

Case Name:
Boily v. ADM Milling Co.

**IN THE MATTER OF Complaint of Alleged Unjust Dismissal -
Adjudication under Division XIV - Part III of the Canada
Labour Code
Between
Richard Boily, Employee, and
ADM Milling Company, (Winnipeg, Manitoba), Employer
Human Resources Development Canada File No. YM2707-7294**

[2007] C.L.A.D. No. 131

Canada
Labour Arbitration

B.P. Schwartz, Adjudicator

Heard: March 21, 2007 and March 22, 2007.

Decision: April 4, 2007.

(60 paras.)

Appearances:

Counsel for the Employee: Carolyn J. Frost, Duboff Edwards Haight & Schachter LLP, Barristers and Solicitors.

Counsel for the Employer: Charles E. Hurdon, Ogilvy Renault, Barristers and Solicitors.

AWARD

Introduction

1 Richard Boily ("Mr. Boily") claims that he was unjustly dismissed by his Employer, ADM Milling Company ("the Employer"). Mr. Boily brings his complaint to adjudication under Part III of the Canadian Labour Code. I was appointed by the Minister to hear and decide the case.

2 The essence of the complaint is that Mr. Boily engaged in acts, while away on medical leave, that amounted to "work". When confronted with video surveillance to this effect, says the Em-

ployer, he failed to "come clean". As a result, the Employer lost the trust it needed to have in an employee, particularly one who had some supervisory duties.

3 The burden of proof is on the Employer in these cases, on a balance of probabilities, to provide its case for dismissal. My conclusion is that it has not done so. My order is that Mr. Boily be immediately reinstated and be compensated for lost wages and other benefits.

The Origin of the Employer's Concerns

4 Mr. Boily worked for the Employer since 1994. He has a grade ten education. Mr. Boily worked his way up the ranks from warehouse delivery truck operator to eventually becoming an operator (1997) and then operator and spare shift miller (2002). An operator's job, which is mostly what Mr. Boily continued to do after his last promotion, involves a variety of physically demanding tasks. Those tasks involved repetitive motion such as vacuuming for up to four hours in a day and moving heavy objects such as buckets for weighing which buckets could weigh as much as forty to sixty pounds.

5 Mr. Boily had a spotless disciplinary record until the date of his dismissal. Mr. Terry Barnhardt, Plant Manager, admitted on cross-examination that Mr. Boily had been promoted in 2002 not only because he displayed an interest in the business, but because he had been a good employee. The Employer did not suggest by evidence or argument that there was any prior history of acting irresponsibly or dishonestly.

6 Mr. Barnhardt was Mr. Boily's supervisor. He testified as follows. In January 2006, Mr. Boily returned from a vacation. Upon doing so, he took sick leave. He told Mr. Barnhardt that he had injured his arm. When the two conversed at the mill, Mr. Boily described his fishing trip. Mr. Barnhardt observed Mr. Boily moving his arms about in the course of his account. Mr. Barnhardt wondered how and why Mr. Boily would do so in light of the injury. Mr. Barnhardt also recalled that Mr. Boily's wife had recently bought a second business. Several months later, in April, Mr. Barnhardt, in consultation with other managers, arranged to have video surveillance done. The tape showed Mr. Boily picking up boxes from his wife's floral shop, driving and delivering them to various locations.

7 Upon reviewing the tape, and in anticipation of meeting with Mr. Boily scheduled for early May, 2006, Mr. Barnhardt prepared the following letter:

"Mr. Richard Boily

I am writing concerning an allegation that you were observed working at your business while collecting short term benefits from your employer (ADM Milling). Pending investigation into the allegation you are suspended indefinitely from duty without pay. As soon as possible and depending on the outcome of the investigation you will either be restored to duty or required to attend a disciplinary meeting.

In order for the company to conduct a thorough investigation you need to remain available to come into work during your normal hours during your period of suspension so that you may be interviewed by a company representative.

In the meantime I have to ask you to leave the Company's premises immediately. Please remain away from the Company's premises until further notice. You should not contact any of the Company's customers or suppliers or any other members of staff during the period of your suspension.

