Federal Court  Cour fédérale

Date: 20260223

Docket: T-1816-25

Citation: 2026 FC 249

Ottawa, Ontario, February 23, 2026

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

RODNEY SEKITOREKO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant was dismissed by his employer in 2024 on the basis that he had abandoned his job as he did not show up for three scheduled shifts in a row. The Canada Employment Insurance Commission [Commission] subsequently rejected the Applicant's application for Employment Insurance [EI] benefits on the basis that he had lost his employment owing to his own misconduct, pursuant to section 30 of the *Employment Insurance Act*, SC 1996, c 23 [*EI Act*]. The Applicant sought reconsideration of the Commission's decision, but the Commission

maintained its position. The Applicant appealed the Commission's decision to the General Division of the Social Security Tribunal [General Division], which upheld the Commission's decision.

[2] The Applicant brought an application to the Social Security Tribunal – Appeal Division [Appeal Division] for leave to appeal the decision of the General Division. By decision dated April 29, 2025, the Appeal Division refused leave to appeal because it found that none of the Applicant's arguments had a reasonable chance of success.

[3] The Applicant now seeks judicial review of the Appeal Division's decision and requests that this Court grant: (a) an order setting aside the decision for unreasonableness and breach of natural justice; (b) an order directing the Applicant's employer to reissue a corrected record of employment that removes any reference to "job abandonment"; and (c) an order for compensation to account for the extreme hardship suffered by the Applicant, including his inability to afford basic necessities, mounting unpaid bills and significant emotional and financial distress while in search of employment.

[4] For the reasons that follow, I am not satisfied that the Applicant has demonstrated any basis for this Court's intervention. Accordingly, his application for judicial review shall be dismissed.

I. Background

[5] In June 2024, the Applicant began working for CWT Staffing Inc. [Employer] as a forklift driver and worked the night shift from 10:00 p.m. to 8:30 a.m.

[6] Pursuant to the Employer's "Attendance and Punctuality" policy [Policy], the Applicant was required to provide one hour's notice to his direct supervisor/manager before the start of his shift on each day that he expected to be absent, together with the reason(s) for missing work and his proposed return date. Paragraph 11 of the Policy provides that if an employee fails to report to work and fails to notify their supervisor of the reason(s) for their absence from work for three consecutive shifts, or more, they will be considered to have abandoned their job and employment will be terminated. On June 18, 2024, the Applicant signed an acknowledgment that he had read and been trained on the Policy.

[7] The Employer's "Employee Discipline" policy provides that job abandonment (which includes failing to return to work after a scheduled absence and failing to report to work as scheduled without a reasonable excuse or without notifying your superior) is a level three infraction (which is the most serious violation level) and will result in either suspension or dismissal.

[8] On November 5, 2024, the Applicant emailed the Employer's Human Resources Manager [HR Manager] and advised that his car had broken down and he was unable to pay for the required repairs. He stated that there were no buses he could take to work and that, without his car, he could not regularly report to work. The HR Manager responded that he should consider rideshare apps or see if one of his co-workers could give him a ride to and from work pending the repair of his car. The Applicant replied that he lived 30 minutes from work by car and could not afford to use rideshare apps. The HR Manager advised that it was the Applicant's responsibility to make sure he attends his work shifts and to arrange his transportation to and from work. However, she advised

that the Employer would give him one week (until November 12, 2024) to get his car repaired, following which he would need to attend his regular shifts. The Applicant responded that he understood his responsibilities and would update her as soon as possible.

[9] On November 11, 2024, the Applicant emailed the HR Manager to advise that he had obtained an estimate for the repairs but that it would take some time to pay for it before he could return to work.

[10] On November 12, 2024, the HR Manager responded that the Applicant was needed at work and that he would have to find an alternative way to get to work. The Applicant responded that he was available to work but could not afford the repairs and inquired whether there was any way the Employer could provide financial assistance.

[11] The Applicant did not attend his shift on either November 12 or 13, 2024, and did not inform his supervisor as required under the Policy.

[12] On November 14, 2024, the HR Manager wrote to the Applicant advising that she was aware of his absences and that he was to attend his shift that evening “otherwise I will treat this as job abandonment and you will be terminated.” The Applicant responded that he still could not get to work due to a lack of transportation and again asked for monetary assistance. He concluded by stating that a supportive financial response would demonstrate the Employer’s commitment for caring and supporting its employees. The Applicant did not attend his shift on November 14, 2024, and did not notify his supervisor as required under the Policy.

[13] On November 15, 2024, the HR Manager sent the Applicant his record of employment and a termination letter, which indicated that he had been dismissed for job abandonment as he missed three consecutive shifts without proper notice.

[14] The Applicant applied for EI benefits shortly thereafter. By letter dated December 19, 2024, the Commission advised the Applicant that he was not entitled to EI benefits because he had lost his job due to misconduct. The Applicant requested that the Commission reconsider its decision and by letter dated March 6, 2025, the Commission advised that it was maintaining its decision.

[15] The Applicant appealed the Commission's decision to the General Division. Following a hearing, the General Division determined that the Applicant had lost his job because he failed to report to work for three consecutive days without proper notice, in breach of the Policy. The Applicant did not notify his supervisor of these absences nor did he provide his supervisor with his reasons for missing work. The Applicant also did not provide anyone (his supervisor, manager or the HR Manager) with an expected return date. The General Division found that the Applicant's communications with the HR Manager did not comply with the Policy requirements. The General Division considered the Applicant's circumstances and his assertion that he did not intentionally fail to show up for work, as well as his assertion that he had never been properly trained on the Policy. The General Division noted that the Applicant admitted that the normal procedure when he would be absent from work was to email his supervisor, that he did not notify his supervisor in relation to the three absences at issue and that he received the email from the HR Manager advising that he would be dismissed if he did not attend his shift on November 14, 2024. The General

Division concluded that the reason for the termination of his employment met the definition of misconduct as the Applicant knew, or ought to have known, about the Policy and that his actions would lead to dismissal.

[16] The Applicant applied to the Appeal Division for leave to appeal the General Division's decision. By decision dated April 29, 2025, the Appeal Division refused to grant leave to appeal. The Appeal Division found that there was no arguable case that the General Division acted unfairly, made an important mistake of fact or made an error of law.

II. Preliminary Issue

[17] In their memorandum of fact and law, the Respondent requests an order amending the style of cause to name the Attorney General of Canada (rather than the Canada Employment Insurance Commission) as the Respondent. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the appropriate respondent in this application is the Attorney General of Canada. The style of cause shall be amended accordingly.

III. Issue for Determination and Standard of Review

[18] The sole issue for determination is whether the Appeal Division's decision refusing to grant leave to appeal from the General Division's decision was reasonable.

[19] The standard of review for Appeal Division decisions denying leave to appeal is reasonableness [see *Davidson v Canada (Attorney General)*, 2023 FC 1555 at para 35]. When

reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

IV. Analysis

[20] The *EI Act* establishes a public insurance program that is based on the concept of social risk. Its purpose is to preserve workers' economic security and ensure their re-entry into the labour market by paying temporary income replacement benefits in the event of loss of employment. The intent of Parliament is to pay benefits to individuals who, through no fault of their own, find themselves unemployed and are seriously engaged in an earnest effort to find work [see *Canada (Attorney General) v Lafrenière*, 2013 FCA 175 at paras 33, 35].

[21] Subsection 30(1) of the *EI Act* provides:

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless	**30 (1)** Le prestataire est exclu du bénéfice des prestations s'il perd un emploi en raison de son inconduite ou s'il quitte volontairement un emploi sans justification, à moins, selon le cas :
(a) the claimant has, since losing or leaving the employment, been employed in insurable	**a)** que depuis qu'il a perdu ou quitté cet emploi, il ait exercé un emploi assurable pendant le

employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or	nombre d'heures requis, au titre de l'article 7 ou 7.1, pour recevoir des prestations de chômage;
(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.	**b)** qu'il ne soit inadmissible, à l'égard de cet emploi, pour l'une des raisons prévues aux articles 31 à 33.
[Emphasis added.]	[Non souligné dans l'original.]

[22] Misconduct is not defined in the *EI Act*. Rather, the jurisprudence has confirmed that misconduct arises when the claimant's conduct is wilful — that is, where the acts leading to the dismissal were conscious, deliberate or intentional and bore a causal link to their employment. This definition of misconduct sets a low bar to establishing disqualifying conduct under subsection 30(1). To establish misconduct pursuant to this provision, it is enough for a claimant to understand or to be aware that dismissal was a real possibility [see *Zagol v Canada (Attorney General)*, 2025 FCA 40 at para 28; *Besley v Canada (Attorney General)*, 2025 FCA 47 at para 5; *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 at para 14].

[23] Pursuant to subsection 56(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*], an appeal of a decision of the General Division to the Appeal Division may only be brought if leave to appeal is granted by the Appeal Division. In order to obtain leave to appeal, an applicant is required to demonstrate at least one of the grounds of appeal enumerated in subsection 58(1) of the *DESDA*:

Grounds of appeal — Employment Insurance Section	**Moyens d'appel — section de l'assurance-emploi**
58 (1) The only grounds of appeal of a decision made by the	**58 (1)** Les seuls moyens d'appel d'une décision rendue par la section

Employment Insurance Section are that the Section	de l'assurance-emploi sont les suivants :
(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;	**a)** la section n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
(b) erred in law in making its decision, whether or not the error appears on the face of the record; or	**b)** elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;
(c) 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.	**c)** elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

