

CASE NO.

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Cite as: Clattenburg v. Nova Scotia (Workers' Compensation Appeals Tribunal), 1998 NSCA 24

WAYNE CLATTENBURG, Workers' Compensation Claimant (Claim No. 1472264)

(Appellant)

- and -

THE WORKERS' COMPENSATION APPEALS TRIBUNAL OF NOVA SCOTIA
and THE WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

(Respondents)

C.A. No. 134042

Halifax, N.S.

Clarke, C.J.N.S.

APPEAL HEARD:

February 4, 1998

JUDGMENT DELIVERED:

February 4, 1998

SUBJECT:

Workers' Compensation - Entitlement to Permanent Partial Disability Benefits.

Administrative Law - Standard of Review on Appeals from the Workers' Compensation Appeals Tribunal to the Court of Appeal.

**Workers' Compensation Act, R.S.N.S. 1989, c. 508 (the former Act).
Workers' Compensation Act, S.N.S. 1994-95, c. 10, s. 228 (the current Act).**

Workers' Compensation Transitional Appeal Regulations.

SUMMARY:

On March 4, 1991, the appellant, a truck driver, was injured. Pursuant to the former **Workers' Compensation Act**, R.S.N.S. 1989, c. 508, he was awarded temporary total disability benefits in 1991 until his claim was terminated on August 16, 1991. Effective February 1, 1996, the current **Workers' Compensation Act**, S.N.S. 1994-95, c. 10, became effective. The Workers Compensation Transitional Appeal Regulations were put in place. The former **Act** was repealed. The appellant sought permanent partial disability benefits under s. 45 of the former **Act**.

On appeal from a decision of the Hearing Officer, the Workers' Compensation Appeals Tribunal, on November 20, 1996, disallowed the

appellant's claim. The appellant appealed the decision of the Tribunal to the Court of Appeal.

ISSUE: Did the Tribunal err.

RESULT: The Court of Appeal allowed the appeal. It concluded the decision of the Court in **Doward v. Workers' Compensation Board (N.S.)** (1997), 160 N.S.R. (2d) 22, determined the result of the appeal. The injury and the claim fell within the transitional "window period" between March 23, 1990 and February 1, 1996.

The interpretation of s. 228 of the current **Act** by the Court in **Doward** applies resulting in the conclusion that the Tribunal made a jurisdictional error.

The Court ordered the matter remitted to the Tribunal to decide whether as a result of the injury, the appellant is entitled to permanent partial disability benefits under the provisions of s. 228 of the current **Act**, applying the law as stated by this Court in **Doward**.

The Court referred to Chipman, J.A. in **Doward** at p. 43 (para. 118), p. 44 (para. 124), and p. 46 (paras. 132, 133).

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 5 pages.