Federal Court of Appeal | Cour d'appel fédérale

Date: 20111102

Docket: A-227-11

Citation: 2011 FCA 301

CORAM: **EVANS J.A.**
SHARLOW J.A.
STRATAS J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MINDY KNEE

Respondent

Heard at Halifax, Nova Scotia, on November 2, 2011.

Judgment delivered at Halifax, Nova Scotia, on November 2, 2011.

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: SHARLOW J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

[1] This is an application for judicial review by the Attorney General of Canada to set aside a decision of an Umpire (CUB 76810) dismissing an appeal by the Attorney General from a decision by a Board of Referees (Board), dated July 22, 2010. In that decision, the Board allowed Mindy Knee's appeal of the Canada Employment Insurance Commission's rejection of her claim for extended employment insurance benefits under the Extended Employment Insurance and Training Incentive (EEITI), also called Pilot Project No. 14.

[2] The Commission had concluded that Ms Knee did not meet the EEITI's eligibility criteria because she had not started a full-time program of instruction or training, to which she had been referred by the Commission, in one of the 52 weeks following the beginning of her benefit period. Claimants who meet the eligibility criteria contained in section 77.91 of the *Employment Insurance Regulations*, SOR/96-332 (Regulations) are entitled to benefits for a longer period than normal as an incentive to undergo further training and education to enhance their employment opportunities.

[3] The provisions in the Regulations relevant to this application are as follows.

77.91 (3) Pilot Project No. 14 applies in respect of every claimant who meets the following criteria:	**77.91** (3) Le projet pilote no 14 s'applique à tout prestataire qui satisfait aux conditions suivantes :
…	[…]
(*d*) the claimant is referred by the Commission, or an authority that the Commission designates, under paragraph 25(1)(a) of the Act, to a course or program of instruction or training	*d*) il est dirigé par la Commission ou l'autorité qu'elle désigne en vertu de l'alinéa 25(1)a) de la Loi vers un cours ou programme d'instruction ou de formation :
(i) that is full-time,	(i) à temps plein,
(ii) that has a duration of at least 20 weeks, and	(ii) dont la durée est d'au moins vingt semaines,
(iii) that begins during one of the 52 weeks following the beginning of the claimant's benefit period, but not before May 31, 2009.	(iii) qui commence dans les cinquante-deux semaines suivant le début de sa période de prestations mais au plus tôt le 31 mai 2009.

[4] Ms Knee decided to attend Memorial University (MUN) because she thought that this would better equip her for the labour market, and be less costly, than enrolling in a program at a private college. Through no fault of her own, she was unable to start in September. She received a letter of acceptance from the University Registrar, dated November 13, 2009, for Pre-Business Administration in the 2009-10 Winter Semester. However, not satisfied with this letter, the Commission required a letter from the faculty before referring her to a program at MUN.

[5] The faculty letter did not arrive in time for her to start at MUN in January. So, rather than simply waiting until May, Ms Knee enrolled in two prerequite courses in January, which she successfully completed. She started a full course-load in the Business Administration program on May 10, 2010.

[6] Despite some confusion as to exactly when the 52-week period started, it is clear that it ended before May 10, 2010. This was the basis of the Commission's refusal of Ms Knee's claim for extended benefits under the EEITI.

[7] The Board agreed with the Commission that Ms Knee had not met all the statutory requirements because she had started the full-time program at MUN one week outside the 52-week period prescribed in subparagraph 77.91(3)(*d*)(iii). Nonetheless, the Board allowed her appeal, reasoning that, since she had acted reasonably throughout and the delays were attributable to others, and given the "spirit of the Regulations and the reasons for its implementation", she had in fact "met all criteria."

[8] On appeal, the Umpire agreed that Ms Knee had missed the 52-week deadline when she started to take a full course-load on May 10. However, he interpreted the requirement that an eligible program of instruction must be "full-time" as meaning that the claimant must have been occupied full time on the program, in the sense that she did nothing else. On this basis, he concluded, Ms Knee was in a program of full-time instruction beginning in January 2010, and had thus started it within the 52-week deadline.

[9] I well understand why the Board and the Umpire were anxious to find in Ms Knee's favour; rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[10] In my view, the Board erred in law by finding that Ms Knee met the criteria when it had already concluded that she had missed the 52-week deadline. The Umpire also erred in law when he interpreted "full-time" program to mean a program during which the claimant did nothing else. On this reasoning Ms Knee would have been eligible for EEITI if she had been taking only one course on which she spent one hour a week. This is not what is meant by a "full-time program of instruction" in the Regulations. Whether a program is "full-time" cannot depend on whether or not a claimant enrolled in a course chose to engage in other activities when not studying.

[11] This is sufficient to grant the application for judicial review. However, I would add that the record in this case is far from satisfactory. It does not contain evidence of the program to which the Commission referred Ms Knee, nor the letter requested by the Commission from the faculty at MUN describing the program into which Ms Knee had been accepted. In the circumstances, these deficiencies, attributable to the bases on which Ms Knee appealed to the Board and to the assumptions on which the case proceeded, are not fatal to the Attorney General's application.

[12] For these reasons, I would allow the application for judicial review, set aside the decision of the Umpire, and remit the matter to the Chief Umpire or his delegate to be determined on the basis that the appeal be allowed. Costs were not requested and I would not grant them.

"John M. Evans"

J.A.

"I agree
K. Sharlow J.A."

"I agree
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

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