



**Date: 20110505**

**Docket: A-422-10**

**Citation: 2011 FCA 155**

**CORAM: NADON J.A.  
LAYDEN-STEVENSON J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**THOMAS PERDIA**

**Respondent**

Heard at Vancouver, British Columbia, on May 5, 2011.

Judgment delivered from the Bench at Vancouver, British Columbia, on May 5, 2011.

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

**NADON J.A.**

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on May 5, 2011)**

**NADON J.A.**

[1] The respondent filed a claim for employment benefits on February 9, 2009, following the loss of his employment with Norson Construction (“Norson”).

[2] In regard to this claim, the Canadian Employment Insurance Commission (the “Commission”) determined a benefit period for him effective January 18, 2009. No appeal was taken by the respondent from this decision.

[3] On March 13, 2009, the respondent, who had been working for Peak Construction Ltd. (“Peak”) for approximately 24 hours, left work in the afternoon, but did not return to work on March 14, nor did he do so on any other day.

[4] On March 25, 2009, the Commission advised the respondent, after contacting him and his employer with regard to the reasons for which he did not return to work after March 13, 2009, that he would not be entitled to benefits as of March 16, 2009, because he had voluntarily left his employment with Peak without just cause.

[5] On April 20, 2009, the respondent appealed the Commission’s decision to the Board of Referees (the “Board”).

[6] On May 25, 2009, the Board dismissed the respondent’s appeal. In so concluding, the Board held that the respondent did not have just cause for leaving his employment with Peak. More particularly, the Board preferred the employer’s evidence that although the respondent had been instructed by his employer to go home on the afternoon of March 13, 2009, for safety reasons, he had clearly been told to report for work the following day. This evidence was contrary to that of the respondent who testified that he had been accused of taking drugs by his employer and that, consequently, he was not prepared to work for his accusers.

[7] The respondent appealed the Board’s decision to the Umpire, who, on July 5, 2010, allowed his appeal in CUB 73340A. In concluding as he did, the Umpire was of the view that the Board had

erred in its credibility determination because it had considered a statement by the respondent, made in the context of a benefits claim arising from his employment with another employer, namely Norson, that he had lost his employment because of a “shortage of work”. As a result, the Umpire made the following order:

Therefore, the undersigned Umpire:

- Annuls the decision of the Board given on May 25, 2009, with this decision withdrawn from the docket; directs the Commission to give a decision on claimant's application for employment insurance benefits, dated February 9, 2009, the claimant's rights as to this decision being reserved;
- Directs the claimant to make another application, if he so wishes, concerning his employment with Peak Construction Ltd. and directs further the Commission to receive such application if made by claimant within 30 days from the date of the decision of the Commission on this application, the claimant's rights according to law being reserved.

[8] We are all agreed that the Umpire erred in making this order.

[9] First, it is clear that the Board did not take into consideration any statement made by the respondent that he had lost his employment with Peak or any other employer because of a “shortage of work”.

[10] Second, it is also clear that the Umpire could not, as he did, direct the Commission to render a decision on the respondent’s claim for benefits arising from his employment with Norson, since that claim was not before him. Hence, the Umpire exceeded his jurisdiction.

[11] Third, the Umpire did not determine the issue that was before him, namely, whether the respondent had left his employment with Peak without just cause.

[12] Lastly, the Umpire erred in directing the Commission to receive an application by the respondent in regard to his employment with Peak. In so doing, the Umpire was without jurisdiction.

[13] Turning to the Board's decision which the Umpire failed to address, we see no basis on which the Umpire could have interfered with that decision. The Board assessed the evidence before it and concluded that the employer's version of the events was more credible than that of the respondent. This led the Board to conclude that the respondent had no just cause for not returning to work on March 14, 2009. As a result, the Board found no grounds to interfere with the Commission's decision disqualifying the respondent from benefits as of March 16, 2009.

[14] For these reasons, the judicial review application will be allowed, the Umpire's decision will be set aside and the matter will be returned to the Chief Umpire or to an Umpire designated by him for redetermination on the basis that the respondent's appeal from the Board's decision should be dismissed.

“Marc Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-422-10

**STYLE OF CAUSE:** A.G.C. v. THOMAS PERDIA

**PLACE OF HEARING:** Vancouver, B.C.

**DATE OF HEARING:** May 5, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON, LAYDEN-STEVENSON,  
MAINVILLE JJ.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

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FOR THE APPLICANT

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