

Date: 20071101

Docket: A-590-05

Citation: 2007 FCA 351

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

**9020-8653 QUÉBEC INC.
Doing business under trade name
Motel Richelieu Jonquière
3075, boulevard du Royaume
Jonquière, Quebec G7X 7V3**

Plaintiff

and

**MARIO CARON
1916, rue Sainte-Famille
Jonquière, Quebec G7X 4X9**

Principal defendant

and

**ATTORNEY GENERAL OF CANADA
Place Guy-Favreau
200, boulevard René-Lévesque Ouest
Montréal, Quebec H2Z 1X4**

Additional defendant

Hearing held at Québec, Quebec on November 1, 2007.

Judgment from the bench at Québec, Quebec on November 1, 2007.

REASONS FOR JUDGMENT OF THE COURT:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Québec, Quebec on November 1, 2007)

LÉTOURNEAU J.A.

[1] The Court was not persuaded that the umpire made any error that warrants its intervention.

[2] The principal defendant voluntarily left his employment. The Employment Insurance Commission (the Commission) considered that he had a valid reason for leaving the employment. It awarded him employment insurance benefits beginning on September 7, 2003. Surprisingly, it was his former employer (the plaintiff) which objected to his receiving such benefits, and this delayed their being issued.

[3] The hearing before the board of referees took place on November 17, 2004. No one asked that the testimony be recorded. The plaintiff chose to be represented by Guy Desmeules, its owner. Several witnesses were called on either side and heard by the board of referees. The Commission's decision was upheld by the board of referees, which gave elaborate reasons containing a summary of the evidence. This decision was appealed to the umpire by the plaintiff.

[4] On March 18, 2005 the parties were notified that the hearing would be held on September 1, 2005. Two days before the date set for the hearing, counsel for the plaintiff asked that it be postponed.

[5] In view of the hardship which the principal defendant suffered as a result of being unable to receive the benefits so long as the matter was in dispute, the umpire adjourned the hearing to September 14, 2005.

[6] The day after the adjournment, namely September 2, and over five months after the hearing date was set, the plaintiff for the first time requested a copy of the tape of the board of referees' sitting on November 17, 2004. At that time more than nine and a half months had elapsed since the sitting with no copy of the recording having been requested. The recording was not available as the result of a mechanical breakdown and the plaintiff then asked for a second adjournment, which was denied.

[7] We note in passing that the plaintiff had an opportunity to be heard before the umpire and to call witnesses if it wished. In view of the lack of a prior recording, the umpire properly acted with great flexibility in allowing the plaintiff to put forward its point of view and comment on the physical evidence in the record.

[8] This Court has before it an application for judicial review by the plaintiff, based essentially on an allegation of harm resulting from the lack of a recording. As a remedy, it is asking that a new hearing be ordered before a board of referees, with of course the rights of appeal that may result. If any harm was done, which is far from having been established by the plaintiff, and it had the burden of proof, we feel that it was rectified by the procedure followed by the umpire.

[9] The hearing in this Court is being held today, November 1, 2007. Over four years have elapsed since the day on which the principal defendant was ruled eligible for benefits. He has still received nothing as a result of the plaintiff's proceeding. The time has come to end these proceedings.

[10] The application for judicial review will be dismissed with costs to the principal defendant, set at \$2,000 and payable forthwith.

“Gilles Létourneau”

J.A.

Certified true translation

Brian McCordick, Translator

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-590-05

STYLE OF CAUSE: 9020-8653 QUÉBEC INC. v. MARIO CARON
and ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: November 1, 2007

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

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

Jean-François Maltais FOR THE PLAINTIFF

Éric Le Bel FOR THE PRINCIPAL
DEFENDANT

Pauline Leroux FOR THE ADDITIONAL
DEFENDANT

SOLICITORS OF RECORD:

Jean-François Maltais FOR THE PLAINTIFF
Jonquière, Quebec

Fradette, Gagnon, Têtu et associés FOR THE PRINCIPAL
Chicoutimi, Quebec DEFENDANT

John H. Sims, Q.C. FOR THE ADDITIONAL
Deputy Attorney General of Canada DEFENDANT