Federal Court of Appeal | Cour d'appel fédérale

Date: 20170323

Docket: A-460-15
A-459-15

Citation: 2017 FCA 57

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

GINETTE JONCAS AND ALBAN LANGLOIS

Respondents

Heard at Quebec City, Quebec, on March 22, 2017.

Judgment delivered at Quebec City, Quebec, on March 23, 2017.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: GAUTHIER J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] The Attorney General of Canada (the applicant) is seeking judicial review of two decisions of the Social Security Tribunal-Appeal Division (SST-AD) dated September 23, 2015. The SST-AD dismissed the appeals brought by the Canada Employment Insurance Commission

(the Commission) against the Board of Referees decision dated March 26, 2013, allowing the appeal of Ginette Joncas and Alban Langlois (the respondents) against the Commission's decision denying them employment insurance benefits on the ground that they left their employment voluntarily.

[2] The SST-AD concluded that, in light of the particular circumstances of their case, the respondents did not voluntarily leave their employment.

[3] Since 1999, the Grande-Rivière recycling centre in the Gaspé region has operated a plant where recyclable material from the regional county municipalities of Rocher-Percé and La Côte-de-Gaspé has been brought to be sorted.

[4] It has been a practice since the beginning of the plant's operations to artificially create seasonal jobs. This practice was established in a letter of agreement signed on January 12, 2001, between the union and the employer. In that context, it was agreed that two teams of employees would share the work over two six-month periods. The fourth clause of the agreement provided that when teams changed, employees would not be able to exercise their seniority-based bumping right provided for in article 9.09 of the collective agreement. During the "rest period", the employees, including the respondents, Ginette Joncas and Alban Langlois, claimed and received employment insurance benefits. This practice, which is contrary to the Act, went on for 13 years without interruption. It was not until November 2012 that Service Canada informed the employer that, when an employee does not exercise his or her seniority right when there would

have been work for him or her, the employee's situation is comparable to a voluntary departure under section 30 of the Act.

[5] Despite that notification, the respondents were laid off as usual to allow the second team to return to work for a period of six months starting on January 11, 2013. The record of employment issued by the respondents' employer indicated shortage of work as the reason for departure. The respondents were denied benefits by the Commission because they voluntarily left their employment. Afterwards, and once they were informed that the letter of agreement no longer held, on February 11, 2013, the respondents exercised their bumping right and returned to work and subsequently appealed the Commission's decision.

[6] The applicant puts forward two arguments against the SST-AD decision determining that the respondents did not voluntarily leave their employment. First, she alleges that the SST-AD erred in concluding that there was no evidence that the respondents had been previously informed by the employer or the union of the cancellation of the letter of understanding regarding shared work and, thus, of their obligation to exercise their bumping right given their seniority. Second, she noted the consistent case law of this Court and decisions by umpires to the effect that a claimant who does not exercise his or her seniority-based bumping right is considered to have voluntarily left his or her employment without just cause and is therefore not entitled to receive employment insurance benefits (see *Hamel v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 53, affirming *Hamel et al*, CUB 20198, Umpire Jérôme, July 11, 1991, CUB 18526, Umpire Pratte, decision dated May 23, 1991, *Duguay*, CUB 26546 Umpire Rouleau).

[7] It is established that the reasonableness standard of review applies to SST-AD decisions that deal with whether a claimant is entitled to receive employment insurance benefits under the Act because they involve questions of fact or mixed fact and law (see *Chemouny v. Canada (Attorney General)*, 2015 FCA 48 at paragraphs 5–6, [2015] F.C.J. No. 228, *Thibodeau v. Canada (Attorney General)*, 2015 FCA 167 at paragraph 41, [2015] F.C.J. No. 928, and *Canada (Attorney General) v. Jean*, 2015 FCA 242, [2015] F.C.J. No. 1315).

[8] In its decision, the SST-AD does not address the just cause in relation to the employees' departure, but rather the voluntary nature of the departure given the particular circumstances of this case.

[9] I am of the view that, in the particular circumstances of this case, the findings of fact made by the SST-AD are reasonable since they are supported by the testimony heard and the documentary evidence on the record. In light of the absence of evidence before the Board of Referees showing that the respondents had been previously informed by the employer, the union or the appellant that the letter of agreement signed on January 12, 2001, by the employer and the union had been cancelled, the SST-AD could reasonably conclude that the respondents did not choose to refuse to work so that other employees could work in their place. Therefore, the SST-AD was not required to determine whether the respondents were justified in leaving their employment.

[10] Furthermore, I must note that the factual framework and the SST-AD decision in this particular case do not in any way call into question the well-established principle in this Court's

case law that any agreement regarding shared work that results in an employee declining to exercise his or her bumping right is contrary to the Act. In sum, an employee who, given his or her seniority, is entitled to work but chooses to refuse to do so in order for another employee to work, has left his or her employment voluntarily and has not established just cause under the Act.

[11] For these reasons, I would dismiss this application for judicial review.

"A.F. Scott"
J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Yves de Montigny J.A."

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	**A-460-15 AND A-459-15**
STYLE OF CAUSE:	**ATTORNEY GENERAL OF CANADA V. GINETTE JONCAS AND ALBAN LANGLOIS**
PLACE OF HEARING:	QUEBEC CITY, QUEBEC
DATE OF HEARING:	MARCH 22, 2017
REASONS FOR JUDGMENT BY:	SCOTT J.A.
CONCURRED IN BY:	GAUTHIER J.A. DE MONTIGNY J.A.
DATED:	MARCH 23, 2017

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