

Date: 20071212

Docket: A-26-06

Citation: 2007 FCA 391

**CORAM: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

ROSE THOMPSON

Respondent

Heard at Charlottetown, Prince Edward Island., on December 6, 2007.

Judgment delivered at Ottawa, Ontario, on December 12, 2007.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**DESJARDINS J.A.
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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an application for Judicial Review of a decision of Umpire Goulard dated December 9, 2005, wherein he dismissed the appeal by Employment Insurance Commission (the “Commission”) from a decision of the Board of Referees (the “Board”) on the basis that the respondent left her employment for just cause, due to an obligation to follow her common-law partner. The Attorney General of Canada (the “AGC”) maintains that the respondent was not in a common-law relationship and therefore does not qualify for benefits.

RELEVANT FACTS

[2] The respondent was employed in Moncton, New Brunswick from February 28, 2003 until September 9 2004 when she left her employment to move to Prince Edward Island (P.E.I.) on September 12, 2004 to be with her partner.

[3] The respondent then applied for employment insurance benefits and an initial claim date was established. On her application for benefits, the respondent stated that she left her employment in order to accompany her common-law spouse and move in with him to begin living together. She added that she and her partner had not established a common-law relationship prior to her move and were not married.

[4] As a result, the Commission relying on subparagraph 29(c)(ii) of the *Employment Insurance Act*, S.C. 1996, c.23 (the “Act”), determined that the respondent had left her employment without just cause.

[5] The respondent appealed the Commission’s decision to the Board. Before the Board, she explained that her common-law relationship had been established approximately 10 to 11 months earlier in New Brunswick. She added that her common-law partner’s business was in P.E.I but that he travelled on weekends to New Brunswick to be with her.

[6] The Board found that the respondent’s testimony provided a better understanding of the situation described in filing her application for benefits. It concluded (CUB 64918, p. 2):

In the case at hand, the Board finds that Ms. Thompson did have “just cause” in leaving her employment in order to accompany her common-law partner to P.E.I. Therefore, it finds that she should not be disqualified from receiving benefits pursuant to section 29 and 30 of the *Employment Insurance Act*.

[7] The Commission brought an appeal before the Umpire, who upheld the Board’s decision. This decision is now before this Court.

THE UMPIRE’S DECISION

[8] The Umpire accepted that the respondent “clarified” her relationship in her testimony before the Board. Although, she had first indicated to the Commission that a common-law relationship had not been established prior to her move to P.E.I., she explained before the Board, and the Umpire accepted, that there had been cohabitation for a 10 to 11 month period prior to the move. In particular, her partner travelled to be with her on weekends, whenever his employment allowed him to do so. In short, they lived together whenever possible.

[9] The Umpire concluded in this regard (Reasons, p. 6):

In the present case, the Board’s decision cannot be said to be incompatible with the evidence before the Board. It may be that the Board could have arrived at a different conclusion, but it did not. The Board accepted the claimant’s evidence that the relationship had existed several months and had involved cohabitation whenever the distance between the parties allowed it. The Board was satisfied that this constitutes enough of a spousal relationship to allow the claimant to move and be entitled to her benefits.

POSITIONS OF THE PARTIES ON APPEAL

[10] The applicant submits, citing various jurisprudence, that the Board committed an error in law in holding that the respondent had established the existence of a common-law relationship during the relevant period, and that the Umpire committed a similar error in refusing to intervene. According to the applicant, the weekends spent by the respondent with her partner, whenever his work schedule allowed him to join her, were not sufficient to establish a common-law relationship.

[11] The respondent for her part maintains that she was cohabiting with her partner prior to applying for benefits as was found by the Board, and confirmed by the Umpire. Although, they were together only intermittently over the 10-11 month period, this was sufficient to establish a common-law relationship.

ANALYSIS AND DECISION

[12] Pursuant to subparagraph 29(c)(ii) of the Act, a claimant has just cause for leaving her employment in order to accompany a common-law partner in a different location. The issue therefore is whether the respondent had established the existence of a common-law relationship prior to leaving her employment and moving to P.E.I. to be with her partner.

[13] It is not necessary in this case to determine whether the weekends which the respondent spent with her partner prior to leaving her employment are sufficient, as a matter of law, to establish the existence of a common-law relationship.

[14] Since 2000, the Act defines the term “common-law partner” as follows (*Modernization of Benefits and Obligations Act*, 2000 S.C. ch.12, section 106, effective July 31, 2000 (SI/2000-76)):

| | |
|---|---|
| "common-law partner" | «conjoint de fait » |
| « <i>conjoint de fait</i> » | " <i>common-law partner</i> " |
| "common-law partner" , in relation to a claimant, means a person who is cohabiting with the claimant in a conjugal relationship, having so cohabited <u>for a period of at least one year</u> ; | «conjoint de fait » La personne qui vit avec la prestataire dans une relation conjugale <u>depuis au moins un an.</u> |

[My emphasis]

[15] Neither the Umpire nor the Board considered this provision and the cases on which they rely all pre-date this amendment. In the present case, the period during which the respondent was found to be in a common-law relationship cannot be said to be “at least one year”. The evidence of the respondent in this regard, as it was accepted by the Board and the Umpire, was that “her common-law relationship was established approximately 10-11 months ago” (CUB 64918, p. 2).

[16] In my respectful view, the respondent’s testimony must be taken for what it says. A relationship established “approximately 10-11 months ago”, does not allow for a finding that the relationship had a duration of “at least one year”.

[17] It follows that the respondent’s partner was not a common-law partner under the Act when she left her employment to be with him, and hence, a common-law relationship cannot be said to have existed at that time.

[18] For these reasons, I would allow the application for Judicial Review, set aside the decision of the Umpire and refer the matter back to the Chief Umpire or his designate for re-determination on the basis that the respondent did not have just cause for leaving her employment.

“Marc Noël”

J.A.

“I concur
Alice Desjardins J.A.”

“I agree
Johanne Trudel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-26-06

STYLE OF CAUSE: THE ATTORNEY GENERAL
OF CANADA and ROSE
THOMPSON

PLACE OF HEARING: Charlottetown, P.E.I.

DATE OF HEARING: December 6, 2007

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: DESJARDINS J.A.
TRUDEL J.A.

DATED: December 12, 2007

APPEARANCES:

Ms. Korinda McLaine FOR THE APPLICANT

Ms. Rose Thompson ON HER OWN BEHALF

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