Yours sincerely,

Terry Barnhardt
Plant Manager"

8 Mr. Boily came to the mill on April 28, 2006 to deliver the medical form he had received from his specialist a few days earlier, clearing him to return to medium work. Mr. Barnhardt took the opportunity to summon him to a meeting. Mr. Barnhardt's note of the meeting is as follows:

"April 28, 2006

On Friday April 28, 2006 at 11.30 a.m. Richard Boily came to the mill to hand in some paper work that was from Great West Life Insurance filled in by his doctor and a Doctors note. I met Rick by surprise coming back to my office from a meeting that I had with Brian Guyda & Scott Weir in Brian's office. As I turned to see who was behind me I noticed Brian had been coming down the stairs as well, I asked Brian, if he had time to have the meeting that was planned for Monday at this time. Brian agreed to have the meeting so Rick could have the opportunity to explain to us why he had been working outside of his job here at ADM Milling. When the three of us went to my office I told Rick that he had been observed working while collecting benefits (STD) and that Brian and I needed him to explain his actions. Rick asked me to define the word working, I told Rick that working means any sort of task that allows you to use your arms. Rick told us that if we meant digging ditches or shovelling snow he was not doing that. I told Rick that the type of work that he was observed doing could have been done here in the plant over the last three months. Rick told us that he could do light duties with his right arm such as carrying light box's and such. Rick then asked me if he was going to be fired, I told Rick that I had a letter prepared for him and that he needed to read it and then sign and date it. Rick did read it as well as signing it. The letter stated that Rick would be suspended indefinitely pending investigations into the allegations & observations without pay. I told Rick that I would be in touch after further investigations were completed. Rick got up from his chair and left the meeting with no more to say.

Terry Barnhardt"

9 In Mr. Barnhardt's words, Mr. Boily's responses at the April 28th meeting led Mr. Barnhardt to conclude that the "trust and honesty" was gone. Several days later, in a decision taken by Mr. Barnhardt, after discussing the matter with one or more other senior managers, Mr. Boily was dismissed.

Testimony Presented by Mr. Boily about the Origin and Nature of the Injury and Why Mr. Boily came to Assist at the Shop

10 Mr. Boily testified, as did his wife, Liana Boily ("Mrs. Boily"). I found both to be credible witnesses.

11 Mr. Boily's answers were generally short and plain and responsive rather than argumentative. His testimony as a whole was internally consistent. There were a few points in which he initially gave an incorrect answer (e.g., he forgot he received \$800, rather than nothing, as employment income in the period of almost a year between his dismissal until the date of the hearing) but ungrudgingly accepted correction when pressed on cross-examination.

12 His testimony was corroborated in many key respects (and contradicted in none) by the testimony of Mrs. Boily. She gave direct, articulate and precise answers and appeared to have a good memory but did not display an implausibly perfect one.

13 The testimony of both Mr. and Mrs. Boily was reinforced by the medical reports which the parties agreed could be entered as an exhibit. The law in this respect is that these reports are admissible in these kinds of hearings as an exception to the hearsay rule, although an adjudicator need not give them absolute effect; see *McKeesson Canada v. United Food and Commercial Workers, Local 401 (Sims)* at paragraphs 53 and 54.

14 Mr. Barnhardt's suspicions began with what he thought was a disparity between Mr. Boily's behaviour in describing his fishing trip and his claimed medical condition. Mr. Barnhardt freely agreed on cross-examination that he has no medical expertise with respect to the condition in question and no particular insight based on his own experience or observations of the matter.

15 The evidence is clear that Mr. Boily had a serious medical condition from January, 2006 to the time of his expected return to work, May 1, 2006.

16 According to Mr. Boily, he had been experiencing some elbow pain prior to his January 2006, fishing trip. He thought it might be due to aging - although perhaps working at the mill was a factor, he was not sure - but he could "get by". It became much worse, however, after he had been trying to land a "rather large fish" (which, he ruefully noted at the hearing, "naturally got away") with a reel, using his left arm to hold the rod in place while moving the reel with his right.

17 Mrs. Boily recalled him favouring his left arm, wincing when he moved it in a certain direction. While he had previously been helpful around the house, it became impossible for him to carry out chores such as lifting laundry baskets. He would rub his arm and complain of numbness in his fingers. He moved his wedding ring to the opposite hand. He was taking painkillers and antidepressants. His mood had worsened. He was frustrated by his inability to be useful. Mr. Boily was a highly active person prior to the January injury.

