Date: 20071113

Docket: T-906-06

Citation: 2007 FC 1176

Ottawa, Ontario, November 13, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant(s)

and

SCOTT FRAZEE

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review concerns an Adjudicator's decision made under s. 92 of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (Act)[1]. The only issue before the Court involves the Adjudicator's assumption of jurisdiction over the Respondent's grievance against his employer, the Canadian Food Inspection Agency (CFIA). The Adjudicator found that the CFIA's treatment of the Respondent was disciplinary resulting in a suspension and, therefore, he assumed jurisdiction over the grievance. He then found that the discipline imposed by the CFIA was unwarranted and he upheld the Respondent's grievance. The Applicant contends that the

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[1] Since replaced by s. 209(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22.

Adjudicator erred by accepting jurisdiction over the grievance in circumstances that were outside of the arbitral authority conferred by the Act and he seeks to have the decision quashed.

Background

[2] The Respondent, Scott Frazee, is a veterinarian employed by the CFIA. In the spring of 2003, Dr. Frazee was working at Larsen Packers Ltd. (Larsen), where he was the veterinarian-in-charge. Larsen operates a federally regulated meat slaughtering and processing plant located in Berwick, Nova Scotia. Dr. Frazee's responsibilities included ante-mortem and post-mortem inspections of livestock to ensure that the animals were free of disease. An animal found to be unfit for human consumption would be condemned. As the veterinarian-in-charge, Dr. Frazee was also responsible for the supervision of one other veterinarian and six animal health inspectors. He reported to Dr. Ken Chew, Inspection Manager for Nova Scotia.

[3] In early May of 2003, Dr. Chew received complaints from Larsen and from the New Brunswick Pork Producers Association that too many hogs were being condemned as unfit at the Larsen facility in Berwick. Larsen alleged that its condemnation rate was more than double the rate experienced by other Canadian packing plants. In a letter dated May 7, 2003, the Chairman of the New Brunswick Pork Producers Association made the following complaint to Dr. Chew:

> We are writing at this time in regards to a situation that has been on-going at the Larsen Packer plant in Berwick Nova Scotia for some time.
>
> We are very concerned about the large number of hogs being condemned at this facility and it is unprecedented according to our history in the business. This situation is placing an unfair burden on our producers and is resulting in great financial loss.

> We understand that Dr. Scott Frazee was not supposed to be present on the kill floor the last couple of days and another vet would be conducting the inspections. Apparently, this has not been the case. We understand that he has been present on the kill floor and the condemnation of our hogs continues. **This situation is unacceptable to our producers and cannot continue.**
>
> **We are requesting that Dr. Scott Frazee be removed from the Larsen Packer plant immediately or our producers will have no other option but to redirect their hogs to another facility. No other option is acceptable**.
>
> *[Emphasis original]*.

[4] It is thus apparent from the record that CFIA management was caught in the middle of a dispute involving Larsen and its customers on one side and Dr. Frazee on the other.

[5] Dr. Chew's approach to the problem was to put in place a correlation review by outside experts to determine if Larsen's complaint of over-condemnation was valid. Dr. Chew and Dr. Frazee discussed this plan and it was agreed that Dr. Frazee would not be involved with final condemnations for two weeks. An e-mail from Dr. Chew to Dr. Frazee and others dated May 6, 2003 reflects the following understanding:

> Dr. Frazee has suggested some short term remedies to address the concerns;
>
> ...
>
> 2. That he **(Dr. Frazee) stay off the final condemnations for this week** since the industry is questioning his condemnation rates. I indicated that this should be for two weeks concurrent.
>
> …

> At the discussion with the RD, Peter and I brought up the possibility of having a national Red Meat expert on condemnation visit Est 150 and perform a correlation review on-site with our veterinarians. This is actively being looked into. We also discussed about the possibility of having Dr. Frazee visit a swine slaughter plant in Ontario or Québec to perform a "reverse correlation". No decision was made on this.

[6] Dr. Frazee appears not to have removed himself completely from condemnation inspections and Larsen continued to object to his involvement. Notwithstanding the clarity of Dr. Chew's May 6th e-mail, Dr. Frazee explained his continued involvement as a misunderstanding of what was expected of him.

