

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120528

Docket: A-386-11

Citation: 2012 FCA 155

**CORAM: NOËL J.A.
DAWSON J.A.
BLANCHARD J.A. (ex officio)**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

HARVEY BARTHE

Respondent

Heard at Fredericton, New Brunswick, on May 24, 2012.

Judgment delivered at Ottawa, Ontario, on May 28, 2012.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**DAWSON J.A.
BLANCHARD J.A. (ex officio)**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120528

Docket: A-386-11

Citation: 2012 FCA 155

**CORAM: NOËL J.A.
DAWSON J.A.
BLANCHARD J.A. (ex officio)**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

HARVEY BARTHE

Respondent

REASONS FOR JUDGMENT

NOËL J.A.

[1] The applicant seeks judicial review of the decision of Umpire Goulard (the Umpire) rendered on August 19, 2011 upholding a prior decision of the Board of Referees (the Board) and confirming the respondent's entitlement to benefits on the basis that he had accumulated a sufficient number of hours of insurable employment to qualify for benefits under the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[2] The respondent attended at the office of the Employment Insurance Commission (the Commission) to apply for benefits on Friday, December 3, 2010, one day before the end of Pilot

Project No. 13. Pilot Project No. 13 had the effect of reducing the number of hours of insurable employment needed to qualify for benefits from 910 to 840. However, the respondent did not have his Record of Employment and was advised that he could not make an application for benefits without this document. He returned the following Monday with his Record of Employment and made his application.

[3] The Umpire rendered his decision on the assumption that the respondent would have qualified if his claim had been considered to have been made on December 3, 2010. As the Commission does not usually require that the Record of Employment be presented upon filing a claim, he held that the claim should be considered to have been filed on that date rather than on December 6, 2010, thereby allowing the respondent to qualify.

[4] The difficulty with the reasoning of the Umpire is that based on the requirements of the Act – in particular subsections 8(1) and 10(1) which are reproduced in the annex to these reasons – the respondent did not accumulate the required number of hours to qualify for benefits whether he is considered to have filed his claim on December 6, 2010 as determined by the Commission or on December 3, 2010 as found by the Umpire.

[5] The Umpire correctly assumed that if the respondent's claim had been established on December 3, 2010 he could have been considered under Pilot Project No. 13 which, pursuant to section 77.9 of the *Employment Insurance Regulations*, SOR/96-332, had the effect of reducing the number of qualifying hours from 910 to 840. However, pursuant to subsection 10(1) of the Act, the

benefit period for the respondent would have started earlier since the first Sunday in the week of the claim or the week in which there was an interruption of earnings was November 28, 2010.

[6] The result is that pursuant to subsection 8(1) of the Act, the qualifying period would end on Saturday, November 27, 2010 and any hours accumulated between November 28 and December 3, 2010 would not count towards his total insurable hours for that benefit period. The respondent accumulated 26 hours between November 28 and December 3, 2010 (applicant's record, tab 3, p. 46). Therefore, the respondent's total insurable hours for the 52 weeks prior to the benefit period beginning on November 28, 2010 would have been 820 hours; 20 hours fewer than required under Pilot Project No. 13.

[7] On the other hand if as determined by the Commission, the respondent established his claim for benefits on December 6, 2010, the Sunday of the week in which the initial claim was made (i.e. December 5, 2010) marks the beginning of the benefit period (see subsection 10(1) of the Act). Pursuant to subsection 8(1) of the Act, the qualifying period within which the respondent was required to accumulate the necessary number of hours was 52 weeks immediately before the benefit period which as noted would begin on December 5, 2010. The respondent's total insurable hours during this period was 846 (applicant's record, tab 3, pp. 43-46), less than the 910 hours required by paragraph 7(3)(b) of the Act.

[8] It follows that the respondent did not qualify regardless of the day on which he is considered to have filed his claim.

[9] I would allow the application for judicial review and return this matter to the Chief Umpire or his designate so that the matter be decided again on the basis that the claimant did not accumulate a sufficient number of hours to qualify for benefits.

“Marc Noël”

J.A.

“I agree

Eleanor R. Dawson J.A.”

“I agree

Edmond P. Blanchard J.A. (ex officio)”

ANNEX

- *Employment Insurance Act* – subsections 8(1) and 10(1):

- | | |
|--|--|
| <p>8. (1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of</p> <ul style="list-style-type: none">(a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1). | <p>8. (1) Sous réserve des paragraphes (2) à (7), la période de référence d'un assuré est la plus courte des périodes suivantes :</p> <ul style="list-style-type: none">a) la période de cinquante-deux semaines qui précède le début d'une période de prestations prévue au paragraphe 10(1);b) la période qui débute en même temps que la période de prestations précédente et se termine à la fin de la semaine précédant le début d'une période de prestations prévue au paragraphe 10(1). |
| <p>10. (1) A benefit period begins on the later of</p> <ul style="list-style-type: none">(a) the Sunday of the week in which the interruption of earnings occurs, and(b) the Sunday of the week in which the initial claim for benefits is made. | <p>10. (1) La période de prestations débute, selon le cas :</p> <ul style="list-style-type: none">a) le dimanche de la semaine au cours de laquelle survient l'arrêt de rémunération;b) le dimanche de la semaine au cours de laquelle est formulée la demande initiale de prestations, si cette semaine est postérieure à celle de l'arrêt de rémunération. |

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-386-11

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA and HARVEY
BARTHE

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: May 24, 2012

REASONS FOR JUDGMENT BY: Noël J.A.

CONCURRED IN BY: Dawson J.A.
Blanchard J.A. (ex officio)

DATED: May 28, 2012

APPEARANCES:

Julien Matte FOR THE APPLICANT

Harvey Barthe FOR THE RESPONDENT
(self-represented)

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada

N/O FOR THE RESPONDENT
(self-represented)