

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20101118

Docket: A-61-10

Citation: 2010 FCA 311

**CORAM: BLAIS C.J.
NOËL J.A.
PELLETIER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

HARVEY BOOTON

Respondent

Heard at Toronto, Ontario, on November 17, 2010.

Judgment delivered at Toronto, Ontario, on November 18, 2010.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

BLAIS C.J.
PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

NOËL J.A.

[1] The application for Judicial Review must be allowed. The Umpire failed to give effect to paragraph 35(1)(c) of the *Employment Insurance Regulations* which incorporates within the definition of “employment” the tenure of an office as defined in subsection 2(1) of the Canada Pension Plan, which in turn defines an “office” as meaning *inter alia*, “...the position of an individual entitling him to a fixed or ascertainable stipend or remuneration...”. The Respondent comes squarely within this definition.

[2] I would therefore allow the application for judicial review, set aside the decision of the Umpire and remit the matter to the Chief Umpire or his designate so that it may be decided again on the basis that the Respondent occupied an employment.

“Marc Noël”

J.A.

“I agree.
Pierre Blais C.J.”

“I agree.
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-61-10

(AN APPLICATION FOR JUDICIAL REVIEW, FROM A DECISION OF THE HONOURABLE MADAM JUSTICE STEVENSON, SITTING AS UMPIRE (EI ACT), DECISION DATED JANUARY 11, 2010, AS CUB DECISION #73843.)

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v.
HARVEY BOOTON

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 17, 2010

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: BLAIS C.J.
PELLETIER J.A.

DATED: NOVEMBER 18, 2010

APPEARANCES:

DAVID TORTELL FOR THE APPLICANT

LORNE WALDMAN FOR THE RESPONDENT (ON HIS
OWN BEHALF)

SOLICITORS OF RECORD:

MYLES J. KIRVAN FOR THE APPLICANT
DEPUTY ATTORNEY GENERAL OF CANADA
TORONTO, ONTARIO

N/A FOR THE RESPONDENT