18 Mr. Boily's testimony was similar. He described that after the January injury he experienced shooting pain, numbness, a lack of dexterity and had trouble even lifting a coffee cup with his left hand.

19 A series of medical statements were filed, including:

- On January 24, 2006 his physician, Dr. A.A. Bissonnette recorded in Mr. Boily's Patient Encounter History that his diagnosis was that Mr. Boily had left lateral epicondylitis also referred to as "tennis elbow". His notes stated "off work for at least two weeks" and "refer for physio";

- On February 7, 2006, his physician, Dr. A.A. Bissonnette completed an ADM Attending Physician's Statement Short Term Disability which stated that the patient has been "continuously (unable to work) from January 24/06 through indefinite" and that "treatment consists of physiotherapy and anti inflammatories";
- The February 7, 2006 Patient Encounter History report stated "has been attending physio since last visit, slight improvement of left tennis elbow, about 20%";
- The February 21, 2006 Patient Encounter History report stated that "pain in left elbow improving slowly" and "Unfit to return to work";
- The April 13, 2006 Patient Encounter History report stated that Mr. Boily had a cortisone injection the previous day and further noted that "Still pain in left elbow and weakness of extensors in left forearm. Pain sometimes wakes him up at night. More sore since the injection".
- The April 25, 2006 Patient Encounter History report stated that Mr. Boily "has improved about 80% with the steroid injection 2 weeks ago. He could attempt a return to work on May 1/06".

20 A Great West Life Attending Physician's Initial Statement Disability Income Benefits form that Mr. Boily brought to his physician was filled out on April 25th, 2006. It reaffirmed the diagnosis, and stated that Mr. Boily could return to medium duties and that Mr. Boily should avoid heavy lifting and repetitive stress on his left arm.

21 Mr. Boily explained in relation to the cortisone injection that initially the pain of the actual injection made the overall pain worse, but he did experience improvement thereafter.

22 The evidence shows that the first basis for Mr. Barnhardt's initial doubt in January, 2006 was contrary to the actual state of affairs once thoroughly examined. While Mr. Boily may have gestured in describing his trip, he did in fact have a serious injury.

23 The evidence similarly shows that the second basis for Mr. Barnhardt's initial doubts could have been dispelled by a more thorough inquiry. Mr. Barnhardt had heard that Mrs. Boily had opened up a second business. I would infer that Mr. Barnhardt was concerned that Mr. Boily was using his claimed injury as an excuse to help his wife with her new business.

24 Mrs. Boily's testimony shows that Mr. Boily had no such intention. His wife's planning for a second shop preceded his injury by months. Mr. Boily's assistance, she stated flatly, was never part of her plans. She had lined up a cadre of three employees. She did not dismiss any of them in the aftermath or Mr. Boily's injury, although months later she went down to two employees because a third proved not to be necessary.

25 Mrs. Boily and Mr. Boily both testified that after his injury, a restless Mr. Boily would come down to one of Mrs. Boily's stores to spend time with his wife. "To get him out of my hair", in her words, she would sometimes ask him to do tasks such as helping with the delivery of a package of flowers. These tasks, she testified were not scheduled. His assistance was never considered obligatory. He was never paid for any of it. She reviewed the videotape, and testified that many of the packages were very light, and the heaviest would have been about eighteen pounds.

26 Mr. Barnhardt's second initial doubt about Mr. Boily was therefore proved not to be sustainable on closer examination. He most certainly did not set out to feign or exaggerate the injury in order to be in a position to assist with his wife's store.

The Video Surveillance Tapes

27 The private investigator's report on the surveillance of April 24 to April 26, 2006 attempted to detail on a scene-by-scene basis what is shown on the video. Large sections of it were shown by both sides at the hearing. What it shows is Mr. Boily emerging from one of his wife's shops, sometimes carrying a package, getting into his van, driving, and dropping off a package at another location. Mr. Boily exhibits a strong preference for using his right hand. Once it is picked up, a package is almost always carried in his right hand only, although occasionally his left hand is used to assist or support. Mr. Boily is right handed, so it is possible that he would have exhibited similar tendencies apart from the injury.

28 The motions involved are not repetitive. None of the packages weighed more than eighteen pounds. Nothing is inconsistent on the tape with the testimony by Mr. and Mrs. Boily that the tasks were carried out on an unpaid basis, and were not a matter of obligation on the part of Mr. Boily or that he received any remuneration.

