Federal Court of Appeal | Cour d'appel fédérale

Date: 20260225

Docket: A-63-24

Citation: 2026 FCA 41

CORAM: **LOCKE J.A.**
LEBLANC J.A.
WALKER J.A.

BETWEEN:

DALE ARNOLD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on February 25, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on February 25, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: WALKER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on February 25, 2026).

WALKER J.A.

[1] Dale Arnold seeks judicial review of a decision (Decision) of the Appeal Division of the Social Security Tribunal (SST) dated January 9, 2024 (AD-23-694) dismissing his appeal of a decision of the General Division of that Tribunal (June 8, 2023, GE-23-740).

[2] The General Division found that Mr. Arnold had knowingly failed to comply with Purolator's mandatory COVID-19 vaccination policy (Vaccination Policy), and concluded that he had been suspended from his job with Purolator for misconduct pursuant to subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 (EI Act). As a result, Mr. Arnold was disqualified from receiving Employment Insurance benefits.

[3] On appeal from the General Division, the Appeal Division similarly concluded that Mr. Arnold's deliberate violation of the Vaccination Policy constituted misconduct within the meaning of the EI Act, citing *Canada (Attorney General) v. Bellavance*, 2005 FCA 87 and *Canada (Attorney General) v. Gagnon*, 2002 FCA 460; see also *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 at para. 14, leave to appeal to SCC refused, 31967 (27 September 2007); *Zagol v. Canada (Attorney General)*, 2025 FCA 40 at paras. 6-27, leave to appeal to SCC refused, 41765 (9 October 2025) (*Zagol*).

[4] The Appeal Division made the following observations, a number of which reflect arguments that were before the Appeal Division and that Mr. Arnold relies on in support of this application:

A. Misconduct for purposes of the EI Act does not imply that the conduct in question was the result of wrongful intent; it is sufficient that the misconduct be conscious, deliberate or intentional (paragraph 20 of the Decision).

B. The General Division's role was to assess (i) whether Mr. Arnold was guilty of misconduct, and (ii) whether that misconduct led to his dismissal (paragraph 21 of the Decision).

C. It was not for the General Division to focus on the conduct of the employer or to consider whether the Vaccination Policy was reasonable or whether the imposition of the Vaccination Policy violated the employment law relationship because those concerns fall outside of EI law; the General Division had to focus on Mr. Arnold's conduct (paragraphs 34, 36, 37 of the Decision).

D. Any question of accommodation, violation by Purolator of the law or the collective bargaining agreement in imposing the Vaccination Policy, or any violation of Mr. Arnold's human or constitutional rights, is a question for another forum (paragraphs 38 and 40 of the Decision).

[5] We are agreed that Mr. Arnold's application must be dismissed. The Decision was reasonable, which is the standard on which we must review it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The Appeal Division's conclusions are supported by the evidentiary record, respect the statutory constraints of the EI Act and meet the *Vavilov* threshold for justification. Further, the Decision is consistent with the jurisprudence of this Court applying the test for misconduct for purposes of subsection 30(1) to a knowing failure to comply with an employer's COVID-19 vaccination policy. While it is true that the facts of each case are different, Mr. Arnold has not convinced us that his case should be distinguished from the recent jurisprudence of this Court in similar circumstances: see, for example, *Lance v. Canada*

(Attorney General), 2025 FCA 41; *Cecchetto v. Canada (Attorney General)*, 2024 FCA 102, leave to appeal to SCC refused, 41441 (13 February 2025); *Sullivan v. Canada (Attorney General)*, 2024 FCA 7 (*Sullivan*); *Khodykin v. Canada (Attorney General)*, 2024 FCA 96; *Palozzi v. Canada (Attorney General)*, 2024 FCA 81; *Kuk v. Canada (Attorney General)*, 2024 FCA 74; *Zhelkov v. Canada (Attorney General)*, 2023 FCA 240; *Francis v. Canada (Attorney General)*, 2023 FCA 217, leave to appeal to SCC refused, 41064 (16 May 2024); and *Zagol*. Mr. Arnold has not convinced us that this jurisprudence is manifestly wrong so as to permit us to depart from it: *Miller v. Canada (Attorney General)*, 2002 FCA 370 at paras. 9-10; *Feeney v. Canada (Attorney General)*, 2022 FCA 190 at para. 16; *Comité interprofessionnel du vin de champagne v. Coors Brewing Company*, 2026 FCA 2 at paras. 48-49.

[6] On appeal, Mr. Arnold maintains his argument that both the Vaccination Policy and Purolator's conduct in imposing and enforcing the Policy were unlawful and must be addressed; in his view, to do otherwise undermines the rule of law. However, the Appeal Division reasonably concluded that these issues are beyond the scope of the SST's mandate under the EI Act. They must be addressed by other decision makers and under different statutory regimes. As this Court has said, "[w]ere the applicant's submissions to be upheld, the Social Security Tribunal would become a forum to question employer policies and the validity of employment dismissals. Under any plausible reading of the legislation that governs the Tribunal, it is a forum to determine entitlement to social security benefits, not a forum to adjudicate allegations of wrongful dismissal" (*Sullivan* at para. 6).

[7] Mr. Arnold also asserts that the General Division's use of template language was procedurally unfair.

[8] We do not agree. The Appeal Division correctly found no unfairness in the use of template language by the General Division in this case. A court assessing procedural fairness must ask "whether the procedure was fair having regard to all of the circumstances", including "whether the party knew the case they had to meet, had an opportunity to respond and had an impartial decision maker": *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 41, 54. As the Appeal Division stated, the General Division held a hearing, listened to Mr. Arnold's arguments and issued a detailed decision based on the evidence and Mr. Arnold's arguments, most of which were outside of the General Division's jurisdiction. It is clear that Mr. Arnold had full opportunity to present his case and it is equally clear that the General Division listened to and understood his arguments. The fact that the certain of the same paragraphs used by the General Division in this case appear in other decisions does not create unfairness or raise a reasonable apprehension of bias.

[9] For the foregoing reasons, we will dismiss the application for judicial review without costs.

"Elizabeth Walker"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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