissed for his misconduct. It requires only that he should have known that his dismissal was a real possibility.

[47] The Claimant had testified that he did not know his employer would treat his refusal as insubordination, because its Acceptable Use Policy was vague.[18] He argues that the General Division finding was not perverse or capricious but that it followed from the Claimant's testimony. The General Division accepted that the Claimant could not know that his specific refusal constituted insubordination, because the Employer had

[16] See GD3-27.
[17] See GD3-117.
[18] See para 44 of the General Division decision.

not shown that its Acceptable Use Policy required full access. This argument is premised on the notion that the Claimant's conduct could only be considered insubordinate if he contravened a specific employer policy.

[48] I appreciate that the Employer's Acceptable Use Policy does not specify that employees must provide full access to their calendar. Nor does it state that the failure to provide such access will be considered as insubordination. I also understand that the Standards do not define what they mean by insubordination.

[49] However, I disagree with the Claimant's premise. An employee may be insubordinate to their superiors without necessarily breaching a formal policy. I will use the ordinary dictionary definition of insubordination, since the Employer's Standards do not define the term.

[50] The Merriam Webster dictionary defines insubordination broadly and simply as "defiance of authority."[19] Being insubordinate is being disobedient to authority.[20] Insubordination could include defiance of the Employer's written policies. But it certainly includes an employee's refusal to follow a direction from his manager.

[51] The March email shows that the Claimant knew that his manager considered his specific conduct to be insubordinate. The Claimant and his manager had exchanged emails about the manager's expectations and the Claimant's objections, and about whether the Employer's Acceptable Use Policy required the kind of access the manager was demanding. But, at the end of this exchange, the Claimant's manager sent the March email.

[52] The March email communicated clearly that the manager considered the Claimant's continued refusal to be insubordinate. This is not a question of the manager's subjective interpretation of the term. It is an objective fact that the manager gave the Claimant a direction, and an objective fact that he was unwilling to follow it.

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[19] See Merriam Webster's online dictionary, accessed at 1:45 Eastern time on March 3, 2026, at INSUBORDINATION Definition & Meaning—Merriam-Webster.
[20] Ibid. INSUBORDINATE Definition & Meaning—Merriam-Webster

The Claimant's refusal to comply with his manager's direction was insubordination **by definition.**

[53] The Claimant may well have felt that he was within his rights to disregard directions from his manager that were not specifically authorized in the Employer's policy, according to his reading of the policy. But the General Division's job was to determine whether the Claimant should have known he could be dismissed for not obeying his manager's direction.

[54] The General Division could not rationally find that the Claimant could not have known his conduct was insubordination or that he could be dismissed for it, by relying on the vagueness of the Employer's Acceptable Use Policy or on the Claimant's view of his obligations to the Employer under the Policy.

[55] If granting full access had been specifically required in the Employer's Policy or Standards, or refusal to grant access had been specifically prohibited, then the Claimant's continued refusal might have been considered misconduct as a breach of the Employer's written policy. But it is still insubordination for an employee to refuse to follow their manager's directions, even directions which do not appear in the written policy.

[56] The bottom line is that the Employer gave the Claimant a direction that he refused to follow. The Employer told him that his refusal was insubordination and that it was a violation of its Standards. Its Standards state that termination is a possible consequence of insubordination. The Claimant was aware of this. So, the Claimant had notice from the Employer that his refusal could result in termination.

[57] Given these facts, it was perverse or capricious for the General Division to find that the Claimant could not have known he would be dismissed.

Error of law

– **Did the General Division fail to apply the law when it found that the Claimant's conduct did not interfere with carrying out his duties for his employer?**

[58] For the Employer to be successful in his General Division appeal, he needed to show that the Claimant's conduct meets all the legal criteria for misconduct. So, he needed to also show that the alleged conduct was willful, and that the Claimant knew or should have known that his conduct interfered with a duty he owed to his employer.

[59] The General Division decision does not analyze whether the Claimant's alleged misconduct was willful. Given that the General Division found the Claimant did not meet the other misconduct criteria, it may not have been necessary for it to consider the willfulness of his conduct. But—in any event—the Employer did not argue this, so I will not consider whether it was an error for the General Division to have omitted to consider the willfulness of the Claimant's conduct.

[60] I am going to focus now on the General Division's finding that the Employer had not shown that the Claimant's conduct interfered with carrying out his work duties.

[61] The Claimant agrees with this finding of fact. He states that the General Division justified its decision from the evidence. It relied on evidence that the manager could see the Claimant's availability in his calendar without full access, and could still schedule and coordinate efficiently.

[62] For the Employer's part, it argues that the General Division's finding failed to follow binding case law. It refers to the Federal Court of Appeal decision in *Lemire*, in which the Court allowed the judicial review of an Umpire decision that did not disturb the Board of Referees decision.[21] [22]

[63] In *Lemire*, the claimant was a delivery driver. He was fired for selling contraband cigarettes on the employer's property. The Board of Referees and, later; the Umpire,

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[21] See *Canada (Attorney General) v Lemire,* 2010 FCA 314.
[22] Note: The Board of Referees was the first level of appeal in the former EI administrative appeal scheme. The Umpire was the final level of appeal.

both held that the claimant's conduct was not misconduct because it was "not established that his actions had directly harmed the employer's business or resulted in a complaint or a criminal or penal conviction."

[64] The Court intervened because the Board of Referees and Umpire had not applied the correct test. It said that misconduct is not about deciding whether the claimant's dismissal is justified under labour law. It is an objective determination of whether the claimant's conduct was such that he could normally foresee that it would be likely to result in his dismissal. Other Federal Court of Appeal decisions say that the question is whether the claimant knew or ought to have known that dismissal was a "real possibility."[23]

[65] In this case, there was a clear causal link between the request and the Claimant's employment.[24] Whatever the Claimant's suspicions about the manager's real motives, the manager had demanded access to the Claimant's Outlook **work** calendar. Such a demand is presumptively work-related. The manager did not ask for access to the Claimant's personal calendar, and he even invited the Claimant to remove any personal information from his work calendar before giving the manager access.

[66] The General Division needed only to decide whether the Claimant knew or ought to have known that willful disobedience to his manager's direction breached or interfered with his duty to the employer. Instead, it relied on evidence suggesting that the Claimant had already satisfied the manager's objectives without providing the full access demanded. In other words, the General Division considered whether the manager's demand may have been unreasonable or unnecessary. This was not a relevant consideration.

[67] The General Division seemed to be applying the wrong legal test. Proving that the Claimant's refusal to grant full access to his calendar interfered with his duty to the employer does not require the employer to show it had no other way to meet its

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[23]Supra note 6; See also *Jolin v Canada (Attorney General)* 2009 FCA 303; *Nelson v Canada (Attorney General)*, 2019 FCA 222.
[24] Ibid, *Nelson* at para 24.

business objectives. Employees do not get to decide which of their manager's directions they will follow based on their own judgement as to the necessity or importance of that direction.

[68] If the General Division had understood and applied the relevant case law, it could not have found that the Claimant's refusal did not interfere with his duties as an employee.

[69] The Employer referred to the *Lemire* and *Jolin* decisions of the Federal Court of Appeal, but those decisions do not stand alone.[25] In *Marion (*cited in both *Lemire* and *Jolin)*, the Federal Court of Appeal stated that the Board of Referees was not tasked with determining **whether the dismissal was justified or whether the employee's conduct was a valid ground for dismissal**. It was required to determine whether the employee's conduct amounted to misconduct within the meaning of the EI Act.[26]

[70] The Federal Court of Appeal made a similar point in the very recent *Sullivan* decision. In this decision, the Court said that the test for misconduct focuses on the employee's knowledge and actions, and **not on the employer's behaviour or the reasonableness of its work policies**. It added that the claimant could pursue remedies elsewhere if he considered that his employer treated him improperly.[27]

[71] The General Division made an error of law by deciding that the Claimant's conduct did not interfere with his work duties without regard to the relevant case law.

Summary

[72] I have found errors of fact and law in the General Division's decision.

[73] The General Division made an error of fact when it found that the Claimant could not have known he would be dismissed. It misapprehended the March email, and it made a key finding that did not follow rationally from the evidence.

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[25] *Supra* notes 21 and 23.
[26] *Canada (Attorney General) v Marion,* 2002 FCA 185.
[27] *Sullivan v Canada (Attorney General)* 2024 FCA 7.

[74] It also made an error of law. Its finding that the Claimant's conduct did not interfere with his duties to his employer was based on irrelevant considerations. It did not take into account relevant case law.

[75] Because I have found errors, I need to decide on the appropriate remedy. I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.[28]

[76] The Employer asks that I make the decision the General Division should have made. Both the Commission and the Claimant would like me to dismiss the appeal, but they agree that the record is complete, so that I should make the decision if I find any errors.

[77] I agree that the record is complete. I will substitute my decision for that of the General Division.

My decision

[78] I find that the Claimant was dismissed for misconduct.

– Reason for dismissal

[79] The reason for the Claimant's dismissal is not in dispute. The Employer dismissed him for what it called insubordination. More specifically, it dismissed him for refusing to follow his manager's direction to grant full access to his Outlook work calendar.

[80] The Claimant does not believe that his refusal to grant access was insubordination, or grounds for dismissal, but he has not argued that the General Division made an error by finding that he was dismissed for failing to give his manager access to his calendar.

[81] I accept the General Division's findings, but I will be more precise. The evidence, and much of the substance of the General Division decision, suggests that the Claimant

[28] See section 59(1) of the DESDA.

was dismissed for refusing to follow the manager's direction to provide full access to his calendar.

– **The Claimant's refusal was willful.**

[82] The first requirement to prove misconduct is that the conduct must be willful, meaning deliberate or intentional, or so reckless as to be almost willful.

[83] After disagreeing with his manager's reasons for asking for full access to his calendar, the Claimant informed his manager that he was not going to comply.

[84] In the March email, the Claimant's manager informed him that his refusal to provide full access was insubordinate, stating that he was in violation of the Standards. Still, the Claimant did not give his manager full access.

[85] I appreciate that the Claimant received the email on March 25, 2025, and he was dismissed on March 28th, so he was not given a lot of time to comply. But the Claimant neither provided the required access nor indicated an intention to provide access, nor did he respond to his manager at all.

[86] His initial refusal to provide access was intentional. His continued refusal to provide access in response to the March email was either intentional or so reckless as to be almost willful.

– **The Claimant's conduct interfered with his duty to his employer**

[87] The second requirement for misconduct is the claimant's conduct must interfere with a duty that the claimant owes to the employer.

[88] Like all employees, the Claimant was obliged to follow work-related directions of his employer, which includes the directions of his supervisors, managers, and other superiors. The Claimant suspected his manager had some inappropriate ulterior purpose but there was no proof that the request was illegal or unethical. It was the Employer's prerogative to specify how it expected the Claimant to use work-supplied hardware or software.

[89] The issue is not whether the Employer's policy required him to provide full access. It was enough that his manager directed him to do so.

[90] The Claimant's refusal was insubordinate. He owed a general duty of obedience to his employer, which he breached by refusing to comply with his manager's direction. His refusal was a challenge to the chain of authority within the employer. This sort of thing is not in any employer's interests. It could potentially disrupt working relationships, and even productivity.

[91] In other words, the Claimant's refusal to follow his manager's direction interfered with his duty to his employer. It is irrelevant whether the Employer could have accomplished its scheduling objectives without demanding full access.

– **The Claimant should have known that he could be dismissed**

[92] The third requirement to prove misconduct is that a claimant must know, or they should have known, that they could be dismissed for their conduct.

[93] I have found that the Claimant willfully ignored a direction from his manager, which breached his duty of obedience. I find that he also knew that dismissal was a real possibility as a result of his refusal.

[94] The Claimant disputed the manager's direction to provide full access to his Outlook work calendar. The manager offered him the opportunity to strip out any personal information, but this did not satisfy the Claimant. Finally, the manager told him that his continued refusal was insubordinate, and a violation of the Employer's Standards.

[95] The Standards state that employees may be disciplined for insubordination up to and including dismissal. The Claimant testified that he was aware of the standards. He testified that he knew employees could be fired for insubordination.[29]

[29] See para 44 of the General Division decision.

[96] However, the Claimant did not think his refusal was insubordination. He seems to have viewed his own refusal to provide the calendar as inconsequential, and thought it unlikely that he would be dismissed for such a thing.[30]

[97] Regardless of how the Claimant felt about his refusal, it was clear from the March email that the manager considered his “continued refusal” to be insubordination and that he took it seriously. The March email told the Claimant that his continued refusal was a violation of its Standards.

[98] Those Standards warn of the potential for dismissal for insubordination. The Claimant knew this.

[99] A reasonable person would have known that they would be risking discipline, and possibly even dismissal, if they neither granted the required access, nor confirmed their intention to grant access.

[100] The Claimant should have known that dismissal was a real possibility.

Conclusion

[101] The appeal is allowed.

[102] The General Division made errors of fact and law. I have corrected those errors and determined that the employer dismissed the Claimant for misconduct.

Stephen Bergen
Member, Appeal Division

[30] See GD3-64.