

CORAM: MARCEAU J.A.
HUGESSEN J.A.
DESJARDINS J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

- and -

PIERRE-ANDRÉ DROUIN,

Respondent.

REASONS FOR JUDGMENT

MARCEAU J.A.

This application for review of a decision by an umpire under the Unemployment Insurance Act is similar in appearance and involves the same problems as another case in which I have just filed my reasons for judgment: Attorney General of Canada v. Denise Caron Bernier, Court file No. A-136-96.

Both cases concerned the application of the Act's provisions on self-employment and the allocation for benefit purposes of income earned by claimants from a business or operation while unemployed after they have qualified for benefits by losing their employment. Ms. Caron Bernier operated a farm with her husband under the name La Ferme Duregard Inc. In the instant case, the respondent held 50 percent of the shares in a company, 2540-3858 Québec Inc., that operated amusement devices. In both cases, the Commission held that the profits from the business being

operated, the farm and the amusement devices, constituted income within the meaning of paragraph 57(6)(c) of the Unemployment Insurance Regulations that had to be allocated in order to be deducted from benefits.

In my reasons for judgment in file No. A-136-96, after observing how obscure the self-employment provisions of the Act and the Regulations are, especially in respect of any income claimants earn from a business or operation while unemployed and entitled to benefits, I noted that three constants had nevertheless emerged from the decisions of umpires concerning the application of the provisions in question. First, the legal status of the operation or business in which the self-employed person works is irrelevant. Second, the relative amount of time spent on the operation or business is irrelevant. Third, actually receiving income from the operation or business is unnecessary, as the mere right to receive such income is sufficient. I pointed out that these constants had seemed necessary in order to give effect to Parliament's intention to include all income directly or indirectly related to work, as opposed to pure investment income. I recognized that the constants are open to criticism, but I did not feel that the Court could question them as the law now stands.

It is clear in the case at bar that the Board of Referees and, after it, the Umpire refused to take one of the constants, *supra*, namely the third, into account. They quashed the Commission's determination on the ground that the claimant had not received his income from the business during his benefit period. In my view, they erred in so deciding.

I am attaching to these reasons a copy of the more detailed reasons I included in file No. A-136-96. I would allow this application, quash the impugned decision and refer the matter back to the Umpire on the basis that the appeal from the Board of Referees' decision must be allowed and the Commission's determination restored.

Louis Marceau

J.A.

"I concur.
James K. Hugessen, J.A."

"I concur.
Alice Desjardins, J.A."

Certified true translation

Stephen Balogh

OTTAWA, Ontario, Thursday, February 27, 1997.

CORAM: MARCEAU J.A.
HUGESSEN J.A.
DESJARDINS J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

- and -

PIERRE-ANDRÉ DROUIN,

Respondent.

J U D G M E N T

The application is allowed, the impugned decision is quashed and the matter is referred back to the Chief Umpire to be decided by himself or an umpire designated by him on the basis that the appeal from the Board of Referees' decision must be allowed and the Commission's determination restored.

Louis Marceau

J.A.

Certified true translation

Stephen Balogh

CORAM: MARCEAU J.A.
HUGESSEN J.A.
DESJARDINS J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

- and -

PIERRE-ANDRÉ DROUIN,

Respondent.

Hearing held at Québec, Quebec on Thursday, February 13, 1997.

Judgment delivered at Ottawa, Ontario on Thursday, February 27, 1997.

REASONS FOR JUDGMENT BY:

MARCEAU J.A.

CONCURRED IN BY:

**HUGESSEN J.A.
DESJARDINS J.A.**

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

- and -

PIERRE-ANDRÉ DROUIN,

Respondent.

REASONS FOR JUDGMENT
