

Cour d'appel  
fédérale



Federal Court  
of Appeal

**Date: 20110126**

**Docket: A-246-10**

**Citation: 2011 FCA 30**

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

**BETWEEN:**

**THOMAS LEPRETRE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on January 26, 2011.

Judgment delivered from the Bench at Vancouver, British Columbia, on January 26, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Cour d'appel  
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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on January 26, 2011)**

**NADON J.A.**

[1] We are satisfied that the evidence does not show that the applicant breached his employer's policy regarding drugs and alcohol. More particularly, although it is conceded that the applicant drank during the evening prior to the date fixed by his employer for an alcohol and drug test, the result of the test does not support the view that the applicant either drank or took drugs in a quantity exceeding the permissible levels of concentration set out in the employer's written policy.

[2] Thus, in the circumstances, we fail to see the basis upon which one could conclude that the applicant lost his employment due to a breach of his employer's policy amounting to misconduct. The Commission's evidence resulting from telephone conversations with a representative of the employer to the effect that the employer had a "0 tolerance policy" regarding alcohol and drugs appears totally at odds with the written policy itself adduced in evidence.

[3] In conclusion, we are of the view that it was unreasonable to conclude, as both the Board and the Umpire did, that the applicant had lost his employment because of misconduct. The evidence before them was totally insufficient to support such a conclusion.

[4] The judicial review application will therefore be allowed, the Umpire's decision dated May 12, 2010, will be set aside and the matter will be returned to the Chief Umpire or his designate for redetermination on the basis that there was no evidence capable of supporting a conclusion that the applicant lost his employment by reason of misconduct.

[5] The applicant shall have his costs, which are hereby fixed at the sum of \$1,748.24

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"Marc Nadon"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-246-10

**STYLE OF CAUSE:** THOMAS LEPRETRE v. A.G.C.

**PLACE OF HEARING:** Vancouver, B.C.

**DATE OF HEARING:** January 26, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON, PELLETIER,  
MAINVILLE J.J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

Kevin A. Love FOR THE APPLICANT

Sally Rudolph FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Myles J. Kirvan  
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