

MONTREAL, QUEBEC, THE 17TH DAY OF JANUARY 1997

CORAM: THE HONOURABLE MR. JUSTICE HUGESSEN
THE HONOURABLE MR. JUSTICE DÉCARY
THE HONOURABLE MR. DEPUTY JUSTICE CHEVALIER

BETWEEN: ISABELLA MUCCIARONE,

Applicant,

AND

EMPLOYMENT AND IMMIGRATION
COMMISSION OF CANADA,

Respondent.

J U D G M E N T

The application for judicial review is allowed, the decision of the umpire set aside and the matter referred back to the chief umpire or such umpire as is designated by him for reconsideration in accordance with the reasons given by this Court.

James K. Hugessen

J.A.

Certified true translation

C. Delon, LL.L.

CORAM: THE HONOURABLE MR. JUSTICE HUGESSEN
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BETWEEN: ISABELLA MUCCIARONE,

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COMMISSION OF CANADA,

Respondent.

Hearing held at Montréal
on Friday, January 17, 1997

Judgment delivered at Montréal
on Friday, January 17, 1997

REASONS FOR JUDGMENT OF THE COURT BY: DÉCARY J.A.

CORAM: THE HONOURABLE MR.JUSTICE HUGESSEN
THE HONOURABLE MR. JUSTICE DÉCARY
THE HONOURABLE MR. DEPUTY JUSTICE CHEVALIER

BETWEEN: ISABELLA MUCCIARONE,

Applicant,

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal
on Friday, January 17, 1997)

DÉCARY J.A.

The applicant knowingly made eighteen false statements and the Commission imposed on her, as it was authorized to do by s. 33(1) of the *Unemployment Insurance Act*,¹ a penalty amounting to eighteen times the benefit rate determined in the case at bar, namely \$4,536 (252 x 1 x 18). The board of referees reduced this penalty to the token amount of \$18, that is one dollar for each of the false statements, citing the applicant's precarious situation and relying on the decision of an umpire in CUB 21472 (*Adhémard Simard*).

Relying on the precedents of the time the umpire concluded that the board of referees had no jurisdiction to alter the amount of the penalty imposed by the Commission, and he therefore allowed the Commission's appeal without ruling on the merits of the board of referees' decision as to the amount of the penalty.

¹

33. (1) Where the Commission becomes aware of facts that in its opinion establish that a claimant or any person on the claimant's behalf has, in relation to a claim for benefit, made statements or representations that the claimant or person knew to be false or misleading or, being required under this Act or the regulations to furnish information, furnished information or made statements or representations that the claimant or person knew to be false or misleading, the Commission may impose on the claimant a penalty in respect of each false or misleading statement, representation or piece of information, but the penalty shall not be greater than an amount equal to three times the claimant's weekly rate of benefit.

The basis of the umpire's decision cannot of course stand in view of the subsequent shift in case law in this Court (see *Morin v. Employment and Immigration Commission* (1996), 134 D.L.R. (4th) 724 (F.C.A.), and *Dunham v. Attorney General of Canada* (September 27, 1996), A-857-95 and A-708-95, F.C.A., not reported).

It is clear that the umpire's decision must be set aside. He should have considered whether the board of referees' decision on the amount of the penalty was justified. The matter will accordingly be referred back to the umpire for him to determine, based on the applicant's financial situation and such other factors as he considers relevant, whether the board of referees exercised its discretion judicially by for all practical purposes cancelling the penalty imposed by the Commission. In this connection, the Court would note that a board of referees should only cancel a penalty or reduce it to a token amount in exceptional circumstances.

The judicial review application will be allowed, the decision of the umpire set aside and the matter referred back to the chief umpire or an umpire designated by him for reconsideration based on these reasons.

Robert Décary
J.A.

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF APPEAL

A-464-96

BETWEEN:

ISABELLA MUCCIARONE,

Applicant,

AND:

EMPLOYMENT AND IMMIGRATION
COMMISSION OF CANADA,

Respondent.

REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE No.: A-464-96

STYLE OF CAUSE: ISABELLA MUCCIARONE,

Applicant,

AND:

EMPLOYMENT AND IMMIGRATION COMMISSION OF
CANADA,

Respondent.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 17, 1997

REASONS FOR JUDGMENT OF THE COURT (THE HONOURABLE MESSRS. JUSTICES
HUGESSEN AND DÉCARY AND DEPUTY JUSTICE CHEVALIER) READ FROM THE
BENCH BY:

Décary J.A.

DATED: January 17, 1997

APPEARANCES:

Claudine Barabé for the applicant
William de Merchant

Sylvie Martin for the respondent
Carole Bureau

SOLICITORS OF RECORD:

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