

Date: 20081028

Docket: A-578-07

Citation: 2008 FCA 330

**CORAM: LINDEN J.A.
SEXTON J.A.
BLAIS J.A.**

BETWEEN:

GERALDINE HICKEY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on October 28, 2008.

Judgment delivered from the Bench at Halifax, Nova Scotia, on October 28, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

LINDEN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on October 28, 2008)

LINDEN J.A.

[1] In our view this application for judicial review must be allowed.

[2] The Umpire should have employed the reasonableness standard of review in assessing the question of mixed fact and law involved in this application, that is, whether the payment made to the employee following the winding up of the pension plan was caused by the sale of the plant or

whether the winding up was an independent transaction to be dealt with under Regulation 36(19)(b) pursuant to the Act (see *Attorney General of Canada v. Kinkead* [1994] F.C.J. 709).

[3] The Umpire did not appear to apply this standard of review, but rather he appears to have substituted his own view of the evidence for that of the Board of Review, which is not permissible, as the Board had before it sufficient evidence upon which it could base its determination.

[4] The application for judicial review will be allowed with one set of costs, the decision of the umpire will be set aside and the matter will be referred back to the Chief Umpire (or his designate) to be decided that the appeal from the Board of Review should be dismissed.

"A.M. Linden"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-578-07

APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 28(1)(M) OF THE FEDERAL COURTS ACT OF A DECISION OF UMPIRE DAVID G. RICHE, IN THE MATTER OF THE EMPLOYMENT INSURANCE ACT, S.C. 1996, c. 29, DATED NOVEMBER 13, 2007.

STYLE OF CAUSE: Geraldine Hickey v. The Attorney General of Canada

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 28, 2008

REASONS FOR JUDGMENT OF THE COURT BY: LINDEN, SEXTON, BLAIS JJ.A.

DELIVERED FROM THE BENCH BY: LINDEN J.A.

APPEARANCES:

Annette Duffy FOR THE APPLICANT

Melissa R. Cameron FOR THE RESPONDENT

SOLICITORS OF RECORD:

O'Dea, Earle Law Office FOR THE APPELLANT/
St-John's, NL APPLICANT

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