Citation: *Canada Employment Insurance Commission v GS*, 2025 SST 73

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Julie Duggan
Respondent:	G. S.

Decision under appeal:	General Division decision dated November 13, 2024 (GE-24-3039)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	January 27, 2025
Hearing participants:	Appellant's representative Respondent
Decision date:	~~**January 31, 2025**~~
CORRIGENDUM DATE:	**February 5, 2025**
File number:	AD-24-811

Decision

[1] I am ~~dismissing~~ **[allowing]** the appeal.

[2] The General Division made errors of jurisdiction, so I have made the decision that the General Division should have made.

[3] The Claimant did not have just cause for leaving his employment.

Overview

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

[5] The Claimant left his job on November 14, 2024. He saw that his employer was allowing his co-worker to take out his usual crane truck to complete deliveries, when there were no other deliveries scheduled. He concluded that his employer did not have enough work for two crane truck operators and that it was preferring his co-worker with the available hours.

[6] The Claimant applied for EI benefits, but the Commission decided that it could not pay him benefits. It found that the Claimant voluntarily left his job without just cause. It would not change its decision when the Claimant asked it to reconsider.

[7] The Claimant appealed to the General Division, which allowed his appeal on May 2, 2024. The General Division decided that the Claimant was not disqualified from receiving benefits because he had not left his job voluntarily. This finding meant that the General Division did not need to decide if the Claimant had just cause for leaving.

[8] The Commission appealed to the Appeal Division. On August 27, 2024, the Appeal Division decided that the General division had made errors of law and fact. It decided to substitute its decision for that of the General Division and found that the Claimant had voluntarily left his job. This meant that the Appeal Division needed to also

consider whether the Claimant had shown that he had just cause for leaving, since he would not be disqualified if he had just cause.

[9] The Appeal Division decided that it could not review whether the Claimant had just cause because the record was not complete on this issue. The General Division had not addressed whether the Claimant had just cause and it had not sought the Claimant's evidence on reasonable alternatives. The Appeal Division decided to send the matter back to the General Division to consider whether the Claimant had just cause.

[10] The General Division reconsidered and issued a new decision on November 13, 2024. Instead of deciding whether the Claimant had just cause for leaving, the General Division once again decided that the Claimant had not voluntarily left his job.

[11] The Commission appealed to the Appeal Division, arguing that the General Division made errors of jurisdiction.

[12] I agree that the General Division made errors of jurisdiction, and I have made the decision the General Division should have made. I am cancelling its decision that the Claimant ~~voluntarily left~~ **[did not voluntarily leave]** his employment: The Appeal Division decision on this issue stands. I am also deciding that the Claimant did not have just cause for leaving his employment.

Issues

[13] The issues in this appeal are:

a) Did the General Division make an error of jurisdiction when it decided that the Claimant did not voluntarily leave his employment?

b) Did the General Division make an error of jurisdiction by refusing to decide whether the Claimant had just cause for leaving his employment?

c) If so, how should the error be fixed?

Analysis

[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.[1]

[15] The Commission argued only that the General Division made errors of jurisdiction.

Error of Jurisdiction

[16] The General Division made errors of jurisdiction.

[17] First, it considered whether the Claimant voluntarily left his job, when it had no authority to do so. The General Division is subordinate to the Appeal Division. The Appeal Division had finally decided that the Claimant voluntarily left his job. Therefore, the issue was not open to appeal; It was *res judicata*. It was not open to the Claimant to challenge the Appeal Division's decision that he voluntarily left his employment, except through a judicial review to the Federal Court of Appeal.

[18] Second, the General Division failed to consider whether the Claimant had just cause for leaving his employment. This was one of the issues in the Commission's reconsideration decision that was under appeal. When the Appeal Division returned the matter to the General Division, it had specifically directed the General Division to consider this issue. Since the General Division did not consider whether the Claimant had just cause for leaving his employment, it refused to exercise its jurisdiction.

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[1][1] 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).

Remedy

[19] I have the power to rescind a decision of the General Division, and I am exercising that power to rescind the General Division's decision that the Claimant did not voluntarily leave his employment.

[20] I must also consider what to do about the General Division's failure to exercise its jurisdiction to decide whether the Claimant had just cause for leaving. I have the power to send the matter back to the General Division so that it can decide the issue it failed to decide.

