

CASE NO.

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AGNES FERNEYHOUGH, spouse of
ARTHUR FERNEYHOUGH (deceased)
Workers' Compensation Claimant
(Claim No. 931757)

THE NOVA SCOTIA WORKERS'
COMPENSATION APPEALS TRIBUNAL,
THE WORKERS COMPENSATION
BOARD OF NOVA SCOTIA and CAPE
BRETON DEVELOPMENT
CORPORATION

- and -

(Appellant)

(Respondents)

CA 160031

Halifax, N.S.

CROMWELL, J.A.

**Cite as: Ferneyhough v. Nova Scotia (Workers' Compensation Appeals Tribunal),
2000 NSCA 121]**

APPEAL HEARD:

September 15, 2000

JUDGMENT DELIVERED:

October 26, 2000

SUBJECT: Workers' compensation - survivor benefits - causation

SUMMARY: The surviving spouse of a coal miner claimed workers' compensation survivor benefits. These were denied by the Board and the denial upheld by WCAT on the ground that it had not been shown that her husband's death had been caused by an industrial disease, namely, pneumoconiosis.

ISSUES: Did WCAT err in law?

RESULT: Appeal allowed. WCAT accepted medical evidence to the effect that the deceased would not have died at the time he did absent pneumoconiosis and further, that the pneumoconiosis was one of three contributing factors to the death. Having accepted this evidence, it was required by the **Workers' Compensation Act** as interpreted by this Court in **Workers' Compensation Appeal Board v. Penney** (1980), 38 N.S.R. (2d) 623 (S.C.A.D.) to find that the necessary causal link between the industrial disease and the death had been established. The interpretation of the decision of this Court in **Penney** is a question of law on which no deference should be paid to the Tribunal by this Court. The correct standard by which to assess whether the required causal link has been established is that the occupational disease must be a contributing cause in the sense that "but for" the occupational disease, death would not have occurred when it did or, that the occupational disease contributed to the death in a material degree. The term "material degree" should be

understood to mean something beyond the *de minimis* range, that is, something that is not negligible. It is apparent from the Tribunal's reasons that, in its view, **Penney** required some stronger causal link. In reaching that conclusion, the Tribunal erred in law.

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 13 pages.