

Cour d'appel
fédérale



Federal Court
of Appeal

Date: 20110324

Docket: A-455-10

Citation: 2011 FCA 118

**CORAM: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

LINDSAY HENDERSON

Respondent

Heard at Vancouver, British Columbia, on March 24, 2011.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 24, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on March 24, 2011)

STRATAS J.A.

[1] The Attorney General applies for an order setting aside the decision of Umpire Durocher dated July 5, 2010 (CUB 75108). Both Umpire Durocher and the Board of Referees (in a decision dated March 5, 2010) found that Mr. Henderson was entitled to extended benefits under the long-

tenured worker provisions of the *Employment Insurance Act*, S.C. 1996, c. 23 (the “Act”), as amended by S.C. 2009, c. 30 (sometimes referred to as Bill C-50).

[2] In our view, the Attorney General’s application must be granted. Extended benefits are available only for those whose “benefit period” was established during certain periods of time: Act, subsections 10(2) to 10(2.4), added by subsection 2(1) of Bill C-50. The Act does not provide for any discretion to adjust or relieve against this requirement.

[3] Both the Umpire and the Board of Referees found, without statutory support, that Mr. Henderson’s “benefit period” was established when he started to be paid benefits, in May, 2009. On this, they erred in law. Their finding conflicts with the clear wording of section 9 and subsection 10(1) of the Act, which define the establishment of the “benefit period.”

[4] Mr. Henderson applied for benefits on June 13, 2008. Under the Act, section 9 and paragraph 10(1)(b), his “benefit period” was established on the previous Sunday, which was June 8, 2008. That date falls outside of the periods of time set out in the Act for which extended benefits are available. Therefore, the extended benefits were not available in law to Mr. Henderson.

[5] We wish Mr. Henderson to understand that this ruling is no reflection on him or his work; it is just that the rules that Parliament has set out in its law do not allow him to receive extended benefits in this situation, and we have no choice but to apply the law exactly as Parliament has written it.

[6] Therefore, we shall grant the application, set aside the decision of the Umpire, and remit the matter to the Umpire, with a direction that Mr. Henderson`s claim for extended benefits be dismissed.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-455-10

**AN APPLICATION FOR A JUDICIAL REVIEW FROM THE DECISION OF THE
HONOURABLE DENIS DUROCHER, UMPIRE, DATED SEPTEMBER 14, 2010**

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA V. LINDSAY
HENDERSON

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 24, 2011

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Nathan Murray FOR THE APPLICANT

Lindsay Henderson ON HIS OWN BEHALF

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada