Federal Court of Appeal | Cour d'appel fédérale

Date: 20211117

Docket: A-38-20

Citation: 2021 FCA 222

CORAM: **DE MONTIGNY J.A.**
RIVOALEN J.A.
DAWSON D.J.C.A.

BETWEEN:

BOLAT UVALIYEV

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on October 26, 2021.

Judgment delivered at Ottawa, Ontario, on November 17, 2021.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: RIVOALEN J.A.
DAWSON D.J.C.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The applicant, Mr. Bolat Uvaliyev, brings this application for judicial review of a decision of the Appeal Division of the Social Security Tribunal (Appeal Division) that he did not qualify for benefits pursuant to the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act) because he failed to exhaust reasonable alternatives prior to quitting his job. Pursuant to subsection 30(1) of the Act, a claimant is disqualified from receiving employment insurance

benefits if the claimant voluntarily left any employment without just cause, as defined in paragraph 29(c).

[2] The applicant initially found employment at Kartners, a retail company with shipping operations, through an employment agency, WorkBC (the Agency). In his application to the Canada Employment Insurance Commission (the Commission), he alleged that Kartners had promised that they would hire him directly and provide him with a pay raise to $20 an hour, up from the $16 an hour he was making through his contract with the Agency.

[3] The applicant further alleged that he had been hired as a Customer Service Representative/Shipper, and that his duties were to pack and ship small boxes. Instead, Kartners required him to unload heavy boxes from containers. He also claimed that a supervisor and colleague at his workplace subjected him to rude and profane language, and that he suffered a workplace injury in his first week of work when he fell off a ladder while lifting a heavy box.

[4] The Commission denied his application on August 26, 2019, on the basis that he had voluntarily left his employment without just cause, and that voluntarily leaving his employment was not his only reasonable alternative. On reconsideration, the Commission upheld its denial on September 4, 2019.

[5] On appeal, the General Division of the Social Security Tribunal (General Division) acknowledged the applicant's expectations to be paid $20 an hour, his concerns about workplace safety and his contentious relationship with co-workers. The General Division nevertheless

found, after reviewing all the evidence, that the applicant did not have just cause for leaving his employment; not only did he not attempt to speak to his employer about his wages or his contentious relationship with his co-workers, but he did not look for other work before he quit and did not ask the Agency for help in finding new work.

[6] The Appeal Division dismissed the appeal of that decision on January 13, 2020. The Appeal Division recognized that the General Division erred in law when it failed to consider the applicant's evidence and arguments that his job duties had changed significantly, and therefore failed to take all of the applicant's circumstances into account in determining whether he had just cause for leaving his employment. It nevertheless reached the same ultimate result, on the basis that the applicant failed to exhaust all reasonable alternatives prior to leaving. As for the terms of his salary, the Appeal Division found that the General Division's conclusion was not inconsistent with the evidence; while the applicant was obviously dissatisfied with his pay, it was not a circumstance that left him with no reasonable alternative but to quit.

[7] After carefully reviewing the record and considering the applicant's argument, I am of the view that the Appeal Division committed no reviewable error in finding that none of the applicant's circumstances, considered individually or cumulatively, amount to just cause leaving the applicant with no reasonable alternative but to quit his job. It bears stressing that the role of the Appeal Division is rather limited pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. It can only intervene if the General Division failed to observe a principle of natural justice, erred in law or based its decision on an erroneous finding of fact made in a perverse or capricious manner. It cannot step in for the sole

reason that it would have weighed the evidence differently. As for this Court sitting in review of a decision of the Appeal Division, its role is to determine whether the Appeal Division's implementation of the factors set forth in subsection 58(1) was unreasonable. This is an exacting standard that is not met easily: unless it can be shown that a decision is either based on an internally incoherent reasoning or unjustified in light of the legal and factual constraints that bear on it, a reviewing court must show deference to the administrative decision maker or tribunal.

[8] In the case at bar, the applicant is essentially asking this Court to reweigh the evidence, especially with respect to his salary. The applicant reiterated that Kartners had promised him wages of $20 an hour, but there was no tangible record or direct evidence before the Social Security Tribunal about what had actually been agreed upon. The applicant relied upon an email written by a career advisor at the Agency stating that the applicant had advised him that his wage was going to be increased to $20 an hour by his employer (Respondent's Record at 176). In contrast, the applicant's employer had advised the Commission that the applicant had never been promised a wage of $20 an hour (Respondent's Record at 271). It also appears that the applicant told the Commission, in the context of his request for reconsideration, that he had made a deal with his Agency and that he expected the employer to honour the deal. He also confirmed that he never actually made the deal with Kartners, but that he expected them to honour it (Respondent's Record at 268).

[9] In light of this conflicting evidence, and in the absence of any record confirming the agreement with the employer with respect to a wage of $20 an hour, the General Division was entitled to conclude that it was likely the employer never agreed to the applicant's request for

that salary. Furthermore, the Appeal Division did not err in finding that the General Division made no important error of fact in that respect. It was clearly for the General Division to assess the reliability and credibility of the evidence on the record, and the Appeal Division's role was not to second-guess that assessment.

[10] This is not to say that the applicant may not have genuinely believed that he would be paid $20 an hour. Such a misunderstanding, however, would not be sufficient cause to leave one's employment prematurely. It must be remembered that the overall purpose of the Act, as stated by this Court in *Canada (Attorney General) v. Marier*, 2013 FCA 39, 450 N.R. 122 at para. 23, "is to provide benefits to those who are truly unemployed, and not those who have contributed to their state of unemployment when this was not the only reasonable alternative" (see also *Canada (Attorney General) v. Campeau*, 2006 FCA 376, 365 N.R. 161). Being dissatisfied with a salary, for whatever reason, is not just cause for the purpose of subsection 30(1) of the Act. It may be a good reason to leave an employer, but the applicant had the burden to establish "just cause"; in other words, he had to demonstrate that there were no reasonable alternatives to leaving his employment. This is a high threshold that the Appeal Division could reasonably find he had not met.

[11] The Appeal Division also considered the other factors raised by the applicant, which in his view justified leaving his job, notably that his work duties changed significantly, that he had an antagonistic relationship with his supervisor, and that the working conditions constituted a danger to his health and safety. Once again, I am unable to find any reviewable error in the Appeal Division's reasoning or finding with respect to those matters.

[12] As for the changes in his work duties, the Appeal Division accepted (contrary to the finding of the General Division) that the work assigned to the applicant was indeed more physical than what he had first agreed to, but found that he was able to perform those duties during the five months he worked for the employer. Moreover, the record shows that the applicant only complained about the rigours of his new duties when he started his employment (Respondent's Record at 271), that he did not mention this factor as a reason for leaving his job when he provided notice to his employer (Respondent's Record at 273), and that he did not seek a transfer nor look for alternative employment prior to leaving (Respondent's Record at 239-240). In that context, it was reasonable for the Appeal Division to conclude that the change in work duties was not a circumstance that left the applicant with no reasonable alternative but to quit.

[13] As for the two other reasons given by the applicant to leave his employment voluntarily, they do not appear to have been key factors in his decision. There is very little evidence in the record tending to show that he was the subject of harassment by his employer, and certainly, nothing to indicate such harassment or antagonism was ongoing or intolerable. Moreover, the applicant conceded in a call with the Commission that he did not raise that issue with management (Respondent's Record at 274). This is fatal to his claim that he had no reasonable alternative but to leave: *Canada (Attorney General) v. Hernandez*, 2007 FCA 320, 2007 CarswellNat 3319 (WL Can) at para. 5.

[14] Finally, the Appeal Division could reasonably conclude that there was insufficient evidence to support the applicant's claim that the working conditions represented a danger to his

health or safety. The applicant did not mention this factor as a reason to leave his job (Respondent's Record at 236, 273). While he did report his fall from a damaged ladder at work to WorkSafeBC, the inspection report noted that the ladder had been removed from service. No other violations with respect to workers carrying heavy objects were found in the inspection report, and the applicant does not provide any further details as to how his workplace was otherwise unsafe. In those circumstances, the Appeal Division was justified to conclude that there was insufficient evidence of dangerous working conditions.

[15] For all of the above reasons, I am therefore of the opinion that the Appeal Division did not err in finding that the applicant had not established just cause for voluntarily leaving his employment, and that he had reasonable alternatives. The decision of the Appeal Division is entitled to a high degree of deference, and despite Mr. Uvaliyev's best efforts to convince us of the contrary, I am unable to find any flaws either in its reasoning or in its outcome.

[16] I would therefore dismiss the application for judicial review. As costs were not sought, I would not award any.

"Yves de Montigny"
J.A.

"I agree
Marianne Rivoalen J.A."

"I agree
Eleanor R. Dawson D.J.C.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

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