Date: 20080116

Docket: A-104-07

Citation: 2008 FCA 17

CORAM: **NOËL J.A.**
SHARLOW J.A.
RYER J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MUHAMMAD IMRAN

Respondent

Heard at Edmonton, Alberta, on January 15, 2008.

Judgment delivered at Edmonton, Alberta, on January 16, 2008.

REASONS FOR JUDGMENT BY: RYER J.A.

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

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REASONS FOR JUDGMENT

RYER J.A.

[1] This is an application for judicial review of a decision of the Chief Umpire Designate Paul Rouleau (CUB 67542), dated January 19, 2007, under the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act") allowing the appeal of Mr. Muhammad Imran from a decision of the Board of Referees (the "Board") that Mr. Imran was not entitled to benefits under the Act because he had voluntarily left his employment without just cause.

[2] Subsection 30(1) of the Act provides that a claimant is disqualified from receiving benefits where he voluntarily leaves employment without just cause, except in limited circumstances that are

not applicable to the facts under consideration. Paragraph 29(*c*) of the Act provides that just cause for voluntarily leaving an employment exists where the claimant had no reasonable alternative to leaving an employment. That provision goes on to stipulate that just cause will be shown to exist if any one of fourteen enumerated sets of circumstances can be demonstrated. Those circumstances are contained in subparagraphs 29(*c*)(i) to (xiv) of the Act.

[3] In this application, the issues were whether Mr. Imran had no reasonable alternative except to voluntarily leave his employment or whether the circumstances described in subparagraph 29(*c*)(vi) of the Act were present, namely whether Mr. Imran had reasonable assurance of another employment in the immediate future.

[4] Before the Board, Mr. Imran submitted that one of the reasons he had left his job at CBCL Outsourcing Inc., a call centre, was to search for a better job in which he could make use of his Masters Degree in Civil Engineering. Other explanations provided by Mr. Imran for leaving his job included that it was stressful dealing with customers in the United States who degraded him because of his accent and racial origin, that he had to travel to Pakistan for family reasons, and that he had a hearing problem in one ear that made his work difficult because he had to use a telephone headset (although the evidence was that Mr. Imran had not drawn this problem to the attention of his employer).

[5] On February 9, 2006, the Board decided that while other factors may have contributed to his decision to leave his employment, the principal reason that Mr. Imran had done so was to find a

better job in which his education and training could be put to use. The Board held that while Mr. Imran left his job for what may be considered a good reason, that was not sufficient to establish "just cause", within the meaning of paragraph 29(*c*) of the Act. In that respect, the Board found that Mr. Imran had failed to show that he had no reasonable alternative to leaving his employment. The Board upheld the position of the Employment Insurance Commission that it would have been more reasonable for Mr. Imran to have looked for a better job while he was still working. Accordingly, the Board held that Mr. Imran was not compelled to leave his employment and denied his appeal.

[6] The day after the Board rendered its decision, Mr. Imran provided the Board with a medical certificate confirming his hearing problem. Mr. Imran requested that the Board reconsider its decision, pursuant to section 120 of the Act, based upon the "new" evidence as to his hearing problem.

[7] On March 9, 2006, the Board held that while the medical certificate constituted "new facts", that certificate was merely corroborative of the evidence that had been presented by Mr. Imran in the first hearing and, therefore, did not provide anything new in the sense that if it had been known at the time of the initial hearing, it would have changed the Board's decision. Accordingly, the Board refused to reconsider its initial decision.

[8] Mr. Imran appealed to the Umpire. It is not clear if the appeal was limited to the reconsideration decision of the Board or if it also encompassed the initial decision of the Board. In any event, the Umpire accepted the Board's finding that Mr. Imran left his employment to find an

engineering position, but took issue with the Board's decision that Mr. Imran did not have just cause for so doing. In that regard, the Umpire held that the test for just cause, for the purposes of paragraph 29(*c*) of the Act, is whether:

> … leaving the employment is what a reasonable and prudent person would do in similar circumstances.

He then rejected the proposition that a reasonable and prudent person in Mr. Imran's circumstances would have sought alternative employment while still working. The Umpire accepted Mr. Imran's evidence that he did not have a reasonable alternative to leaving his employment in order to find an engineering job because he would not have been able to achieve that goal had he continued to work. According to the Umpire, this finding was supported by the fact that Mr. Imran had obtained an engineering job after less than a month of full-time intensive searching. On that basis, the Umpire held that Mr. Imran's reasons for leaving his employment constitute just cause.

[9] For the reasons that follow, I am unable to agree with the decision of the Umpire.

[10] By framing the question as whether leaving the employment is what a reasonable and prudent person would do in similar circumstances, the Umpire applied the wrong test for just cause. The proper test for just cause was described by Létourneau J.A. in *Canada (Attorney General) v. Laughland*, 2003 FCA 129, at paragraphs 9 and 10:

> This Court has clearly held that good cause is not the same as just cause. In *Tanguay v. Unemployment Insurance Commission et al*, (1986) 68 N.R. 154, at paragraph 10, Pratte J.A. wrote:
>
> > ... it seems clear that the board decided as it did because it was of the view that the applicants had acted reasonably in leaving their employment. This indicates a complete

> misunderstanding of the words “just cause” in s 41(1). In the context in which they are used these words are not synonymous with “reason” or “motive”.

He went on, at paragraph 11, to quote Lord Denning in *Crewe and others v. Social Security Commission*, [1982] 2 All E.R. 745:

> ... it is not sufficient for him to prove that he was quite reasonable in leaving his employment. Reasonableness may be “good cause”, but it is not necessarily “just cause”.

[11] The Umpire accepted Mr. Imran’s argument that he could not have stayed in his employment and been successful in finding a better job. On that basis, the Umpire concluded that Mr. Imran had no reasonable alternative but to leave his employment. With respect, this conclusion conflicts with the decision of this Court in *Canada (Attorney General) v. Traynor*, [1995] F.C.J. No. 836, in which Marceau J.A., at paragraph 11, stated: “the letter, as well as the philosophy and purpose, of the unemployment insurance scheme” does not allow a claimant to leave her job “with the sole view of improving her situation in the market place”. Moreover, this Court held in *Laughland* at paragraph 12,

> The Employment Insurance scheme is intended to protect those persons with no other reasonable choice but to leave their employment. Its purpose is not to provide employees in unstable employment, who leave their employment without just cause, with benefits while they seek better and more remunerative work.

[12] Mr. Imran argues that because jobs in the field of civil engineering were plentiful, he had reasonable assurance of another employment in the immediate future, which constituted just cause for voluntarily leaving his employment, pursuant to subparagraph 29(*c*)(vi) of the Act. In *Canada (Attorney General) v. Bordage*, 2005 FCA 155, Décary J.A. expressed the view at paragraph 11 that:

> Subparagraph 29(*c*)(vi) requires that there be reasonable assurance of another employment in the immediate future. In this case, none of the three requirements have been met… At the moment when he himself chose to become unemployed, the respondent did not know if he would have employment, he did not know what employment he would have with what employer, he did not know at what moment in the future he would have employment (see *Canada (Attorney General) v. Sacrey*, [2004] 1 F.C.R. 733; *Canada (Attorney General) v. Laughland*, (2003) 301 N.R. 331 (F.C.A.); *Canada (Attorney General) v. Bédard* (2004) 241 D.L.R. (4th) 763 (F.C.A.); *Canada v. Wall*, (2002) 293 N.R. 338 (F.C.A.); *Canada (Attorney General) v. Lessard*, 2002 FCA 469).

[13] While Mr. Imran was successful in finding an engineering job shortly after leaving his employment, at the moment when Mr. Imran left his job it cannot be said that he knew what future employment he would have or the identity of his future employer. As such, just cause for leaving his employment on the basis provided in subparagraph 29(*c*)(vi) of the Act has not been established.

[14] Mr. Imran argues that his other stated reasons for leaving his employment, namely the harassment from certain of the customers of his employer, his desire to provide some care for his mother in Pakistan and his hearing problem should be accepted as just cause for his cessation of employment. The determination of Mr. Imran's reason for leaving his employment is a question of fact that must stand unless, as contemplated by paragraph 115(2)(*c*) of the Act, it was made in a perverse or capricious manner or without regard to the evidence. None of these other reasons was accepted by either the Board or the Umpire as the basis for Mr. Imran's decision to leave his employment and I am not persuaded that there is any reason to interfere with their findings on that point.

[15] 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 reconsideration and decision in accordance with these reasons.

"C. Michael Ryer"
J.A.

"I agree.
Marc Noël J.A."

"I agree.
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-104-07
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CONCURRED IN BY:	NOËL J.A. SHARLOW J.A.
CONCURRING REASONS BY:	
DISSENTING REASONS BY:	
DATED:	January 16, 2008

APPEARANCES:

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