

CASE NO.

VOL. NO.

PAGE

Cite as: Francis v. Pictou Landing First Nation, 1999 NSCA 88

RAYMOND FRANCIS and
DENNIS FRANCIS

- and -

CHIEF AND COUNCIL OF THE
PICTOU LANDING FIRST NATION

(Appellants)

(Respondents)

C.A. 149362

Halifax, N.S.

CROMWELL, J.A.

APPEAL HEARD:

June 4, 1999

JUDGMENT DELIVERED:

June 17, 1999

SUBJECT:

Arbitration - Appeal from Award of Arbitrator - Unreasonable Findings of Fact

SUMMARY:

The appeal is from the award of an arbitrator adjudicating a claim under the provisions of the Settlement Agreement between Her Majesty the Queen in Right of Canada and The Pictou Landing Micmac. The appellants claimed compensation for the loss of their lobster operation as a result of the construction of an effluent treatment system at Boat Harbour in 1965. Their claim was against the Continuing Compensation Account of the Boat Harbour Settlement Trust which was established in settlement of an action brought on behalf of The Pictou Landing Micmac against Her Majesty the Queen in Right of Canada. Under the terms of the Settlement Agreement, the Crown paid a total of \$35,000,000 representing a cash settlement of its fiduciary or other obligations relating to the adverse effects of the treatment system. The Continuing Compensation Account permitted members to advance claims for compensation for damages directly attributable to the continuing adverse effects of the treatment system. Claimants against this account have the burden of proving their claim on a balance of probabilities. The arbitrator found that the appellants claimed \$200,000.00 for the total loss of their fishery. He determined that they had lost only 25% of their fishery and that the construction of the treatment system was 80% responsible for that loss. He, accordingly, awarded 80% of 25% of the overall claim of \$200,000.00 resulting in his award of \$40,000.00. The appellants appeal to the Court of Appeal is on a question of law or jurisdiction.

ISSUE: Did the arbitrator err in law in finding that the appellants claimed \$200,000.00 for the total loss of their fishery?

RESULT: The arbitrator did not err in law. There was some evidence to support the arbitrator's conclusion and it was not so weakly supported by the evidence as to make the finding unreasonable.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 9 pages.