Date: 20080918

Dockets: A-321-07
A-320-07
A-322-07
A-323-07
A-324-07
A-325-07

Citation: 2008 FCA 275

CORAM: **DÉCARY J.A.**
BLAIS J.A.
RYER J.A.

A-321-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

AMY KIN-HO LAU

Respondent

A-320-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

LE SI HU

Respondent

A-322-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

WAN LAU LO

Respondent

A-323-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

ZHONG HAO LIANG

Respondent

A-324-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

CUI WEN MA

Respondent

A-325-07

BETWEEN:

TAIGA WORKS-WILDERNESS LTD.

Applicant

and

WOON KING HO

Respondent

Heard at Vancouver, British Columbia, on September 15, 2008.

Judgment delivered at Vancouver, British Columbia, on September 18, 2008.

REASONS FOR JUDGMENT BY: BLAIS J.A.

CONCURRED IN BY: DÉCARY J.A.
RYER J.A.

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REASONS FOR JUDGMENT

BLAIS J.A.

[1] This is an appeal from a decision rendered by Umpire Max Teitelbaum of the Office of the Umpire, on May 28, 2007.

[2] Generally, the issue between the parties is whether six seamstresses in the employ of Taiga Works-Wilderness Equipment Ltd. ("Taiga") left their employment with or without just cause after Taiga allegedly modified the terms and conditions of their salary and wages.

[3] Specifically at issue in this judicial review is whether the umpire properly confirmed that the employees had just cause in leaving the employment of Taiga, upholding the Board of Referees' decision.

[4] The decision of the umpire should be upheld.

Background

The Commission's Decision

[5] On December 20, 2005, the Canadian Employment Insurance Commission (the "Commission") determined that eleven seamstresses did not demonstrate just cause for leaving the employment of Taiga. This determination was based on the Commission's view that the respondents had not pursued reasonable alternatives to walking off the job, including contacting the employment agency or Employment Standards prior to quitting. It therefore imposed an indefinite disqualification of benefits pursuant to sections 29 and 30 of the *Employment Insurance Act.*

The Board's Decision

[6] At the Board level, the seamstresses' appeals were joined in two groups. The first group of appellants were represented by Ms. Huang (A-316-07), the second group of appellants were

represented by Ms. Lau (A-321-07). The two groups were subject to two separate hearings before the Board of Referees and the evidence in each case does not appear to have been the same. Each decision, in turn, led to separate appeals before this Court.

[7] On March 15, 2006, the Board of Referees determined that the Lau respondents did have just cause for voluntarily leaving Taiga's employment. Included in the reasons were that,

> [t]he Board could not find any evidence that the changes [in the method for determining pay] made by the company would increase the claimant's wages. The claimant had pay stubs which showed that her wage calculations were very complicated and they were unable to determine what the end result would be (Exhibit 14.5). Despite many vehement statements that their employees would benefit from the new wage structure, Taiga did not provide any evidence to support their position. In fact, in Taiga's exhibit 15.2, the employer states that: … "we hired an operator with only average skills who, after a couple of weeks, achieved about $20.00/hour for this work and, when using last year's rate would have reached about $24.00/hour."
>
> Although the Board is not certain this was Mr. Behrman's goal, this statement supports the claimant's argument that wages are going down, not up.

[8] The Board's decision also pointed to the employer's refusal to improve difficult working conditions including low temperature, lack of light, unisex washrooms, lack of communication with management, the elimination of paid breaks, and lack of compensation for overtime. The Board further found that Taiga's November 3, 2005 announcement that the base rate of pay would be $8.00/hour directly precipitated the seamstresses' decision to walk off the job. Based on these findings, the Board determined that the Lau respondents did not have time to look for alternate work and did not have access to management in order to discuss the November 3 wage change.

Therefore, the Board held the Lau respondents met the criteria for just cause under paragraphs 29(c)(iv) and (vii) of the *Employment Insurance Act*. This subsection reads,

29 (c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:	29 c) le prestataire est fondé à quitter volontairement son emploi ou à prendre congé si, compte tenu de toutes les circonstances, notamment de celles qui sont énumérées ci-après, son départ ou son congé constitue la seule solution raisonnable dans son cas :
(i) sexual or other harassment,	(i) harcèlement, de nature sexuelle ou autre,
(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,	(ii) nécessité d'accompagner son époux ou conjoint de fait ou un enfant à charge vers un autre lieu de résidence,
(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,	(iii) discrimination fondée sur des motifs de distinction illicite, au sens de la *Loi canadienne sur les droits de la personne*,
(iv) working conditions that constitute a danger to health or safety,	(iv) conditions de travail dangereuses pour sa santé ou sa sécurité,
(v) obligation to care for a child or a member of the immediate family,	(v) nécessité de prendre soin d'un enfant ou d'un proche parent,
(vi) reasonable assurance of another employment in the immediate future,	(vi) assurance raisonnable d'un autre emploi dans un avenir immédiat,
(vii) significant modification of terms and conditions respecting	(vii) modification importante de ses conditions de

wages or salary,	rémunération,
(viii) excessive overtime work or refusal to pay for overtime work,	(viii) excès d'heures supplémentaires ou non-rémunération de celles-ci,
(ix) significant changes in work duties,	(ix) modification importante des fonctions,
(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,	(x) relations conflictuelles, dont la cause ne lui est pas essentiellement imputable, avec un supérieur,
(xi) practices of an employer that are contrary to law,	(xi) pratiques de l'employeur contraires au droit,
(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,	(xii) discrimination relative à l'emploi en raison de l'appartenance à une association, une organisation ou un syndicat de travailleurs,
(xiii) undue pressure by an employer on the claimant to leave their employment, and	(xiii) incitation indue par l'employeur à l'égard du prestataire à quitter son emploi,
(xiv) any other reasonable circumstances that are prescribed.	(xiv) toute autre circonstance raisonnable prévue par règlement.
(emphasis added)	(accentuation est celui de l'auteur)

[9] The umpire considered written submissions from the applicant before making his decision. On May 28, 2007 the umpire concluded that these submissions did not contain new information and that they simply reiterated the employer's position.

[10] The umpire concluded that the Board had come to a decision that was reasonably open to it and that the facts supported this conclusion. The umpire found the Board had not committed any error in either fact or law in making its decision and on that basis did not interfere with the Board's decision.

Analysis

[11] The applicant argues that with respect to the Lau respondents, both the Board and the umpire made a decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before them. The applicant further argues that under paragraph 115(2)(c) of the *Employment Insurance Act* and paragraph 18.1(4)(d) and subsection 28(2) of the *Federal Courts Act* both decisions should be overturned on this basis.

[12] The Board made findings of fact that were reasonably open to it and within its mandate. These conclusions could not therefore be interfered with by the umpire. The conclusion that the employer announced a significant unilateral change to the terms and working conditions, regardless of their date of implementation, was sufficient to justify the Board's finding of just cause under section 29(c) (vii) of the *Employment Insurance Act*.

[13] The applicant has not demonstrated that the umpire made a reviewable error in deciding not to interfere with the Board's decision. Therefore, the judicial review regarding the Lau respondents should be dismissed.

Conclusion

[14] I would dismiss the application.

[15] The parties did not seek costs therefore I would award no costs.

"Pierre Blais"
J.A.

“I concur
Robert Décary J.A.”

“I concur
C. Michael Ryer J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	DÉCARY J.A. RYER JA.
DATED:	September 18, 2008

APPEARANCES:

Robert A. Kasting	FOR THE APPLICANT
No one appeared	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Stewart, Aulinger &Co. Vancouver B.C.	FOR THE APPLICANT