

Date: 20071122

Docket: A-592-06

Citation: 2007 FCA 372

**CORAM: NOËL J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

GARY HASTINGS

Respondent

Heard at Montreal, Quebec, on November 20, 2007.

Judgment delivered at Montreal, Quebec, on November 22, 2007.

REASONS FOR JUDGMENT BY:

NADON J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

NADON J.A.

[1] This is an application for judicial review of a decision of an Umpire, dated November 16, 2006, which dismissed the Commission's appeal from the decision of the Board of Referees (the "Board"). I am of the view that the Umpire erred in upholding the Board's decision.

[2] The claimant was dismissed because of acts which he posed after he was informed by his employer of a \$0.25 increase in salary which he found to be unacceptable and unreasonable. In the words of the Umpire, found at page 1 of his decision (p. 7 of the Applicant's Record), the claimant "struck the computer and a printer, destroying both and used vulgar language in the loud speakers of the factory, giving a message that was offensive to the employer". The Board concluded that there was no misconduct on the part of the claimant. Specifically, it said at page 2 of its Reasons (p. 52 of the Applicant's Record):

The Board feels that his reaction was human under the circumstances. The next morning, the appellant went back to see the employer to explain his behaviour and excuse himself. The Board considers that the claimant's action "on the spur of the moment" was not wilful and deliberate pursuant [to] the Act.

[3] I am satisfied that there was no evidence before the Board to support its conclusion that the claimant's conduct was neither wilful nor deliberate. To the contrary, the acts which led to the claimant's dismissal were, in my view, undoubtedly conscious, deliberate and intentional. They were, at the very least, reckless. The fact that the claimant acted "on the spur of the moment" and that he immediately regretted his actions and apologized to his employer shortly thereafter is of no relevance to whether his conduct constitutes misconduct. In acting as he did, the claimant ought to have known that his conduct was such that it might lead to his dismissal (see *Canada (A.G.C.) v. Secours*, [1995] F.C.J. 70 (Q.L.) at paragraph 2; *Mishibinijima v. Canada (A.G.C.)*, 2007 FCA 36 at para. 14).

[4] I therefore conclude that the Board's decision was patently unreasonable and that, as a result, the Umpire ought to have intervened.

[5] For these reasons, the application for judicial review will be allowed with costs, the decision of the Umpire will be set aside at the matter referred back to the Chief Umpire or to the person designated by him to be decided on the basis that the respondent's conduct amounted to misconduct within the terms of section 29 and 30 of the *Employment Insurance Act*, S.C. 1985, c. 23.

“Marc Nadon”

J.A.

“I agree.

Marc Noël, J.A.”

“I agree.

J. D. Denis Pelletier, J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-592-06

**(APPEAL FROM A DECISION OF THE UMPIRE, MR. JUSTICE PAUL ROULEAU,
IN FILE NUMBER CUB 67079).**

STYLE OF CAUSE: **ATTORNEY GENERAL OF
CANADA and GARY
HASTINGS**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 20, 2007

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: NOËL J.A.
PELLETIER J.A.

DATED: November 22, 2007

APPEARANCES:

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Mr. Paul Deschênes

FOR THE APPLICANT

Mr. David Grossman

FOR THE RESPONDENT

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