

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230518

Docket: A-87-20

Citation: 2023 FCA 109

[ENGLISH TRANSLATION]

**CORAM: RIVOALEN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

KATHERINE MAPACHEE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 18, 2023.

Judgment delivered from the bench at Ottawa, Ontario, on May 18, 2023.

**REASONS FOR JUDGMENT OF THE
COURT BY:**

RIVOALEN J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230518

Docket: A-87-20

Citation: 2023 FCA 109

**CORAM: RIVOALEN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

KATHERINE MAPACHEE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Ottawa, Ontario, on May 18, 2023.)

RIVOALEN J.A.

[1] The applicant filed an application for judicial review of a decision rendered by the Appeal Division of the Social Security Tribunal (the Appeal Division) (2020 SST 151), which determined that she was not eligible to receive the benefits provided for under the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act). Under subsection 30(1) of the Act, a claimant is disqualified from receiving any employment insurance benefits if the claimant voluntarily left

any employment in the absence of a just cause as set out in paragraph 29(c). The issue before this Court is the interpretation of subparagraph 29(c)(ix) of the *Employment Insurance Act*.

[2] The General Division of the Social Security Tribunal (the General Division) reviewed the non-exhaustive list of circumstances that constitute just cause for voluntarily leaving an employment, as set out in paragraph 29(c) of the Act, and found that although the applicant had left her employment voluntarily, she had not left without just cause. According to the General Division, by modifying one of the essential terms and conditions of the employment contract, the employer had made significant changes in the applicant's work duties. According to the evidence on record, the applicant had no reasonable alternative to leaving.

[3] On February 18, 2020, the Appeal Division found that the evidence did not support the General Division's conclusion that the employer had changed the applicant's work duties significantly within the meaning of paragraph 29(c) of the Act. The Appeal Division concluded that if she had not gone back to school, the applicant would clearly have carried on the same work duties. Consequently, she did not have just cause for voluntarily leaving her employment.

[4] It should be recalled that the role conferred on the Appeal Division under subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34, is rather limited. The Appeal Division can intervene only 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 that it made in a perverse or capricious manner or without regard for the material before it.

[5] The Appeal Division's decision is subject to the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [Vavilov]. The burden is on the applicant to show that the decision is unreasonable: *Vavilov* at para. 100.

[6] Therefore, this Court's role on judicial review of an Appeal Division decision is to determine whether the Appeal Division applied the factors set out in subsection 58(1) in an unreasonable manner. 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 (*Uvaliyev v. Canada (Attorney General)*, 2021 FCA 222).

[7] The applicant has raised new arguments before this Court, namely that she was the victim of psychological harassment, racism and discrimination. Those arguments were not raised before the General Division or the Appeal Division. Therefore, she cannot raise them for the first time before this Court.

[8] Upon carefully reviewing the record and the applicant's written and oral submissions, we are of the opinion that the Appeal Division committed no reviewable error.

[9] The issue before the General Division was whether the modification to the applicant's work schedule constituted significant changes to her work duties within the meaning of

subparagraph 29(c)(ix). That subparagraph refers to “significant changes in work duties”. Modifying a claimant’s work hours or schedule does not necessarily represent significant changes to the claimant’s work duties. In light of the record, we find that it was reasonable for the Appeal Division to conclude that the evidence was insufficient to support the applicant’s allegations that her work duties had been changed significantly within the meaning of subparagraph 29(c)(ix) of the Act.

[10] However, we disagree with the Appeal Division’s remarks at paragraph 15 of its reasons. We are of the view that the General Division did not ignore this Court’s consistent case law, but rather chose to dispose of the issue before it in a different manner, namely, by considering the working conditions rather than the applicant’s return to school. Nevertheless, we remain of the opinion that the Appeal Division reasonably found that the General Division erred in its interpretation of subparagraph 29(c)(ix) of the Act. The Appeal Division’s decision is owed a high level of deference, and despite the applicant’s best efforts to convince us of the contrary, this Court’s role is limited.

[11] Consequently, we would dismiss this application for judicial review. Given that costs were not sought, none will be awarded.

“Marianne Rivoalen”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-87-20

STYLE OF CAUSE: KATHERINE MAPACHEE v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 18, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** RIVOALEN J.A.
ROUSSEL J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: RIVOALEN J.A.

APPEARANCES:

Katherine Mapachee FOR THE APPLICANT
(on her own behalf)

Suzette Bernard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE RESPONDENT
Deputy Attorney General of Canada