

Date: 20071105

Docket: A-603-06

Citation: 2007 FCA 364

**CORAM: SEXTON J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

JOHN D. CUNDLE

Applicant

and

HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA

Respondent

Heard at Toronto, Ontario, on November 5, 2007.

Judgment delivered from the Bench at Toronto, Ontario, on November 5, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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PELLETIER J.A.

[1] The applicant seeks to set aside the decision of Umpire Riche which dismissed his application for judicial review of the Board of Referee's decision upholding the Commission's disallowance of his claim for benefits.

[2] The difficulty facing the applicant is that the version of the facts on which he relies was first given to the Commission in his notice of appeal from the Commission's decision (exhibit 9, at page 58 of the respondent's record). In fact, on the day before filing his notice of appeal, the applicant

explained his reasons for leaving Ivaco without mentioning any issue of harassment: see page 57 of the respondent's record.

[3] In the circumstances, the Board of Referees was entitled to make findings of fact on the basis of all the evidence. In doing so, it obviously discounted the documentary evidence submitted by the applicant in favour of his earlier statements to the Commission. The Umpire found that the Board of Referees was entitled to proceed in that way. We find no error in the Umpire's conclusion on that point.

[4] Accordingly, the application will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-603-06

(APPEAL FROM THE DECISION OF THE UMPIRE, HON. DAVID RICHE DATED NOVEMBER 30, 2006, FROM CUB 6433A, WHEREBY THE APPEAL FROM THE CLAIMANT WAS DISMISSED.)

STYLE OF CAUSE: *JOHN D. CUNDLE and
HUMAN RESOURCES AND SKILLS
DEVELOPMENT CANADA*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 5, 2007

**REASONS FOR JUDGMENT
OF THE COURT BY:** SEXTON, PELLETIER, RYER J.J.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

John D. Cundle FOR THE APPLICANT,
ON HIS OWN BEHALF

Derek Edwards FOR THE RESPONDENT

SOLICITORS OF RECORD:

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