

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130911

Docket: A-33-13

Citation: 2013 FCA 208

**CORAM: NOËL J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

NOUNKÉ KABA

Respondent

Heard at Montréal, Quebec, on September 11, 2013.

Judgment delivered from the Bench at Montréal, Quebec, on September 11, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on September 11, 2013.)

TRUDEL J.A.

[1] This is an application for judicial review presented by the Attorney General of Canada with respect to the decision of an umpire (CUB 80255) that confirmed the decision of a board of referees finding that Mr. Kaba is entitled to benefits. Mr. Kaba lost his employment after he slapped a female co-worker who insulted members of his family. The board of referees found

that the respondent's actions did not constitute misconduct disqualifying him from receiving benefits. The umpire confirmed that decision.

[2] We all agree that the umpire erred in ruling as he did and that the decision of the Canada Employment Insurance Commission (the Commission) to disqualify the respondent from receiving benefits must be restored.

[3] The test for misconduct is whether the act complained of was wilful, or at least of such a careless or negligent nature that one could say that the employee wilfully disregarded the effects his or her actions would have on job performance (*Canada (Attorney General) v. Tucker*, [1986] 2 F.C. 329, 66 N.R. 1).

[4] In the present case, the board of referees found that Mr. Kaba's violent act was not deliberate. The board of referees based its favourable decision on all the following facts: Mr. Kaba regretted his actions and had no prior disciplinary record, the other party to the altercation had provoked him by harassing him, and the employer had reinstated him without him admitting to the alleged facts.

[5] However, the above factors and the fact that Mr. Kaba acted on the spur of the moment are not relevant to determining whether there was misconduct. Mr. Kaba should have known that his conduct could lead to his dismissal (*Canada (Attorney General of Canada) v. Hastings*, 2007 FCA 372). Physical or verbal violence in the workplace is unacceptable and must not be condoned by an entitlement to benefits.

[6] The purpose of the Act is to protect workers who lose their employment involuntarily, not those who find themselves jobless by their own fault.

[7] Therefore, the application for judicial review will be allowed, the decision of the umpire will be quashed, and the file will be referred back to the Chief Umpire or his designate for redetermination on the basis that the respondent is not entitled to benefits, having lost his employment because of his own misconduct.

“Johanne Trudel”

J.A.

Certified true translation
Francois Brunet, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

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STYLE OF CAUSE:

THE ATTORNEY GENERAL OF
CANADA v. NOUNKÉ KABA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: September 11, 2013

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TRUDEL J.A.
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DELIVERED FROM THE BENCH BY: TRUDEL

J.A.

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