Federal Court of Appeal

Cour d'appel fédérale

Date: 20110927

Docket: A-61-11

Citation: 2011 FCA 268

CORAM: **SHARLOW J.A.**
LAYDEN-STEVENSON J.A.
STRATAS J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

SARAH TROCHIMCHUK

Respondent

Heard at Toronto, Ontario, on September 19, 2011.

Judgment delivered at Ottawa, Ontario, on September 27, 2011.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: SHARLOW J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

[1] The applicant Attorney General of Canada (the Crown) applies for judicial review of the decision of Umpire Landry (CUB 76124) dismissing its appeal from a decision of the Board of Referees (the Board). The Umpire held that subsection 30(5) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act) did not preclude previous hours accumulated from work at a second job from counting towards employment insurance benefits (benefits) in circumstances when a claimant left a first job without just cause. The respondent did not file written submissions and was not present at the hearing before this Court. For the reasons that follow, I would allow the application.

Background

[2] The respondent worked at International Clothiers Inc. (the first job) from January 16, 2009 until May 10, 2009. She left her employment at the first job in order to pursue her studies. It is settled law that leaving one's employment to pursue studies does not constitute just cause under the Act: *Canada* (*A.G.*) *v. Mancheron*, 2001 FCA 174, 109 A.C.W.S. (3d) 558. On June 28, 2009, the respondent obtained employment with Air Ivanhoe Ltd. (Ivanhoe). She was laid off from Ivanhoe on September 19, 2009. At the time the respondent left her employment at the first job, she was also working at Stinson Theatres Limited (the second job). Although she also voluntarily left her second job, the Employment Insurance Commission (the Commission) determined that she had just cause for doing so.

[3] The respondent applied for benefits on September 25, 2009. The Commission determined that she required 455 hours of insurable employment to qualify for benefits. It considered only those hours accumulated after May 10, 2009 (the termination date at the first job) based on its interpretation of subsection 30(5) of the Act. In other words, the Commission excluded the hours the respondent accumulated at the second job previous to May 10th. Because she had only 425 hours accumulated after May 10th, the Commission denied the respondent's application. The record shows that, if the pre-May 10th hours from the second job had been included, the respondent would have qualified for benefits.

The Board

[4] On Appeal to the Board, the respondent conceded that her hours at the first job could not be

counted as qualifying hours. However, she argued that her pre-May 10th second job hours should be included. The Board misunderstood the Commission's submissions at the hearing and erroneously believed that the Commission had stated the respondent left her first job with just cause. On that basis, the Board allowed her appeal.

The Umpire

[5] The Crown appealed the Board's determination. The Umpire found that the Board had misinterpreted the Commission's position in that the respondent had shown just cause for leaving her second job, but had not shown just cause for leaving her first job. However, the Umpire determined that the Act, specifically subsection 30(5), did not preclude the pre-May 10th hours accumulated at the second job from counting towards qualification for benefits. The Umpire acknowledged that, "[o]n its face, subsection 30(5) appears to state that whatever the circumstances when one voluntarily leaves an employment without just cause all insurable hours earned prior to that moment are lost in respect of future claims for benefits" (reasons, at p. 3).

[6] In the Umpire's view, such an interpretation put any person holding two or more jobs at risk. He concluded that the legislator did not intend to sanction "persons who find it necessary to hold two jobs, when such persons decide to abandon one of the two jobs while continuing their employment on their other job" (reasons, at p. 5). The Umpire's proposed "appropriate interpretation" is as follows:

> - when a person has one employment and leaves that employment without just cause, the person loses all insurable hours accumulated previously from that employment or a previous employment

- when a person holds two jobs and leaves one job while continuing to work on a second job, that person loses the insurable hours accumulated from the abandoned job and any other previous jobs but retains the insurable hours accumulated in the continuing employment (reasons, at p. 5)

The Standard of Review

[7] The interpretation of a statutory provision is a question of law. The standard of review applicable to a decision of an Umpire is correctness on questions of law and reasonableness on the application of the law to the facts: *MacNeil v. Canada* (*Employment Insurance Commission*), 2009 FCA 306, 396 N.R. 157; *Mac v. Canada* (*A.G.*), 2008 FCA 184, 380 N.R. 203; *Canada* (*A.G.*) *v. Sveinson*, 2001 FCA 315, [2002] 2 F.C. 205.

The Statutory Provision

[8] The relevant parts of section 30 read:

Employment Insurance Act S.C. 1996, c. 23	*Loi sur l'assurance-emploi* L.C. 1996, ch. 23
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 qualify to receive benefits; or	*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 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.
…	[…]
30(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:	30(5) Dans les cas où le prestataire qui a perdu ou quitté un emploi dans les circonstances visées au paragraphe (1) formule une demande initiale de prestations, les heures d'emploi assurable provenant de cet emploi ou de tout autre emploi qui précèdent la perte de cet emploi ou le départ volontaire et les heures d'emploi assurable dans tout emploi que le prestataire perd ou quitte par la suite, dans les mêmes circonstances, n'entrent pas en ligne de compte pour l'application de l'article 7 ou 7.1.
(*a*) hours of insurable employment from that or any other employment before the employment was lost or left; and	
(*b*) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).	

Analysis

[9] Statutory interpretation seeks a harmonious reading on the basis of a provision's text, context and purpose. The words viewed in context, if clear, will dominate. If not, they yield to an interpretation that best meets the overriding purpose of the statute: *Celgene Corp. v. Canada* (*Attorney General*), 2011 SCC 1, [2011] 1 S.C.R. 3.

[10] As stated previously, the Umpire concluded that the text of the provision, on its face, appears to state that "whatever the circumstances when one voluntarily leaves an employment

without just cause all hours earned prior to that moment are lost in respect of future claims for benefits" (reasons, at p. 3). This is the interpretation proposed by the Crown. Although he did not specifically refer to *Canada* (*Attorney General*) v. *Abrahams*, [1983] 1 S.C.R. 2 (*Abrahams*), it appears that the Umpire implicitly adopted the principles expressed in that authority. That is, the overall purpose of the Act is to make benefits available to the unemployed. The Act is to be liberally interpreted and any doubt arising from difficulties in the language are to be resolved in favour of the claimant: *Abrahams*, at p. 10. Nonetheless, Parliament's expressed intent, when it can be discerned, must prevail.

[11] Subsection 30(5) of the Act is not a model of draftsmanship. For example: it is not clear if both paragraphs (*a*) and (*b*) of subsection 30(5) are to be read in conjunction with subsection 30(1) as indicated at its outset; it is not clear whether the word "or" in paragraph (*a*) is to be read conjunctively or disjunctively; it is not clear if the words "before the employment was lost or left" in paragraph (*a*) modify the phrases "from that", or "from any other employment", or both. Thus, it can be said that the provision is ambiguous.

[12] However, the legislation is written in both official languages. Both the English and French versions of a statute are equally authoritative statements: *Schreiber v. Canada* (*Attorney General*), 2002 SCC 62, [2002] 3 S.C.R. 269, at para. 54; Michel Bastarache, *The Law of Bilingual Interpretation*, 1st ed. (Markham: LexisNexis, 2008) at p. 15. As stated in Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), both versions of bilingual legislation must express the same law and must receive the same interpretation. If there is a

discrepancy between the versions, the discrepancy must be eliminated. The best way to reconcile conflicting versions is to identify and adopt a meaning that may plausibly be attributed to both (Sullivan, at p. 100). When the versions differ in scope, the narrower meaning found in both expresses the shared meaning and should prevail: *R v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217, at para. 29.

[13] In this case, reference to the French text eliminates any ambiguity found in the English version. The French version states: [d]ans les cas où le prestataire qui a perdu ou quitté un emploi dans les circonstances visées au paragraphe (1) formule une demande initiale de prestations, les heures d'emploi assurable provenant de cet emploi ou de tout autre emploi qui précèdent la perte de cet emploi ou le départ volontaire emploi [from this employment or from all other employment that preceded the loss of this employment or the voluntary departure] et les heures d'emploi assurable dans tout emploi que le prestataire perd ou quitte par la suite, dans les mêmes circonstances, n'entrent pas en ligne de compte pour l'application de l'article 7 ou 7.1.

[14] The French version, read together with subsection 30(1), makes clear that in circumstances where, absent just cause, an individual voluntarily leaves employment, the hours of insurable employment accumulated in any employment before the date upon which the person left the employment are excluded from the computation in relation to qualification for benefits. This interpretation is consistent with the Crown's position and is also consistent with the Hansard debates when Bill C-12 was tabled: House of Commons Debates, Volume 134, Number 044 (May 10, 1996) at 2599-2602; House of Commons Debates, Volume 134, Number 046 (May 14, 1996) at

2733. Given the clarity of the French version, the shared meaning between the English and French versions, in my view, is consistent with Parliament's intent.

[15] Interpreting subsection 30(5) correctly, it means that when a claimant applies for benefits, the insurable hours of employment accumulated in any employment prior to the claimant voluntarily leaving employment are excluded from the calculation of insurable hours in relation to the application.

[16] For these reasons, I conclude that the Umpire erred in interpreting subsection 30(5) of the Act.

Disposition

[17] I would allow the application for judicial review, set aside the Umpire's decision and return the matter to the Chief Umpire, or his designate, for redetermination on the basis that the respondent had insufficient hours of insurable employment to qualify for employment insurance benefits. I would not award costs since the Crown did not request them.

"Carolyn Layden-Stevenson"
J.A.

"I agree
K. Sharlow J.A."

"I agree,
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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