

**Date: 20071119**

**Docket: A-90-07**

**Citation: 2007 FCA 369**

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

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**CARLO PAGANO**

**Respondent**

Heard at Montréal, Quebec, on November 19, 2007.

Judgment delivered from the Bench at Montréal, Quebec, on November 19, 2007.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NOËL J.A.**

**Date: 20071119**

**Docket: A-90-07**

**Citation: 2007 FCA 396**

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

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**CARLO PAGANO**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on November 19, 2007)**

**NOËL J.A.**

[1] The Attorney General maintains that the respondent was dismissed from his employment because he no longer had a driver's license by reason of his failure to pay outstanding fines. As a driver's license was a prerequisite of his employment, the Attorney General submits that the respondent was fired by reason of his own misconduct, and the Chief Umpire designated committed a reviewable error in holding otherwise.

[2] There is no doubt that the respondent, by failing to pay his outstanding tickets, brought about the loss of his driver's license and that he could have been fired for that reason since the essential requirement of his employment was that he perform deliveries by truck.

[3] However, the Chief Umpire designate and the Board of Referees before him found as a fact that the employer decided not to dismiss the respondent on that account, but to suspend him for brief time in order to see if he could reacquire his driver's license. According to both the Board and the Chief Umpire designated the respondent complied with the employer's direction but was promptly fired upon returning to work with his reinstated permit shortly thereafter.

[4] Accepting as we must that the respondent was initially suspended, he could not have been dismissed for the reason advanced by the Attorney General, since his driver's license had been reinstated at the time of his dismissal.

[5] The application will accordingly be dismissed.

“Marc Noël”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-90-07

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA and CARLO PAGANO

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 19, 2007

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
NADON J.A.  
PELLETIER J.A.

**DELIVERED FROM THE BENCH BY:** NOËL J.A.

**APPEARANCE:**

Mr. Paul Deschênes FOR THE APPLICANT

**SOLICITOR OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Montreal (Québec) FOR THE APPLICANT