

CANADA / JUDGMENT

Caron v. Canada (Employment and Immigration Commission)

[1991] 1 SCR 48

COURT

Supreme Court of Canada

DECIDED

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Caron v. Canada (Employment and Immigration Commission) Collection Supreme Court
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[1991] 1 SCR 48 Case number 21188 Judges La Forest, Gérard V.; L'Heureux-Dubé, Claire; Sopinka, John; Gonthier, Charles Doherty; Cory, Peter deCarteret; McLachlin, Beverley; Stevenson, William On appeal from Federal Court of Appeal Subjects Insurance Notes SCC Case Information: 21188 Decision Content Caron v. Canada (Employment and Immigration Commission), [1991] 1 S.C.R. 48 The Canada Employment and Immigration Commission and The Deputy Attorney General of Canada Appellants v. Alphonse Caron, Georges-Émile Richard, Cyprien Lévesque, Harold Lévesque, Régis Dubé, Michel Giroux, Paul-Henri Guité, Philippe Celant, Jean-Noël Hudon, Roland Poulin, Jacques Boucher, Marc-André Gagnon, Guy Martin, Gilles Lévesque, Lucien Lévesque, Jean Vallée, Giovanni De Falchi, Majorique Arseneault, Herman Crousset, Sylvain Côté, Gilbert Caron, Lionel Caron, Lionel D'Astous, Jean-Paul Landry, Léon-Denis Pelletier, Ghislain St-Pierre, Réjean Gagnon, Donald Gendreau, Gilles Comeau, Roland Jourdain, Louis-Philippe Lavoie, Réal Tremblay, Normand Goulet, Justy Côté, Noël Martel, Mario Gagnon, Marius Caron, Gilles Morin, Guy Poulianne, Guy Caron, Jacques-André Gauthier, Serge Ross, Roger Ratté, Jean-Claude Martel, Jocelyn Dion, Jacques Dupont, Jean-Marc Pineault, Alain Martel, Régis Simard, Jocelyn Pelletier, Bertrand Bouchard, Louis Sénéchal, Lucien Jourdain, Gabriel Dufour, Jean-Claude Bernatchez, Georges Bérubé, Jean-Paul Lamarre, Yvon Tremblay, Fernand Roy, Régis Tremblay, François Camire, Fernand Simard, Normand Coursol, André St-Gelais, Rosaire Delarosbil, Walter Arseneault, William Bourque, Hugues Lévesque, Gérard Ouellet, Alfred Noël, Robert-A. Butland, Carmel Leblanc, Lucien Dionne, Louis-Marie Verreault, Rudolf Bard, Welley Deschesne, Paul-Armand Lagacé, Robert Lefrançois, Clément Ross, Albert Racine, Andréa Roussy, Léopold Marquis, Benoit Gagné, Raoul Brochu, Patrice Ouellet, Gérard Tremblay, Charles Gagnon, Léonard Nadeau, Georges Turbide, Léopold Dupont, Wilfrid Dupont, Charles St-Pierre, Raoul Valcourt, Maurice Ross, Yvon Durette, Roland Boulay, Réal Thibeault, Edmond Blaney, Jean-Marie Dufour, Camille Gonthier, Rock Gagné, Jean-Claude Bard, Henri Camire, Adrien Bérubé,