[7] Larsen continued to put pressure on the CFIA to have Dr. Frazee removed from its Berwick facility. An inflammatory and inappropriate e-mail from Mike Larsen was sent to Dr. Chew on May 8, 2003 which described Dr. Frazee as unprofessional and stated that "there is no solution that is acceptable to us other than the immediate removal of Dr. Frazee."

[8] An e-mail exchange between Dr. Frazee's union representative, Maureen Harper, and Dr. Chew illustrates the rancorous tone of the dispute and Dr. Frazee's increasing level of frustration with his work status:

> Hello Ken. I am writing because I have some very grave concerns about what is happening at the abattoir where Scott has been working for a number of years. I understand that plant management has expressed consternation about their recent rates of condemnation. I believe that CFIA has a responsibility to investigate the plant's

concerns. This should be done by a national correlation team as is done with similar complaints in poultry plants.
What is concerning me is how Scott is being treated. I believe by removing Scott from his duties, you are not only sending the wrong message to industry (the tale of the dock wagging the dog), but you are also unjustly treating one of your employees. What ever happened to being innocent until proven guilty? I am even more concerned to learn that you feel Scott is not entitled to union representation in this matter. You and plant management have tried to have him removed from performing his duties at the abattoir and you think that he is not entitled to be represented by the union?
This is becoming an all too frequent occurrence in this Agency. Plant management makes a complaint to CFIA if they perceive a vet is too stringent in performing his duties which causes an economic loss to the plant and CFIA pulls the vet from the job to keep the industry happy. And we dare call ourselves a regulatory Agency!
This issue is scheduled to be discussed at the national UMC on June 16. I will personally be addressing it. I am tired of continually hearing about veterinarians in abattoirs being subjected to harassment not only from plant management, but also CFIA. This all has to stop because quite frankly, the CFIA does not have any vets to spare when they keep removing them from the abattoirs.
I would suggest that you really need to be careful how you handle the situation.

…

Hi Maureen, I appreciate and value the comments you raised. I am not sure if you have been presented with all the facts though. I personally find it very difficult when faced with some facts and some strong assumptions already made.
I have asked Dr. Frazee temporarily to stay away from the kill floor and he has cooperated by doing so. Both my Regional Director and myself have indicated that this is not a punitive measure. We have made no assessment of blame or acknowledgment that any fault has been made.
Maureen, when you have separate Pork Marketing Boards from two different provinces and various swine producers as well as the management of the abattoir all suddenly demanding the removal of the veterinarian, there is a very urgent need to diffuse the situation and be able to talk and listen to them. Yesterday I spent pretty well most of the day at Larsen Packers, Est. 150 with 13 angry swine producers from New Brunswick, the chairman of the New

> Brunswick Pork Marketing Board and their veterinary swine consultant.
> I explained to them our action plan. Further, that we are presently arranging for a veterinary pathologist and a national veterinary correlator, experienced in swine condemnation to be on-site to spend time with our veterinarians. I also informed the group that I shall be bringing Dr. Frazee back on the kill floor to spend time with the pathologist and correlator. A couple of the producers, including a major one suggested that if Dr. Frazee was found lacking in some areas, that he be send for further retraining. I think you can see in which direction we are heading. There are a lot of issues to separate out, a big one being miscommunication.
> Maureen I am sorry I cannot give you details but if you feel you need to talk to me, give me a shout.

[9] The record indicates that the outside correlation review was not completed as quickly as planned and, in the result, Dr. Frazee's return to full inspection duties was delayed. An e-mail from the CFIA Regional Director, Freeman Libby, to Dr. Frazee dated May 28, 2003 described the situation as follows:

> Scott; This is a follow-up to our conversation this morning. As you are aware management is trying very hard to get some help from the Ontario Area vis-a-vis some veterinarians with expertise in red meat (hog) slaughter to come to Larsons to work with you and the staff at Larsens. The main goal of this is to address the "disposition" issue working towards ensuring consistency in our approach.
> It is hoped that this will take place early next week. I will advise you as soon as possible when this has been confirmed.
> Until we get this in place I am asking that you refrain from working the kill floor. I want to re-emphasize with you that in no way is this viewed as "disciplinary" action by management. By remaining off the kill floor it allows the Agency time to address the issue in a manner that I described to you during our calls.
> I want to thank you for your cooperation and I want to reiterate that I am committed to getting this issue resolved ASAP.

