

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150218

Docket: A-44-14

Citation: 2015 FCA 50

**CORAM: RYER J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

PRASHANTH PATHMANATHAN

Applicant

and

OFFICE OF THE UMPIRE

Respondent

Heard at Toronto, Ontario, on February 18, 2015.

Judgment delivered from the Bench at Toronto, Ontario, on February 18, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on February 18, 2015).

RYER J.A.

[1] The applicant, Mr. Prashanth Pathmanathan, applied for benefits under the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act") on the basis that he had been employed by an employer known as Liansons, but had lost that employment because of a shortage of work.

[2] In support of his application, Mr. Pathmanathan filed a record of employment (the “ROE”), which was prepared by Mr. Karunathirajah Wilson Singarayar (the “Owner”), the owner of Liansons and which stipulated that Mr. Pathmanathan had worked for Liansons from July 5, 2008 to December 12, 2008. The Employment Insurance Commission (the “Commission”) granted his application and Mr. Pathmanathan received 27 weeks of benefits, which commenced on December 14, 2008 and which totalled \$9,126.

[3] The Commission determined that the ROE that supported Mr. Pathmanathan’s application for benefits was fraudulently issued by the Owner to him and that, in fact, he was never employed by Liansons. This determination was based upon a confession by the Owner to the effect that he had sold over 800 ROEs to individuals who were never his employees. The Owner, through his legal counsel, provided a list of the 12 ROEs that he had issued to the individuals who had been employed by him and Mr. Pathmanathan’s ROE was not on the list. In addition, the Commission’s determination was based upon an interview with Mr. Pathmanathan in which it questioned the credibility of his assertion that he had, in fact, been employed by Liansons.

[4] As a consequence of its determinations that Mr. Pathmanathan’s ROE, which underpinned his application for benefits, was fraudulent and that he had never been employed by Liansons, the Commission cancelled Mr. Pathmanathan’s claim for benefits, which began on December 14, 2008. The Commission determined that this cancellation was warranted on the basis that because Mr. Pathmanathan was never employed by Liansons, he had not accumulated

the number of hours of insurable employment that are stipulated in subsection 7(2) of the Act as a precondition to qualifying to receive benefits under subsection 7(1) of the Act.

[5] Mr. Pathmanathan's disqualification for benefits led the Commission to issue Mr. Pathmanathan a Notice of Debt which stipulated that he had received an overpayment of benefits in the amount of \$9,126 and that he was required to repay such amount.

[6] The Commission also assessed a penalty of \$3,698 against Mr. Pathmanathan under subsection 38(1) of the Act, on the basis that he had made misrepresentations to the Commission in his application for benefits by asserting that he had been an employee of Liansons. In total, 17 such misrepresentations were asserted: in his application for benefits, in the ROE that he filed in support of his application, in the interview with the investigation arm of the Commission, and in 14 bi-weekly reports he filed during the 27 - week period that he received benefits.

[7] Finally, the Commission issued a notice of a very serious violation of the Act to Mr. Pathmanathan under subsection 7.1(4) of the Act as a result of the imposition of the penalty under subsection 38(1) of the Act.

[8] Mr. Pathmanathan appealed to the Board of Referees (the "Board"), which upheld the determinations of the Commission and dismissed his appeal. In doing so, the Board found that Mr. Pathmanathan made false representations when he maintained that he was employed by Liansons and used the ROE, which contained false or misleading information, to support his claim for benefits.

[9] Unhappy with the decision of the Board, Mr. Pathmanathan appealed that decision to the Umpire.

[10] In his notice of appeal, Mr. Pathmanathan alleged that the Board made an error of law but in elaborating upon his grounds of appeal, Mr. Pathmanathan simply reiterated that he had, in fact, worked as an employee of Liansons.

