

A-463-96

CORAM: HUGESSEN J.A.  
DÉCARY J.A.  
CHEVALIER D.J.

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

APPLICANT

AND :

**BERNARD FORRESTALL**

RESPONDENT

Heard at Halifax, Nova Scotia, Thursday, December 12, 1996.

Judgment rendered from the Bench, December 12, 1996.

REASONS FOR JUDGMENT OF THE COURT  
DELIVERED BY:

HUGESSEN J.A.

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DÉCARY J.A.  
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REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Halifax, Nova Scotia,  
Thursday, December 12, 1996)

HUGESSEN J.A.

The respondent was discharged by his employer for disciplinary reasons. He grieved that discharge and an arbitrator ordered him reinstated. The operative part of the award reads as follows:

In the result, therefore, the grievance is allowed in part. The griever's purported discharge is rescinded and a three-day suspension is substituted in lieu thereof. The suspension is deemed

to have commenced on July 21st and to have been served during the next three working days on the job. The Employer is directed to compensate the grievor for all loss of earnings and benefits incurred thereafter. The Employer is also directed to offer employment to the grievor on the Nicholson Hall job as soon as reasonably practical, with damages continuing to run until such offer is made.

(Award, pages 19-20)

The employer chose not to take back the respondent but rather to pay him what he would otherwise have earned for a period of eleven days from the end of the suspension until due time when the job ended and he would have been laid off in any event.

We are all of the view that the Tax Court judge erred in holding that those eleven days represented insurable employment for the respondent. He did no work in that period. What he received from his employer was, in the words of the arbitrator, "damages", it was not wages.

As we said in *Élément c. M.N.R.*<sup>1</sup>:

. . . a person who does not perform any work [and]<sup>2</sup> receive[s no] wages does not hold insurable employment within the meaning of paragraph 3(1)(a) of the Act.

That is clearly the case of the respondent.

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<sup>1</sup> (May 21, 1996), A-751-95 (F.C.A.) [unreported]

<sup>2</sup> The official translation may be ambiguous, the version given here is more in accordance with the clear meaning of the French original.

The decision of the Tax Court of Canada will accordingly be set aside and the matter remitted to that Court for redetermination on the basis that the respondent was not in insurable employment during the period in question.

"James K. Hugessen"  
J.A.

FEDERAL COURT OF APPEAL

A-463-96

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APPLICANT

AND:

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RESPONDENT

REASONS FOR JUDGMENT OF THE COURT

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT FILE NO.:** **A-463-96**

**STYLE OF CAUSE:** **Attorney General of Canada v.**  
**Bernard Porrestall**

**PLACE OF HEARING:** **Halifax, Nova Scotia**

**DATE OF HEARING:** **Thursday, December 12, 1996**

**REASONS FOR JUDGMENT  
OF THE COURT:** **Hugessen J.A.**  
**Décary J.A.**  
**Chevalier D.J.**

**RENDERED FROM THE BENCH BY:** **Hugessen J.A.**

**APPEARANCES:**

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**Ms. Celine Morrow** **for the Respondent**

**SOLICITORS OF RECORD:**

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**for the Respondent**