[10] On June 6, 2003, Dr. Frazee was again told not to participate in final dispositions at the Larsen plant until he had an opportunity to work with an Ontario veterinarian scheduled to arrive within the following two weeks.

[11] By June 25, 2003, the CFIA had completed its internal reviews of Larsen's condemnation complaints and it found them to be unmeritorious. Dr. Frazee was then returned to full duties at the Larsen plant but with instructions to rebuild his working relationships.

Issues

[12] (a) What is the appropriate standard of review?

(b) Did the Adjudicator err by holding that Dr. Frazee had been subjected to a disciplinary suspension?

Analysis

[13] The Adjudicator could only assume jurisdiction over Dr. Frazee's grievance if he found that the CFIA's treatment of Dr. Frazee constituted a form of discipline resulting in a suspension. At the time, this adjudicative authority was conferred by s. 92(1) of the Act which read:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to	92. (1) Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, un fonctionnaire peut renvoyer à l'arbitrage tout grief portant sur:
(a) the interpretation or application in respect of the employee of a provision of a	a) l'interprétation ou l'application, à son endroit, d'une

collective agreement or an arbitral award,

(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),

(i) disciplinary action resulting in suspension or a financial penalty, or

(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or

(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty, and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.

Approval of bargaining agent

disposition d'une convention collective ou d'une décision arbitrale;

b) dans le cas d'un fonctionnaire d'un ministère ou secteur de l'administration publique fédérale spécifié à la partie I de l'annexe I ou désigné par décret pris au titre du paragraphe (4), soit une mesure disciplinaire entraînant la suspension ou une sanction pécuniaire, soit un licenciement ou une rétrogradation visé aux alinéas 11(2)f) ou g) de la Loi sur la gestion des finances publiques;

c) dans les autres cas, une mesure disciplinaire entraînant le licenciement, la suspension ou une sanction pécuniaire.

Approbation de l'agent négociateur

(2) Pour pouvoir renvoyer à l'arbitrage un grief du type visé à l'alinéa (1)a), le fonctionnaire doit obtenir, dans les formes réglementaires, l'approbation de son agent négociateur et son acceptation de le représenter dans la procédure d'arbitrage.

(2) Where a grievance that may be presented by an employee to adjudication is a grievance described in paragraph (1)(a), the employee is not entitled to refer the grievance to adjudication unless the bargaining agent for the bargaining unit, to which the collective agreement or arbitral award referred to in that paragraph applies, signifies in the prescribed manner its approval of the reference of the grievance to adjudication and its willingness to represent the employee in the adjudication proceedings.

Termination under P.S.E.A. not grievable

(3) Nothing in subsection (1) shall be construed or applied as permitting the referral to adjudication of a grievance with respect to any termination of employment under the Public Service Employment Act.

Order

(4) The Governor in Council may, by order, designate for the purposes of paragraph (1)(b) any portion of the public service of Canada specified in Part II of

Exclusion

(3) Le paragraphe (1) n'a pas pour effet de permettre le renvoi à l'arbitrage d'un grief portant sur le licenciement prévu sous le régime de la Loi sur l'emploi dans la fonction publique.

Décret

(4) Le gouverneur en conseil peut, par décret, désigner, pour l'application de l'alinéa (1)b), tout secteur de l'administration publique fédérale spécifié à la partie II de l'annexe I.

Schedule I.

[14] Both the parties to this application characterized the issues under review as matters of mixed fact and law subject to a standard of review of reasonableness *simpliciter*. They both see the question of what constitutes a disciplinary suspension as requiring the application of relevant facts to a set of defining legal principles. In that sense, they have correctly identified the Adjudicator's task. However, the issue facing the Court on this application is somewhat different. Where a legal issue or the identification of a legal standard going to jurisdiction can be isolated from its factual surroundings, it should be assessed on a standard of correctness: see *Canwell Enviro Industries Ltd. v. Baker Petrolite Corporation*, 2002 FCA 158, 288 N.R. 201 at para. 51 and *Dynamex Canada Inc. v. Mamona*, 2003 FCA 248, 242 F.T.R. 149 at para. 45.

