

Date: 20071010

Docket: A-594-06

Citation: 2007 FCA 320

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

WILFIDO HERNANDEZ

Respondent

Hearing held at Montréal, Quebec on October 10, 2007.

Judgment from the bench at Montréal, Quebec on October 10, 2007.

REASONS FOR JUDGMENT OF THE COURT:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec on October 10, 2007.)

LÉTOURNEAU J.A.

[1] Despite the submissions of Mr. Marotte, we consider that this application for judicial review should be allowed.

[2] In analyzing the respondent's grounds of appeal, the board of referees failed to consider whether the fact that the respondent voluntarily left his employment as a result of fears he had of dangerous conditions at his work was the only reasonable alternative. This is an essential condition of paragraph 29(c)(iv) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act): see *Attorney General of Canada v. Horslen*, A-517-94, September 21, 1995; *Astronomo v. Attorney General of Canada*, A-141-97, July 10, 1998.

[3] The board of referees' failure to consider this condition was an error of law which the umpire should have corrected: *Canada (Attorney General) v. Johnson*, 2004 FCA 100.

[4] Counsel for the respondent asked that the matter be referred back for re-hearing if we were to allow the application for judicial review. However, on the evidence in the record we do not feel it is necessary to hold a re-hearing, for the following reasons.

[5] The respondent left his employment without even discussing the working conditions with his employer. He did not explore the possibility with his employer that the nature or conditions of work at his employment could be changed in response to his concerns. The physical evidence in the record does not contain anything submitted by the respondent on the basis of which it could be concluded that in departing the claimant had "no reasonable alternative".

[6] For these reasons, the application for judicial review will be allowed, but in the circumstances without costs. The umpire's decision in CUB 66996 will be quashed and the matter

referred back to the chief umpire, or a person designated by him, to be again decided on the basis that the respondent is excluded from benefits as a result of his leaving his employment voluntarily without just cause within the meaning of sections 29(c) and 30 of the Act.

“Gilles Létourneau”

J.A.

Certified true translation

Brian McCordick, Translator

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-594-06

**JUDICIAL REVIEW OF DECISION BY UMPIRE JEAN A. FORGET
ON NOVEMBER 17, 2006: CASE NO. CUB 66996.**

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA v. WILFIDO HERNANDEZ

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 10, 2007

REASONS FOR JUDGMENT OF THE COURT: LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH: LÉTOURNEAU J.A.

APPEARANCES:

Paul Deschênes FOR THE APPLICANT

Hans Marotte FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada
Montréal, Quebec

Hans Marotte FOR THE RESPONDENT
Montréal, Quebec

Date: 20071010

Docket: A-594-06

Montréal, Quebec, October 10, 2007

**CORAM : LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

WILFIDO HERNANDEZ

Respondent

JUDGMENT

The application for judicial review is allowed, but in the circumstances without costs. The umpire's decision in CUB 66996 is quashed and the matter referred back to the chief umpire, or a person designated by him, to be again decided on the basis that the respondent is excluded from benefits as a result of leaving his employment voluntarily without just cause within the meaning of sections 29(c) and 30 of the Act.

"Gilles Létourneau"

J.A.

Certified true translation

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