

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20020612**

**Docket: A-277-01**

**Neutral Citation: 2002 FCA 257**

**CORAM: ISAAC J.A.  
NOËL J.A.  
SEXTON J.A.**

**BETWEEN:**

**ALMA BOONE, ET AL**

**Applicants**

**and**

**CANADA EMPLOYMENT AND INSURANCE COMMISSION**

**Respondent**

Heard at Fredericton, New Brunswick, on June 12, 2002.

Order delivered at Fredericton, New Brunswick, on June 12, 2002.

**REASONS FOR ORDER BY: Isaac, J.A.**

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**REASONS FOR ORDER**

(Delivered from the Bench at Fredericton, NB, on June 12, 2002)

**ISAAC J.A.**

[1] This is an application for a judicial review of a decision of an Umpire, dated 27 February 2001, which allowed an appeal from a decision of a Board of Referees ("the Board") dated 5 June, 2000.

[2] The Board found that there was not sufficient connection between the monies which the applicant and her fellow employees had received from the union and the work they had done for their employer, Hartt Shoe Company, such that they were not earnings within the meaning of Section 35

35 and 36 of the *Employment Insurance Regulations* ("the Regulations"). The Board took into account the following facts:

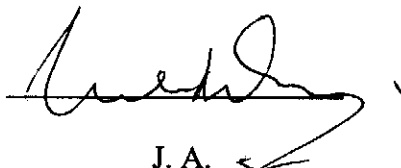
- a) the money was a good will payment and "ex gratia";
- b) both the union and the employer agreed that the severance grievances were frivolous and that the money was paid out without reference to length of service or age of employee;
- c) the money could be spent in the sole discretion of the union.

However, having reviewed the record the learned Umpire stated :

" I have considered the evidence in this case and I am satisfied that the decision of the Board was wrong as it did not conform to the evidence that it had before it. It is clear from the exhibits that there was a grievance filed by the union on behalf of the employees seeking severance pay. There were releases signed by the employees as required by the employer with respect to their claim for severance pay. Exhibit 8.1 clearly states that the grievance is in regards to severance allowances. In order to receive that money the claimant signed a release (which relieved the employer of any obligation relating to their termination) . Although it was contended by counsel for the claimants that the union felt they had no legal grounds to pursue their grievance, the fact is that the monies paid by the employer were still paid to satisfy that grievance which was a claim for severance. The result is that the monies paid was severance pay to the union which in turn paid the monies to the employees."

He concluded that the monies paid to the Applicant and the other employees were earnings for benefit purpose pursuant to Section 35 and allocated pursuant to Sec 36 of the Regulations.

[3] We are of the view that the Learned Umpire was right in reaching the conclusion that he did, see *Canada v. King* [1996] 2FC 940 (C.A.). Consequently we will dismiss with costs the application for judicial review.

  
J. A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-277-01

**STYLE OF CAUSE:** ALMA BOONE, ET AL v. CANADA  
EMPLOYMENT AND INSURANCE COMMISSION

**PLACE OF HEARING:** Fredericton, New Brunswick

**DATE OF HEARING:** June 12, 2002

**REASONS FOR ORDER:** Isaac, J.A.

**DATED:** June 12, 2002

**APPEARANCES:**

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