

Date: 20091201

Docket: A-1-09

Citation: 2009 FCA 351

**CORAM: BLAIS C.J.
NOËL J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

DAVINDER TAMBER

Respondent

Heard at Toronto, Ontario, on December 1, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on December 1, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 1, 2009)

LAYDEN-STEVENSON J.A.

[1] We are of the view that the appeal must be dismissed with costs, subject to certain clarifications.

[2] According to subsection 77(2) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act), no benefits can be paid without a special warrant being drawn on the Receiver General. As the

claimant received benefits in this case, it was not open to the Umpire to hold that there were no special warrants.

[3] However, the Umpire made no error when he held that the infractions alleged to have been committed pursuant to paragraphs 38(1)(a) or (e) of the Act, based on the allegation that the claimant made misrepresentations by reference to the direct deposits, had not been established before the Board of Referees.

[4] In particular, we are of the view that the direct deposit of the benefits in the claimant's account cannot under any logic allow for the conclusion that the claimant comes within the four corners of paragraph 38(1)(e).

[5] The parties agree that, in conformity with the Umpire's decision, when final resolution regarding insurability is attained, the matter will be reheard by a newly constituted Board of Referees. The issues referred back are those identified by the Umpire in the last paragraph at page 3 of his reasons, as well as the question of whether the application for benefits was properly made.

“Carolyn Layden-Stevenson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-09

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE
HONOURABLE MR. JUSTICE STEVENSON, AS UMPIRE, UNDER THE *E.I. ACT*,
DATED NOVEMBER 4, 2008, IN FILE NO. CUB 71395)**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. DAVINDER TAMBER

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 1, 2009

**REASONS FOR JUDGMENT OF
THE COURT BY:** (BLAIS C.J., NOËL & LAYDEN-
STEVENSON JJ.A.)

DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

APPEARANCES:

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