

NOVA SCOTIA COURT OF APPEAL

[Cite as: MacDonald v. Nova Scotia (Workers' Compensation Board), 2000 NSCA 131]

Freeman, Bateman and Oland, JJ.A.

BETWEEN:

EDMOND MacDONALD

Appellant

- and -

NOVA SCOTIA (WORKERS' COMPENSATION APPEALS TRIBUNAL) and NOVA SCOTIA (WORKERS' COMPENSATION BOARD)

Respondents

REASONS FOR JUDGMENT

Counsel: Justin Kimball and Ian C. Pickard, for the appellant
Sarah Bradfield, for the respondent The Workers' Compensation Appeals Tribunal
Paula Arab-O'Leary and Madeleine Hearn, for the respondent The Workers' Compensation Board of Nova Scotia

Appeal Heard: November 15, 2000

Judgment Delivered: November 15, 2000

THE COURT: Appeal dismissed as per oral reasons for judgment of Freeman, J.A.; Bateman and Oland, JJ.A. concurring.

FREEMAN, J.A.:

[1] After four years of minimal income, resulting in part from his grief at the tragic death of his son, the appellant was placed on his union's preferred list and engaged as a millwright on a two-week contract that paid him \$3,286.72 a week, with prospects of 22 weeks of similar employment at sites throughout the Maritimes. In February, 1995, halfway into the contract, his right hand was injured and he could not return to work until April, 1997.

[2] Under the former **Act** he received the maximum Workers' Compensation benefit of \$538.08 a week based on his income at that time. Section 229 of the **Workers' Compensation Act**, S.N.S. 1994-5, c. 10, required that his benefit be recalculated. This resulted in a reduction in his weekly benefits to \$86.33 beginning August 1, 1996, which was paid until April 29, 1997, when he returned to work. This was confirmed by the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal. He has appealed further to this court.

[3] Under ss.42 and 43 the Board is directed to determine the worker's

earnings in a way that best represents the actual loss of earnings suffered. The Tribunal and Hearing Officer gave reasoned decisions as to why they chose the period used. This is a finding of fact.

[4] Appeals to this court are limited to issues of law or jurisdiction. Patently unreasonable errors of fact go to the jurisdiction of the Board or Tribunal, but otherwise this court has no jurisdiction to consider appeals based on errors of fact. We have carefully reviewed the record, including the decisions of the Board and Tribunal, and the submissions of counsel. We have identified no errors of law or jurisdiction, including patently unreasonable errors of fact.

[5] Accordingly, the appeal must be dismissed.

Freeman, J.A.

Concurred in:

Bateman, J.A.

Oland, J.A.