[15] The issue as I see it is whether the Adjudicator applied the correct legal principles to the evidence before him. To the extent that the Adjudicator failed to apply those principles to the evidence, the standard of review is correctness and not reasonableness.

[16] In the end, however, whether the standard of review is correctness or reasonableness, the result is the same – the Adjudicator's decision in this case is deficient and must be set aside.

[17] The Adjudicator seems to have concluded that what began as an administrative investigation of an outside complaint slipped into a disciplinary suspension of Dr. Frazee. The Adjudicator's

reasons for characterizing the CFIA's actions as disciplinary are contained within the following brief passage from his decision:

> Firstly, the decision of the employer was directed personally against Dr. Frazee, and none of the other members of the CFIA inspection staff at the Larsen Packers Ltd. plant were involved in similar allegations of excessive condemnation during that period. Secondly, the allegations of wrongdoing on the part of Dr. Frazee were repeatedly made. Thirdly, Dr. Frazee was directed on four different occasions not to perform an important part of his duties within a short period of time. Fourthly, the CFIA management decided that they could not perform their investigation into the allegations of excessive condemnation without suspending him from an important part of his duties in postmortem evaluations. In those circumstances, I conclude that the suspensions from performing final condemnation and from being present on the kill floor between May 5 and June 25, 2003 imposed on Dr. Frazee were disciplinary in nature; the CFIA justified those decisions on the basis of the allegations of excessive condemnation rates.
>
> The disciplinary nature of the employer's decision to suspend Dr. Frazee from an important part of his duties is adjudicable pursuant to subparagraph 92(1)(b)(i) of the former Act and gives me jurisdiction to adjudicate the grievance.

[18] The issue before the Adjudicator was whether the CFIA's decision to remove Dr. Frazee from performing condemnation inspections for six weeks was administrative or disciplinary in nature. That was an issue of mixed fact and law which required an examination of both the purpose and effect of the employer’s action. It required the Adjudicator to apply the largely undisputed evidence of what took place to a set of accepted standards or legal principles which define discipline in the employment context.

[19] Whether an employer's conduct constitutes discipline has been the subject of a number of arbitral and judicial decisions from which several accepted principles have emerged. A useful summary of the authorities is contained within the following passage from Brown and Beatty, Canadian Labour Arbitration (4th ed.) at para. 7:4210:

[…]

> In deciding whether an employee has been disciplined or not, arbitrators look at both the purpose and effect of the employer's action. The essential characteristic of disciplinary action is an intention to correct bad behaviour on an employee's part by punishing the employee in some way. An employer's assurance that it did not intend its action to be disciplinary often, but not always, settles the question.
>
> Where an employee's behaviour is not culpable and/or the employer's purpose is not to punish, whatever action is taken will generally be characterized as non-disciplinary. On the basis of this definition, arbitrators have ruled that suspensions that required an employee to remain off work on account of his or her health, or pending the resolution of criminal charges, were not disciplinary sanctions. Similarly, transfers and demotions for non-culpable reasons, the revocation of a civil servant's "reliability status", financial levies that were compensatory rather than punitive, shift assignments designed to facilitate closer supervision, and deeming an employee to have quit his or her employment, have all been characterized as non-disciplinary. For the same reason, counselling and warning employees about excessive but innocent absenteeism have generally not been regarded as disciplinary. On the other hand, it has been held that even where an employee falls ill during the course of serving a disciplinary suspension and is in receipt of sick pay benefits for part of the time he or she is off work, that hiatus will not alter the disciplinary character of the employee's suspension.
>
> A disciplinary sanction must at least have the potential to prejudicially affect an employee's situation, although immediate economic loss is not required. Suspensions with pay, which have the essential objective of correcting unacceptable behaviour, for example, would still be regarded as disciplinary even though they do not sanction the employee financially.

[Footnotes omitted]

[20] The authorities confirm that not every action taken by an employer that adversely affects an employee amounts to discipline. While an employee may well feel aggrieved by decisions that negatively impact on the terms of employment, the vast majority of such workplace adjustments are purely administrative in nature and are not intended to be a form of punishment. This point is made in *William Porter v. Treasury Board (Department of Energy, Mines and Resources)* (1973) 166-2-752 (PSLRB) in the following passage at page 13:

> The concept of "disciplinary action" is not sufficiently wide to include any or every action taken by the employer which may be harmful or prejudicial to the interests of the employee. Certainly, every unfavourable assessment of performance or efficiency is harmful both to the immediate interests of the employee and his prospects for advancement. In such cases, it cannot be assumed that the employee is being disciplined. Discipline in the public service must be understood in the context of the statutory provisions relating to discipline.

[21] The case authorities indicate that the issue is not whether an employer's action is ill-conceived or badly executed but, rather, whether it amounts to a form of discipline involving suspension. Similarly, an employee's feelings about being unfairly treated do not convert administrative action into discipline: see *Fermin Garcia Marin v. Treasury Board (Department of Public Works and Government Services Canada)* 2006 PSLRB 16 at para. 85.

[22] It is not surprising that one of the primary factors in determining whether an employee has been disciplined concerns the intention of the employer. The question to be asked is whether the employer intended to impose discipline and whether its impugned decision was likely to be relied

upon in the imposition of future discipline: see *St. Clair Catholic District School Board and Ontario English Catholic Teachers Association* (1999) 86 L.A.C. (4th) 251 (*Re St. Clair*) at page 255 and *Re Civil Service Commission and Nova Scotia Government Employees Union* (1989) 6 L.A.C. (4th) 391 (*Re Civil Service Commission)* at page 400.

[23] It is accepted, nonetheless, that how the employer chooses to characterize its decision cannot be by itself a determinative factor. The concept of disguised discipline is a well known and a necessary controlling consideration which allows an adjudicator to look behind the employer's stated motivation to determine what was actually intended. Thus in *Gaw v. Treasury Board (National Parole Service)* (1978) 166-2-3292 (PSSRB), the employer's attempt to justify the employee's suspension from work as being necessary to facilitate an investigation was rejected in the face of compelling evidence that the employer's actual motivation was disciplinary: also see *Re Canada Post Corp. and Canadian Union of Postal Workers* (1992) 28 L.A.C. (4th) 366.

[24] The problem of disguised discipline can also be addressed by examining the effects of the employer's action on the employee. Where the impact of the employer's decision is significantly disproportionate to the administrative rationale being served, the decision may be viewed as disciplinary: see *Re Toronto East General & Orthopaedic Hospital Inc. and Association of Allied Health Professionals Ontario* (1989) 8 L.A.C. (4th) 391 (*Re Toronto East General*). However, that threshold will not be reached where the employer's action is seen to be a reasonable response (but not necessarily the best response) to honestly held operational considerations.

[25] Other considerations for defining discipline in the employment context include the impact of the decision upon the employee's career prospects, whether the subject incident or the employer's view of it could be seen to involve culpable or corrigible behaviour by the employee, whether the decision taken was intended to be corrective and whether the employer's action had an immediate adverse effect on the employee: see *Re St. Clair*, above, and *Re Civil Service Commission*, above.

[26] It is against the above-noted considerations that the Adjudicator's decision must be assessed in this proceeding.

[27] The Adjudicator's conclusion that the CFIA's decision to temporarily remove Dr. Frazee from his condemnation inspection duties was disciplinary is supported by only four considerations:

(a) The removal of duties was directed only at Dr. Frazee and not against any of the other CFIA on-site employees;

(b) The allegations of wrongdoing made against Dr. Frazee were repeatedly made;

(c) The CFIA directed Dr. Frazee on four occasions not to perform an important part of his duties within a short period of time;

(d) CFIA managers decided that they could not perform their investigation without suspending Dr. Frazee from an important part of his duties.

[28] Having found that the temporary removal of inspection responsibilities from Dr. Frazee constituted "disciplinary" action, the Adjudicator then upheld the grievance because Larsen's allegations were subsequently proven to be unfounded.

[29] The problem with the Adjudicator’s analysis is that it failed to apply the accepted legal principles for determining whether the alteration to Dr. Frazee’s terms of employment was imposed as a means of discipline.

[30] Of particular concern is the Adjudicator’s failure to consider the significance and validity of the CFIA's characterization of its decision which was consistently stated to be non-disciplinary. The Adjudicator also failed to consider the effect of the CFIA's decision on Dr. Frazee beyond pointing out that a more appropriate review plan was probably available. In addition, the Adjudicator failed to consider whether the CFIA's decision was taken in response to what it saw as culpable or corrigible conduct by Dr. Frazee and was intended thereby to have a corrective aspect.

[31] Instead, the Adjudicator appears to have wrongly imputed Larsen's allegations to the CFIA without any evidence that the CFIA had acted in furtherance of Larsen's views of Dr. Frazee’s competence. What evidence there was indicated only that the CFIA had drawn no conclusions about the merits of the complaints against Dr. Frazee and that it merely wanted to conduct an independent review. Even Dr. Frazee seems to have initially accepted the decision to step aside temporarily from his inspection duties.

[32] It is difficult to know what the Adjudicator had in mind in pointing out that Dr. Frazee was the only CFIA employee affected by the correlation assessment. That is not a particularly surprising fact given that Dr. Frazee was the veterinarian-in-charge and the sole target of Larsen's complaint.

[33] The Adjudicator's final observation that the CFIA's decision to remove Dr. Frazee's inspection responsibilities during the review process was, by itself, evidence of discipline, represents circular reasoning. The stated purpose of the decision was to ensure that Dr. Frazee's critics could not complain about his involvement in the review. Whether, in the circumstances, a better decision could have been made by the CFIA is not relevant to the proper characterization of the decision taken, provided that it had a legitimate operational rationale to support it. In the absence of evidence that the CFIA managers were acting for some contrary or ulterior motive, the conduct of Dr. Frazee does not appear to have been under scrutiny as blameworthy.

[34] I am of the view that the Adjudicator erred in this case by failing to take account of any of the several recognized legal principles by which discipline in the employment context is to be identified and, further, by taking into consideration matters which were not relevant to that determination. In the result, the Adjudicator's decision is set aside.

[35] While I was invited by the Applicant to direct that the grievance should be dismissed for want of jurisdiction, I am not disposed to go that far. It is not plain and obvious that no jurisdiction could ever be properly assumed in this case. There is some authority indicating that the removal of significant employment responsibilities can constitute a suspension under s. 92 of the *Act*: see *Evans v. Treasury Board (Department of the Solicitor General)* (1982) 2 PSSRB 57 and *Guay and Treasury Board (Revenue Canada, Taxation)* (1995) 27 PSSRB 10. This would only be the case where an employer left its employee with essentially no useful work to perform. I will say, though,

that I do not agree with the Adjudicator that a suspension is established where the employer temporarily takes away an "important part" of an employee's duties. The issue is not what is taken away but, rather, what remains. I have no doubt that an employee left to sit mostly idle at a desk for six weeks has been suspended. In this case, the record does not disclose what, if any, meaningful duties Dr. Frazee retained over the six weeks he was taken off the kill floor and I cannot, therefore, determine whether what occurred amounted to a suspension.

[36] In this case, there has also been no clear determination on the facts as to whether the CFIA's decision to remove Dr. Frazee's inspection responsibilities was so disproportionate, unnecessary or ill-conceived that an adjudicator might find it to be a form of disguised discipline. It is also not beyond the realm of all possibility that an adjudicator might find the CFIA's actions to be punitive such that they would overwhelm an ostensibly innocent administrative intent in the same way that was of concern in *Re Toronto East General*, above.

[37] This matter will, therefore, be remitted to a different adjudicator for redetermination on the merits.

[38] The Applicant shall have the costs of the application.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is allowed with the matter to be remitted to a different adjudicator for redetermination on the merits.

THIS COURT FURTHER ADJUDGES that the Applicant shall have the costs of this application.

" R. L. Barnes "
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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