

Date: 20080108

Docket: A-21-07

Citation: 2008 FCA 10

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

EASWARAKUMAR MURUGAIAH

Respondent

Heard at Toronto, Ontario, on January 8, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on January 8, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 8, 2008)

SEXTON J.A.

[1] This is an application for judicial review of the decision of R.C. Stevenson, Umpire (the “Umpire”) dismissing an appeal from the Board of Referees (the “Board”) which held that Mr. Murugaiah (the “respondent”) had left his employment with just cause and thus was not disqualified from receiving employment insurance benefits.

FACTS

[2] The respondent had taken a full time course for a year and a half in Montreal, obtaining a diploma in electro-mechanics in order to upgrade his skills. This would presumably allow him to work as a mechanic and electrician for automated systems. While working two jobs as a furniture assembler and general warehouse worker, he tried to obtain a job in this field in Montreal. However, he was told by employers that he needed to be fluent in French due to the technical nature of the position. The respondent claimed that learning French would not be a reasonable option for him due to the difficulties in learning the language, both because of his age (forty-seven) and his problems with French pronunciation. The respondent quit his two jobs in order to move to Toronto to look for work suitable to his recent training. The Commission determined that the respondent had voluntarily left his employment without just cause.

[3] On appeal to the Board of Referees the Board concluded:

All of this indicates that the claimant had no reasonable alternative to remedying the situation other than leaving his employment and moving to an English-speaking province. The Board finds that the claimant had just cause to leave his employment and make the move.

The Umpire dismissed the Commission's appeal.

STANDARD OF REVIEW

[4] The Umpire did not identify the appropriate standard of review to exercise in this case, which he should have done. The question in this case is one of mixed fact and law, – whether the respondent left his two jobs with just cause. In *Budhai* this Court determined that the standard of

review in such a case was reasonableness *simpliciter* (at paragraph 47). We see no reason to depart from that analysis in Budhai.

ANALYSIS

[5] Subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the “Act”) clearly states that a claimant is disqualified from receiving any benefits if the claimant left any employment without just cause.

[6] The grounds for just cause for voluntarily leaving an employment are outlined in section 29(c) of the Act:

- (c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:
 - (i) sexual or other harassment,
 - (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,
 - (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act,
 - (iv) working conditions that constitute a danger to health or safety,
 - (v) obligation to care for a child or a member of the immediate family,
 - (vi) reasonable assurance of another employment in the immediate future,
 - (vii) significant modification of terms and conditions respecting wages or salary,
 - (viii) excessive overtime work or refusal to pay for overtime work,
 - (ix) significant changes in work duties,
 - (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,
 - (xi) practices of an employer that are contrary to law,
 - (xii) discrimination with regard to employment because of membership in an association, organization or union of workers,
 - (xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

[7] Despite the myriad of examples provided by section 29(c) of what would constitute just cause for voluntarily leaving an employment, the primary question remains the same: did the claimant have no reasonable alternative to leaving the position or taking leave from employment?

[8] There is well established case law from this Court to the effect that leaving ones' employment in order to improve ones' position in the marketplace does not constitute just cause within the meaning of section 29(c) and section 30 of the *Employment Insurance Act*. This Court's decision in *Canada (Attorney General) v. Traynor* is particularly applicable in the circumstances. In that case, Justice Marceau, for the Court, stated as follows:

"It is clear to me that, in the circumstances of this case, the Board of Referees had no choice but to uphold the determination of the Commission that the respondent was disqualified for the whole period of her claim for having deliberately taken herself out of the work force without just cause. The Umpire was wrong in disputing the validity of that conclusion. It is a conclusion that may appear harsh and unfortunate to the respondent whose decision to quit her job was made with the sole view of improving her situation in the market place. Unfortunately, the letter, as well as the philosophy and purpose, of the unemployment insurance scheme, in my view, does not allow any other conclusion."

Canada (Attorney General) v. Traynor, [1995] F.C.J. No. 836 (FCA) (QL) at para 11.

See also *Canada (A.G.) v. Sacrey*, [2003] F.C.J. No. 1501 (FCA) at para 16.

[9] There is also no indication that the Board considered the most obvious reasonable alternative to the respondent leaving his employment, that is, searching for work in Toronto while working in Montreal instead of moving immediately. That would arguably be the most reasonable alternative to voluntarily leaving this employment.

[10] Moreover, this Court has recently held that suitability of employment cannot be just cause for voluntarily leaving employment under sections 29 and 30 of the Act: *Canada (Attorney General) v. Campeau*, 2006 FCA 376 at paragraph 20. Given the case law on point, it is undeniable that the conclusion by the Board was unreasonable.

[11] While we have considerable sympathy for the respondent's position, we feel we must, for the reasons given, allow the application for judicial review and set aside the Umpire's decision. The matter should be remitted to the Chief Umpire or his designate with a direction to deal with the appeal from the Board of Referees in accordance with these reasons.

“J. Edgar Sexton”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-21-07

(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE HONOURABLE MR. JUSTICE STEVENSON SITTING AS AN UMPIRE, DECISION DATED NOVEMBER 16, 2006, DOCKET NO. CUB 67195)

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v.
EASWARAKUMAR MURUGAIAH

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 8, 2008

**REASONS FOR JUDGMENT
OF THE COURT BY:** (DESJARDINS, SEXTON &
PELLETIER J.J.A.)

DELIVERED FROM THE BENCH BY: SEXTON J.A.

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