

Date: 20010928  
Docket: CA 166475

**NOVA SCOTIA COURT OF APPEAL**  
**Cite as: Ofume v. Nova Scotia (Education), 2001 NSCA 131**

**Roscoe, Cromwell and Saunders, J.J.A.**

**BETWEEN:**

PHILLIP OFUME

Appellant

- and -

NOVA SCOTIA DEPARTMENT OF EDUCATION - AFRICAN  
CANADIAN SERVICES DIVISION and  
THE NOVA SCOTIA LABOUR STANDARDS TRIBUNAL

Respondents

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**REASONS FOR JUDGMENT**

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Counsel:           The appellant in person  
                      Dale Darling for the respondent  
                      Respondent Tribunal not appearing

Appeal Heard:       September 14, 2001

Judgment Delivered: September 28, 2001

**THE COURT:**       Appeal dismissed per reasons for judgment of Cromwell,  
                          J.A.; Roscoe and Saunders, J.J.A. concurring.

**CROMWELL, J.A.:**

[1] The appellant, Dr. Ofume, was employed by the Department of Education as a casual employee for two successive, six month, term contracts. After the expiry of the term, he filed a complaint with the Director of Labour Standards alleging that he had been mistreated during his employment, that he had not been paid earned overtime and other benefits and that he had not been given proper notice of termination. The Director declined to proceed with the complaint and Dr. Ofume appealed to the Labour Standards Tribunal. The Tribunal dismissed the appeal, deciding that:

1. All sums for overtime and other benefits owed by the employer had been paid;
2. Notice of termination was not required by virtue of s. 72(3) (b) of the **Labour Standards Code** and, in any event, that notice had been given;
3. Section 15 of the **Labour Standards Code** had not been breached; and
4. The other matters raised by Dr. Ofume were not addressed by the **Code** and were outside the Tribunal's jurisdiction.

[2] Dr. Ofume appeals to this Court pursuant to s. 20(2) of the **Code**. The appeal is restricted by that section to questions of law or jurisdiction. Dr. Ofume asks for the following relief on the appeal:

(a) That the Appellant demands for the sum of \$125,000.00 was due to half-way research and investigation into this matter because this is a matter which the Appellant ought to have demanded for over \$50 million as what he has suffered as a result of the extreme subjugation, persecution, victimization, cruelty and score of unofficial or illegal work environment and condition which he was subjected to by the Respondent for about one year. As this initial plan was not established in this Appeal, the Appeal therefore firmly demand the sum of \$125,000.00 without seizure of one penny.

(b) The decision of the Director of Nova Scotia Labour Standards Code and the Nova Scotia Labour Standards Tribunal be dismissed accordingly.

(c) Appellant be allowed to continue the African Canadian Immigrant Research Project (ACIRP) to enable the target Community (African Canadian Immigrant) get a sound and waterproof policy report to save its Community from the longstanding racism, racial discrimination, xenophobia, social assistance dependency and related inhumanity. No report has been produced on this project since 1997 and the Respondent is spending the money (\$200,000.00) selfishly without question by the grant makers and the Auditor General of NS.

(d) The Auditor General of NS be requested to publish the expenditure and balance of the grant for this project (\$200,000.00) from fiscal year to fiscal year effective from the year 1997.

(e) Request for an administrative and democratic structure (Chair, Vice-Chair, Secretary, Assistant Secretary, Treasurer, etc.) be established by the ACIRP Steering Committee.

(f) The Respondent be commanded to remove its hands from the project because they are not competent to conduct and manage the project. The time (1997 - 2001) which they have spent without turning out a policy document for this community, grant maker and/or provincial and federal governments of Canada is an indication that they lack the skill and expertise to conduct and turn out policy report on this project. It will be unfair to the target Community for the Respondent to be allowed to continue to float this project and driving it to nowhere against the interest and fundamental and ordinary rights of this Community.

[3] The record before us on appeal is not complete for reasons set out by Flinn, J.A. in his Chambers decision in this matter: 2001 NSCA 4. Dr. Ofume did not want the matter reheard by the Tribunal but wished to proceed with his appeal to this Court on the available record. Accordingly we made the order which is attached as Annex "A". Dr. Ofume did not prepare the appendix to his factum as directed by § 3 of that order nor, so far as I can tell from the material, did he present copies of exhibits that he sought, unsuccessfully, to have admitted before the Tribunal as permitted by § 5 of our order.

[4] I conclude, in all of the circumstances, that the record is adequate for appellate review of the Tribunal's decision in this case. I reach this conclusion in light of Dr. Ofume's position that he does not want the matter remitted to the Tribunal for a rehearing, his failure to supplement the available record as contemplated by our order and as a result of my assessment of the available record in relation to the issues raised by Dr. Ofume on the appeal.

[5] Items (a), (c), (d), (e), (f) set out in Dr. Ofume’s requested relief are not within the jurisdiction of the Tribunal or this Court on appeal from it. As for (b), which we take to be a request to set aside the Tribunal’s order, no error of law or jurisdiction has been shown that would justify setting aside the Tribunal’s decision. In short, Dr. Ofume has pointed to nothing which would support his allegation of bias on the part of the Tribunal or any breach of the **Code**. His other submissions do not relate to matters within the provisions of the **Code**.

[6] Dr. Ofume suggested that the decision of the Tribunal was “fraudulent” because the Tribunal did not have the tapes of the first portion of the hearing. This, of course, is not correct. The Tribunal was present and heard all of the evidence presented at the entire hearing. A tape or transcript of the evidence is not required by the Tribunal for the purposes of the preparation of its decision and reasons.