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Bérubé, Léon Gagnon, Guy Franck, Jocelyn Bourret, Yves Morin, Denis Cassista, Patrice Caron, Benoit Ross, Gilles Gagné, Anaclet Bernatchez, Gaétan Cormier, Camil Dion, Alain Côté, Pierre Lévesque, Sylvain Gagnon, Clermont Dupont, Gino Roy, Pierre Imbeault, Jacques Arseneault, Denis Harrisson, Guy St-Pierre, Jean-Marc Levasseur, Gérard Imbeault, Jean-François Beaudin, Denis Rousseau, Ghislain Fournier, Jacques Lefrançois, Mario Ross, Pierre Martel, Réjean Bonneau, Réjean Dufour, Donald Lévesque, Jean-Pierre Gagné, Marcel Damien, Hosman Fortin, Denis Martin, Serge Rouleau, Donald Bélanger, Denis Guité, Christian D'Astous, Réjean D'Astous, Bernard Arseneault, Réjean Truchon, Gilles Beaudin, Robert Gagnon, Michel Beaulieu, Marcel Bourque, Michel St-Gelais, Gilles Létourneau, Carl Ferlate, Marc Laliberté, Jeannot Gagnon, Jean Robitaille, Roger D'Amours, Alain Coulombe, Rémy Malouin, Jean-Guy Pelletier, Nelson Pelletier, Régis Boulay, Guy Pouliot, Serge Beaudet, Jean Paradis, Donald Lebrun, Michel Millier, Réal Goulet, Claude Valois, Raynald Mimeault, Serge Chouinard, Armand Gaul, Pierre Savard, Pierre Coulombe, Michel Mimeault, Marc-Aurèle Dufour, Gilles Moreau, Richard Perreault, André Roussy, Dany Dufour, Guy Bard, Gaétan Fournier, Jean-Pierre Blanchette, Marc Turbis, Denis Rainville, Claude Grenier, Sabin Lévesque, Richard Perreault, Clément Paradis, Yvan Gagnon, Michel Parent, Claude Gagnon, Alain Martel, André Bissonnette, Luc Giasson, Michel Maltais, Dominic Desbiens, Serge Imbeault, Romain Daraiche, Alain Verreault, André St-Pierre, Donald Gagnon, Régis Bernier, Claude Trépanier, Gilles Foster, Daniel Ongaro, Larry Gough, Gérard Gaudet, Fernand Raymond, Sylvain Dion, H.-Léonard Goguen, Michel Hovington, Jocelyn Tremblay, André Desjardins, Herriuge Proulx, Jean-Claude Bélanger, Jean-Louis Côté, Roger Boulay, André Beaulieu, Gérard Therrien, Marc Dufour, Daniel Martin, Norman Doucet, Mario Arseneault, Luc Gagnon, Michel Ross, Richard Cavanagh, Marc Beaulieu, Roger Morin, Clément Lavoie, Rémi Gagnon, Richard Lavoie, Guy Bernatchez, Rosaire Potvin, Rémi Bourque, André Lévesque, Marc Poirier, Serge Imbeault, Nelson Lecours, Aurèle Imbeault, Adrien St-Gelais, André St-Laurent, Patrice Hickie, Robert Lecours, Jean-Claude Deschesne, Michel Robert, Albini Fournier, Michel Savard, Henri Thorn, Marc Desjardins, Réginald Couture, Michel Girard, Marius D'Astous, Denis Laliberté, Jean-Claude Grand, Serge Fournier, Josué Landry, Nelson Larrivée, Berthier Gauthier, Denis Gauthier, Gaétan Bélanger, Claude Moisan, Roberto Otis, Robert Béchar, Réjean Doucet, Lorrain Ouellet, Harold Michaud, Camil Devost, Jean-Guy Lechasseur, Denis Paré, Alain Boulay, Daniel Boulay, Claude Rivard, Marco Bovoli, Alain Turbis, André Dick, Tarzan Bérubé, Roland Boulay, Michel-D. Ouellet, Marcel Couturier, Vincent Vallée, Clermont Tremblay, Sylvain Martel, Michel Laberge, Pierre Larouche, Léo Bouchard, Louis-Marie Ouellet, Paul Gervais, Cécil-R. Burton, Gérard Therrien, Jude Gauthier, Henri-Claude Perron, Jude Lapointe, Bernard St-Gelais, Claude Soucy, Denis Tremblay, Réjean Otis, Harold Girard, Rénald Deschesnes, Dominic St-Hilaire, Paul Malenfant, Donald Gagnon, Alain Côté, Paul Talbot, Denis Tremblay, Denis Boudreault, Jules Therrien, Denis Langlois, Éric Langlois, Serge Beaudoin, Bernard Beaulieu, Danny Marcil, Gaston Dubé, Clément Giasson, Éric Ross, Bernard Courcy, Yves Hamel, Renaud Rousseau, Michel Raymond, Mario Dufour, Normen Gauthier, Leslie Bellany, Marc Poirier and Claude Coulombe Respondents Indexed as: Caron v. Canada

