

Date: 20080910

Docket: A-72-07

Citation: 2008 FCA 259

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

BETWEEN:

EDSON EMILIO ALVAREZ GARCIA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on September 10, 2008.

Judgment delivered from the Bench at Montréal, Quebec, on September 10, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

Date: 20080910

Docket: A-72-07

Citation: 2008 FCA 259

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

BETWEEN:

EDSON EMILIO ALVAREZ GARCIA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

(Delivered from the Bench at Montréal, Quebec on September 10, 2008)

TRUDEL J.A.

[1] The applicant lost his employment with Taylor Dentech due to misconduct and was therefore disqualified from regular employment insurance benefits. He unsuccessfully challenged his disqualification before the Employment Insurance Commission, the Board of Referees and the Umpire. The Umpire also dismissed his request for reconsideration in CUB 66107A, a decision dated October 27, 2006.

[2] Hence the present Application for judicial review of the latter decision. In his memorandum of fact and law, the applicant is also asking this Court to set aside the first decision of the Umpire and the decision of the Board of Referees. Throughout the proceedings, the issue for the applicant remains whether he lost his employment due to his own misconduct.

[3] After launching the Application under study, the applicant obtained a memorandum, dated July 29, 2005, and addressed by a civil servant of Human Resources and Skills Development Canada to legal counsel acting for the Crown in the applicant's file.

[4] In essence, the author of this memorandum opines that "there are a number of problems with this case" and recommends "that counsel acknowledge these and allow the Umpire to return this appeal for a "*de novo*" hearing by a new Board of Referees". Obviously, legal counsel for the Crown chose another course of action.

[5] This memorandum is now in front of us following the Order of Ryer J.A. dated November 20, 2007. Ryer J.A. stated that the document was not within the control of the applicant, and that it would have been "valuable and influential evidence that could have influenced the Umpire", had it been presented to him for the reconsideration of his prior decision.

[6] The evidence having been admitted, this Application for judicial review will be allowed with costs, the reconsideration decision of the Umpire, the late Mr. Justice Paul Rouleau, will be set

aside and the matter will be sent back to the Chief Umpire or his designate for reconsideration of the motion for reconsideration in light of the new evidence.

[7] In view of this conclusion, it becomes unnecessary to examine the other arguments put forward by the parties.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-72-07

APPEAL FROM A DECISION OF THE UMPIRE DATED OCTOBER 27, 2006

STYLE OF CAUSE: Edson Emilio Alvarez Garcia v. AGC

PLACE OF HEARING: Montréal

DATE OF HEARING: September 10, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LÉTOURNEAU, NOËL, TRUDEL
JJ.A.)

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

EDSON EMILIO ALVAREZ GARCIA	SELF-REPRESENTED APPELLANT
NICHOLAS R. BANKS	FOR THE RESPONDENT

SOLICITORS OF RECORD:

EDSON EMILIO ALVAREZ GARCIA Montréal, Quebec	SELF-REPRESENTED APPELLANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT