

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20090925**

**Docket: A-54-09**

**Citation: 2009 FCA 277**

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

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**MOHANATHAS VAIRAMUTHU**

**Respondent**

Heard at Montreal, Québec, on September 24, 2009.

Judgment delivered at Ottawa, Ontario, on September 25, 2009.

**REASONS FOR JUDGMENT BY:**

**PELLETIER J.A.**

**CONCURRED IN BY:**

**NOËL J.A.  
NADON J.A.**

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**and**

**MOHANATHAS VAIRAMUTHU**

**Respondent**

**REASONS FOR JUDGMENT**

**PELLETIER J.A.**

[1] The respondent voluntarily left his employment to accompany his wife to India to seek treatment for infertility. Two previous attempts at treatment in the Montreal area had not been successful. The respondent and his wife heard of a clinic in India and decided to seek treatment there.

[2] The decision to seek treatment abroad is certainly one which the respondent and his wife were entitled to make. Given the importance of children in the respondent's culture, it may well have been good cause for the respondent to have voluntarily left his employment but it is not just cause. Given that the condition being treated is not a threat to life or to health, and given the absence of evidence that no adequate alternate treatment was available in the Montreal area, the decision to seek treatment abroad was not just cause within the meaning of section 30 of the *Employment Insurance Act*, S.C. 1996 c. 23. In particular, it did not meet the standard set in paragraph 29(c)(v) of the Act.

[3] The Umpire erred in law in disturbing the Board of Referees' decision. As a result, I would allow the application for judicial review, I would set aside the decision of the Umpire and I would remit the matter to the Umpire in Chief or his designate for redetermination on the basis that the respondent was not justified in voluntarily leaving his employment to seek treatment abroad for a condition for which treatment was available locally.

"J.D. Denis Pelletier"

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J.A.

"I agree.  
Marc Noël J.A."

"I agree.  
M. Nadon J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-54-09

**STYLE OF CAUSE:** THE ATTORNEY GENERAL  
OF CANADA and  
MOHANATHAS  
VAIRAMUTHU

**PLACE OF HEARING:** MONTREAL, QUÉBEC

**DATE OF HEARING:** SEPTEMBER 24, 2009

**REASONS FOR JUDGMENT BY:** PELLETIER J.A.

**CONCURRED IN BY:** NOËL J.A.  
NADON J.A.

**DATED:** SEPTEMBER 25, 2009

**APPEARANCES:**

NICHOLAS R. BANKS FOR THE APPLICANT  
PAULINE LEROUX

MOHANATHAS VAIRAMUTHU FOR THE RESPONDENT, ON HIS  
OWN BEHALF

**SOLICITORS OF RECORD:**

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