

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Workers' Compensation Board) v. Rhodenizer*,
2015 NSCA 15

Date: 20150210
Docket: CA 425752
Registry: Halifax

Between:

Workers' Compensation Board of Nova Scotia

Appellant

v.

Wade Rhodenizer, the Nova Scotia Workers' Compensation
Appeals Tribunal, the Attorney General for the Province of
Nova Scotia and ABCO Industries Limited

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: October 15, 2014, in Halifax, Nova Scotia

Subject: **Workers' Compensation Law. Interpretation of s. 185 and
s. 73 of the Workers' Compensation Act, S.N.S. 1994-95, c.
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Summary: The appellant injured his lower back on June 7, 2005. He was awarded an Extended Earnings-Replacement Benefit (EERB) on February 18, 2009. At that time he was deemed by the Workers' Compensation Board (WCB) to be able to earn income as a customer service representative.

Pursuant to Board Policy, EERB awards are reviewed at 36 months and if deemed appropriate, 24 months after that.

At the 36 month review, the appellant obtained a report from a physiotherapist who opined that he was not capable of

working as a customer service representative as deemed by the WCB and was not capable of doing that job in 2009.

The appellant asked the WCB to reconsider his original EERB award based on the physiotherapist's report being "new evidence" under s. 185 of the **Act**. The WCAT refused his request.

The WCB refused to re-consider the original EERB award. Mr. Rhodenizer appealed to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT) which found that the review provisions in s. 185 of the **Act** could be interpreted broadly enough to permit re-consideration of the original EERB decision.

The WCB appealed WCAT's decision arguing that WCAT's interpretation of the **Act** was unreasonable and that EERBs were not subject to review under s. 185 of the **Act**.

Issues: Did WCAT commit a reviewable error in concluding that an EERB award can be reviewed and adjusted at any time there is "new evidence" pursuant to s. 185 of the **Act**?

Result: Appeal allowed. WCAT's interpretation of the interaction between s. 185 and s. 73 of the **Act** was unreasonable. Section 73 is a complete Code for reconsideration of EERB awards and the awards are not subject to review under s. 185 of the **Act**.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 12 pages.