29 The investigator's report says in the introduction that Mr. Boily was seen "operating a business". It is unfortunate that such a broad and potentially misleading characterization was used. The report itself is generally confined to simple observations about what was observed. It may be the case, however, that the "operating a business" phrase helped Mr. Barnhardt to arrive at the conclusion that Mr. Boily was conducting himself in a way that was fundamentally incompatible with his being away from work with an injury.

30 Mr. Boily was not "operating a business". He did not own or manage it in any way. He was doing some tasks associated with the business on an unpaid basis, which gave him something to do other than drink coffee or chat with his wife and customers at one of her shops.

The Meeting of April 28, 2006

31 Mr. Barnhardt characterized Mr. Boily as being "aggressive and defensive" at the meeting. He did not mention any kind of shouting or angry gestures or expressions, and it appears that Mr. Barnhardt was referring to the content of Mr. Boily's responses - which included asking for a definition of "work".

32 Mr. Barnhardt admitted that he gave Mr. Boily no prior notice that any meeting was going to be held to confront him about evidence of inappropriate activity while on sick leave. He was suddenly confronted with Mr. Barnhardt's statement about being seen "working".

33 Mr. Boily said he was "in shock" when he was so confronted. His immediate question about the definition of work was sincere, and not only understandable but reasonable. He was given no specific description of what was seen on the video and when or where it was taken. In fact, he was not told that a video had been made. And even if any particulars had been provided, the issue of what constitutes "work" in the context would be one that an honest person could reasonably query.

34 Mr. Barnhardt had some time to prepare for the meeting. He was, moreover, not the one whose reputation and employment was suddenly under threat. Yet Mr. Barnhardt, according to his own note, offered the following definition of "work" at the April 28th, 2006 meeting: "Any task that allows you to use your arms". On cross-examination, Mr. Barnhardt admitted that this definition

could not be correct. He clarified on cross-examination, however, that Mr. Boily should have understood that he was being confronted with observations that he had been doing the kind of actions seen on the videotape. But Mr. Boily had been offered no particulars about who saw him, when, and what specifically he was seen doing.

35 An employer's concern about "working" could be based, from the employee's point of view, on a very wide variety of definitions. Here are just a few possible ones: "Work" might mean "accepting remuneration" of any kind. It might mean "scheduled employment", whether on a volunteer or remunerated basis. It might mean "doing activities", paid or not, that are incompatible with your claim to be injured and unavailable to work at our place.

36 Counsel for the Employer suggested that "work" meant activities that were equivalent to those done by paid employees at the shop. This is not the definition that Mr. Barnhardt initially offered during the April 28th, 2006 meeting and recorded in his notes. It is not the definition that he offered while being cross-examined at the hearing. It is also not a definition that occurred to Mr. Boily when suddenly confronted on April 28th, 2006.

37 Mr. Boily recalled that his request for clarification was met with "just answer the question" from Mr. Barnhardt. Such an order was not compatible with Mr. Barnhardt's genuinely inviting Mr. Boily to recount the facts and provide his perspective on them, as opposed to essentially seeking the equivalent of a guilty plea and being satisfied with nothing less.

38 The Employer contends that Mr. Boily should have "come clean". He was not given a reasonable opportunity to do so. He was not invited to describe and explain what he actually was doing over the period of his injury or in the scenes in the videotapes.

39 Furthermore, Mr. Boily in his own mind had nothing to "come clean" about. He felt injured and incapacitated during the course of the period away from work. His physician's reports confirmed his perceptions. He had responded to each and every request from the Employer to provide medical reports. The note he received near the end of April clearing him to return to work was the first he had received to this effect. He did not believe that the kind of tasks he performed for his wife in late April or anything he did earlier were incompatible with being away from his work on the basis of an injury.

40 It was proved at the hearing that Mr. Boily did not engage in any kind of concealment of his activities during his period away from work. There was nothing furtive about his moving about his small town doing the activities shown on the videotape. In the months before, he had been openly visiting his wife's shop. He had discussed the fact that he had been doing so with Mr. Barnhardt. One of the employees at the mill would come to Mr. Boily's town from time to time, phone ahead, and arrange to meet with Mr. Boily. Another worker at the mill often came to the shop and spoke with Mr. Boily while he was there.

