

**MONTRÉAL, QUEBEC, THIS 14th DAY OF MAY 1997**

**CORAM: THE HONOURABLE MADAME JUSTICE DESJARDINS  
THE HONOURABLE MR. JUSTICE DÉCARY  
THE HONOURABLE DEPUTY JUSTICE CHEVALIER**

**BETWEEN: ATTORNEY GENERAL OF CANADA,**  
Applicant,

**AND:**

GLADIS H. ROMERO,  
Respondent.

**J U D G M E N T**

The application for judicial review is allowed, the decision of the umpire is set aside and the matter is referred back to the umpire to be designated by the Chief Umpire for redetermination, with instructions to dismiss the claimant's appeal.

Alice Desjardins  
J.A.

Certified true translation

C. Delon, LL.L.

A-815-96

**CORAM:**                   **DESJARDINS J.A.**  
                                  **DÉCARY J.A.**  
                                  **CHEVALIER D.J.**

**BETWEEN:**

ATTORNEY GENERAL OF CANADA,

Applicant,

**AND:**

GLADIS H. ROMERO,

Respondent.

Hearing held at Montréal  
on Wednesday, May 14, 1997

Judgment delivered at Montréal  
on Wednesday, May 14, 1997

REASONS FOR JUDGMENT OF THE COURT BY:

**DÉCARY J.A.**

**CORAM:** THE HONOURABLE MADAME JUSTICE DESJARDINS  
THE HONOURABLE MR. JUSTICE DÉCARY  
THE HONOURABLE DEPUTY JUSTICE CHEVALIER

**BETWEEN:** ATTORNEY GENERAL OF CANADA,  
Applicant,

**AND:**

GLADIS H. ROMERO,  
Respondent.

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the bench at Montréal  
on Wednesday, May 14, 1997)

**DÉCARY J.A.**

Under subsection 26(2) of the *Unemployment Insurance act*, a claimant may continue to receive benefit if, before the expiry of his or her benefit period, he or she begins attendance at a training course to which he or she has been referred by the Commission.

In the instant case, the respondent's benefit period ended on November 30, 1991, but because of a programming error in the Commission's computers, it referred her to a course that did not begin until December 17, 1991, after the period had expired. The respondent therefore continued to receive benefit after November 30, 1991.

The Commission realized its error sometime in June 1992 and demanded repayment from the respondent of the benefits that had been paid to her since December 1, 1991.

The board of referees held that the claimant had collected benefits to which she was not entitled and that she had to return them, but it recommended that the Commission

exercise its discretion under section 60 of the *Unemployment Insurance Regulations* and write off the overpayment in view of the hardship that repayment would cause the claimant.

When the Commission refused to write off the overpayment, the respondent pursued the appeal she had filed before the umpire. The umpire allowed the appeal, essentially for the following reasons:

The Commission would be abusing its discretionary power if it told a claimant he was eligible for a training course and allowed him to take the course, and then, after realizing its error, required him to repay the benefits received. The principles of administrative law have evolved sufficiently to allow the courts, in such cases, to assess the harm done to the claimant in relation to the public interest. In this case, nothing is gained and the public interest is not served by allowing the Commission to go back on a position it had previously taken and require the claimant to suffer the consequences of erroneous information he has received and on which he has, in all honesty, relied.

The umpire made commendable efforts to assist the claimant. However, the question he, and before him the board of referees, had to decide was this: was the claimant entitled under the *Unemployment Insurance Act* to receive the benefits she received after December 1, 1991? Clearly, the answer is no, as we have held on numerous occasions.

Neither the board of referees nor the umpire, nor this Court in the exercise of its power of judicial review of the decisions of umpires, has the requisite authority to transform the issue before it into an issue relating to the Commission's liability for what has been called an abuse of its discretionary power and to assessment of the damages that a claimant who is compelled to repay benefits received as a result of an error on the part of the Commission may have suffered; that issue must be debated in another forum. This Court had occasion to restate that principle only a few months ago, in *Attorney General v. Tjong* (A-672-95, October 3, 1996, unreported), a case that was remarkably similar to this one.<sup>1</sup>

<sup>1</sup> In addition to the decisions cited in that case, see *Calder v. Minister of Employment and Immigration*, [1980] 1 F.C. 842, 854 (C.A.) and, of course, *Granger v. Canada (Canada Employment and Immigration Commission)*, [1986] 3 F.C. 70 (C.A.), aff'd [1989] 1 S.C.R. 141.

The application for judicial review will be allowed, the decision of the umpire will be set aside and the matter will be referred back to an umpire to be designated by the Chief Umpire for redetermination, with instructions to dismiss the claimant's appeal.

Robert Décary  
J.A.

Certified true translation

C. Delon, LL.L.

*Federal Court of Canada*

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Court file No. A-815-96

BETWEEN

ATTORNEY GENERAL OF CANADA,

Applicant,

— *and* —

GLADIS H. ROMERO,

Respondent.

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**REASONS FOR JUDGMENT**

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**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT FILE NO:** A-815-96

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA,  
Applicant,

**AND:**

GLADIS H. ROMERO,  
Respondent.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 14, 1997

**REASONS FOR JUDGMENT OF THE COURT (DESJARDINS AND DÉCARY JJ.A. AND CHEVALIER D.J.)**

**DELIVERED FROM THE BENCH BY:** The Honourable Mr. Justice Décary

**Dated:** May 14, 1997

**APPEARANCES:**

Carole Bureau for the applicant

Gilbert Nadon for the respondent

**SOLICITORS OF RECORD:**

George Thomson for the applicant  
Deputy Attorney General  
of Canada

Campeau, Ouellet, Nadon & Associés  
Montréal, Quebec for the respondent