

**Date: 20061126**

**Docket: A-542-07  
A-543-07  
A-544-07**

**Citation: 2008 FCA 372**

**CORAM: LINDEN J.A.  
RYER J.A.  
TRUDEL J.A.**

**A-542-07**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**RONALD PALMER**

**Respondent**

**A-543-07**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**WES KREIDER**

**Respondent**

**A-544-07**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**ROBERT KING**

**Respondent**

Heard at Calgary, Alberta, on November 26, 2008.

Judgment delivered from the Bench at Calgary, Alberta, on November 26, 2008.

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.,A.

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Calgary, Alberta, on November 26, 2008)**

**RYER J.A.**

[1] This is a consolidated application for judicial review of three decisions of Umpire Guy Goulard (CUB 69098, CUB 69099 and CUB 69097), upholding three decisions of the majority of the Board of Referees (Case 05-0826, Case 05-0800 and Case 05-0726), each dated February 1, 2006, in which employment insurance benefits were awarded to Mr. Ronald Palmer, Mr. Wesley Kreider and Mr. Robert King. These three applications were consolidated pursuant to an Order of Decary J.A. dated March 25, 2008.

[2] The dispute before the Board of Referees related to the question of whether Messieurs Palmer, Kreider and King lost their employment with TELUS because of a “work stoppage

attributable to a labour dispute” within the meaning of subsection 36(1) of the *Employment*

*Insurance Act* (the “Act”). That provision reads as follows:

**36.** (1) Subject to the regulations, if a claimant loses an employment, or is unable to resume an employment, because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which the claimant was employed, the claimant is not entitled to receive benefits until the earlier of  
(a) the end of the work stoppage, and  
(b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment.

**36.** (1) Sous réserve des règlements, le prestataire qui a perdu un emploi ou qui ne peut reprendre un emploi en raison d'un arrêt de travail dû à un conflit collectif à l'usine, à l'atelier ou en tout autre local où il exerçait un emploi n'est pas admissible au bénéfice des prestations avant :

a) soit la fin de l'arrêt de travail;

b) soit, s'il est antérieur, le jour où il a commencé à exercer ailleurs d'une façon régulière un emploi assurable.

[3] It is common ground that if these men lost their employment due to such a work stoppage, they would not be entitled to employment insurance benefits.

[4] We are of the view the Umpire misconstrued the decision of the Board of Referees and therefore could not have properly reviewed that decision, regardless of the standard of review that he applied to that task.

[5] It is clear that the majority of the Board of Referees found that there was no work stoppage, within the meaning of subsection 36(1) of the Act. In each case, the Board of Referees states: “Therefore we find that under section 31 of the Act no work stoppage occurred”. However, in his reasons, the Umpire states:

On July 21, 2005, a work stoppage attributable to a labour dispute occurred where the employer locked out the employees. On the same date, members of the TWU established

picket lines at various Telus sites. The evidence also established that on the day of the work stoppage, the employer activated a Comprehensive Business Continuity Plan it had been putting in place for an extended period of time prior to, and in anticipation of, the work stoppage. Through this Plan, the employer was able to maintain a high level of productivity in most of its areas of operation.

[emphasis added]

In this passage, the Umpire makes three separate references to a work stoppage that had occurred.

[6] That the Umpire had the view that a work stoppage had occurred is also evident from his statement, near the end of his reasons, that

As stated by Justice Pratte in Simoneau (A-143-80), “The question of whether a work stoppage has terminated is a question of fact in each case”.

[emphasis added]

[7] In the concluding portion of his reasons, the Umpire acknowledges that deference is owed to the Board of Referees in relation to the facts as found by them. In upholding the decision of the majority of the Board of Referees, the Umpire states that their decision is compatible with the evidence before them. Thus, the Umpire upholds the decision of the majority of the Board, that found that no work stoppage had occurred. With respect, this is clearly inconsistent with his statements quoted above, in which he states that a work stoppage had occurred.

[8] We are of the view that this misapprehension on the part of the Umpire as to the decision of the majority of the Board of Referees requires us to intervene and to set aside his decision.

[9] These cases raise the important issue of what constitutes a work stoppage, as a matter of law, and whether the elements of that legal term have been met on the facts. An analysis of this issue should have been clearly and directly undertaken by the Board of Referees or the Umpire in reviewing their decision.

[10] Accordingly, the applications for judicial review are allowed, without costs, the decisions of the Umpire are set aside and those matters are referred to the Chief Umpire for redetermination. A copy of these reasons should be placed in the file for each of the applications that has been consolidated.

“C. Michael Ryer”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-542-07

The Attorney General of Canada  
v. Ronald Palmer

A-543-07

The Attorney General of Canada  
v. Wes Kreider

A-544-07

The Attorney General of Canada  
v. Robert King

**PLACE OF HEARING:**

Calgary, Alberta

**DATE OF HEARING:**

November 26, 2008

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

(LINDEN, RYER, & TRUDEL JJ.A.)

**DELIVERED FROM THE BENCH BY:**

Ryer J.A.

**APPEARANCES:**

Margaret McCabe

FOR THE APPLICANT

Wayne Benedict

FOR THE RESPONDENT

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