NOVA SCOTIA COURT OF APPEAL

Citation: Logan v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2006 NSCA 11

Date: 20060127
Docket: CA 257902
Registry: Halifax

Between:

Joanne Logan

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal and the Workers' Compensation Board of Nova Scotia

Respondents

Judge: The Honourable Justice Fichaud

Application Heard: January 26, 2006, in Halifax, Nova Scotia, In Chambers

Held: Application to permit intervention granted with conditions.

Counsel: Bernadine MacAulay, for the applicant (proposed intervenor), Alliance of Manufacturers & Exporters Canada, carrying on business as the Canadian Manufacturers & Exporters Association - N.S. Division
Anne S. Clark, for the appellant, Joanne Logan (respondent to application)
Louanne Labelle, for the respondent WCAT
Madeleine Hearns, for the respondent WCB

Decision:

[1] This is an application by the Alliance of Manufacturers & Exporters Canada, carrying on business as the Canadian Manufacturers & Exporters Association - Nova Scotia Division ("CME") to intervene in this appeal.

[2] The appellant (respondent to the application), Ms. Joanne Logan is a worker who claimed benefits under the *Workers' Compensation Act*, S.N.S. 1994-95 c. 10 ("*Act*"). She suffered stress following her dismissal without cause by her employer. The Workers Compensation Appeals Tribunal ("WCAT") determined that Ms. Logan's claim did not originate from an "accident" or "traumatic event" under s. 2(a) of the *Act*. Leave has been granted. Ms. Logan appeals from that ruling.

[3] Ms. Logan had been employed by High-Crest Springhill Enterprises Limited. High-Crest has not participated as a party in this appeal.

[4] CME is established by statute and represents numerous employers in Nova Scotia. According to the affidavit of Mr. McIntyre, President of CME-NS Division, CME members account for 15% of the total assessments paid to the Workers' Compensation Board of Nova Scotia ("WCB")

[5] CME's application to intervene is made under *Rule* 62.35.

[6] *Rule* 62.35(3) requires the proposed intervenor to describe its interest, identify the position to be taken on the appeal and summarize its submissions and their relevancy and usefulness to the appeal. The material filed by CME satisfies these requirements. In particular, it is clear that CME has an interest in the appeal within the meaning of the intervention case law. The precedential value of the issues on the appeal could have a significant impact on assessments to members of CME - Nova Scotia Division.

[7] Under *Rule* 62.35(1) the chambers judge exercises a discretion whether to permit the intervention. The question is whether I should exercise the discretion.

[8] The authorities have described a flexible menu of criteria to govern that discretion. I refer to Justice Cromwell's decision in *R. v. Regan* (1999), 174 N.S.R. (2d) 1 (C.A.) at ¶ 29-53, and Justice Bateman's decision in *Nova Scotia (Attorney General) v. Arrow Construction Products Ltd.* (1996), 148 N.S.R. (2d) 392 (C.A.)

at ¶ 5. Generally, an intervention should (1) target the parties' existing *lis* and (2) accommodate the process of the existing appeal while (3) augmenting and not just duplicating the parties' submissions or perspectives to assist the court's consideration of the parties' issues. Some of those criteria are not at play here. There is no concern about delay, prejudice, hindrance to the process or injection of extraneous issues. In the circumstances of this application the key factor is whether the proposed intervention would bring a different or broader perspective that may assist the court to consider and determine the parties' issues on the appeal.

[9] Counsel for Ms. Logan says that the existing respondent WCB would advance all the submissions proposed by the intervenor.

[10] This point would have more force if the employer High-Crest was participating in the appeal. But the employer is not a participant. The responding submissions are left to the WCB. The WCAT, being the tribunal under appeal, may play only a limited role.

[11] There is value that may be contributed to this appeal by a party speaking from the employer's private enterprise point of view. This perspective may not be congruent with the quasi-administrative point of view of the statutory WCB. Absent the employer High-Crest, CME's perspective would usefully assist the court to consider the issues on the appeal. I will allow the application to intervene.

[12] Under *Rule* 62.35(5), unless otherwise ordered, the intervenor may not file a factum exceeding 25 pages, add to the appeal book or present oral argument.

[13] I agree that CME's factum should not exceed 25 pages and that CME may not add to the appeal book. The intervenor is to file its factum by March 8, 2006, the same due date as for the respondent's factum. The appellant may file a factum replying to the intervenor's factum by March 22, 2006. The hearing date has been scheduled already and need not be adjourned to accommodate the intervention.

[14] It is appropriate that CME participate in oral argument given the non-participation of the employer. The final say on the extent of oral argument is with the panel which hears the appeal. Subject to that, I would direct as a condition of the intervention that the total hearing time for the respondents plus the intervenor not exceed 50% of the hearing. This approximates what would have been the time allocation had the employer High-Crest participated.