[24] On this application, the Applicant asserts that the Appeal Division erred in law in that it failed to apply the legal test for misconduct and failed to consider the Applicant's submissions regarding authorization of absences and mitigating circumstances. The Applicant asserts that his conduct was not wilful, but rather was due to circumstances beyond his control, such that it does not meet the legal test for misconduct. Further, the Applicant asserts that his conduct was not in breach of the Policy as he did report his absences to his Employer via the HR Manager and kept her apprised of his transportation difficulties. The Applicant asserts that the Appeal Division failed to scrutinize the Employer's rigid application of the Policy and failed to engage with the evidence of his financial hardship and the Employer's unwillingness to offer financial support. Moreover, the Applicant asserts that the Commission and the General Division breached his procedural fairness rights by prioritizing the Employer's narrative without properly weighing the Applicant's submissions. Finally, the Applicant asserts that the Appeal Division failed to grapple with key

evidence and provided a conclusory endorsement of the General Division's decision, such that the reasoning of the Appeal Division was not justified, transparent or intelligible.

[25] The determination of whether the Appeal Division's decision was reasonable must start with the Applicant's grounds of appeal in his application for leave to appeal. These set out the key issues and central arguments the Appeal Division had to grapple with [see *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at para 13]. Before the Appeal Division, the Applicant made the following submissions:

A. The General Division made significant errors of law, although no specific error was identified.

B. The General Division made an erroneous finding of fact that was not supported by the evidence on record. Specifically, the Applicant was never properly educated by the Employer on the Policy and the General Division disregarded the detailed emails that demonstrated sufficient communication from the Applicant to the HR Manager regarding his absences.

C. The General Division breached the Applicant's procedural fairness rights as an individual from the General Division told the Applicant that she prioritized the Employer's information and did not bother to look into the information that the Applicant had submitted. As a result, the General Division did not have a full understanding of the situation and was prevented from making a fair decision that complied with the applicable legal principles.

[26] I am satisfied that the Appeal Division reasonably concluded that the Applicant had not raised an argument in his leave application that had a reasonable chance of success.

[27] With respect the Applicant's asserted error of law, the Appeal Division rightly concluded that the Applicant had not identified any error of law made by the General Division and that no such error of law was apparent on the face of the General Division's reasons. On this application, I find that the Applicant is still not asserting any error of law. Rather, he is asserting that his conduct did not meet the legal definition of misconduct. However, the application of settled legal principles (i.e., the legal definition of misconduct) to the facts of a case is a question of mixed fact and law and is not an error of law. As such, the Appeal Division had no jurisdiction to interfere with the General Division's decision under paragraph 58(1)(b) of the *DESDA* [see *Quadir v Canada (Attorney General)*, 2018 FCA 21 at para 9].

[28] With respect to the Applicant's asserted errors of fact, I find that the Appeal Division reasonably determined that the General Division did not ignore nor misunderstand the email evidence or any other evidence before it. It was clear from the reasons that the General Division was aware of the Applicant's communications with the HR Manager, as well as the evidence regarding the training on the Policy the Applicant received and his knowledge thereof (including admissions made by the Applicant confirming his understanding of the requirement of emailing his supervisor if he was going to be absent, as set out in the Policy). The Applicant simply disagrees with the findings made by the General Division that: (a) his communications with the HR Manager were insufficient to constitute compliance with the Policy; (b) he had been absent for three shifts without providing proper notice; and (c) the Applicant was aware that he could be dismissed from

his employment if he did not show up for work on November 14, 2024. These findings of fact made by the General Division were reasonable and grounded in the evidentiary record before it, such that it was not open to the Appeal Division to conclude that the General Division had based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[29] With respect to the Applicant's assertion that the General Division failed to observe a principle of natural justice, I find that the Appeal Division reasonably determined that there had been no breach of the Applicant's procedural fairness rights or a denial of natural justice. The record demonstrated that the Applicant was afforded an opportunity to present his case to the General Division and contrary to his assertion, the General Division addressed his evidence and arguments. The Appeal Division reasonably determined that neither the reasons nor the audio recording of the hearing included any comment by the General Division that it was prioritizing the Employer's information over the submissions of the Applicant.

[30] I find that the decision of the Appeal Division reasonably determined the issues raised by the Applicant in his leave to appeal application and its reasons exhibits the requisite degree of justification, intelligibility and transparency. While I am sympathetic to the Applicant's personal struggles, it was simply not open to the Appeal Division to intervene in light of the constraints imposed by section 58 of the *DESDA*.

[31] Accordingly, the Applicant's application for judicial review shall be dismissed. The Respondent is not seeking costs and none will be awarded.

JUDGMENT in T-1816-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name the Attorney General of Canada as Respondent.

2. The application for judicial review is dismissed.

3. There shall be no award of costs.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1816-25
STYLE OF CAUSE:	RODNEY SEKITOREKO v ATTORNEY GENERAL OF CANADA
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APPEARANCES:

Rodney Sekitoreko	FOR THE APPLICANT ON HIS OWN BEHALF
Yanick Bélanger	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Gatineau, Québec	FOR THE RESPONDENT