

MONTRÉAL, QUEBEC, THIS 29th DAY OF JANUARY 1997

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

BETWEEN: RÉJEAN TURGEON,

Applicant,

AND:

CANADA EMPLOYMENT AND
IMMIGRATION COMMISSION,

Respondent.

J U D G M E N T

The application for judicial review is dismissed.

Louis Marceau
J.A.

Certified true translation

C. Delon, LL.L.

A-715-95

CORAM: MARCEAU J.A.
DESJARDINS J.A.
CHEVALIER D.J.

BETWEEN:

RÉJEAN TURGEON,

Applicant,

- and -

**CANADA EMPLOYMENT AND
IMMIGRATION COMMISSION,**

Respondent.

Hearing held at Montréal, Quebec, on Wednesday, January 29, 1997.

Judgment delivered from the bench at on Wednesday, January 29, 1997.

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

CORAM: MARCEAU J.A.
DESJARDINS J.A.
CHEVALIER D.J.

BETWEEN:

RÉJEAN TURGEON,

Applicant,

- and -

**CANADA EMPLOYMENT AND
IMMIGRATION COMMISSION,**

Respondent.

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec,
on Wednesday, January 29, 1997)

MARCEAU J.A.

We are of the opinion that this application for review cannot succeed.

A penalty was imposed on the applicant, a construction worker, by the Commission, under subsection 33(1) of the *Unemployment Insurance Act*, for making false statements in support of his claims for benefit, by failing to report substantial earnings that he received from his employer over a period of some weeks. The Board of Referees confirmed the Commission's determination and the umpire declined to intervene. The applicant repeated in this Court what he had said before the Board of Referees and the umpire: that while he did make statements that he knew to be false, he did so because he did not want to reveal the "banking" system that his employer

had forced him to participate in, under which he would be paid for his overtime on the same basis as ordinary time, during the weeks when he was not working. If he had revealed that fact, he says, he would certainly have lost his chance of being re-employed by that employer. Accordingly, he complains that the umpire did not agree to find that the "coercion" under which he was acting went to the very heart of the situation that must exist, under subsection 33(1), if penalties are to be imposed, that is, that he must have made statements that he "knew to be false". He says that the umpire applied the word "knew", and the reasons that a claimant can present as justification to avoid being penalized, in an extreme and too narrow manner.

The complaint that the applicant addresses to the umpire is not deserved. Once it is established that the requirements for subsection 33(1) to apply have been met, that is, that the statements were contrary to the truth and that the person who made those statements knew that full well, a fine must be imposed. The situation in which the statements were made may operate as mitigating circumstances in determining the quantum of the penalty, but it is up to the Commission or the Board of Referees to decide this, not the umpire.

The application made must be dismissed.

"Louis Marceau"
J.A.

Certified true translation

C. Delon, L.L.L.

FEDERAL COURT OF CANADA

A-715-95

BETWEEN:

RÉJEAN TURGEON,

Applicant,

- and -

**CANADA EMPLOYMENT AND
IMMIGRATION COMMISSION,**

Respondent.

**REASONS FOR JUDGMENT
OF THE COURT**

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: A-715-97

STYLE OF CAUSE: Réjean Turgeon v. Employment
and Immigration Commission

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: Wednesday, January 29, 1997

**REASONS FOR JUDGMENT
OF THE COURT:** Marceau J.A.
Desjardins J.A.
Chevalier J.A.

DELIVERED FROM THE BENCH BY: Marceau J.A.

APPEARANCES:

Denis Falardeau for the applicant

Francisco Couto for the respondent

SOLICITORS OF RECORD:

Leduc, Simard, Cliche, Duchesne & Associés
Québec, Quebec for the applicant

George Thomson
Deputy Attorney General of Canada
Ottawa, Ontario for the respondent