C.A. No. 129889

NOVA SCOTIA COURT OF APPEAL

Cite as: Nova Scotia (Department of Human Resources) v. Nova Scotia Government Employees Union, 1997 NSCA 21

Clarke, C.J.N.S.; Hart and Matthews, JJ.A.

BETWEEN:

NOVA SCOTIA (DEPARTMENT OF HUMAN RESOURCES) Appellant - and - NOVA SCOTIA GOVERNMENT EMPLOYEES UNION Respondent	)	Eric B. Durnford, Q.C. Karen P. Oldfield for the Appellant Raymond F. Larkin, Q.C. for the Respondent Appeal Heard: November 27, 1996 Judgment Delivered: January 20, 1997

THE COURT: Appeal dismissed from the decision of a chambers judge who dismissed an application for an order in the nature of ***certiorari*** from the award of a statutory adjudicator, per reasons for judgment of Clarke, C.J.N.S.; Hart and Matthews, JJ.A. concurring.

CLARKE, C.J.N.S.:

The principal issue in this appeal is whether two nursing positions in the Medical Day Unit (MDU) at the Victoria General Hospital in Halifax were properly filled in accordance with the terms of the Collective Agreement.

Underlying this appeal is a decision of S. Bruce Outhouse, Q.C., an adjudicator appointed pursuant to the **Civil Service Collective Bargaining Act**, R.S.N.S. 1989, Chap. 71 (the **Act**) and Article 27 of the Collective Agreement. He allowed the grievance of the respondent Union requiring the appellant employer to follow the layoff and recall provisions of Article 36 and the job posting requirements of Article 37 of the Collective Agreement. The policy grievance was filed after the employer permanently reassigned two staff nurses to the MDU. The position of the appellant was that the reassignment from one unit in the hospital to another unit was permitted by the management rights articles in the Agreement.

The appellant applied to the Supreme Court for an order in the nature of ***certiorari*** to quash the award. The application was dismissed by Justice Tidman. His reasons are reported in 152 N.S.R. (2d) 194.

The essential facts are not in dispute. Justice Tidman extracted them from the decision of the adjudicator. They are reported at pp. 196-197 (N.S.R.). They follow.

> (1) The HSN Bargaining Unit is comprised of approximately 2,000 nursing services personnel. Of those, about 1,200 are employed at the Victoria General Hospital, with the largest single group being staff nurses of which there are between 800 and 900.
>
> (2) Like most hospitals, the V.G. is organized, for operational purposes, into units. There are around 30 such units at the V.G.

(3) Staff nurses working on the various units share the same generic job description. However, job duties vary somewhat from unit to unit and a number of units require special skills. These include the Emergency Department, five Intensive Care Units, Renal Dialysis, Operating Rooms, Recovery Rooms, Tertiary Respirology, Radiation Oncology, Cardiac Catheterization and Tumour Clinic. Staff nurses who are regularly and continuously assigned to these units receive premium pay. Most units operate on a continuous basis and the staff nurses on those units are required to work rotating shifts. However, a few units operate from Monday to Friday and the staff nurses on those units work days only.

(4) The MDU opened in November of 1993. It is an ambulatory care unit which provides scheduled medical and nursing care, as well as diagnostic and therapeutic services. Patients do not stay overnight and the unit is open from 7:00 a.m. to 7:00 p.m. It essentially operates Monday to Friday, providing only very limited services on the weekend.

(5) When the MDU commenced operation, it had a head nurse, one full-time staff nurse and a staff nurse who worked half time in the MDU and half time in another unit. The staff nurse positions were posted and competitions held to select the successful applicants. In January or February of 1994, the staff nurse who had previously been working half time in the MDU began working there on a full-time basis. No posting or competition was held at that time.

(6) By June of 1994, the MDU was expanding and required two additional staff nurses. The Human Resources Department at the Hospital recognised that the two positions in question would be preferred jobs in that they involved primarily day work from Monday to Friday. There were staff nurses on the recall list at the time and, in accordance with Article 36.11(b), the two positions would first have to be offered to them in order of seniority, provided they were qualified to do the work. However, Human Resources considered that it would be fairer to give senior staff nurses the opportunity to complete for the preferred positions and, once the successful applicants were chosen, to fill their former positions (the "resulting vacancies") from the recall list. In order to accomplish this, the Employer required the Union's consent to waive the application of Article 36.11(b) with respect to the filling of the two MDU positions. On or about June 20, 1994, the Employer approached the Union for its consent. Following several telephone conversations and an exchange of correspondence, agreement was reached to the effect that the MDU positions would be filled through an internal competition and that the resulting vacancies would then be offered to the two most senior qualified staff nurses on the recall list.

(7) The internal competition for the two MDU positions was posted in late June of 1994. The posting was entitled "Reassignment Opportunity" and was restricted to permanent civil servants. Approximately 20 applications were received in response to the

posting, at least one of which was a staff nurse on the recall list. The MDU head nurse went through the applications and came up with a short list of five or six applicants who were to be interviewed. However, before the interviews took place, the Hospital's Executive Committee was advised that it was $8,000,000 over budget and instructions were issued to the Human Resources Department not to fill any vacancies. Accordingly, on July 22, 1994, all applicants were notified that the competition for the MDU positions had been cancelled.

(8) Notwithstanding the cancellation of the competition, the requirement for two additional staff nurses in the MDU still existed. The Employer decided to meet that requirement by reassigning two staff nurses from its existing complement to the MDU. With that in mind, the MDU head nurse was directed to again review the applications she had received and to select from among them the two best applicants. She did so, choosing Ms. Cottreau and Ms. Larocque who previously worked on 8A and 8B respectively. Ms. Larocque was assigned to the MDU on July 25, 1994 and Ms. Larocque's assignment was effective August 1, 1994. The Employer then filled their former positions by reassigning two staff nurses from 8-Victoria where management determined that there was an over-staffing situation. In the result, two full-time positions were added to the MDU and two full-time positions were deleted from 8-Victoria. There was no increase in the overall complement of staff nurses.

(9) The Union was advised of the above developments by letter dated August 22, 1994. Shortly thereafter, it filed the present grievance.

The Collective Agreement

In his decision, Justice Tidman also recorded relevant extracts from the Collective Agreement. As earlier noted, the Union argued that whether the position was new or vacant the Articles relating to the displacement, recall and posting must be observed by the employer. These provisions are found in Articles 36 and 37, portions of which include the following:

Article 36 - Layoff and Recall

. . .

36.01 Layoff

(b) Where an employee's position is relocated, he/she shall be offered the position in the new location. The employee may decline

an offer pursuant to this section, in which case the provisions of Article 36.09 shall apply.

(c) Where an employee's position becomes redundant the provisions of Article 36.09 shall apply.

. . . . .

36.04 Layoff Procedure

In cases where ability, experience, qualifications, special skills, and physical fitness, where applicable, as determined by the Employer, are equal according to objective tests or standards reflecting the functions of the job concerned, employees shall be laid off in reverse order of seniority.

. . . . .

36.09 Placement/Displacement Procedures

(a) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, accordingly [sic] to objective tests and standards reflecting the functions of the job concerned, an employee in receipt of layoff notice, who has not been placed in accordance with Article 36.01(b), or whose position has become redundant, shall have the right to be placed in a vacancy in the following manner and sequence:

. . . . .

(c) If a vacancy is not available under any of the foregoing steps or has been declined in accordance with 36.09(b), the employee shall have the right to displace another employee with lesser seniority who is in the same position classification title, or position classification title series, within the same geographic location and the same Department, Board, Commission or Agency. Such displacement is subject to consideration of Article 36.04 and the employee to be displaced shall be one who has the least seniority among those whom the employee in receipt of layoff notice is entitled to displace.

. . . . .

36.11 Recall Procedure

(a) Employees who are laid off shall be placed on a recall list.

(b) Subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, according to objective tests and standards reflecting the functions of the job concerned, employees placed on the recall list shall be recalled by order of seniority to any position in any Department, Board, Commission or Agency for which the employee

> is deemed to be qualified. Positions pursuant to this section shall include all positions in the Civil Service bargaining units represented by the Union.
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> . . . . .
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> Article 37 - Job Posting
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> . . . . .
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> 37.01 Job Posting
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> When a new position or vacancy is created within the bargaining unit, the Employer shall post a notice of such new position or vacancy on all bulletin boards in buildings where employees in the bargaining unit work.
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> 37.02 Filling Vacancies
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> Where it is determined by the Employer that:
>
> (a) two or more applicants for the position in the bargaining unit are qualified; and
>
> (b) those applicants are of equal merit,
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> preference in filling that vacancy shall be given to the applicant with the greatest length of service.

The employer argued that upon its cancellation of the posting of the two positions and the reassignment of nurses Cottreau and Larocque, the vacancies ceased to exist.

The employer asserted that its right to reassign the two staff nurses of the MDU is grounded in the management rights provisions of Article 6 of the Collective Agreement. The adjudicator, as did Justice Tidman, referred to and discussed the provisions of Article 6.

> 6.01 Management Rights
>
> The management and direction of employees and operations is vested exclusively in the Employer and any matter arising out of this shall not be the subject of collective bargaining. All the functions, rights, powers and authority which the Employer has not specifically abridged, deleted or modified by this agreement are recognized by the Union as being retained by the Employer.

. . . . .

6.03 Consistent Application

The Employer agrees that management rights will not be exercised in a manner inconsistent with the express provisions of this agreement.

The Decision of the Adjudicator

Adjudicator Outhouse correctly identified the issue. He wrote,

> The pivotal issue in this case, in my opinion, is whether or not management at the V.G. Hospital has the right to permanently reassign staff nurses from one unit to another without regard to Articles 36.09, 36.11 or 37.01. If management has that right, then it necessarily follows that the present grievance is without merit and must be dismissed. On the other hand, it is equally plain that, absent such right, the grievance is well founded and must be sustained.
>
> There is no question here that there was "a job of work to be done" in the MDU. In fact, there were two of them. Both parties recognized that basic reality and the only disagreement, albeit a very important one, is over how the two jobs could properly be filled having regard to the relevant terms of the collective agreement. The Employer's position, simply stated, is that it had the right to reassign staff nurses from other units to the MDU, provided that it was acting in good faith and was not increasing the Hospital's overall complement of staff nurses. The Union's position, of course, is that such reassignments were improper because, if permitted, they would effectively circumvent Articles 36.09, 36.11 and 37.01.

In allowing the grievance the adjudicator found that pursuant to Article 37.01, these two positions in the MDU were in fact vacancies with the result that the employees within their own classification could compete for them. He rejected the submission of the employer that the Articles referring to seniority and posting only applied when the hospital increased the overall number of its staff nurses. He decided the employer could not reassign a staff nurse from one position to another without considering the other staff nurses in the classification. In his opinion, the employer's right to reassign was restricted by the language in Articles 36.09, 36.11 and 37.01.

After quoting Articles 6.01 and 6.03, ***supra***, Adjudicator Outhouse wrote:

> In light of the above, one must start from the proposition that the Employer retains full managerial rights, powers and authority save to the extent which they are specifically limited by the express provisions of the agreement. In the event of a conflict between management rights and an express provision of the agreement, then the latter prevails. Based on the arbitral authorities referred to by both parties at the hearing, it can be safely stated that management has the presumptive right to manage its workforce, including the right to reassign employees within their own classification. That right can, however, be restricted or eliminated altogether by agreement of the parties and the question, therefore, is whether or not the present collective agreement, properly construed, has that effect. To answer that question, it is necessary to analyze the rights conferred on employees by Articles 36 and 37.

Adjudicator Outhouse proceeded with a lengthy and detailed analysis of Articles 36 and 37. He considered these provisions against the record before him and the submissions made by counsel of both parties. The following excerpts reflect some of the conclusions he reached and recorded in his lengthy and comprehensive award.

> Article 36.11 provides that employees who are laid off shall be placed on a recall list. Employees on the list are entitled to be recalled in order of seniority to any position in any department, board, commission or agency for which the employee is deemed to be qualified, including positions in other civil service bargaining units represented by the Union. I accept the Union's submission that, while not expressly stated in Article 36.11, the right to recall is contingent upon the existence of a vacancy. It is also worth emphasizing that, although the order of recall is based on seniority, it is not necessarily the case that employees on the list will be the most junior in their classification. ...
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> . . . . .
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> Article 37 deals with job posting. Article 37.01 mandates that every "new position" or "vacancy" within the bargaining unit be posted. Article 37.02 establishes a competitive framework for the filling of vacancies, with length of service being the deciding factor where applicants are found to be of equal merit. I agree with the Union that Article 37 is not limited to promotions and confers on employees the right to compete for positions within their own classification. Indeed, the Employer did not contend otherwise.

. . . . .

Of even greater significance, in my view, is the impact that the Employer's claimed right of unrestricted reassignment would have on the entitlement of staff nurses and other employees under Article 37. Whenever a new position was created or a vacancy occurred, management could simply fill it by reassigning a staff nurse from another unit. In doing so, it could pick whichever staff nurse it saw fit, without regard to the criteria specified in Article 37.02 or the seniority rights of other staff nurses. All preferred positions could be staffed in this manner and the posting procedure could, at the discretion of management, be reserved exclusively for the filling of less desirable positions. For instance, in the case at hand, there would have been no need for the Employer to seek the Union's agreement to hold an internal competition for the MDU positions. Even if management was intending to increase the Hospital's overall complement of staff nurses, it could have filled the MDU positions by picking and choosing from among the existing staff nurses without regard to considerations or merit or length of service. Having done so, it would then have had the option of filling the resulting vacancies by either repeating the reassignment process or utilizing the job posting procedure. Thus, for all practical purposes, management could fill new positions or vacancies by moving staff nurses around at will and would only have to have recourse to the job posting procedure when filling the least desirable staff nurse positions. Such a result does violence to the language of Article 37 and I am satisfied that it is not in accordance with the intention of the parties.

. . . . .

For all of the above reasons, I find that, on a proper interpretation of the collective agreement, the right so claimed [by the employer] does not exist. Management may well retain a residual right to reassign employees in certain circumstances, but not where such reassignment would conflict with the rights conferred on employees pursuant to Articles 36 and 37. Pursuant to those provisions, I am satisfied that new positions and vacancies are referable to particular units within the Hospital and their existence, for the purposes of the application of Articles 36.09, 36.11 and 37.01, does not depend on whether there is a global increase in the number of staff nurse positions in the Hospital.

. . . . .

The Employer attaches considerable importance to the approved position description for the Staff Nurse classification as supporting the right of reassignment. The relevant portion of the position description states:

> "Staff nurses are hired for the Nursing Division and while assigned to a particular unit, may be reassigned to another unit depending upon patient care

requirements."

It goes without saying, of course, that the position description cannot override the collective agreement. In any event, I think it is quite clear that the above reference is to temporary reassignments and not to permanent reassignments, the key phrase being "while assigned to a particular unit". In other words, a staff nurse who is being reassigned to another unit in order to meet patient care requirements still retains his or her regular assignment. Obviously, this would not be the case if the reassignment was intended to be permanent. To the extent that the language in the position description is ambiguous on this issue, the past practice makes it abundantly clear that temporary reassignments to meet daily patient care requirements are extremely common whereas permanent reassignments were virtually unknown, at least to July of 1994. Accordingly, it is quite plain that it is the former situation, not the latter, which is contemplated in the position description.

. . . . .

I have examined all of the authorities referred to me by counsel for the parties. While I have found them to be useful in establishing general principles with respect to management rights and the existence of vacancies, none are directly on point. More than anything else, they serve to emphasize the importance, in each case, of focusing on the specific language of the collective agreement under consideration, which is precisely what I have endeavoured to do in the present instance.

In the result, the grievance is allowed and a declaration is hereby issued to the effect that the two staff nurse positions in the MDU were filled in a manner which was contrary to the collective agreement. The Employer is directed to treat the two MDU positions as new positions and to fill them in accordance with the facts as they stood on July 22, 1994, being the date that the original competition was cancelled. ...

The Decision of the Chambers Judge

Justice Tidman dismissed the application of the appellant for an order in the nature of ***certiorari***. After reviewing the facts, the relevant Articles of the Collective Agreement, the award of the adjudicator and a number of case authorities, he concluded (p. 202 N.S.R.):

The arbitrator considered the "management rights" clause of the collective agreement. He found that management's acknowledged right to reassign nurses was expressly restricted by articles 36.09,

> 36.11 and 37.01, which provided for recall, placement and posting considerations for those positions. In doing so, he found that the term "position" as used in those articles was particular to a specific work location. Thus, he found that staff nurses could not be re-assigned to newly created Medical Day Unit positions without complying with those articles. In doing so, he was interpreting the collective agreement as he was mandated to do by the parties and was acting within his field of expertise as a labour/management arbitrator. In my view, the arbitrator was acting within his jurisdiction and made no "patently unreasonable" error in arriving at his conclusion.

This Appeal

In appealing from the decision of Justice Tidman, the appellant contends that he erred:

> 1. . . . in finding that the adjudicator's decision should be accorded the same level of deference as that of labour tribunals, and
>
> 2. . . . in failing to find as patently unreasonable, the adjudicator's determination that the term "position" as used in Articles 36.09, 36.11 and 37.01 of the Collective Agreement is particular to a specific work location.

Standard of Review

The appellant submits that Tidman, J., erred in determining the decision of Adjudicator Outhouse was entitled to the same level of deference as a labour tribunal. The appellant refers to that portion of the decision of the Chambers judge at p. 199 (para. 13, N.S.R.) where he writes:

> . . . a consensual arbitrator should be accorded no less deference than labour tribunals provided the arbitrator is acting within jurisdiction and field of expertise. ...

As already noted, the parties were subject to the **Act** and Mr. Outhouse was a statutory adjudicator appointed pursuant to s. 33 to resolve this rights dispute. The parties are in agreement that the patently unreasonable standard is the appropriate standard of review.

It is a standard for this type of dispute which this Court has adopted in recent decisions including **Nova Scotia Government Employees Union v. Civil Service Commission (N.S.) et al.** (1992), 112 N.S.R. (2d) 444, per Chipman, J.A., at pp. 447-448; **Nova Scotia Employees Union v. Civil Service Commission (N.S.) et al.** (1992), 117 N.S.R. (2d) 91, per Chipman, J.A., at pp. 94-95; **Civil Service Commission (N.S.) v. Nova Scotia Government Employees Union** (1993), 123 N.S.R. (2d) 217, per Freeman, J.A., at p. 224; **The Nova Scotia Government Employees Union v. Her Majesty The Queen in the Right of the Province of Nova Scotia as represented by The Department of Human Resources**, C.A. 125695, judgment delivered September 25, 1996, per Roscoe, J.A., at pp. 3-4.

To assist in interpreting the phrase "patently unreasonable", reference is frequently made to the definition given by Mr. Justice Cory in **Canada (Attorney-General) v. Public Service Alliance of Canada** (1993), 101 D.L.R. (4th) 673, S.C.C. at p. 690:

> It is said that it is difficult to know what "patently unreasonable" means. What is patently unreasonable to one judge may be eminently reasonable to another. Yet any test can only be defined by words, the building blocks of all reasons. Obviously, the patently unreasonable test sets a high standard of review. In the Shorter Oxford English Dictionary "patently", an adverb, is defined as "openly, evidently, clearly". "Unreasonable" is defined as "not having the faculty of reason, irrational, not acting in accordance with reason or good sense". Thus, based on the dictionary definition of the words "patently unreasonable", it is apparent that if the decision the Board reached, acting within its jurisdiction, is not clearly irrational, that is to say evidently not in accordance with reason, then it cannot be said that there was a loss of jurisdiction. This is clearly a very strict test.

Section 33(3) of the **Act** contains a provision for final settlement:

> (3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement.

This is a significant statutory provision from which the reasonable conclusion can be drawn that in this instance Adjudicator Outhouse had privative protection.

Justice Chipman of this court interpreted s. 33(3) in this manner in **N.S.G.E.U. v. Civil Service, supra,** at p. 96 (117 N.S.R. (2d)).

> Mr. Justice Gruchy considered that by virtue of s. 33 of the **Act**, the tribunal was a statutory one protected by a privative clause. I agree. ...

An opinion similar to that of Chipman, J.A. was given by the Supreme Court of Canada in **United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.** (1993) 102 D.L.R. (4th) 402. There the court was considering, among others, a provision in the **Labour Relations Act** of Newfoundland which provided for the "final settlement" by arbitration of disputes arising out of Collective Agreements. Mr. Justice Sopinka wrote at p. 418:

> ... The questions to be resolved in coming to these conclusions involved the interpretation of the collective agreement and its application to a particular factual situation - matters which constitute the core area of an arbitrator's expertise. Combined with the purpose and wording of s. 88, which confers upon the arbitrator exclusive jurisdiction to come to a final settlement of disputes arising out of the interpretation or application of the collective agreement, the arbitrator's relative expertise mandates that the court defer to the decision of the arbitrator in this case unless his decision is found to be patently unreasonable. ...

In this case, Adjudicator Outhouse had the jurisdiction to deal with the policy issue in dispute. The standard of review is one of determining whether his award is patently unreasonable.

In response to this ground of appeal I would make the following observations:

1. Paragraph 13 of Justice Tidman's decision at p. 199 (N.S.R.) reads in full:

> I am inclined to the view expressed by Mr. Larkin that a consensual arbitrator should be accorded no less deference than labour tribunals provided the arbitrator is acting within jurisdiction and field of expertise. I shall further deal with this point later on in this decision.

The reader will note that he begins with a reference to being "inclined to the view expressed by Mr. Larkin" and also says that he "will deal with this point later on in his decision". I do not read the paragraph as saying that Justice Tidman adopted as his own opinion the view to which he was inclined to ascribe to Mr. Larkin. There are many judgments of many courts in this land which, in varying phrases and words, describe the test to be applied upon the review of decisions and orders of tribunals, arbitrators, adjudicators, commissions, boards and agencies. It is not at all unusual that the words to which the appellant objects might find their way into the comments being made by a judge reviewing the award of an adjudicator.

2. The significant feature, however, is that Justice Tidman "deals with this point later on in his decision". He makes it perfectly clear that he accepts, is concerned with and in fact applies the standard of patently unreasonable error. He canvassed and considered this proposition through several judicial decisions including those of this court in **Maritime Telephone Co. v. Atlantic Communication and Technical Workers' Union and Veniot** (1994), 136 N.S.R. 364, per Freeman, J.A., and the Supreme Court of Canada in **CAIMAW v. PACCAR of Canada Ltd.**, [1989] 2 S.C.R. 983 and **Dayco (Canada) Ltd. v. CAW-Canada**, [1993] 2 S.C.R. 230.

Justice Tidman concluded his analysis with these words at p. 202, para. 27, (N.S.R.):

> ... In doing so, he was interpreting the collective agreement as he was mandated to do by the parties and was acting within his field of expertise as a labour/management arbitrator. In my view, the arbitrator was acting within his jurisdiction and made no "patently unreasonable" error in arriving at his conclusion.

In my opinion, Justice Tidman did not err in the standard of review he impressed on the decision of the adjudicator. I would dismiss the first ground.

The Second Ground

The appellant submits Justice Tidman erred "in failing to find as patently unreasonable, the Adjudicator's determination that the term "position" as used in Articles 36.09, 36.11 and 37.01 of the Collective Agreement is particular to a specific work location."

The contention of the appellant, quoting from its factum, is that:

> ... the learned judge erred in failing to find that the Adjudicator gave patently unreasonable interpretations to the language of the collective agreement. With all due respect to the learned trial judge, it is apparent from a review of his decision that he did not make a real analysis of the collective agreement or give due consideration to the arguments raised by the Appellant. ...

The appellant further submits that the decision of the adjudicator was patently unreasonable in the following respects:

(a) by the Adjudicator's determination that the staff nurse "position" was geographically defined by particular work location (i.e., units) rather than the entire Nursing Division within the V.G.;

(b) by the Adjudicator's determination that the language of the "position description" for the staff nurse classification is ambiguous;

(c) by the Adjudicator's determination that the "position

> description" for the staff nurse classification refers only to temporary reassignments and not to indefinite reassignments;
>
> (d) by the Adjudicator's failure to consider relevant evidence and his consideration of irrelevant evidence.

Earlier in these reasons I quoted quite extensively from the award of the adjudicator which was before Justice Tidman when the same arguments were advanced as the parties now make in this appeal. In my view the adjudicator addressed the submissions and arguments of the employer in his detailed award. While Justice Tidman did not deal with every issue the applicant advanced on the application for relief by way of ***certiorari***, I do not think that he can be faulted on that ground. The application heard by him was not "a new trial" - it was a review. That required the chambers judge to consider whether in the formulation of his award the adjudicator adopted a rational approach that would lead to a rational result. Whether Justice Tidman agreed with the result does not matter; nor does it matter whether this court agrees with the result Adjudicator Outhouse reached.

The appellant is convinced that error occurred by not following the interpretation Justice Freeman applied in his decision in **Maritime Tel, supra**. Justice Freeman found that the decision of the arbitrator was patently unreasonable. He concluded there was no express provision in the Collective Agreement which restricted the employer's right to manage whereas the arbitrator chose to find otherwise by incorporating broad policy considerations.

This case, however, is distinguishable from **Maritime Tel** in that the Collective Agreement expressly limits the scope of management rights. Article 6.03 provides:

> The Employer agrees that management rights will not be exercised in a manner inconsistent with the express provisions of this Agreement.

In this fact situation it became necessary for the adjudicator to enter upon an interpretation of the relevant provisions to determine whether the rights of management were being exercised in a manner inconsistent with the provisions of the Collective Agreement. I agree with the conclusion reached by Justice Tidman that the award of the adjudicator was not patently unreasonable.

I would dismiss the second ground.

Conclusion

I would dismiss the appeal and award the respondent costs of $1,000.00, including its disbursements.

C.J.N.S.

Concurred in:

Hart, J. A.

Matthews, J.A.