(Employment and Immigration Commission) File No.: 21188. 1990: December 10; 1991: January 17. Present: La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ. on appeal from the federal court of appeal Unemployment insurance -- Labour disputes -- Meaning of phrase "termination of the stoppage of work" in s. 44(1)(a) of Unemployment Insurance Act, 1971 -- Workers gradually recalled for work following settlement of labour dispute -- Date on which workers not immediately recalled for work eligible for unemployment insurance benefits. The employees of an aluminum plant were locked out by their employer following a labour dispute. A collective agreement and a memorandum governing the return to work was signed on March 29, 1986, and 970 of the approximately 1430 workers immediately reported to the plant. The remaining workers were gradually recalled for work. The appellant Commission held that these workers were only eligible for unemployment insurance benefits as of May 17, 1986. Under s. 44(1)(a) of the Unemployment Insurance Act, 1971, "[a] claimant who has lost his employment by reason of a stoppage of work attributable to a labour dispute . . . is not entitled to receive benefit until the termination of the stoppage of work". On appeal, the Board of Referees concluded that the stoppage of work terminated on April 26. At that time, 71% of the production had been reached and 90% of employees had been recalled. On further appeal, the Umpire affirmed the Board's decision. The majority of the Federal Court of Appeal allowed the workers' application to review and set aside the Umpire's decision. It held that the workers in this case were entitled to benefits as of March 29. It found that what characterizes the s. 44(1)(a) work stoppage and distinguishes it from the claimant's loss of employment is the aspect of "intent": a work stoppage due to a labour dispute always results from the fact that one or other of the parties to a contract of service does not wish to perform it; loss of employment is independent of intent. Thus, a work stoppage attributable to a labour dispute cannot continue after the point at which the parties to a dispute have indicated a desire to resume performance of their contracts of service and have, in fact, resumed such performance. The majority noted that this new interpretation of s. 44(1)(a) was appropriate in view of the Supreme Court's judgments in *Abrahams and Hills*. The dissenting judge affirmed the view of the Umpire. Held (Sopinka and Stevenson JJ. dissenting): The appeal should be dismissed. Per La Forest, L'Heureux-Dubé, Gonthier, Cory and McLachlin JJ.: The position of the majority of the Federal Court of Appeal is substantially agreed with. Nothing in s. 44(1) of the Act supports the use of criteria such as particular levels of production, and the return to work of a particular number of employees, in the interpretation of the words "termination of the stoppage of work". While the majority reasons should not be read as stating that the end of a labour dispute necessarily implies the termination of a stoppage of work in every case, the majority properly concluded in this case that March 29 was the day of the termination of the stoppage of work. Per Sopinka and Stevenson JJ. (dissenting): The analysis of the dissenting judge in the Federal Court of Appeal is substantially agreed with. Section 44(1) of the Act reflects the principle of neutrality of the state in labour disputes. Commission funds are not to be used to alleviate the consequences of a labour dispute. Neutrality requires that those funds should not be available to the striking or locked-out workers until

the resulting stoppage is at an end. Those consequences, for the employees as well as for the employer, last until the work affected is no longer stopped and the production has come back to normal. Until that point, the employee's loss of employment is attributable to a labour dispute. The decisions of this Court in *Abrahams* and *Hills* do not mandate any reversal of the previously settled case law under the section in question. Cases Cited By L'Heureux-Dubé J. Referred to: *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513. By Stevenson J. (dissenting) *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513. Statutes and Regulations Cited Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10 [now R.S.C., 1985, c. F-7], s. 28 . Unemployment Insurance Act, 1971, S.C. 1970-71-72, c. 48, s. 44(1) [now the Unemployment Insurance Act, R.S.C., 1985, c. U-1, s. 31(1) [rep. & sub. 1990, c. 40, s. 23]]. Unemployment Insurance Regulations, C.R.C. 1978, c. 1576, s. 49 [rep. & sub. SOR/90-756, s. 13]. Unemployment Insurance Regulations, amendment, SOR/90-756, s. 13. APPEAL from a judgment of the Federal Court of Appeal, [1989] 1 F.C. 628, 55 D.L.R. (4th) 274, 91 N.R. 1, 89 CLLC {PP} 14027, granting respondents' application under s. 28 of the Federal Court Act to review and set aside the decision of an umpire under the Unemployment Insurance Act, 1971, CUB-14267. Appeal dismissed, *Sopinka and Stevenson JJ. dissenting. Claude Joyal and Johanne Levasseur, for the appellants. Guy Martin, Georges Campeau and François Lamoureux, for the respondents.* // L'Heureux-Dubé// The judgment of La Forest, L'Heureux-Dubé, Gonthier, Cory and McLachlin JJ. was delivered by L'Heureux-Dubé J. -- This appeal concerns the entitlement of certain workers to unemployment insurance benefits. The legislation applicable to this case is the Unemployment Insurance Act, 1971, S.C. 1970-71-72, c. 48 ("the Act"), now the Unemployment Insurance Act, R.S.C., 1985, c. U-1. The respondents were all workers who were "locked out" by their employer during a labour dispute. Their claim for unemployment insurance benefits depends on the interpretation of s. 44(1) of the Act (now s. 31(1), recently amended by S.C. 1990, c. 40, s. 23), which reads:

44. (1) A claimant who has lost his employment by reason of a stoppage of work attributable to a labour dispute at the factory, workshop or other premises at which he was employed is not entitled to receive benefit until
- (a) the termination of the stoppage of work,
 - (b) he becomes bona fide employed elsewhere in the occupation that he usually follows, or
 - (c) he has become regularly engaged in some other occupation, whichever event first occurs.
- This appeal concerns specifically the meaning of the phrase, "termination of the stoppage of work" in s. 44(1)(a). When the stoppage of work was terminated, then the respondents became eligible for benefits. When did the stoppage of work terminate? The facts are not in dispute. The respondents were employed in an aluminum plant by the Reynolds Canadian Metal Company Limited ("the Company") in Baie Comeau, P.Q. Beginning in December 1985, the Company and the National Union of Aluminum Workers at Baie Comeau ("the Union"), representing the workers, were negotiating a new collective agreement. On March 3, 1986,

the Company ordered a lockout of the workers. The Company and the Union recommenced intense negotiations to resolve the dispute. During the lockout, only three of the eight production areas in which aluminum vats are situated remained operational, and these were staffed by management personnel. As a result, production levels were significantly diminished. In the early hours of March 29, the negotiations resulted in a settlement and the parties signed a collective agreement and a memorandum governing the return to work. The workers were recalled and at 8 o'clock that morning, 970 of the approximately 1430 workers reported to the plant. It is evident that some 460 workers were unable to start working immediately after the end of negotiations. Put simply, production in an aluminum plant cannot quickly return to normal levels after a period of idleness. Time must be taken to prepare the machinery for full operational use. So some workers must wait several days or weeks before reporting for work. The case before this Court poses the question of when these workers become eligible for unemployment insurance benefits. The Commission itself originally decided that the workers would be extended benefits as of May 17, 1986. The workers appealed this result to a Board of Referees, which altered the date to April 26. The three-member Board decided that [TRANSLATION] "[t]he stoppage of work was not necessarily connected with the signing of the collective agreement and the memorandum governing the return to work. After examining the documents . . . , the Board was of the view that there was substantial production (71%) and a 90% recall of the employees. The Board thus concluded that the stoppage of work occurred on April 26." (The reference to the "stoppage of work" in the Board's decision was evidently intended to mean "the termination of the stoppage of work".) An appeal against this decision was launched as of right to the Umpire. Dubé J. heard the appeal and took the same approach as the Board. Dubé J. recognized that the figures of production and employees which were used to determine the end of a work stoppage were useful guides, although they were not (in his word) [TRANSLATION] "magic". Taking into account all the facts before the Board, he did not interfere with the Board's date of April 26: CUB-14267. An application was then made to the Federal Court of Appeal, under s. 28 of the Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10 (now R.S.C., 1985, c. F-7). The Federal Court of Appeal by a majority (Hugessen and Desjardins JJ.) found the workers entitled to benefits beginning on the day when (in this case) the collective agreement and the memorandum governing the return to work were signed, and a number of the workers returned to work. That day was March 29. Marceau J., in dissent, would have affirmed the view of the Umpire Dubé J. The Federal Court of Appeal's reasons, delivered July 12, 1988, are now published at [1989] 1 F.C. 628. The majority gave an interpretation to s. 44 which, in their view, better accorded with the text of the legislation, and posed this question (at p. 638): How can it be said that there is still an "arrêt de travail" (the English word "stoppage" seems even stronger) when on the one hand, the employer has agreed to call its employees back to work, and on the other hand the latter have agreed to return and have in fact returned to work, at least in part? The facts of the case at bar are a striking illustration of this: if there was still a work stoppage at the Reynolds company's operations on March 29, 1986, then what were the 970 people who returned on that date doing? The majority noted that s. 44(1) creates a chain of causation: a labour

