

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20090527

Docket: A-376-08

Citation: 2009 FCA 177

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

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MELISSA L. RUSSELL

Respondent

Heard at Halifax, Nova Scotia, on May 27, 2009.

Judgment delivered from the Bench at Halifax, Nova Scotia, on May 27, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on May 27, 2009)

NADON J.A.

[1] This is an application for judicial review of a decision of an umpire, Mr. Justice Stevenson, dated May 27, 2008 (CUB 70627) who allowed the respondent's appeal from a decision of the Board of Referees.

[2] More particularly, the Umpire found that subsection 32(1) of the *Employment Insurance Act* (the Act) was not applicable because there had been no agreement between the respondent and her

employer as to the date on which she would resume employment, as required by paragraph 32(1)(b) of the Act.

[3] We are all agreed that the Umpire erred in so concluding. In our view, the two conditions set out in the subsection are clearly met in the present matter. Firstly, the period of leave was authorized by the respondent's employer and secondly, the date of the respondent's return to her job was agreed to between the respondent and her employer in that her leave of absence was granted by the employer for a period of one year.

[4] As a result, the judicial review application will be allowed, the decision of the Umpire will be set aside and the matter will be remitted to the Chief Umpire or an Umpire designated by him for redetermination on the basis of these reasons.

“M. Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-376-08

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA v. MELISSA L. RUSSELL

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: May 27, 2009

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

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCE:

Korinda McLaine

FOR THE APPLICANT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPLICANT