Date: 20090421

Docket: A-518-08

Citation: 2009 FCA 122

CORAM: **LÉTOURNEAU J.A.**
PELLETIER J.A.
TRUDEL J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

GABRIEL RICHARD

Respondent

Heard at Montréal, Quebec, on April 21, 2009.

Judgment Delivered from the Bench at Montréal, Quebec, on April 21, 2009.

REASONS FOR JUDGMENT OF THE COURT BY: THE COURT

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on April 21, 2009)

THE COURT

[1] Did the Umpire (CUB 70980) err in law in his interpretation of subparagraph 29(*c*)(vi) and section 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[2] The combined effect of these provisions is to disqualify workers from receiving unemployment benefits if they voluntarily leave their employment without just cause. However, the

disqualification does not apply if a worker, since leaving his or her employment, has been employed in insurable employment for the number of hours required to qualify to receive benefits.

[3] This Court therefore has to resolve whether, in the circumstances, the respondent had just cause for leaving his employment and if the disqualification from unemployment benefits applies in his case. The relevant provisions of the Act read as follows:

29. For the purposes of sections 30 to 33,	29. pour l'application des articles 30 à 33 :
(*a*) "employment" refers to any employment of the claimant within their qualifying period or their benefit period;	*a*) « emploi » s'entend de tout emploi exercé par le prestataire au cours de sa période de référence ou de sa période de prestations;
. . .	[…]
(*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:	*c*) le prestataire est fondé à quitter volontairement son emploi ou à prendre congé si, compte tenu de toutes les circonstances, notamment de celles qui sont énumérées ci-après, son départ ou son congé constitue la seule solution raisonnable dans son cas :
. . .	[…]
(vi) reasonable assurance of another employment in the immediate future,	(vi) assurance raisonnable d'un autre emploi dans un avenir immédiat,
. . .	[…]
30. (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless	**30.** (1) Le prestataire est exclu du bénéfice des prestations s'il perd un emploi en raison de son inconduite ou s'il quitte volontairement un emploi sans justification, à moins, selon le cas :
(*a*) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to	*a*) que, depuis qu'il a perdu ou quitté cet emploi, il ait exercé un emploi assurable pendant le nombre d'heures requis, au titre de l'article 7 ou 7.1, pour recevoir des

qualify to receive benefits; or	prestations de chômage;
(*b*) the claimant is disentitled under sections 31 to 33 in relation to the employment.	*b*) qu'il ne soit inadmissible, à l'égard de cet emploi, pour l'une des raisons prévues aux articles 31 à 33.

(Emphasis added)

[4] It is clear from these provisions that a worker has just cause to leave an employment if leaving is the only reasonable alternative in his or her case, taking into account, among other things, that the worker has reasonable assurance of another employment in the immediate future.

Decision of the Board of Referees

[5] In this case, the Board of Referees rescinded the Commission's decision. In a decision that is as laconic as it is erroneous, the Board found that the respondent had just cause to leave his employment for a seasonal position in another field where he could improve his financial situation.

[6] The respondent had a part-time job as a service station attendant that provided him with 15 to 20 hours' work a week. He was paid $8 an hour. He moved from the Gaspé to Québec, where he worked for Maçonnerie Richard et Plante Inc. (Maçonnerie) to obtain his competency cards as an apprentice mason. He worked there from October 8 to November 23, 2007.

[7] When the respondent left his employment in the Gaspé on September 15, 2007, Maçonnerie guaranteed him 150 hours' work at $18.60 an hour. While working in his new position, he accumulated 184 hours of insurable employment.

[8] The respondent left his previous position to go to Québec because the Commission de la construction du Québec (CCQ) had opened, for a limited period, apprentice mason positions, making it possible for those who qualified to obtain a CCQ-recognized competency card.

[9] These are the facts underlying the Board's decision.

Decision of the Umpire

[10] The Umpire referred to the decision of this Court in *Attorney General of Canada v. Langlois*, 2008 FCA 18, given the factual similarities of the two cases. In *Langlois*, as in the case at bar, the worker had left a permanent position for another higher-paying, permanent but seasonal position.

[11] For the Umpire, the issues were a simple matter of weighing the evidence: see page 6 of the reasons for his decision. He applied the case law stating that the Board of Referees has sole jurisdiction over the facts and that the Umpire may not substitute his or her opinion for that of the Board, unless the Board's decision was made in a perverse or capricious manner, or without regard to the material before it: *ibidem*.

[12] Finally, at page 7 of his reasons, the Umpire expressed the view that the Board's decision was entirely consistent with the decision of this Court in *Langlois*, above, with regard to "the issue of just cause . . . involving circumstances similar to those of the claimant in this case". He upheld the Board of Referees' decision.

Analysis of the decisions of the Board of Referees and the Umpire

a) Desire to change one's financial situation

[13] The Board of Referees erred when it accepted a worker's desire to improve his or her financial situation as just cause for voluntarily leaving an employment.

[14] Case law is nonetheless clear on this issue, and the respondent has complained that it was not followed. How many times does it have to be repeated before umpires understand and the Chief Umpire ensures that they have understood? However noble and legitimate the desire to improve one's lot may be, this desire is not, for the purposes of sections 29 and 30 of the Act, a legal justification for voluntarily leaving one's employment. In *Langlois*, above, the Court wrote as follows at paragraph 31 of the reasons for its decision:

> [31] While it is legitimate for a worker to want to improve his life by changing employers or the nature of his work, he cannot expect those who contribute to the employment insurance fund to bear the cost of that legitimate desire. This applies equally to those who decide to go back to school to further their education or start a business and to those who simply wish to earn more money: see *Canada (Attorney General) v. Tremblay* (1994), 172 N.R. 305 (F.C.A.); *Astronomo v. Canada (Attorney General)* (1998), 37 C.C.E.L. (2d) 141 (F.C.A.); *Canada (Attorney General) v. Martel*, (1994), 7 C.C.E.L. (2d) 130 (F.C.A.). In the words of this Court in *Campeau*, above, at paragraph 21, "sincerity and inadequate income do not constitute just cause under section 30 of the Act, allowing [the claimant] to leave her employment and making the Employment Insurance system bear the cost of supporting her."

[15] The decision of Umpire Stevenson in *Tilbury* (CUB 66322), on which the Board of Referees relied in this case, should be decried. By Umpire Stevenson's refusal or failure to follow the case law in this matter, the decision misleads boards of referees and creates illegitimate expectations on the part of benefit claimants as well as causing them to incur costs in judicial review.

[16] The Umpire ought to have intervened to condemn the Board's error in law: see *Attorney General of Canada v. Sacrey*, 2003 FCA 377, at paragraphs 6, 11 and 12, according to which the interpretation of the term "just cause" within the meaning of subsection 30(1) is a question of law, and its application one of mixed fact and law; *Attorney General of Canada v. Campeau*, 2006 FCA 376, at paragraph 17.

b) Did the respondent have reasonable assurance of another employment in the immediate future giving him just cause to leave his previous employment?

[17] With respect, the Umpire misinterpreted this Court's decision in *Langlois*, leading him to misapply it to the facts of this case.

[18] The mere fact that the respondent left his previous employment for a seasonal job inevitably leading to a period of unemployment did not necessarily disqualify him from receiving benefits: *Attorney General of Canada v. Langlois*, above, at paragraph 29.

[19] But reasonable assurance of another employment in the immediate future must be determined in light of all the circumstances surrounding the claimant's leaving, as paragraph 29(*c*) of the Act invites us to do, in order to decide whether leaving was the claimant's only reasonable alternative. On this point, our Court described as follows, at paragraphs 33 and 34 of *Langlois*, the most significant circumstances to consider when a worker switches to seasonal employment.

> [33] In my view, in the case of seasonal employment, the time of the voluntary separation and the remaining duration of the seasonal employment are the most important circumstances to consider in determining whether leaving was a reasonable alternative and, accordingly, whether there was just cause for it.
>
> [34] Switching to seasonal employment late in the season when it is about to end and when it is obvious that the requirements of section 30 will clearly not be met creates a certainty of unemployment for which there can be no just cause. The employee is free to quit his non-seasonal job, but it is he alone then who must assume the risk of his voluntary leaving. How does this apply to the case at bar?

[20] When the respondent left his employment, it was clear that he would not qualify for benefits under section 30 at the end of his new seasonal position because he was guaranteed only 150 hours of work instead of the 840 he had to accumulate in his new job. Moreover, the respondent was also aware that work was hard to find at this time of the year. In fact, the employment ended on November 23 and lasted only six weeks.

[21] In the circumstances, the respondent's voluntary leaving was not justified within the meaning of subparagraph 29(*c*)(vi) and section 30 of the Act.

Conclusion

[22] There is no doubt that disqualification under section 30 of the Act punishes the respondent because he cannot add the insurable hours accumulated in his previous employment to those accumulated in his new employment. But that is the choice that Parliament made. And although we are sympathetic to the respondent's cause, we must apply the Act.

[23] For these reasons, the application for judicial review will be allowed without costs since the respondent did not oppose it. The decision of the Umpire (CUB 70980) will be quashed and the matter referred back to the Chief Umpire or his designate for redetermination on the basis that the respondent did not have just cause to leave his employment with Cie 9058-0697 Québec Inc. and that he has not accumulated the minimum number of hours of insurable employment required to qualify for benefits.

"Gilles Létourneau"
J.A.

"J.D. Denis Pelletier"
J.A.

"Johanne Trudel"

J.A.

Certified true translation
Johanna Kratz

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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