

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140407

Docket: A-56-13

Citation: 2014 FCA 93

**CORAM: NOËL J.A.
DAWSON J.A.
WEBB J.A.**

BETWEEN:

RICHARD ANDRADE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Winnipeg, Manitoba, on April 3, 2014.

Judgment delivered at Ottawa, Ontario, on April 7, 2014.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

**DAWSON J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an application for judicial review directed against a decision of Umpire J.M. Bordeleau (the Umpire) (CUB 80318) upholding a prior decision of the Board of Referees (the Board), which dismissed Mr. Richard Andrade's (the applicant) appeal from the denial of his claim for employment insurance benefits on the basis that he had voluntarily left his employment without "just cause", within the meaning of sections 29 and 30 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[2] The applicant was a journeyman electrician who resided in Lockport, Manitoba, near the city of Winnipeg (applicant's record, p. 13). From January 23, 2012 to March 25, 2012, he took up employment in Wuskwatim, northern Manitoba (applicant's record, p. 41).

[3] On March 25, 2012, the applicant left his employment. He subsequently applied to renew his claim for unemployment insurance benefits (applicant's record, pp. 29 to 40). In support of his claim, the applicant stated that he had left his employment due to family problems that resulted from him being out of town for work and being only able to return once per month (Umpire's reasons, p. 1). He further stated that his girlfriend was not happy and considered leaving him so he returned home (*ibidem*). In the appeal letter which he filed before the Board, he took the further position that he had made an arrangement to have his horses looked after by his mother and girlfriend. However, his mother had stopped looking after the horses and it was too much for his girlfriend, so he left his job to return home (Umpire's reasons, p. 2; applicant's record, p. 47).

[4] The record shows that the applicant did not request a transfer or leave of absence from his employer prior to terminating his employment (applicant's record, p. 42). On April 25, 2012, the applicant found employment in Regina, Saskatchewan (*ibidem*).

[5] The Employment Insurance Commission (the Commission) denied the claim for benefits and imposed an indefinite disqualification pursuant to sections 29 and 30 of the Act on the ground that the applicant had voluntarily terminated his employment without 'just cause' (applicant's record, p. 43). On appeal, the Commission's denial was upheld by the Board, a decision which was in turn confirmed by the Umpire (applicant's record, pp. 9 to 12 and 30).

[6] According to the Umpire, “just cause” must be distinguished from “good cause” (reasons, p. 3). In this case, the applicant made a personal decision to leave his employment and failed to explore other alternatives to leaving his employment (*ibidem*). Relying on the decision of this Court in *Tanguay v. Canada (Unemployment Insurance Commission)* (1985), 68 N.R. 154, 10 CCEL 239 (FCA) and *Canada (Attorney General) v. Landry* (1993), 2 CCEL (2d) 92, [1993] F.C.J. No. 1366 (FCA), the Umpire proceeded to dismiss the applicant’s appeal. In so holding, the Umpire came to the same conclusion as the Board essentially for the same reasons (Board’s reasons, applicant’s record, p. 59).

[7] In the written submissions filed in support of his application, the applicant took the position that the Umpire failed to consider his letter of November 8, 2012 and misunderstood the reasons which lead him to leave his previous employment (applicant’s record, p. 6, heading 2). Specifically, he contends that the reason why he left his employment is that he had reasonable assurance of another employment in the immediate future, which constitutes a just cause under subparagraph 29(c)(vi) of the Act (applicant’s record, p. 6; applicant’s memorandum, p. 16).

[8] Specifically, the applicant contends that he was required to leave his employment in order to be placed on the hiring list compiled by his Union and be recalled for a job (applicant’s record, pp. 15 and 16). Indeed, the Union requires that enlisted employees be “available and on non-working status” to be considered for employment (applicant’s record, p. 15). By leaving his job, the applicant merely made himself available for another employment (applicant’s record, p. 16).

[9] In my opinion, the applicant's alternative argument must fail. The record shows that the applicant did not have an offer of employment upon leaving his employment and in fact remained unemployed from March 26, 2012 to April 24, 2012, *i.e.* the period for which he applied for benefits. The test under subparagraph 29(c)(vi) is stringent: "[r]easonable assurance or just cause exists when a [c]laimant has been in contact with an employer for an offer or employment, or an offer of employment has been received by the [c]laimant" (CUB 29435A, p. 2). The mere expectation of an employment – being available for a recall – falls short of this requirement.

[10] During the hearing, the applicant advanced yet a further argument. He argued for the first time that he left his job because the working schedule (28 straight 10 hour days) was too grueling for him to take. As explained during the hearing, the issue in a judicial review application is whether the decision-maker made a reviewable error, and the Umpire cannot possibly have made such an error by reference to facts and arguments which he did not have before him and could not address.

[11] Otherwise, I can detect no error in the Umpire's conclusion that the applicant's decision to return home was a personal one, and that a personal decision does not constitute just cause.

[12] I would dismiss the application for judicial review with costs.

"Marc Noël"

J.A.

"I agree
Eleanor R. Dawson J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-56-13

STYLE OF CAUSE:

RICHARD ANDRADE v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: APRIL 3, 2014

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

DAWSON J.A.
WEBB J.A.

DATED: APRIL 7, 2014

APPEARANCES:

Richard Andrade

FOR THE APPLICANT
(SELF-REPRESENTED)

Gregory Perlinski

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT