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Pièces n°: NON

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COTÉE

Canada (Attorney General) v. Paul

Attorney General of **Canada**, applicant, and François **Paul**, respondent

Federal Court of Appeal

Hugessen J.A.

October 5, 1995

Heard: October 5, 1995
Judgment: October 5, 1995
Docket: A-100-95

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Counsel: Carole Bureau for Applicant.

Diane Rainville for Respondent.

Subject: Public; Labour and Employment

Administrative law --- Requirements of natural justice -- Bias

Board of referees rendering ex parte decision dismissing claimant's appeal -- Second hearing of appeal held before same board -- Umpire incorrectly finding reasonable apprehension of bias existing.

In the absence of claimant and his representative, a board of referees dismissed claimant's appeal. The board heard the appeal for a second time, in the presence of claimant, and once again dismissed the appeal. The umpire found that there was a reasonable apprehension of bias, stating that a person who was tried in his or her absence and lost

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his or her appeal would find it difficult to be confident that the same individuals would be able to find in his or her favour if they had to re-try the same facts in his or her presence. Attorney General applied for judicial review of the umpire's decision. Held, the application was allowed. The decision was set aside and the case referred back for a new decision premised on the fact that there was no reasonable apprehension of bias. The correct test for reasonable apprehension of bias was objective and asked whether a reasonably well-informed person could apprehend that the decision was biased. The umpire erred by applying a purely subjective standard to the facts of the present case. The board's first decision, rendered ex parte, in no way prevented the members from weighing and assessing the evidence adduced and the submissions made to them at the second hearing. The mere fact of a second hearing before the same adjudicator, without more, did not give rise to a reasonable apprehension of bias.

Hugessen J.A.:

- 1 At the beginning of his reasons the umpire correctly stated the test for reasonable apprehension of bias:

[TRANSLATION]

The question I must ask in the instant case is whether a reasonably well-informed person could apprehend that the decision was biased.

- 2 However, when the time came to apply the law to the facts of the instant case the umpire used an entirely different standard:

[TRANSLATION]

A person who is tried in his or her absence and loses his or her appeal will find it difficult to be confident that the same individuals will be able to find in his or her favour if they have to retry the same facts in his or her presence.

- 3 In the first passage cited the standard is objective: the Court assesses the facts through the eyes of a reasonable person who is well informed of the situation. The standard used by the umpire, on the other hand, is purely subjective; he put himself in the position of an interested person who has lost a case.

- 4 This Court has already held that

...the mere fact of a second hearing before the same adjudicator, without more, does not give rise to reasonable apprehension of bias. ...[FN1]

- 5 In the facts of the case at bar, we are all of the opinion that the mere fact that the members of the Board of Referees had dismissed the claimant's appeal once, in the absence of the claimant and his representative, would not give rise to any reasonable apprehension of bias in the mind of an impartial, reasonable and well-informed

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observer. The Board of Referees' first decision, rendered *ex parte*, in no way prevented the members from weighing and assessing the evidence adduced and the submissions made to them at the second hearing.

6 The application for judicial review will be allowed, the umpire's decision set aside and the case referred back to the chief umpire or another umpire designated by him for a new decision premised on the fact that there was no reasonable apprehension of bias in the instant case.

FN1. See *Arthur v. Minister of Employment and Immigration*. [1993] 1 F.C. 94, at 105.

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