dispute may cause a stoppage of work to a group of employees, and the stoppage of work in turn may cause a loss of employment to an individual. The difficulty arises when the stoppage of work is over, and the second effect (the individual's loss of employment) persists. The majority reasoned as follows, at p. 639: . . . what essentially characterizes the section 44 work stoppage and distinguishes it from the claimant's loss of employment is the aspect of "intent": a work stoppage due to a labour dispute always results from the fact that one or other of the parties to a contract of service does not wish to perform it. If it is the employer who feels this way, the stoppage is called a lockout; if it is the employees who refuse to provide their services, it is called a strike. In either case it is the lack of intent which is the essence of the work stoppage. The loss of employment, on the other hand, is a phenomenon completely independent of intent, which is capable of affecting both those directly involved in the work stoppage, the strikers or employees who are locked out, and those who are not in any way concerned but who have lost their employment as a result nonetheless. In light of this analysis, we feel it cannot be said that a work stoppage attributable to a labour dispute can continue in being after the point at which the parties to the dispute have indicated a desire to resume performance of their contracts of service and have in fact resumed such performance. Therefore, the change in intention marked the end of the work stoppage, and this coincided in this case with the signing of the collective agreement on March 29. While the majority recognized that this was a novel interpretation of s. 44(1)(a) for the Canadian legislation, as well as for similar provisions under the American and United Kingdom statutes, Hugessen and Desjardins JJ. decided this was appropriate in view of the judgments of this Court in *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, and *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513. The majority also noted that this was in keeping with the broader purpose of the Act, which is to assist persons who are involuntarily unemployed. Marceau J. dissented, finding that there was no reason to depart from the precedents solely on the basis of *Abrahams* or *Hills*. Marceau J. found various policy arguments in favour of the existing case law. He would have affirmed the view of the Umpire. I am in substantial agreement with the position of the majority in the Federal Court of Appeal. Nothing in the legislation (as it read at the time) supports the use of criteria such as particular levels of production, and the return to work of a particular number of employees, in the interpretation of the words "termination of the stoppage of work". And although there were suggestions otherwise, I do not read the majority reasons as stating that the end of a labour dispute necessarily implies the termination of a stoppage of work in every case. Although the end of the labour dispute and the termination of the stoppage of work occurred on the same day in this case, this may not be the situation in other cases. In my opinion, the majority of the Federal Court of Appeal properly concluded that in this situation, March 29 was the day of the termination of the stoppage of work. While this is sufficient to dispose of this appeal, one other matter should be addressed. At the hearing before this Court, the question of the standard of review under s. 28 of the Federal Court Act was raised. As this was not an issue raised in the courts below, and the respondents submitted that a consideration of the issue would completely change the focus of this appeal, this Court decided that it would not hear the parties on this

question. In summary, I would dismiss the appeal with costs and send the matter back to the Canada Employment and Immigration Commission so that it can assess each individual claim as of March 29, 1986. //Stevenson J.// The reasons of Sopinka and Stevenson JJ. were delivered by Stevenson J. (dissenting) -- I have read the judgment of my colleague Justice L'Heureux-Dubé and respectfully disagree with her conclusion. On November 1, 1990, following the decision of the Federal Court of Appeal in the case at bar, the regulations under the legislation in question have been amended to reflect the conclusion of the Board of Referees, the Umpire and Marceau J. dissenting in the Court of Appeal (see s. 49 of the Unemployment Insurance Regulations, C.R.C. 1978, c. 1576, as amended by s. 13 of the Unemployment Insurance Regulations, amendment, SOR/90-756, which states that the stoppage of work is terminated when the work-force and the level of production attains 85 per cent of their normal level). There is therefore nothing to be gained from a detailed analysis of the legislation as it stood before those amendments. I am in substantial agreement with the analysis of the dissenting judge, Marceau J. The decisions of this court in *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, and *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, do not mandate any reversal of the previously settled case law under the section in question. The section reflects the principle of neutrality of the state in labour disputes. Commission funds are not to be used to alleviate the consequences of a labour dispute. Neutrality requires that those funds should not be available to the striking or locked-out workers until the resulting stoppage is at an end. Those consequences, for the employees as well as for the employer, last until the work affected is no longer stopped and the production has come back to normal. Until that point, the employee's loss of employment is attributable to a labour dispute. The proper interpretation of the legislation requires only an answer to the question: was the loss of employment the consequence of a strike or lock-out? The legislation does not, as it might have, end the disqualification with the resolution of the dispute, but, chooses to end it with the ending of the stoppage. I would, therefore, allow the appeal. Appeal dismissed with costs, Sopinka and Stevenson JJ. dissenting. Solicitor for the appellants: John C. Tait, Ottawa. Solicitors for the respondents: Sauvé, Ménard & Associés, Montréal.

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