

Date: 20080407

Docket: A-465-07

Citation: 2008 FCA 133

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

CHRISTINE BEAULIEU

Respondent

Hearing held at Montréal, Quebec, on April 7, 2008.

Judgment delivered from the bench at Montréal, Quebec, on April 7, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

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REASONS FOR JUDGMENT OF THE COURT
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DESJARDINS J.A.

[1] In this case, the question is whether the Umpire and the Board of Referees could conclude that, given the circumstances, the respondent had just cause to voluntarily leave her student job at Alimentation de la Mitis in order to carry out an internship required for her to complete a secretarial diploma.

[2] The applicant argues that in confirming the decision of the Board of Referees, the Umpire first erred in law by omitting to rule on a question that had been submitted to him, that is, the Board of Referees' excess of jurisdiction. In fact, the Board of Referees ruled on the respondent's eligibility for benefits at the end of her internship even though no benefit period had been established at that point and this question had not been submitted to it.

[3] The applicant also argues that the Umpire erred in fact and in law in his application of the notion of "without just cause" for voluntarily leaving an employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[4] The respondent worked part time for Alimentation de la Mitis from April 24, 2005, to January 29, 2006, while she was going to school. As part of her course, she had to carry out an internship at the Université du Québec à Rimouski from February 2 to 23, 2006, in order to obtain her diploma.

[5] The respondent asked her employer to change her hours of work to allow her to do the internship, but the employer refused because she was asking to take time off during busy periods.

[6] The respondent left her job to carry out the internship. Afterwards, she was unable to find a job in the secretarial field. She filed a claim for employment insurance benefits on April 7, 2006. A benefit period was established for her effective March 26, 2006. The respondent finally found a job at a farmer's market in Notre-Dame-des-Prairies starting May 29, 2006.

[7] On May 16, 2006, the Commission informed the respondent that she was not eligible for regular employment insurance benefits effective March 26, 2006, because she had voluntarily left her employment on January 29, 2006, “without just cause”. The Commission added that leaving her employment had not been the only reasonable alternative in her case.

[8] The Board of Referees allowed the respondent’s appeal because she had been required to carry out the internship in order to obtain her diploma, her job was a student job, and she had tried to fit her hours of work around the compulsory internship by negotiating with her employer, but the latter had been inflexible and had left her no other choice but to leave her employment. The Board of Referees declared the claimant eligible for benefits once she had completed her internship.

[9] The Umpire dismissed the Commission’s appeal on the grounds that the matter was a question of fact and that he was not authorized to intervene (CUB 68840).

[10] We would allow the application for judicial review.

[11] The respondent did not appeal the date of her eligibility for benefits, that is, March 26, 2006, before the Board of Referees. The only question before the Board of Referees was the respondent’s eligibility for benefits. The Board of Referees and, consequently, the Umpire did not have jurisdiction to change the date determined by the Commission.

[12] The Umpire and the Board of Referees also erred in fact and in law in their interpretation and application of the notion of “without just cause” for voluntarily leaving an employment within the meaning of sections 29 and 30 of the Act, which state:

<p>29. For the purposes of sections 30 to 33,</p> <p>(a) “employment” refers to <u>any employment of the claimant</u> within their qualifying period or their benefit period;</p> <p>...</p> <p>(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, <u>having regard to all the circumstances</u>, including any of the following:</p> <p>...</p>	<p>29. Pour l’application des articles 30 à 33 :</p> <p>a) « emploi » s’entend de <u>tout emploi exercé par le prestataire</u> au cours de sa période de référence ou de sa période de prestations;</p> <p>...</p> <p>c) le prestataire est fondé à quitter volontairement son emploi ou à prendre congé si, <u>compte tenu de toutes les circonstances</u>, notamment de celles qui sont énumérées ci-après, son départ ou son congé constitue la seule solution raisonnable dans son cas :</p> <p>...</p>
<p>30. (1) <u>A claimant is disqualified from receiving any benefits if the claimant</u> lost any employment because of their misconduct or voluntarily left any employment <u>without just cause</u>, unless</p> <p>...</p> <p>[Emphasis added.]</p>	<p>30. (1) <u>Le prestataire est exclu du bénéfice des prestations</u> s’il perd un emploi en raison de son inconduite ou s’il quitte volontairement un emploi <u>sans justification</u>, à moins, selon le cas :</p> <p>...</p> <p>[Je souligne.]</p>

[13] One need only recall the jurisprudence of this Court applicable to this case. In *Canada (Attorney General) v. Martel*, [1994] F.C.J. No. 1458 (F.C.A.) (QL), A-1691-92, a case which is factually similar to the one at hand, I wrote for the Court (para. 12):

An employee who voluntarily leaves his employment to take a training course which is not authorized by the Commission certainly has an excellent reason for doing so in personal terms; but we feel it is contrary to the very principles underlying the unemployment insurance system for that employee to be able to impose the economic burden of his decision on contributors to the fund.

[14] Subsequent jurisprudence has been consistent with this decision (*Canada (Attorney General) v. Traynor*, [1995] F.C.J. No. 836 (F.C.A.) (QL); *Canada (Attorney General) v. Barnett*, [1996] F.C.J. No. 1289 (F.C.A.) (QL); *Canada (Attorney General) v. Bois*, 2001 FCA 175, [2001] F.C.J. No. 878 (F.C.A.) (QL); *Canada v. Wall*, 2002 F.C.A. 283, [2002] F.C.J. No. 1024 (F.C.A.) (QL); *Canada (Attorney General) v. Shaw*, 2002 FCA 325; *Canada (Attorney General) v. Lessard*, 2002 FCA 469, [2002] F.C.J. No. 1655 (F.C.A.) (QL); *Canada (Attorney General) v. Connell*, 2003 FCA 144, [2003] F.C.J. No. 1147 (F.C.A.) (QL); *Canada (Attorney General) v. Bédard*, 2004 FCA 21, [2004] F.C.J. No. 270 (F.C.A.) (QL); *Canada (Attorney General) v. Caron*, 2007 FCA 204, [2007] F.C.J. No. 754 (F.C.A.) (QL)).

[15] The Umpire erred in upholding the decision of the Board of Referees.

[16] This application for judicial review will be allowed, the Umpire's decision will be set aside, and the matter will be referred back to the Chief Umpire or his delegate for redetermination, taking into consideration that the respondent must be disqualified from employment insurance benefits because she voluntarily left her employment “without just cause”.

[17] No costs shall be payable given that there was no challenge by the respondent.

“Alice Desjardins”

J.A.

Certified true translation
Johanna Kratz

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-465-07

STYLE OF CAUSE: ATTORNEY GENERAL OF
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DELIVERED FROM THE BENCH BY: DESJARDINS J.A.

APPEARANCES:

Pauline Leroux FOR THE APPLICANT

COUNSEL OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada