

CORAM: STRAYER, J.A.
DÉCARY, J.A.
McDONALD, J.A.

**IN THE MATTER OF THE UNEMPLOYMENT
INSURANCE ACT, RSC 1985, C. U-1, AS AMENDED**

**AND IN THE MATTER OF THE DECISION OF THE
HONOURABLE R.J. MARIN, UMPIRE, DATED
FEBRUARY 6, 1995 AND RECEIVED BY THE
APPLICANT ON MAY 15, 1995 SETTING ASIDE THE
DECISION OF THE BOARD OF REFEREES DATED
AUGUST 5, 1992**

B E T W E E N :

SUSAN HEMPEL

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA AND
CANADA EMPLOYMENT AND IMMIGRATION COMMISSION**

Respondents

Judgment rendered at Calgary, Wednesday, May 15, 1996.

HEARD AT CALGARY, ALBERTA ON WEDNESDAY, MAY 15, 1996.

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

McDONALD, J.A.

CORAM: STRAYER, J.A.
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REASONS FOR JUDGMENT

(Delivered from the Bench at Calgary (Alberta)
on Wednesday, May 15, 1996

McDonald J.A.

The applicant on this Judicial Review Susan Hempel has been a teacher in Lacombe County, Alberta since September 1987. On November 9, 1991 she went on maternity leave. She gave birth to her son Jacob on December 18, 1991. She applied for Unemployment Insurance Benefits on December 18, 1991. She applied

for Unemployment Insurance Benefits on December 21 1991 and began receiving them on December 29, 1991. On January 30, 1992 when he was just 6 weeks old Jacob suffered cardiac arrest and ultimately he passed away on January 31, 1992.

Ms. Hempel suffered severe depression on the death of her son. In the opinion of her doctor she was suffering from a "severe mental disability".

On April 18, 1992 her maternity benefits ceased. She applied for sickness benefits which she began receiving on April 19, 1992. On June 30, 1992 Ms. Hempel was informed that pursuant to Regulation 46.1 of the *Unemployment Insurance Regulations* she would not be entitled to receive benefits during the "non teaching period" being the summer months.

There were two issues before the Umpire one being the statutory condition of 46.1. The other being the allegation of discrimination under sec. 15 of the Charter. The Umpire found against the applicant on both grounds and the sole issue before us related to Charter Argument.

Ms. Hempel appealed her disentitlement to the Board of Referees who allowed her appeal. The Commission's appeal from that decision was successful.

He found that the characterization of the disqualified group was inappropriate. Regulation 46.1 does not exclude disabled teachers from collecting benefits during the non-teaching period. Rather it excludes all teachers who are not eligible for maternity, parental, or adoption benefits. The distinction is between teachers who are on pregnancy, parental, or adoption leave and all other teachers. This does not therefore constitute a discriminatory distinction based on

a personal characteristic. In addition the Umpire found that disqualified teachers do not

constitute an analogous ground to those listed in sec. 15.

The Umpire concluded that Regulation 46.1 does not violate the Charter and allowed the Commission's appeal.

While we have great sympathy for the trauma suffered by Ms. Hempel we are not persuaded that the Umpire committed any reviewable error.

We are in substantial agreement with the reasons of the Umpire to the effect that Regulation 46.1 does not violate Ms. Hempel's right to equality guaranteed by sec. 15 of the Charter. We believe that this Court's decision in *Attorney General of Canada v. Taylor* is directly applicable. The fact that Ms. Hempel was mentally disabled does not single her out from receipt of benefits during the non-teaching period.

Persons receiving sickness benefits because of any physical condition other than pregnancy do not receive benefits over the summer period either. The applicant is not being denied a benefit or suffering any discriminatory burden simply because she was mentally ill for a period of time.

In regard to the non-charter evidence admitted, the Umpire allowed it in but clearly states that he gave it no weight. As such this does not constitute grounds for overturning the decision.

Accordingly the application for Judicial Review is dismissed

"F. J. McDonald"
J.A..

A-368-95

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REASONS FOR JUDGMENT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-368-95

**STYLE OF CAUSE: SUSAN HEMPEL v. THE
ATTORNEY GENERAL OF
CANADA AND CANADA
EMPLOYMENT AND**

IMMIGRATION COMMISSION

PLACE OF HEARING: **CALGARY, Alberta**

DATE OF HEARING: **May 15, 1996**

**REASONS FOR JUDGMENT
OF THE COURT BY:** **McDONALD, J.A**

DATED: **May 15, 1996**

APPEARANCES:

Mr. F. Molnar **for the Applicant**

Mr. M. Curley **for the Respondents**

SOLICITORS OF RECORD:

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