[11] The Umpire determined that the major issue was whether Mr. Pathmanathan was or was not one of the 12 individuals who were actually employed by Liansons. He reviewed the documentary evidence, as well as Mr. Pathmanathan's oral testimony on this issue and concluded that the Board had before it sufficient evidence to enable it to reach its conclusion that Mr. Pathmanathan had not, in fact, been employed by Liansons.

[12] The Umpire went on to conclude that the Board's decision was compatible with the applicable law and that the Board had observed the principles of natural justice in granting Mr. Pathmanathan a fair hearing. As a consequence, he dismissed the appeal.

[13] Mr. Pathmanathan applied to this Court for judicial review of the Umpire's decision. In his application, Mr. Pathmanathan once again asserted that he had, in fact, worked as an employee of Liansons. He also stated that he was not aware that the ROE, upon which his application for benefits was based, was false.

[14] To succeed in this application, Mr. Pathmanathan must convince the Court that the Umpire chose the wrong standard of review when he reviewed the decision of the Board or, if the Umpire chose the correct standard of review, he applied it incorrectly in his review of the decision.

[15] The applicable standard of review is largely determined by the nature of the issue that is being reviewed. Umpires are required to review questions of law on the standard of correctness, and questions of fact and mixed fact and law involving no readily extricable question of law are reviewed on the standard of reasonableness. (See *De Jesus v. Canada (Attorney General)*, 2013 FCA 264 at paragraph 30). *De Jesus* further stipulates that this Court will also review questions of law on the standard of correctness and questions of fact or mixed fact and law involving no readily extricable question of law on the standard of reasonableness.

[16] Before the Board, the essential question was whether or not Mr. Pathmanathan worked as an employee of Liansons. This is largely, if not completely, a question of fact and therefore should have been reviewed by the Umpire on the more deferential standard of reasonableness.

[17] While the Umpire did not specifically enunciate the standard upon which he reviewed the Board's decision on this factual question, it is evident that he concluded that the Board had sufficient evidence before it to reach the factual conclusion that Mr. Pathmanathan had not worked for Liansons, as he had asserted in his application for benefits. In essence, the Umpire reviewed this factual question on the standard of reasonableness.

[18] Before this Court, Mr. Pathmanathan is essentially asserting that the Umpire misapplied the reasonableness standard of review when he upheld the Board's factual findings on the critical issue of whether or not Mr. Pathmanathan had worked for Liansons.

[19] In our view, this assertion is untenable. The evidence before both the Board and the Umpire is clearly sufficient to support the factual finding that Mr. Pathmanathan was not employed by and did not work for Liansons at the times stipulated in the ROE that he submitted in support of his claims for benefits. In terms of the grounds of appeal stipulated in paragraph 115(2)(a) of the Act and subsection 18.1(4)(d) of the *Federal Courts Act*, this critical factual finding cannot be said to have been an erroneous finding of fact made by the Board in a perverse or capricious manner or without regard for the material before it. Accordingly, we are of the view that this critical finding of fact was reasonable.

[20] Since this factual finding underpins each of the three determinations of the Commission, namely:

- (a) the cancellation of Mr. Pathmanathan's claim for benefits and the resulting overpayment of \$9,126;
- (b) the imposition of the \$3,698 penalty on Mr. Pathmanathan; and
- (c) the issuance to Mr. Pathmanathan of a very serious violation.

we are of the view that these determinations should stand.

[21] For these reasons, the application will be dismissed, with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-44-14

JUDICIAL REVIEW IN RESPECT OF THE DECISION OF MR. GUY GOULARD OF THE OFFICE OF THE UMPIRE IN TRIBUNAL NUMBER 2012-0820 AND CUB 80864, DATED JUNE 28, 2013.

STYLE OF CAUSE:

PRASHANTH PATHMANATHAN
v. OFFICE OF THE UMPIRE

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

FEBRUARY 18, 2015

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.
WEBB J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY:

RYER J.A.

APPEARANCES:

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FOR THE APPLICANT
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