

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090609**

**Docket: A-294-08**

**Citation: 2009 FCA 198**

**CORAM: NADON J.A.  
BLAIS J.A.  
PELLETIER J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**RICHARD CYR**

**Respondent**

Heard at Fredericton, New Brunswick, on June 9, 2009.

Judgment delivered from the Bench at Fredericton, New Brunswick, on June 9, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Fredericton, New Brunswick, on June 9, 2009)**

**NADON J.A.**

[1] This is an application for judicial review of a decision of Umpire Goulard dated May 2, 2008.

[2] Two issues were before the Umpire. The first one was whether the respondent had left his employment without just cause. The second issue was whether the respondent had established availability for work during the period in which he left his employment.

[3] The Umpire did not address the first issue because “The Commission therefore indicated that it was no longer contesting the issue of the claimant’s justification for leaving his employment.” (page 1 of the Umpire’s decision).

[4] With respect to the second issue, the Umpire set aside the Board of Referees’ decision on the ground that it had not addressed the issue of the respondent’s availability for work. In so holding, the Umpire noted that the respondent did not object to the matter being returned to the Board of Referees on that basis.

[5] The application before us concerns only the issue of whether the respondent had just cause for leaving his employment. In support of its application, the applicant filed the affidavit of Sandra Doucette, the counsel who represented the Commission before the Umpire. In her affidavit, Ms. Doucet states unequivocally that she never advised the Umpire that the Commission was abandoning its position as to whether the respondent had just cause for leaving his employment.

[6] On the basis of Ms. Doucet’s affidavit, it clear to us that this application must be allowed as the Umpire erred in holding, as he did, that the Commission had abandoned its position that the respondent did not have just cause for leaving his employment.

[7] As a result, the judicial review application will be allowed, the decision of the Umpire will be set aside, and the matter will be returned to the Chief Umpire or an Umpire designated by him

for redetermination on the basis that the matter is to be returned to the Board of Referees for determination of whether the respondent left his employment without just cause and whether he was available for work during the relevant period of time.

“M. Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-294-08

**STYLE OF CAUSE:** THE ATTORNEY GENERAL OF  
CANADA v. RICHARD CYR

**PLACE OF HEARING:** Fredericton, New Brunswick

**DATE OF HEARING:** June 9, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (NADON, BLAIS,  
PELLETIER J.J.A.)

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCE:**

Tania Nolet FOR THE APPLICANT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE APPLICANT  
Attorney General of Canada