[21] I also have the power to make the decision that the General Division should have made.[2] I can only make the decision that the General Division should have made if the record is complete.

[22] The Commission suggests that the second General Division member explained the test for just cause and that it assessed the Claimant's circumstances which might have been relevant to whether he had reasonable alternatives to leaving. It urges me to make the decision the General Division should have made.

[23] The Claimant acknowledges that the second General Division member had been thorough. He stated that he would have nothing more to tell the General Division about the circumstances surrounding the termination of his employment. He agrees that I should make the decision.

[24] I also note that the last decision of the Appeal Division gave the Claimant notice of what sort of evidence might be required when it returned the matter to the most recent panel of the General Division. It stated that the Claimant would "have the opportunity to give evidence and make arguments about the circumstances that existed when he quit." It added that he could "argue why these circumstances meant that he had no reasonable alternatives to leaving."

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[2] See sections 59(1) and 64 of the DESDA.

[25] In the hearing that followed the Appeal Division's decision, the General Division member asked the Claimant about the circumstances surrounding his departure. The member stated that she was asking because she would have to also consider whether the Claimant had reasonable alternatives to leaving if she decided that he quit his job.[3]

[26] The Claimant had a fair chance to present evidence on those circumstances which may have been relevant to whether he had reasonable alternatives to leaving.

[27] I accept the recommendations of the parties. I will make the decision that the General Division should have made.

My decision

[28] I need to decide if the Claimant had just cause for leaving his employment.

[29] A claimant is not disqualified from receiving benefits for voluntarily leaving their employment if they had just cause for leaving. To establish "just cause," a claimant must show they had no reasonable alternative to leaving, having regard to all the circumstances.[4]

Possibly relevant circumstances

[30] The *Employment Insurance Act* (EI Act) lists a number of circumstances. The list is not meant to be comprehensive of all the circumstances that could be relevant, but the circumstances in the list must at least be considered where they are suggested by the facts. These circumstances factor into the evaluation of a claimant's reasonable alternatives but they do not, in themselves, establish that a claimant has just cause for leaving.

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[3] Listen to the audio recording of the General Division decision at timestamp 00:43:00.
[4] See sections 29(c) and 30 of the *Employment Insurance Act* (EI Act).

– **Working conditions that constitute a danger to health or safety**

[31] One of the circumstances that the Claimant raised was, “working conditions that constitute a danger to health or safety.”[5] The Claimant complained that he was required to operate trucks that were not roadworthy.

[32] On the last day of the Claimant’s employment, he discovered that a junior employee was taking the larger crane truck to a job, even though it needed repairs. This was the Claimant’s usual truck, and he was upset that the work was not given to him.[6] The employer said that they told the Claimant could take the smaller crane truck and that there was lots of work, but the Claimant disputed this.[7] He told the General Division that the small crane truck needed major repairs. According to the Claimant, the employer sent him home because there were no other jobs scheduled for that day.[8]

[33] The Claimant described one of the employer’s crane trucks as pulling hard to the right. He said that it had been stuck and pulled out. He said it also had a major hydraulic leak, which had to do with the crane attachment and not the truck itself.[9] The Claimant had intended to fix the leak before taking the truck out on his last day of work.[10]

[34] I do not accept that the Claimant’s concern for his health or safety was any part of the reason that the Claimant left his job, or that he had to leave his job immediately to protect his health or safety. He did not mention any concern with workplace safety in any of his discussions with the Commission. His principal concern was that the other crane operator was using his truck, which left no work for him. He did not suggest that he had any reservations about taking out the crane truck himself. He had anticipated that he would repair the hydraulic leak on the crane attachment and take his truck out for a delivery.

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[5] See section 29(c)(iv).
[6] See GD3-29.
[7] Listen to the audio of the General division at timestamp 00:40:10.
[8] Listen to the audio of the General division at timestamp 00:17:30.
[9] See GD3-26, 27, GD6-1, GD6-2.
[10] See GD3-42.

[35] The Claimant's concerns with the safety of his working conditions did not affect his reasonable alternatives to leaving.

