

A-378-96

OTTAWA, ONTARIO, THE 10th DAY OF OCTOBER 1996

CORAM: THE HONOURABLE MR. JUSTICE HUGESSEN
THE HONOURABLE MADAM JUSTICE DESJARDINS
THE HONOURABLE MR. JUSTICE DÉCARY

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

- and -

ANDRÉ LALONDE,

Respondent.

JUDGMENT

The application for judicial review is allowed, the umpire's decision is quashed and the

matter is referred back to the chief umpire or an umpire designated by him for a new decision on the basis that the payments received by the respondent constituted earnings.

James K. Hugessen

J.A.

Certified true translation

Stephen Balogh

A-378-96

CORAM: HUGESSEN J.A.
DESJARDINS J.A.
DÉCARY J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

AND:

ANDRÉ LALONDE,

Respondent.

Hearing held at Ottawa, Ontario on Thursday, October 10, 1996

Judgment delivered from the bench at Ottawa on October 10, 1996

REASONS FOR JUDGMENT OF THE COURT BY:

DÉCARY J.A.

CORAM: HUGESSEN J.A.
DESJARDINS J.A.
DÉCARY J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

AND:

ANDRÉ LALONDE,

Respondent.

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Ottawa, Ontario
on Thursday, October 10, 1996)

DÉCARY J.A.

The issue in this case is whether certain payments received by the claimant following an automobile accident are payments he “has received or, on application, is entitled to receive from motor vehicle accident insurance provided under or pursuant to a provincial law in respect of the actual or presumed loss of income from employment due to injury. . .” within the meaning of paragraph 57(2)(d) of the

Unemployment Insurance Regulations.¹ If they are, the amount received will constitute earnings.

Like the Canada Employment and Immigration Commission (the Commission) and unlike the Board of Referees and the umpire, it is our view that paragraph 57(2)(d) of the *Unemployment Insurance Regulations* is applicable to the case at bar.

The respondent lives in Ontario, and the automobile accident took place in Ontario on September 2, 1993. In Part VI of the *Insurance Act* (R.S.O. 1990, c. I.8, as amended) (the Ontario Act) entitled “Automobile Insurance”, the Ontario legislature has provided for the payment of “no-fault benefits” (section 224), and it has authorized the Lieutenant Governor in Council, in subsection 121(1), item 9, to make regulations “establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits”.

The Ontario Act is binding on all insurers, and all insurance contracts are subject, in the case of no-fault benefits, to Regulation 672 (R.R.O. 1990) entitled *No-Fault Benefits Schedule*, which applies to accidents that occurred between June 22, 1990 and January 1, 1994. The Schedule provides, *inter alia*, that insurers cannot raise certain grounds for invalidity of insurance contracts against claimants and imposes, in subsection 12(1), a minimum amount as a weekly “income” benefit. Subsection 12(1) reads as follows:

¹ Paragraph 57(2)(d) of the *Unemployment Insurance Regulations* reads as follows:

57 . . .

(2) Subject to this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings has occurred and the amount to be deducted from benefits payable under subsection 15(1) or (2), 17(4), 18(5), or 20(3) of the Act and for the purposes of sections 37 and 38 of the Act are

. . .
(d) notwithstanding paragraph (3)(b) but subject to subsection (2.1), the payments a claimant has received or, on application, is entitled to receive from motor vehicle accident insurance provided under or pursuant to a provincial law in respect of the actual or presumed loss of income from employment due to injury, if the benefits paid or payable under the Act are not taken into account in determining the amount that the claimant receives or is entitled to receive from such insurance. . . .

The French version of the opening words of paragraph (d) reads as follows:

d) nonobstant l'alinéa 3b), mais sous réserve du paragraphe (2.1), les indemnités qu'un prestataire a reçues ou a le droit de recevoir, en vertu d'un régime d'assurance-automobile prévu par une loi provinciale. . . .

[Emphasis added]

PART IV

Weekly Benefits

Income Benefit

12. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident a weekly income benefit during the period in which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment if the insured person meets the qualifications set out in subsection (2) or (3).

It is established in the case at bar that the weekly benefits received (each in the amount of \$566.38, over a period of six weeks) by the respondent were paid by his insurer pursuant to section 12 of Regulation 672 and calculated as prescribed by that section.

According to the Board of Referees, the Ontario Act provides for [TRANSLATION] “insurance for loss of wages due to a motor vehicle accident”, while the umpire considered it “private insurance” to which the respondent had subscribed on his own initiative.

Neither of them was wrong, but their conclusions led them to a question that they should have answered but did not. It must be asked whether or not this insurance for loss of wages due to a motor vehicle accident or private insurance is motor vehicle accident insurance provided under or pursuant to a provincial law.

The question, is not easy to answer in view in particular of the differences between the English and French versions of the *Unemployment Insurance Regulations*, as the French version uses the words “régime d'assurance-automobile prévu par une loi provinciale” to render “motor vehicle accident insurance provided under or pursuant to a provincial law”,

It is our view on final analysis that these differences between the two versions are insignificant. One explanation for them may be that the drafters had the Ontario Act in mind when drafting the English version and the Quebec automobile insurance scheme in mind when drafting the French version.

What is clear from both versions is that the intention was to take compensation for lost wages to which a claimant is entitled under provincial

legislation into account in calculating benefits payable under the *Unemployment Insurance Act*. Paragraph 57(2)(d) is not concerned with the form of the government intervention: as long as a payment is made to a claimant under a scheme of motor vehicle insurance regulated by the provincial government that provides for the payment of benefits for loss of wages, the benefits paid constitute earnings for the purposes of paragraph 57(2)(d) of the *Unemployment Insurance Regulations*, provided of course that the other requirements of that paragraph have been met.

In *Gall v. Canada*,² a recent decision that was clearly not brought to the umpire's attention, this Court considered benefits paid under section 13 (Benefit If No Income) of Regulation 672. According to what the Chief Justice stated at page 424, it was not in issue that the payments in question were "received from motor vehicle accident insurance provided under or pursuant to a provincial law", and the Court held in *obiter* that benefits paid under section 12 of Regulation 672 are paid "in respect of the actual or presumed loss of income from employment" within the meaning of paragraph 57(2)(d) of the *Unemployment Insurance Regulations*.

The respondent in the case at bar disagrees that such benefits constitute payments received from motor vehicle accident insurance provided under or pursuant to a provincial law. For the above reasons, this argument cannot succeed. Furthermore, we do not hesitate, in the instant case, to adopt the Chief Justice's *obiter dictum*.

The application for judicial review will be allowed, the umpire's decision will be quashed and the matter will be referred back to the chief umpire or an umpire designated by him for a new decision on the basis that the payments received by the respondent constituted earnings.

Robert Décary

J.A.

Certified true translation

² [1995] 2 F.C. 413 (C.A.).

Stephen Balogh

FEDERAL COURT OF APPEAL

A-378-96

BETWEEN:

ATTORNEY GENERAL OF CANADA,

Applicant,

AND:

ANDRÉ LALONDE,

Respondent.

REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: A-378-96

STYLE OF CAUSE: AGC v. André Lalonde

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 10, 1996

REASONS FOR JUDGMENT OF THE COURT (Hugessen, Desjardins and
Décary J.J.A)

DELIVERED FROM THE BENCH BY: Décary J.A.

APPEARANCES:

Dominique Gagné for the applicant

André Lalonde for himself

SOLICITORS OF RECORD:

George Thomson
Deputy Attorney General of Canada
Ottawa, Ontario for the applicant

André Lalonde
Vanier, Ontario for himself