

Date: 20080917

Docket: A-66-08

Citation: 2008 FCA 271

**CORAM: NADON J.A.
SEXTON J.A.
PELLETIER J.A.**

BETWEEN:

JUDITH A. MOORE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 17, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on September 17, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 17, 2008)

PELLETIER J.A.

[1] The grounds upon which an appeal may be taken from a decision of the Board of Referees are set out at subsection 115(2) of the *Employment Insurance Act*, S.C. 1996, c. 23. They are denial of natural justice, error of law or error of fact.

[2] In the present case, the Board of Referees' findings of fact are not challenged. The Commission's complaint is not that the Board of Referees applied the wrong test. Its complaint is that it does not agree with the Board of Referees' application of that test.

[3] In the absence of an error of fact or law on the part of the Board of Referees, the Umpire was not entitled to intervene simply because he would have come to a different conclusion on the facts. When asked to reconsider his decision on the basis that he had misapprehended the facts, the Umpire reconsidered the matter, but in the absence of an error of fact or law on the part of the Board of Referees, he was no more entitled to interfere with its decision on that occasion.

[4] As a result, we would allow the application for judicial review, set aside both decisions of the Umpire and remit the matter to the Umpire in Chief for a re-hearing in accordance with these reasons.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-66-08

(APPEAL FROM A DECISION OF THE UMPIRE, DATED SEPTEMBER 14, 2007 AT ST. JOHNS, NEWFOUNDLAND, FILE NO. CUB: 69227 AND FROM THE RECONSIDERATION OF THE UMPIRE'S DECISION, DATED DECEMBER 24, 2007 AT ST. JOHNS, NEWFOUNDLAND, FILE NO. CUB 69227A.)

STYLE OF CAUSE: JUDITH A. MOORE v. THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, SEXTON & PELLETIER
J.J.A.)

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

DONALD K. MOORE FOR THE APPLICANT

ADAM RAMBERT FOR THE RESPONDENT

SOLICITORS OF RECORD:

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