

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20100210

Docket: A-56-09

Citation: 2010 FCA 42

**CORAM: NOËL J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

LAWRENCE ROMANSKY

Respondent

Heard at Winnipeg, Manitoba, on February 10, 2010.

Judgment delivered from the Bench at Winnipeg, Manitoba, on February 10, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Winnipeg, Manitoba, on February 10, 2010)

NOËL J.A.

[1] This is an application for judicial review of a decision of Goulard J. (the Umpire) dated December 11, 2008 allowing the respondent's appeal from a decision of the Board of Referees holding that the respondent had left his employment without just cause, and had knowingly made a false statement by failing to declare this employment in his application for benefits.

[2] The Umpire concluded that the evidence before the Board of Referees did not support the conclusion that it reached. The reasoning of the Umpire is set out in full in the following three paragraphs (Reasons, pages 3 and 4):

I thoroughly reviewed the appeal file in this matter and found that there was no evidence whatsoever that the claimant had worked for Donvito International Autobody Ltd. and if so, what period he had worked. There is also no evidence that a record of employment had been issued and, if so, no indication of the reasons why one would have been issued. In its written representation to the Board of Referees, the Commission referred to a record of employment but there is no copy of such a document in the file. In the Commission's request for information from Donvito International Autobody Ltd. (exhibit 3) the employer did not respond to the question as to whether the claimant had worked for them. The only comment is "no reason given to us".

In his appeal to the Board of Referees, the claimant gave a number of reasons for leaving his employment including safety reasons. There is no evidence whatsoever from the employer confirming the claimant's employment or the reasons for which he left or replying to the claimant's explanations for leaving. The Commission's representations to the Board of Referees do not constitute evidence *per se* (CUB 17907).

I therefore find that, in this case, there was no evidence before the Board of Referees on which the Board could base its decision that the claimant had voluntarily left an employment and failed to report that employment and the reasons for leaving it. If the Board could find that this employment had existed, there was no evidence to contradict the claimant's explanations for leaving it.

[3] Notwithstanding the above finding that there was no evidence to support the decision of the Board of Referees, the Umpire had before him the respondent's record of employment, which reflected the period worked, and showed that it was being issued because the respondent had quit his job. He also had before him a request for payroll information completed by the employer, indicating that the respondent had not explained why he left his employment. Finally, the record shows that respondent himself indicated that he worked for Donvito International Autobody Ltd.

[4] It is unclear why the Umpire did not refer to the record. If he had, he would have been bound to conclude that there was evidence to support the Board of Referees' conclusion that the respondent left his employment with Donvito Intervational Autobody Ltd. without just cause and that he failed to disclose this employment in circumstances which justify the imposition of a penalty and the issuance of a notice of violation.

[5] In a written submission filed the day before the hearing, the respondent referred to a document entitled "Employment Standards" published by the Government of Manitoba, which provides that when a period of employment is less than thirty days, the employer or the employee may terminate the relationship without notice. In this case however, nothing turns on the fact that the respondent left his employment without giving notice. What is relevant for present purposes is that he left his employment without just cause.

[6] The application for judicial review will therefore be allowed, the decision of the Umpire will be set aside and the matter will be referred back to the Chief Umpire or his designate for reconsideration and re-determination on the basis that the respondent failed to show that the Board of Referees erred in confirming the decision of the Commission.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-56-09

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA and LAWRENCE
ROMANSKY

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: February 10, 2010

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Pelletier and Layden-Stevenson
J.J.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

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