

Date: 20071108

Docket: A-94-07

Citation: 2007 FCA 363

**CORAM: LINDEN J.A.
NADON J.A.
SHARLOW J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

DJENANA IGNELZI

Respondent

Heard at Vancouver, British Columbia, on November 8, 2007.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 8, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 8, 2007)

NADON J.A.

[1] On February 15, 2006, Umpire John Urie confirmed the decision of the Board of Referees which dismissed the Respondent's appeal from the Commission's decisions in respect of a number of issues, which the Umpire stated to be: i) the allocation of earnings which the Respondent had failed to declare; ii) her failure to prove that she was unemployed; iii) the issue of penalty for providing false information; and iv) the issue of notice of violation.

[2] On September 12, 2006, the Respondent wrote to the Office of the Chief Umpire advising it that she had recently been informed by the Commission that it was seeking reimbursement of a sum of \$7,255.83 on account of overpayment even though she had understood during the course of the hearing before the Umpire, both from the Commission and from the Umpire, that the amount of the overpayment was \$2,544.00. In those circumstances, the Respondent sought reconsideration of the Umpire's February 15, 2006 order.

[3] On October 31, 2006, Umpire Urie dismissed the Respondent's request for reconsideration in the following terms:

The applicant requests that I reconsider my Decision dated February 15, 2006.

As was pointed out in my Decision, no reference was made at the hearing as to the correctness of the amount claimed to be an overpayment of benefits, so I made no finding with respect thereto.

Furthermore, I am not empowered to determine the amount of an alleged overpayment nor is its calculation a matter that is properly the subject of a reconsideration application under Section 120 of the Act.

Accordingly, the application for reconsideration is dismissed.

[4] On December 22, 2006, the Respondent commenced before the Federal Court a Judicial Review application of the Umpire's February 15, 2006 decision. By order of this Court dated February 12, 2007, the Judicial Review application was transferred from the Federal Court to this Court. That proceeding is still pending.

[5] On January 15, 2007, Rouleau J., then the Chief Umpire Designate, reconsidered Umpire Urie's two decisions. He concluded that Umpire Urie ought to have reduced the amount of the overpayment from \$6,292 to \$2544 and the amount of the penalty from \$1573 to \$143.

[6] We are all agreed that it was an error on the part of the Chief Umpire Designate to make the order which he made.

[7] Considering that at the time of Rouleau J.'s order, the Umpire's second decision was already the subject of a Judicial Review application commenced by the Respondent, that Rouleau J. took it upon himself, without any motion inviting him to do so, to reconsider the Umpire's decisions and that he failed, in any event, to provide to the Applicant an opportunity of addressing him on the issues of whether it was open to him to reconsider the Umpire's decisions and, if so, whether reconsideration was justified, we are compelled to conclude that Rouleau J. erred in proceeding as he did.

[8] For these reasons, the Judicial Review application will be allowed and the Chief Umpire Designate's decision will be set aside.

[9] As the Applicant is not seeking costs, no such order will be made.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-94-07

STYLE OF CAUSE: AGC v. Djenana Ignelzi

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 8, 2007

REASONS FOR JUDGMENT BY: LINDEN J.A.
NADON J.A.
SHARLOW J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

DATED: November 8, 2007

APPEARANCES:

Melanie Chartier FOR THE APPLICANT

Djenana Ignelzi FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada

FOR THE RESPONDENT