– **Practices of an employer that are contrary to law**

[36] The Claimant said that the improper operation of the crane, or the operation of a faulty crane, could be dangerous. He questioned the scheme by which the employer allowed his co-worker to operate the large crane truck under another retired operator's "ticket." He said that his co-worker, a "trainee-operator" took the large crane truck out when it needed repairs and that someone could have been killed.[11] He also recalled other safety incidents that were never "written down" or reported. In one incident, a crane apparently went "wild," and there was another incident when he was almost blinded when oil sprayed in his eye.[12]

[37] He implied that the employer was operating illegally or at least, unethically.[13] However, he did not specify any particular law that was broken. There is no evidence by which I could find that it was more likely than not that some action or inaction of the employer was in violation of the law.

[38] Furthermore, whatever the Claimant's objection to the employer's practices, he was still willing to work for the employer until the events of November 14. The employer did not leave his employment until the employer let the Claimant's co-worker drive the Claimant's usual truck and make the deliveries that the Claimant believed he should have made.

[39] The legality or illegality of the employer's practices were not a circumstance that affected the Claimant's decision to leave, and they did not affect his reasonable alternatives to leaving.

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[11] Listen to the audio of the General division at timestamp: 00:16:37.
[12] Listen to the audio of the General division at timestamp: 00:49:03.
[13] Listen to the audio of the General division at timestamp 00:20:00.

– **Significant modification of terms and conditions respecting wages or salary**

[40] The Claimant had trained a co-worker to operate a crane truck just before he went on vacation, but he maintained that he was still the main crane operator.

[41] At his employer's request, he returned early from vacation to do deliveries on November 13, 2023. He believed that he should also have been permitted to take his usual truck out to complete deliveries on November 14, 2023, but his co-worker took the truck out instead. The Claimant said there were no other deliveries scheduled for any other truck on that day or any deliveries for any trucks for the rest of that week.

[42] The Claimant believes that his employer had a plan to replace him with his co-worker. He gave evidence that his co-worker was paid at a lower hourly rate than his rate, and that the employer had given the co-worker a five-year guarantee at 40 hours a week.[14]

[43] However, the Claimant did not prove that his employer intended to significantly reduce the shifts available to the Claimant. He admitted that he had experienced other weeks in which there were few or no deliveries available. He was upset with how his employer gave his co-worker the delivery on November 14, and upset that this left him with no deliveries. However, he did not demonstrate that this was part of a pattern or that it occurred regularly or routinely.

[44] The evidence does not establish that the employer significantly modified the terms and conditions of the Claimant's wages. The Claimant only suspected that the employer planned to sideline him by giving an increasing share of the deliveries to his co-worker. I do not doubt that his suspicion was at least part of the reason the Claimant reacted as he did to the co-worker taking over the November 14 delivery with the crane truck ordinarily driven by the Claimant. However, the Claimant left his job before he could prove that the employer had actually modified their relationship in a way that significantly affected his wages.

[14] Listen to the audio of the General division at timestamp: 00:21:45 and 00:28:55.

[45] This was not a circumstance which affected his reasonable alternatives to leaving.

Refusal to pay for overtime

[46] There is no indication that the Claimant quit because he was not paid overtime. The Claimant had just returned from vacation before he left his employment. He complained that he had not been paid for his vacation or all his hours of work, but there was no evidence before the General Division that—before he left—he believed his employer had no intention of paying him what he was owed.

[47] This was not a circumstance which affected his reasonable alternatives to leaving.

Undue pressure by an employer on the claimant to leave their employment

[48] The only circumstance or event that could be considered "pressure to leave" is the assignment of deliveries to the Claimant's co-worker that would otherwise have been given to the Claimant.

[49] I appreciate that the Claimant managed all of the employer's deliveries alone for two years. It is possible that the employer only had enough work for one crane truck operator. If the Claimant experienced a persistent reduction in assigned deliveries at the same time as the employer was increasingly assigning deliveries to his junior co-worker, then I would agree that the Claimant would be justified in feeling that the employer was pressuring him to leave.

[50] However, as I noted earlier, the Claimant left his employment in response to a single incident in which his truck and its deliveries were assigned to his co-worker. While this occurred during a week in which there was little other work, there is no evidence that the employer would continue to shift deliveries to the co-worker as it had on November 14, or that this would occur more frequently. The Claimant could only speculate that the employer assigned the November 14 delivery or deliveries to the Claimant's co-worker as part of a strategy to pressure the Claimant to leave.

[51] This was not a circumstance which affected his reasonable alternatives to leaving.