41 The Employer drew attention to the fact that Mr. Barnhardt's note of April 28, 2006 quotes Mr. Boily as saying "he could do light duties with his right arm such as carrying light box's (sic) and such". I do not take this statement as deceptive. Mr. Barnhardt did indeed do most of his carrying with his right arm, and no package was more than eighteen pounds. The use of his left arm was far less extensive, and involved only very limited periods of task-related activity at a time between medium to extended periods of driving or waiting around.

42 Mr. Boily's statement was pursuant to Mr. Barnhardt's comment that, "I told Rick that the work he was observed doing could have been done here in the plant over the last three months". The comment to Mr. Boily was sweeping and condemnatory and directed to an individual who was caught by surprise and in "shock", not a request for more information or explanation. In the circumstances, it is not surprising that Mr. Boily did not volunteer any information about the use of his left arm, or much else.

43 At the hearing, counsel for the Employer challenged Mr. Boily on why there was a delay between the time Mr. Boily brought the Great West Life forms to his physician and the time the physician finally filled out the form and returned it to Mr. Boily. The response from Mr. Boily was simply that it was the physician's choice as to how quickly or slowly to fill out the paper work. Counsel suggested that Mr. Boily should have asked the physician to fill out the form while Mr. Boily was waiting. In my view it has not been proved, nor does common sense and common experience suggest, that Mr. Boily was culpable for not having been more assertive. It is not easy for a patient to tell a physician, who may have a waiting room full of patients or other obligations to attend to, and who may have his own way of handling paperwork that he should immediately fill in a several page medical form. A patient might reasonably be concerned that the request would not only be rejected, but found impertinent and offensive.

44 Counsel for the Employer suggested that Mr. Boily might have been available for light work earlier than the May 1, 2006 return date, and should have been proactive about exploring this possibility with this Employer.

45 Mr. Barnhardt agreed at the hearing that he never suggested the possibility, never had such a plan in mind, and never brought up the matter with Mr. Boily in any of their conversations between January, 2006 and April 28, 2006. It was not shown at the hearing that any program of useful work could have been lined up for Mr. Boily between April 24, 2006 and his return date of May 1, 2006. There is evidence that Mr. Boily had done light work when injured on previous occasions - but both exhibits connected with events are a note by a physician expressly clearing him for light work. Mr. Boily received no such note in respect of this injury, including in the doctors form dated April 28, 2006. The form includes a number of boxes that can be checked off, including one for "light duties" and immediately following a line concerning "the earliest date at which your patient will be able to return to work". The physician did not check off or otherwise indicate that a short period of light duties was appropriate before Mr. Boily attempted a return to medium duties on the earliest date of May 1, 2006. Mr. Boily phoned Mr. Barnhardt at the earliest opportunity - on April 25, 2006, the day the doctor's form is dated - to inform his Employer that he was indeed going to return to work on May 1, 2006. Mr. Barnhardt did not in response mention anything about the possibility of doing light work in the interim. In all the circumstances, I do not believe Mr. Boily can be reasonably faulted for failing to actively propose to Mr. Barnhardt that the Employer should consider whether a period of light work should be lined up prior to May 1, 2006.

46 In closing argument, counsel for the Employer also submitted that Mrs. Boily acknowledged that Mr. Boily had done some picks-ups and deliveries prior to April, 2006. In fact she did so. But her recollection of the details, she also mentioned, was not clear.

47 The Employer also suggested that Mr. Boily had shown poor judgment or was otherwise culpable for doing the tasks shown on the videotape without medical clearance. It has not been proved that Mr. Boily had any reason to believe that performing these tasks would jeopardize his recovery or that it did so. From the evidence, it could just as easily be the case that for the restless

and depressed Mr. Boily, engaging in at least some activity helped improve his physical and mental state to return to duties.

The Case Law

48 The Employer brought to my attention a number of cases. Those involving dishonesty or fraud on the part of a claimant are not applicable to the facts of this case as I have found them to be.

49 The Employer argued, however, that *Re Johnson Mathew Ltd and U.S.W.A. Loc 9046* (Murray), holds that fraudulent intent is not necessary to uphold discipline where an employee has been "negligent or untruthful" about a disability. For example, in *Re Kenroc Tools Corp and U.S.W.A. (1990) 17 L.A.C. (4th) 416*, discipline was upheld in a case where an employee went on a hunting trip during a medical leave. The adjudicator held that the grievor was under a "minimal obligation to follow a faithful program of treatment and convalescence, and to clear in advance with both his physician and his employer contemplated activities which might be unusual in the circumstances".

50 With respect to any alleged negligence in looking after his convalescence, the evidence shows that he regularly visited his physician, took physiotherapy as recommended and agreed to a cortisone shot despite the uncertain prospects of whether it would help. As noted earlier, none of the activities shown on the video or acknowledged in the testimony of Mr. Boily or his wife were shown to have in any way jeopardized his recovery, or to be the kind of activity that a reasonable person in Mr. Boily's circumstances should have considered as potentially prejudicial and so requiring prior clearance.

51 The Employer cited an argument by counsel for the employer recorded in the *Re Johnson Mathley, supra*, that an employee "has a responsibility to advise the company when he feels ready to work". This might well be a correct statement of a general legal obligation on the part of an employee who is absent with a disability. (There is a similar statement in the Employer's manual: "Employees are expected to return to work as soon as they are medically able to perform the duties of their job.") As already explained, however, the evidence does not establish any breach of such an obligation on the part of Mr. Boily on the facts of this case.

Conclusion

52 The burden of proof is on the Employer, on the civil standard of proof to justify dismissal or any lesser measure of discipline. I find it has not done so.

53 Mr. Boily did not in his own mind "fail to come clean", and the evidence does not show that he had actually done anything to "come clean" about.

54 In fact, I believe that the appropriate conclusion from all of the evidence is that Mr. Boily has been a competent and diligent servant of the Employer for a dozen years, and that he conducted himself in an honest, open and responsible manner during his period of absence.

55 I find that Mr. Barnhardt was an honest witness and that he acted throughout in what he sincerely believed to be the best interests of his Company. With respect, however, I believe that on reviewing all the evidence presented at this hearing, I am not able to sustain the conclusions to which Mr. Barnhardt came to at the time of the dismissal.

56 Mr. Boily and his family have suffered greatly from that dismissal. He has been unemployed and depressed. His family has had difficulty in meeting their financial obligations. I have not, how-

ever, been specifically asked to provide any additional compensation to reflect the stress and upset involved.

57 I am hereby ordering the reinstatement of Mr. Boily, and I do not see this as any intrinsic loss for the Employer. The Employer will have the return of the services of an experienced and competent employee and, in my view, an honourable one.

58 I am also ordering that Mr. Boily be paid all of the wages and other financial benefits he lost as a result of the dismissal between the time it was effective and the date of reinstatement. The calculation should take into account overtime hours that Mr. Boily would have worked in the ordinary course of events, and deduct any wages and allied compensation that Mr. Boily received during the period of the dismissal until reinstatement. There should be a component for interest as well.

59 Counsel for Mr. Boily asked for costs on a solicitor and client basis. Ordinarily in these proceedings costs are awarded on a party and party basis, and I will do so here. While the impact of the dismissal on Mr. Boily was severe, I believe that it was carried out in good faith rather than maliciously. The conduct of the litigation by the Employer has been exemplary as far as I can see, rather than warranting any higher level of costs. The Employer provided requested evidence to Mr. Boily's counsel prior to the hearing, cooperated in setting dates, produced witnesses who testified in an honest manner, assisted in ensuring that the hearings were completed in two days instead of the three days that had been scheduled, and presented its case from beginning to end of the hearing in a courteous, rule-abiding, fair and efficient manner. The hearing took two days, and there was obviously some preparation time involved with reviewing the videos and interviewing the two witnesses. In line with the Federal Court tariff, I would fix costs in relation to fees at \$2,400.00 for counsel time at the hearing (about twelve hours at \$200/hour) plus \$600.00 for preparation for a total of \$3,000.00. The Employer should also reimburse Mr. Boily for any reasonable disbursements incurred by counsel and charged to him.

60 If the parties cannot agree on the details connected with the remedy, including agreeing on the amount to be paid by way of redress for loss of compensation or for legal costs, either party may contact me to arrange for me to resolve the outstanding issues and I retain jurisdiction for the purposes of doing so. I also retain jurisdiction for the purposes of preparing and issuing a form of this Award that may be sought for the purposes of registration in Federal Court.

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