[7] Dr. Ofume apparently expected the Tribunal to conduct a wide ranging investigation of his employment with the Department of Education and of the management of the research project on which he worked. The Tribunal properly declined to do so and limited its consideration to matters addressed by the **Code**. The Tribunal (as described in § 10 of its reasons) curtailed Dr. Ofume’s evidence for the purpose of addressing only matters within its jurisdiction. It did not err in law or jurisdiction in doing so.

[8] There is no error of law or jurisdiction in the Tribunal’s decision relating to the grounds advanced by Dr. Ofume which alleged violations of the **Code**. At the hearing in this Court, Dr. Ofume particularly stressed his arguments in relation to alleged breaches of ss. 81, 15 and 16 of the **Code**. The relevant parts of the Tribunal’s conclusions on these points are as follows:

5. ...It is the policy of the department not to pay overtime in the first instance, but to allow compensatory time. Dr. Kakembo testified that the policy was explained to Dr. Ofume at the commencement of his employment, that he asked Dr. Ofume on several occasions to take his compensatory time, but that this was not done. At the end of the term, Dr. Ofume indicated that he was owed forty-four hours, while Dr. Kakembo felt that it was thirty-five hours owed. We are satisfied that there was a negotiated settlement of any overtime/compensatory time owed, whereby Dr. Kakembo agreed that forty-four hours would be paid, and this was done.

...

11. We also note that the Complainant alleges violation of Sections 15 and 16 of the LABOUR STANDARDS CODE, which require the Employer to keep certain employment records, and gives the Director of Labour Standards the authority to inspect those records. We can find nothing in the evidence which discloses a violation of either of those Sections.

[9] I see no error in these conclusions. Given the Departmental policy concerning overtime and the timing of Dr. Ofume’s demand for payment, there was no violation by the employer of the six-month time period in s. 81.

- [10] Dr. Ofume states in his notice of appeal that the Tribunal exhibited bias in its conduct of the hearing. There is no support for this assertion. The Tribunal properly insisted on limiting the hearing to matters within its jurisdiction and reasonably and carefully exercised its discretion with respect to practice and procedure for the purpose of conducting a hearing that was both fair and orderly.
- [11] The appeal is dismissed.

Cromwell, J.A.

Concurred in:

Roscoe, J.A.  
Saunders, J.A.

Annex "A"

CA 166475

**NOVA SCOTIA COURT OF APPEAL**

**BETWEEN:**

PHILLIP OFUME

Appellant

- and -

NOVA SCOTIA DEPARTMENT OF  
EDUCATION - AFRICAN CANADIAN  
SERVICE DIVISION

Respondent

- and -

NOVA SCOTIA LABOUR  
STANDARDS TRIBUNAL

Respondent

**ORDER**

BEFORE:     The Honourable Justice Roscoe  
              The Honourable Justice Cromwell  
              The Honourable Justice Saunders

UPON HEARING the appellant on his own behalf;

AND UPON HEARING counsel for the respondent and counsel for the Labour  
Standards Tribunal;

AND UPON IT APPEARING THAT:

1. tapes of part of the hearing before the Tribunal are not available;
2. the appellant applied to have a hearing of an appeal from a decision of the Tribunal, dated August 23, 2000, heard on the basis of an incomplete record of the evidence presented to the Tribunal;
3. the appellant did not consent to an order remitting the matter to the Tribunal for a re-hearing;
4. counsel for the respondent did not consent to the appeal being heard in the absence of a complete record;

IT IS ORDERED THAT without foreclosing any of the options available to the panel assigned to hear the appeal, with respect to the absence of a complete record, the matter be set down for hearing of the appeal on the following conditions:

5. Mr. Kydd, counsel for the Tribunal, shall prepare an appeal book which shall contain:

- (a) an index of its contents, and copies of

the Notice of Appeal;

the pleadings filed with the Tribunal, including the complaint and the Director's decision;

the decision appealed from;

a transcript of all available evidence and argument presented to the Tribunal; and

all exhibits filed with the Tribunal.

2. Mr. Kydd shall file five copies of the appeal book and deliver a copy to Mr. Ofume and Ms. Darling.
3. The appellant, Mr. Ofume, will file a factum containing his legal argument and attach to it as an appendix a summary of the evidence he and his witness presented to the Tribunal.
4. Ms. Darling, counsel for the respondent, will file a factum in which she may respond to the appellant's legal argument and argue the impact, if any, of the absence of a complete record.
5. Mr. Ofume may file a supplementary appeal book containing copies of exhibits that he sought to have admitted before the Tribunal. If such a supplementary appeal book is prepared, five copies shall be filed with the Court and a copy shall be delivered to Ms. Darling and Mr. Kydd.
6. No other documents, other than Books of Authorities, shall be filed without further order of a judge of this Court.
7. The appeal will be heard on September 14, 2001 at 10 o'clock in the forenoon. The Appeal Book shall be filed and delivered to the other parties on or before May 1, 2001. The appellant's factum (five copies) and supplementary appeal book, if any, shall be filed and delivered to the other parties on or before June 1, 2001. The respondent's factum (five copies) shall be filed and delivered to the other parties on or before July 3, 2001.



DATED at Halifax, Nova Scotia, this 27<sup>th</sup> day of March, 2001.

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Deputy Registrar