

CANADA / JUDGMENT

Canada (Minister of Human Resources Development v. Heaman

2004 FC 1155

COURT

Federal Court

DECIDED

19 August 2004

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Canada (Minister of Human Resources Development v. Heaman Court (s) Database Federal Court Decisions Date 2004-08-19 Neutral citation 2004 FC 1155 File numbers T-290-03 Notes Digest Decision Content Date: 20040819 Docket: T-290-03 Citation: 2004 FC 1155 OTTAWA, ONTARIO, THURSDAY, THIS 19TH DAY OF AUGUST, 2004 PRESENT: THE HONOURABLE MADAM JUSTICE SNIDER BETWEEN: MINISTER OF HUMAN RESOURCES DEVELOPMENT Applicant

- and - BERNICE HEAMAN Respondent REASONS FOR ORDER AND ORDER SNIDER J.

- [1] Since February 1998, Ms. Heaman has been eligible to receive Old Age Security Benefits under the Old Age Security Act, R.S.C. 1985, c. O-9, as amended (the OASA). In the year 2000, Ms. Heaman, who retired from the federal public service in 1994, received a one-time pay equity payment. The Applicant, the Minister of Human Resources Development (the Minister), took the position that the pay equity monies were a retroactive salary adjustment that should be included for purposes of calculating her Guaranteed Income Supplement (Supplement). This reduced Ms. Heaman's Supplement by over \$100 per month. Ms. Heaman was informed of this decision by letter dated December 24, 2001 in which she was advised that: You may appeal to a Review Tribunal.
- [2] Ms. Heaman appealed to and was heard by a Review Tribunal which allowed her appeal in a decision dated January 20, 2003, stating as follows: [T]here was no persuasive authority to indicate that these monies should not have been considered income earned for the year 1994 . . . or earlier or a lump sum under . . . the Old Age Security Operations Manual. As a result the amount received should not be included or considered when calculating the Guaranteed Income Supplement of the Appellant.
- [3] The Minister seeks judicial review of this decision.
- [4] The determinative issue in this application is whether the Review Tribunal acted without jurisdiction in hearing Ms. Heaman's appeal and not referring it to the Tax Court of Canada.

- [5] The Applicant submits that the Review Tribunal had no jurisdiction to hear Ms. Heaman's appeal; that the OASA required the Commissioner of Review Tribunals to refer Ms. Heaman's appeal to the Tax Court of Canada. This application raises a question of law. In the domain of statutory interpretation, the Review Tribunal possesses no superior expertise relative to this Court. A Review Tribunal consists of three persons, only one of whom is required to be a member of the bar of a province (OASA, s. 82(7)(a)). The purpose of the OASA is not stated anywhere in the statute and the Canada Pension Plan contains neither a right of appeal nor a privative clause in respect of Review Tribunal decisions. Thus, the applicable standard of review is correctness. This standard of review was also accepted by Justice MacKay in *Attorney General of Canada v. Comeau*, 2004 FC 1034, a case dealing with a similar application.
- [6] Ms. Heaman was dissatisfied with the decision of the Minister under subsection 27.1(2) of the OASA. Accordingly, she appealed this decision to a Review Tribunal, pursuant to subsection 28(1) of the OASA:
- (1) A person who makes a request under subsection 27.1(1) and who is dissatisfied with the decision of the Minister in respect of the request, or, subject to the regulations, any person on their behalf, may appeal the decision to a Review Tribunal under subsection 82(1) of the Canada Pension Plan.
- (1) L'auteur de la demande prévue au paragraphe 27.1(1) qui se croit lésé par la décision révisée du ministre -- ou, sous réserve des règlements, quiconque pour son compte -- peut appeler de la décision devant un tribunal de révision constitué en application du paragraphe 82(1) du Régime de pensions du Canada.
- [7] However, subsection 28(2) of the OASA provides: Where, on an appeal to a Review Tribunal, it is a ground of the appeal that the decision made by the Minister as to the income or income from a particular source or sources of an applicant or beneficiary or of the spouse or common-law partner of the applicant or beneficiary was incorrectly made, the appeal on that ground shall, in accordance with the regulations, be referred for decision to the Tax Court of Canada ¼(emphasis added) Lorsque l'appelant prétend que la décision du ministre touchant son revenu ou celui de son époux ou conjoint de fait, ou le revenu tiré d'une ou de plusieurs sources particulières, est mal fondée, l'appel est, conformément aux règlements, renvoyé pour décision devant la Cour canadienne de l'impôt. La décision de la Cour est, sous la seule réserve des modifications que celle-ci pourrait y apporter pour l'harmoniser avec une autre décision rendue aux termes de la Loi sur la Cour canadienne de l'impôt ...
- [8] Use of the word _shall_ in subsection 28(2) of the OASA indicates that the Review Tribunal's jurisdiction is not permissive or discretionary. An appeal concerning _income_ shall be referred for adjudication to the Tax Court of Canada. How then is _income_ defined? Section 2 of the OASA states: _income_ of a person for a calendar year means the person's income for the year, computed in accordance with the Income Tax Act . . . _revenu_ Le revenu d'une personne pour une année civile, calculé en conformité avec la Loi de l'impôt sur le

revenu

- [9] According to a Notice of Reassessment for the year 2000, which is part of the record in this proceeding, the Canada Customs and Revenue Agency (the _CCRA_) treated the pay equity amount received by Ms. Heaman as income earned that year for purposes of the Income Tax Act. The sole ground of Ms. Heaman_s appeal to the Review Tribunal is whether the pay equity amount received by her in 2000 should be treated as income earned in that calendar year for the purposes of determining the amount of Supplement payable to her. Thus, section 28(2) of the OASA is engaged.
- [10] The jurisdiction of a statutory body such as the Review Tribunal is limited to that set out in its enabling statute (Comeau, supra). Given the ground of Ms. Heaman_s appeal and the mandatory language used in section 28(2) of the OASA, the Review Tribunal exceeded its jurisdiction by hearing Ms. Heaman_s appeal. There was a statutory duty, pursuant to subsection 28(2) of the OASA, to refer Ms. Heaman_s appeal to the Tax Court of Canada for adjudication. Accordingly, the decision of the Review Tribunal should be quashed.
- [11] In this conclusion, I agree with the decision of my colleague Justice MacKay in Comeau, supra. Although the monies in question in that case consisted of certain RRSP funds that Ms. Comeau had cashed in rather than the pay equity settlement in this case, Justice MacKay_s reasoning on this issue of jurisdiction is equally applicable to the facts before me. As in that case, it is beyond the jurisdiction of the Review Tribunal to dictate how the Minister was to treat the matter of her income for the year in question.
- [12] Although I am bound to quash the decision of the Review Tribunal because of a lack of jurisdiction, I am troubled by the Minister_s failure to raise this objection before or during the hearing of the Review Tribunal. As a result, Ms. Heaman and her family - pensioners and self-represented litigants - have been put to considerable inconvenience. The matter must now be referred back to the Review Tribunal and, if pursued further by Ms. Heaman, will require representations to the Tax Court. All of this could have been avoided if the Minister had recognized the problem earlier. In the unusual circumstances of this application and exercising my discretion, I am prepared to award costs to Ms. Heaman fixed in the amount of \$500. ORDER THIS COURT ORDERS THAT:
1. The application is allowed, the decision of the Review Tribunal is set aside and the matter is referred back for reconsideration; and,
 2. Costs fixed in the amount of \$500 are payable forthwith to the Respondent. _Judith A. Snider_ Judge FEDERAL COURT NAMES OF COUNSEL AND SOLICITORS OF RECORD DOCKET: T-290-03 STYLE OF CAUSE: MINISTER OF HUMAN RESOURCES DEVELOPMENT v. BERNICE HEAMAN PLACE OF HEARING: Winnipeg, Manitoba DATE OF HEARING: August 17, 2004 REASONS FOR ORDER: The Honourable Madam Justice Snider DATED: August 19, 2004 APPEARANCES: Ms. Shawna Noseworthy FOR APPLICANT Mr. & Mrs. Heaman FOR RESPONDENT SOLICITORS OF RECORD: Mr. Morris Rosenberg FOR APPLICANT Deputy Attorney General of Canada Ottawa, Ontario On their own behalf FOR RESPONDENT

Hamiota, Manitoba

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Prepared on 27 October 2026 · Esheria