

Date: 20090506

Docket: A-444-08

Citation: 2009 FCA 147

**CORAM: LÉTOURNEAU J.A.
BLAIS J.A.
TRUDEL J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

NATHALIE LAPOINTE

Respondent

Heard at Québec, Quebec, on May 5, 2009.

Judgment delivered at Québec, Quebec, on May 6, 2009.

REASONS FOR JUDGMENT BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

**BLAIS J.A.
TRUDEL J.A.**

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

[1] In a stereotypical decision (CUB 70917), the Umpire upheld the decision of the Board of Referees according to which the respondent had just cause to “[leave] her job to significantly improve her working conditions”. Another example of this stereotype can be found in *Richard* (CUB 70980), reversed by this Court on April 21, 2009: *Attorney General of Canada v. Richard*, 2009 FCA 122.

[2] For the reasons given in *Richard*, above, the Umpire's decision must be set aside. Consequently, we will not have to determine whether or not the respondent was entitled to unemployment benefits following an alleged lack of availability.

[3] I would, however, add that the Board of Referees, when ruling on the respondent's availability, erred in law by considering facts and circumstances that existed later than [TRANSLATION] "those which existed at the time [the respondent] left her job": *Attorney General of Canada v. Furey*, A-819-95, July 2, 1996 (F.C.A.), *Attorney General of Canada v. Primard*, 2003 FCA 349.

[4] Having said that, we agree with counsel for the respondent that, given his conclusion as to whether there was just cause for leaving, the Umpire should have ruled on the second ground of appeal of the Employment Insurance Commission because this ground alone, if proven, could justify the refusal to allow benefits, regardless of the mitigating circumstances and the brevity of the period of unemployment: see *Attorney General of Canada v. Cornelissen-O'Neill* (1994), 174 N.R. 78 (F.C.A.).

[5] We can merely empathize with the respondent for having made the difficult decision of leaving her employment in order to significantly improve her working conditions in a region where permanent jobs are few and far between. The subsequent events demonstrated that her decision was courageous and, moreover, the correct one. But we are bound to apply Parliament's intent expressed in section 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (Act).

[6] For these reasons, I would allow the application for judicial review without costs, the applicant having waived them. I would set aside the decision of the Umpire and refer the matter back to the Chief Umpire or his designate for redetermination on the basis that the respondent did not have just cause to leave her employment with Le Veau Charlevoix within the meaning of sections 29 and 30 of the Act.

“Gilles Létourneau”

J.A.

“I agree.

Pierre Blais J.A.”

“I agree.

Johanne Trudel J.A.”

Certified true translation
Johanna Kratz

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-444-08

**(JUDICIAL REVIEW OF A DECISION OF UMPIRE GUY COULARD DATED
AUGUST 27, 2008, FILE NO. CUB 70917)**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. NATHALIE
LAPOINTE

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: May 5, 2009

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: BLAIS J.A.
TRUDEL J.A.

DATED: May 6, 2009

APPEARANCES:

Pauline Leroux

FOR THE APPLICANT

Nathalie Lapointe

FOR THE RESPONDENT
(for herself)

SOLICITORS OF RECORD:

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FOR THE APPLICANT