Federal Court of Appeal | Cour d'appel fédérale

Date: 20110606

Docket: A-381-10

Citation: 2011 FCA 190

CORAM: **NADON J.A.**
EVANS J.A.
LAYDEN-STEVENSON J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

CHARMAINE WHITE

Respondent

Heard at St. John's, Newfoundland and Labrador, on June 2, 2011.

Judgment delivered at Ottawa, Ontario, on June 6, 2011.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: NADON J.A.
EVANS J.A.

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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

[1] The Employment Insurance Commission (the Commission) denied the respondent, Charmaine White, employment insurance benefits on the basis that she voluntarily left her employment without just cause. The Board of Referees (the Board) dismissed her appeal. Ms. White appealed the Board's decision to the Umpire. Umpire Riche allowed the appeal and found that a significant change in Ms. White's work duties constituted just cause for leaving her employment.

The applicant Attorney General of Canada (the Crown) seeks judicial review of the Umpire's determination. I would allow the application.

[2] The Umpire's role is to review the Board's determinations on questions of law on a standard of correctness and its determinations on questions of fact and mixed fact and law on a standard of reasonableness: *Stone v. Canada* (*Attorney General*), 2006 FCA 27; *Budhai v. Canada* (*Attorney General*), 2002 FCA 298.

[3] The question of "just cause" for leaving employment requires an examination of "whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment": *MacNeil v. Canada* (*Employment Insurance Commission*), 2009 FCA 306. Ms. White bears the burden of establishing just cause: *Canada* (*Attorney General*) *v. Patel*, 2010 FCA 95.

[4] In this case, although the Board failed to comprehensively address Ms. White's allegations of a "significant change in work duties" and concluded that no significant change in duties had been imposed, the crux of its finding turned on its determination that Ms. White had not met the burden of showing a lack of any reasonable alternative to leaving her employment. Specifically, it concluded that a "reasonable alternative would have been to remain employed until she found suitable employment."

[5] The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job: *Canada* (*Attorney General*) *v. Hernandez*, 2007 FCA 320; *Canada* (*Attorney General*) *v. Campeau*, 2006 FCA 376; *Canada* (*Attorney General*) *v. Murugaiah*, 2008 FCA 10.

[6] Ms. White expressed her concerns to the Operations Manager of the various Rainbow Daycares during the telephone conversation when she was informed of the impending changes to her work duties. However, she decided not to speak with her employer because it would have been a "waste of time." She left her employment after only two hours without seeking a transfer to one of the other Rainbow Daycare locations and without seeking alternative employment. Additionally, as the Crown notes, she had no opportunity (during the two hours) to determine if the new work structure would lead to negative reports.

[7] Although section 117 of the Act grants the Umpire broad powers to decide questions of fact or law necessary for the disposition of an appeal, the Umpire cannot substitute his assessment of facts for that of the Board unless he finds that the Board's assessment was not reasonably open to it. In this instance, the Umpire did not stipulate the standard of review applicable to the Board's assessment of the facts with respect to the issue of just cause. The Board's observation that good cause does not equate to just cause was proper. In my view, the Board's conclusion that Ms. White had not established just cause, or a lack of any reasonable alternative, was reasonably open to it. The

Umpire erred in failing to afford any deference to the Board's findings and in substituting his view of the facts for that of the Board.

[8] Consequently, I would allow the application, set aside the Umpire's decision and return the matter to the Chief Umpire, or his designate, for redetermination on the basis that the respondent did not have just cause for leaving her employment. I would not award costs since the applicant did not request them.

"Carolyn Layden-Stevenson"
J.A.

" I agree
M. Nadon J.A."

"I agree
John M. Evans J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-381-10
STYLE OF CAUSE:	**AGC v WHITE**
PLACE OF HEARING:	St. John's, Newfoundland and Labrador
DATE OF HEARING:	June 2, 2011
REASONS FOR JUDGMENT BY:	LAYDEN-STEVENSON J.A.
CONCURRED IN BY:	NADON, EVANS JJ.A.
DATED:	June 6, 2011

APPEARANCES:

Nicole Arsenault	FOR THE APPLICANT
Charmaine White	SELF-REPRESENTED

SOLICITORS OF RECORD:

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