

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20100412

Docket: A-274-09

Citation: 2010 FCA 95

**CORAM: NOËL J.A.
EVANS J.A.
DAWSON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JAYESHKUMAR PATEL

Respondent

Heard at Toronto, Ontario, on April 12, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on April 12, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Date: 20100412

Docket: A-274-09

Citation: 2010 FCA 95

**CORAM: NOËL J.A.
EVANS J.A.
DAWSON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JAYESHKUMAR PATEL

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 12, 2010.)

NOËL J.A.

[1] This is an application for judicial review of the decision of Umpire Stevenson rendered pursuant to the *Unemployment Insurance Act*, S.C. 1996, c. 23 (the Act), holding that the respondent Jayeshkumar Patel (the claimant) had good cause for leaving his employment, and allowing the claimant's appeal from the earlier decision of the Board of Referees (the Board) on that ground.

[2] In its earlier decision, the Board held that the claimant's reason for quitting his job, i.e. caring for his two children, had not been shown to be "just cause" within the meaning of section 29 of the Act:

Interpretation

29. For the purposes of sections 30 to 33,

...

(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:

...

v) obligation to care for a child or a member of the immediate family,

...

Interprétation

29. Pour l'application des articles 30 à 33 :

[...]

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:

[...]

(v) nécessité de prendre soin d'un enfant ou d'un proche parent,

[...]

[3] The Umpire overruled the decision of the Board on the basis that it was unreasonable. The reasoning adopted by the Umpire for reaching that conclusion is captured in the following three paragraphs of his reasons:

...

Whether one has just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances including several specific circumstances enumerated in section 29 of the *Employment Insurance Act* one of which is an "obligation to care for a child".

The Board of Referees said Mr. Patel had the reasonable alternatives of hiring a babysitter, using a day care facility or requesting a leave of absence. I do not think it can be presumed that suitable babysitters or day care facilities are readily available to everyone but the Board of Referees seems to have applied such a presumption. While Mr. Patel did not request a leave of absence from his job it seems highly unlikely that one would have been granted as it would have been for an indefinite period of time.

...

Parents are responsible for the care of their children, especially children as young as the Patel children were at the time. In my view the Board's decision was not reasonable and the Board failed to consider "all the circumstances".

[4] For the reasons which follow, we agree with the applicant that the Umpire improperly labeled the decision of the Board as unreasonable and hence, had no basis for interfering with it.

[5] The Board mentioned in the course of its reasons that:

[t]he claimant stated he quit because he cannot get the babysitter he wishes; no leave of absence was requested.

[6] The Board went on to ask whether, having regard to all the circumstances, the claimant had a reasonable alternative to leaving his employment. In the end, it concluded that he did since he had the option of hiring a babysitter, using a day care facility, or requesting a leave of absence.

[7] The Umpire's rejection of the first two options is based on the conclusion that such services could not be presumed to be available. However, the burden of establishing just cause rests on the claimant. His evidence in this regard was that he did not want to take the children to a babysitter and there is no suggestion that he attempted to find childcare. As such, it was not unreasonable for the Board to assume that such services were available to the claimant.

[8] With respect to the third option, i.e. seeking a leave of absence, the Umpire assumed a fact for which there was no foundation in that nothing on this record allows for the conclusion that a leave of absence, if sought, would have been refused. Again, the burden rested on the claimant to establish just cause and it was incumbent upon the claimant to establish that leave would have been refused if requested. Having failed to do that, it was reasonable for the Board to hold that the claimant had not demonstrated that he had no other reasonable alternative.

[9] The application for judicial review will be allowed, the decision of the Umpire will be set aside and the matter will be returned to the Chief Umpire or one of his delegates for re-determination on the basis that the claimant left his employment without just cause.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-274-09

**(APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE STEVENSON,
UMPIRE, DATED MAY 21, 2009, CUB 72421)**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v.
JAYESHKUMAR PATEL

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 12, 2010

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, EVANS & DAWSON JJ.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

Adam Rambert FOR THE APPLICANT

Jayeshkumar Patel FOR THE RESPONDENT
(SELF-REPRESENTED)

SOLICITORS OF RECORD:

Myles Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada

N/A FOR THE RESPONDENT
(SELF-REPRESENTED)