– **Discrimination**

[52] The Claimant spoke of how the employer discriminated against him. He did not elaborate but the "discrimination"—to which he refers—appears to be discrimination in favour of his co-worker. He believes that the employer assigned a delivery, or was assigning deliveries, to the co-worker in preference to himself.

[53] I would only assess "discrimination" independently of the other circumstances, if there were evidence that the employer discriminated against the Claimant on the basis of a prohibited ground under the *Canadian Human Rights Act*.[15] There was no evidence that the employer discriminated against the Claimant on the basis of one of the prohibited grounds.

[54] "Discrimination" was not a circumstance which affected the Claimant's reasonable alternatives to leaving.

Reasonable alternatives

[55] The Claimant says that he moved to a small community to accept his job with the employer in September 2021, because his employer was desperate for a qualified crane truck operator.[16] He was the employer's only crane operator for two years.[17]

[56] On November 13, 2023, the employer was stuck again. The employer asked him to come in on the last day of his vacation to make deliveries because no one else could do it. The Claimant agreed, but the crane hydraulics broke down on his first delivery and he had to make a temporary repair. Because of this, he was unable to complete the second delivery for the day. He was scheduled to work November 14, so he came in

[15] The grounds are set out in section 3(1) of the *Canadian Human Rights Act.*
[16] Listen to the audio of the General division at timestamp: 00:46:50.
[17] Listen to the audio of the General division at timestamp: 00:18:30.

with his tools to finish the repair and complete his deliveries. It would seem that the Claimant was a loyal and dedicated employee.

[57] The Claimant said that he felt disrespected, used, and unwanted.[18] He came in to work to find that his co-worker, whom he had trained, had been given his truck and was taking the only delivery jobs scheduled for that day, or for the entire week.

[58] The Claimant's sense of betrayal is the only circumstance that is relevant to whether the Claimant had reasonable alternatives to leaving. He appears to believe that he went out of his way for his employer, but that his employer was not loyal to him in return. The other circumstances that I discussed earlier are of no importance to whether the Claimant had reasonable alternatives to leaving.

[59] I cannot find that the Claimant had just cause for leaving on the basis that he felt unappreciated. The Claimant did not have to leave his employment when he did. At the time he left, he had reasonable alternatives to leaving.

[60] For one thing, it would have been reasonable for the Claimant to wait and see what happens. He did not know for certain that he would see a significant reduction over time in the deliveries assigned to him. Even though he may have felt unappreciated, it was not prudent for him to give up what work he had without other prospects. The Claimant lived in a small, relatively isolated community, in which he said there was not much work.[19]

[61] The Claimant said that he asked the employer for his "EI papers" because he needed support (if he was not going to get deliveries), but the Claimant admitted to having had previous weeks with minimal deliveries.[20] He did not say what was different on this occasion that required him to leave so urgently.

[62] If the Claimant believed that the employer could not give him enough deliveries because it was giving them to his co-worker, he could have spoken to the employer

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[18] Listen to the audio of the General division at timestamp: 00:28:50 and 00:33:05.
[19] Listen to the audio of the General division at timestamp: 00:22:30.
[20] Listen to the audio of the General division at timestamp: 00:37:00.

about his concerns before he left. The employer may have been able to make workload adjustments or assign additional duties to himself or his co-worker to keep them working.

[63] If such discussions with the employer only served to confirm that the employer was intentionally sidelining the Claimant by shifting delivery assignments to his co-worker, or if the Claimant discovered that the employer was unable or unwilling to make any helpful changes, then the Claimant could still have made some effort to seek or secure alternate employment before he left.

[64] The Claimant did not discuss with the employer his concerns about how deliveries were allocated, and he did not make efforts to find other work before leaving. The Federal Court of Appeal has said that claimants have an obligation to try to resolve workplace issues with the employer, or to seek alternative employment, before making a unilateral decision to quit a job.[21]

[65] I find that the Claimant had reasonable alternatives to leaving, which means that he did not have just cause for leaving.

Conclusion

[66] I am ~~dismissing~~ **[allowing]** the appeal.

[67] The General Division made errors of jurisdiction which I have corrected. I have made the decision the General Division should have made and decided that the Claimant did not have just cause for voluntarily leaving his employment.

Stephen Bergen
Member, Appeal Division

[21] *Canada (Attorney General) v White*, 2011 FCA 190.