

Date: 20091110

Docket: A-144-09

Citation: 2009 FCA 323

**CORAM: LAYDEN-STEVENSON J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

GLEN KNAPP

Respondent

Heard at Ottawa, Ontario, on November 10, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on November 10, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on November 10, 2009)

[1] This is an application for judicial review of a decision of Umpire R.J. Marin (CUB 67880A), dated January 9, 2009, in which he quashed a decision of the Board of Referees (the "Board") dated September 26, 2006.

[2] The Board upheld the decision of the Employment Insurance Commission (the "Commission") to impose a penalty of \$2,478, pursuant to section 38 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act"), upon Mr. Glen Knapp for providing information or making a

representation to the Commission that he knew to be false or misleading, and to issue a notice of a serious violation, pursuant to section 7.1 of the Act, to Mr. Knapp, as a consequence of the imposition of the penalty.

[3] The Umpire determined that the substantive issue in the appeal was one that was not raised by Mr. Knapp or the Commission.

[4] The Umpire appears to have concluded that because the record does not "reflect a ruling" by the Commission in relation to an allocation of earnings, presumably in accordance with sections 35 and 36 of the *Employment Insurance Regulations*, SOR/96-332, (the "Regulations"), to weeks in Mr. Knapp's benefit period, the Commission was precluded from assessing a penalty against him under section 38 of the Act. Without so stating, the Umpire seemingly concluded that the Board erred in not vitiating the penalty for that reason. He further concluded that he had no jurisdiction to consider the matter of an allocation of Mr. Knapp's earnings. He then quashed the decision of the Board, stating that the file should be returned to the Commission for appropriate action.

[5] We are all of the view that the decision of the Umpire must be set aside. It is undisputed that Mr. Knapp advised the Commission that he was not working, when he knew that was not the case, and that he did not advise the Commission of the earnings that he derived from his work.

[6] Moreover, the record establishes that an allocation of Mr. Knapp's earnings was made (see exhibit 17 at page 111 of the applicant's record) by the Commission, and presumably, this allocation

formed the basis of the Commission's determination of the amount of the overpayment of benefits. It is also evident that Mr. Knapp takes no issue with the amount of the overpayment. It is, therefore, not surprising that the matter of the allocation of Mr. Knapp's earnings was not in issue before the Board.

[7] More importantly, we are of the view that nothing in section 38 of the Act requires the Commission to demonstrate that it made an allocation of Mr. Knapp's earnings, pursuant to sections 35 and 36 of the Regulations, as a precondition to the imposition of a penalty upon him, pursuant to section 38 of the Act, for making a representation that he knew to be false or misleading. In our view, the Umpire erred in law in so holding.

[8] Since this was the only basis upon which the Umpire sought to interfere with the decision of the Board, the application for judicial review will be allowed, the decision of the Umpire will be set aside and the matter will be referred back to the Chief Umpire for redetermination on the basis that the appeal from the decision of the Board should be dismissed.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-144-09

(Application for Judicial review of a decision of Umpire R.J. Marin (CUB 67880A), dated January 9, 2009, in which he quashed a decision of the Board of Referees, dated September 26, 2006.)

STYLE OF CAUSE: Attorney General of Canada v.
Glen Knapp

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 10, 2009

REASONS FOR JUDGMENT OF THE COURT (Layden-Stevenson, Ryer and Trudel
JJ.A)

DELIVERED FROM THE BENCH BY: Ryer J.A.

APPEARANCES:

Peter McGrath FOR THE APPLICANT

Glen Knapp SELF-REPRESENTED
RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT