

**Date: 20030129**

**Docket: A-43-01**

**Neutral Citation: 2003 FCA 44**

**CORAM: DESJARDINS J.A.  
LÉTOURNEAU J.A.  
NADON J.A.**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**ARIANE BOURGAULT**

**Respondent**

Hearing held at Québec, Quebec, January 23, 2003.

Judgment delivered at Ottawa, Ontario, January 29, 2003.

**REASONS FOR JUDGMENT:**

**LÉTOURNEAU J.A.**

**CONCURRING:**

**DESJARDINS J.A.  
NADON J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] The question before the Board of Referees was essentially one of fact: Was the claimant available for work given that she had returned to school? It concluded in the negative, since what was involved was a full-time course lasting eight months, at an average of 30 hours per week of diligent study and courses from Monday to Friday spread over day and night, followed by an internship of two to three months.

[2] The Board was not persuaded by the claimant that it was possible in the circumstances to combine a work schedule with a study schedule. It also concluded, on the basis of the evidence, that the claimant had not demonstrated a genuine desire, past and future, to work while continuing her studies.

[3] The Umpire, hearing the claimant's appeal, overturned the findings of fact by the Board of Referees, not without first acknowledging that the Board is master of the facts in employment insurance matters. In doing so, we must infer that he relied on paragraph 115(2)(c) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act), which reads:

**115.** (2) The only grounds of appeal are that  
(a) the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;  
(b) the board of referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or  
(c) the board of referees based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

**115.** (2) Les seuls moyens d'appel sont les suivants :  
a) le conseil arbitral n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;  
b) le conseil arbitral a rendu une décision ou une ordonnance entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;  
c) le conseil arbitral a fondé sa décision ou son ordonnance sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

[4] With respect, I am of the opinion that the Umpire had no reason to intervene, as the findings of fact by the Board of Referees were not erroneous or made in a perverse or capricious manner.

[5] The Umpire criticized the Board for overlooking a passage in a letter by the claimant in which she stated that she was not seeking benefits for the entire period of her courses but only for a period of about three months, toward the end of the courses.

[6] I think the Umpire misdirected himself in law concerning the impact of this request by the claimant. The benefit period, whether the one defined by the Act or the more limited one desired by a claimant, is irrelevant in determining and gauging the availability of the claimant, which must exist for any working day under paragraph 18(a) of the Act. What was relevant for the purposes of determining availability was the period of the claimant's courses and studies. That was what the Board of Referees rightly considered.

[7] For these reasons, I would allow the application for judicial review, I would set aside the decision of the Umpire and I would refer the matter back to the Chief Umpire or to an Umpire designated by him for redetermination on the basis that the claimant's appeal from the decision of the Board of Referees, dated June 29, 2000, shall be dismissed.

“Gilles Létourneau”

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Judge

“I concur  
Alice Desjardins J.A.”

“I concur  
M. Nadon J.A.”

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

**FEDERAL COURT OF CANADA**  
**APPEAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE NO:** A-43-01

**STYLE:** THE ATTORNEY GENERAL OF CANADA v.  
ARIANE BOURGAULT

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** January 23, 2003

**CORAM:** DESJARDINS J.A.  
LÉTOURNEAU J.A.  
NADON J.A.

**REASONS FOR  
JUDGMENT OF  
THE COURT:** LÉTOURNEAU J.A.

**DATED:** January 29, 2003

**APPEARANCES:**

Paul Deschênes	FOR THE APPLICANT
Ariane Bourgault	ON HER OWN BEHALF

**SOLICITORS OF RECORD:**

Department of Justice Canada Montréal, Quebec	FOR THE APPLICANT
Ariane Bourgault La Baie, Quebec	ON HER OWN BEHALF