Federal Court of Appeal | Cour d'appel fédérale

Date: 20120514

Docket: A-469-11

Citation: 2012 FCA 144

CORAM: **NADON J.A.**
DAWSON J.A.
MAINVILLE J.A.

BETWEEN:

UNITED WINGS ENTERPRISE INC.

Applicant

and

RUI QIU and ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on May 8, 2012.

Judgment delivered at Ottawa, Ontario, on May 14, 2012.

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: NADON J.A.
DAWSON J.A.

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This is a judicial review of the decision of an Umpire (CUB 77989) rejecting an appeal of a decision of a Board of Referees dated October 14, 2010.

[2] The Canada Employment Insurance Commission approved the claim of the respondent Ms. Rui Qiu ("claimant") for unemployment benefits under the *Employment Insurance Act*, S.C. 1996, c. 23. The Commission found, pursuant to paragraph 29(*c*) of the Act, that the claimant had voluntarily left her employment with United Wings Enterprises Inc. ("employer") in December of

2009 for just cause, as she had no reasonable alternative having regard to the circumstances. The employer challenged this finding before a Board of Referees.

[3] The claimant's testimony before the Board of Referees was that she had left her employment in order to avoid harassment from her employer's manager. The employer denied any harassment, and rather submitted that its manager was close to the claimant's family, had assumed a form of parental guardianship over the claimant, and in this capacity scolded the claimant for various alleged misdeeds, leading to the claimant's unjustified refusal to return to work.

[4] After hearing testimony evidence over two days, the Board of Referees concluded as follows:

> The Board finds as fact that the appellant's own testimony that he had conversations with the claimant about her sexual activities, and constantly texting her at night, can only be defined as harassment. The claimant testified that she just wanted things to stop. So she initially brushed off the appellant's actions. Unfortunately, instead of stopping the behaviour, the appellant chose to escalate his harassment of the claimant.
>
> The claimant was in a very difficult situation – if she quit her job not only did she have to deal with the financial issues of not working, but her immigration status was put in limbo. So she put up with the appellant's behaviour until the incident in early December [2009].
>
> …
>
> The Board unanimously dismisses the Employer's appeal.
>
> [Board of Referees' decision at pp.17-18, reproduced in Respondent's Record at pp. 131-32]

[5] The employer raises a single ground of review in this Court: by refusing to receive into evidence certain emails tendered on behalf of the employer, the Board of Referees denied the employer a fair hearing.

[6] The Umpire found that the Board of Referees had not breached any principle of procedural fairness by refusing the production of the emails since "[t]hese documents were superfluous to the evidence already before the Board and they added nothing of importance to the facts the Board already knew; in this sense the evidence excluded was irrelevant to the issue and the reasons why the claimant left her job": Umpire's decision at p. 6, reproduced at p. 18 of the Applicant's Record.

[7] Whether an administrative tribunal has breached procedural fairness by rejecting evidence depends on the circumstances of each case. As noted by Lamer C.J. in *Université du Québec à Trois-Rivières v. Laroque*, [1993] 1 S.C.R. 471 at p. 491:

> For my part, I am not prepared to say that the rejection of relevant evidence is automatically a breach of natural justice. A grievance arbitrator is in a privileged position to assess the relevance of evidence presented to him and I do not think it is desirable for the courts, in the guise of protecting the right of parties to be heard, to substitute their own assessment of the evidence for that of the grievance arbitrator. It may happen, however, that the rejection of relevant evidence has such an impact on the fairness of the proceeding, leading unavoidably to the conclusion that there has been a breach of natural justice.

[8] In this case, the findings of fact of the Board of Referees concerning harassment were based on the manager's own *viva voce* testimony, and these findings were consistent with a large part of the claimant's testimony. As found by the Umpire, the emails which the employer sought to submit into evidence were largely irrelevant to the issues at stake in the proceedings. In these

circumstances, I cannot conclude that the decision of the Board of Referees to exclude such emails denied the employer a fair hearing or otherwise constituted a breach of procedural fairness.

[9] I would consequently dismiss this judicial review application.

"Robert M. Mainville"
J.A.

“I agree.
M. Nadon J.A.”

“I agree.
Eleanor R. Dawson J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-469-11
JUDICIAL REVIEW FROM THE DECISION OF AN UMPIRE (CUB 77989) DATED OCTOBER 14, 2010.	
STYLE OF CAUSE:	United Wings Enterprise Inc. v. Rui Qiu and Attorney General of Canada
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 8, 2012
REASONS FOR JUDGMENT BY:	MAINVILLE J.A.
CONCURRED IN BY:	NADON J.A. DAWSON J.A.
DATED:	May 14, 2012

APPEARANCES:

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Jacqueline Wilson	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA

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