

Date: 19990106

Docket: C.A. 151009

NOVA SCOTIA COURT OF APPEAL

Cite as: Nova Scotia (Education) v. Nova Scotia Teachers Union,
1999 NSCA 38

Glube, C.J.N.S.; Flinn and Cromwell, J.J.A.

BETWEEN:

MINISTER OF EDUCATION)	Peter McLellan, Q.C. and
)	Anne K. Gallop
Appellant)	for the Appellant
)	
- and -)	
)	Lorraine P. Lafferty
)	for the Respondent
NOVA SCOTIA TEACHERS UNION)	
)	
Respondent)	Appeal Heard:
)	January 6, 1999
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)	
)	Judgment Delivered:
)	January 6, 1999
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THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Flinn, J.A. concurring.

CROMWELL, J.A.: (Orally)

This is an appeal by the Minister of Education from the order of Nathanson, J. quashing an award of arbitrator William Kydd, Q.C. on the basis that the learned arbitrator had given certain provisions of the collective agreement between the parties a patently unreasonable interpretation.

At issue in the proceedings is the entitlement of certain former Community College teachers to severance pay under Article 20.09 which provides:

20.09 Where a permanent teacher who has five (5) or more years of continuous service as a teacher in the province is terminated, the teacher upon application to the Employer is entitled to severance pay equal to the amount obtained multiplying the number of completed years of continuous service as a teacher by two percent (2%) of the teacher's annual salary of the year in which termination occurred to a maximum of forty percent (40%) provided that in no case shall such severance pay exceed fifty percent (50%) of the salary rate of a VTCII position 7.

It is common ground that the only issue of entitlement is whether the teachers were "terminated" within the meaning of this Article.

The teachers in question received notices of termination effective July 31, 1994. After receiving the notices but prior to July 31, 1994, amendments were enacted so that they became eligible teachers within the meaning of the **Nova Scotia Teachers' Early Retirement Program (1994-98) Regulations**. Therefore, under s. 5 of the **Regulations** they had "... the right to obtain the benefit of the early retirement program by retiring in accordance with ..." those **Regulations**. Section 19 of the **Regulations** makes it clear that the notices of

termination did not negate their eligibility:

19. Notwithstanding anything in these regulations, where a teacher is given notice of termination for other than just cause during the eligible early retirement period, and except for such notice of termination, would be an eligible teacher, such teacher shall be deemed to be an eligible teacher for the purpose of these regulations and shall be eligible to a pension calculated in accordance with Section 22 of these regulations, based upon such teacher's years of pensionable service at the time that teacher is terminated, and shall be credited with the additional pensionable service referred to in Section 12 of these regulations.

After receiving the notices of termination effective July 31, 1994, the teachers exercised their rights under the **Regulations** to retire effective that same day. The arbitrator decided that, as a result of this election their employment was not terminated. He said:

An application by an employee for early retirement is a resignation. Employees cannot both resign and be terminated. ... My finding therefore is that the employees in question who applied for and were eligible for the early retirement program, are not entitled to severance, because at the end of their employment relationship they had not been terminated but instead had elected to resign.

The premise of the arbitrator's conclusion is that a teacher could not both be terminated and retire. With great respect to the learned and experienced arbitrator, this interpretation, in light of s. 19 of the **Regulations** applying to these teachers, is patently unreasonable. Section 19, by clear words, contemplates precisely the state of affairs that the arbitrator held to be impossible, that is, a teacher who has been given a notice of termination taking advantage of the early retirement program. As the arbitrator himself said elsewhere in his award, the teachers were entitled to participate in the early retirement program notwithstanding "that they had been terminated...". In the case before him

nothing intervened to prevent the notices of termination from coming into effect. There is no rational basis in the collective agreement for the conclusion that having made this election to retire, the teachers in question were not terminated within the meaning of Article 20.09.

We conclude, therefore, that Justice Nathanson was right to quash the award. The appeal is dismissed with costs which we would fix at \$750.00 plus disbursements.

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

Flinn, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

MINISTER OF EDUCATION

Appellant

- and -

NOVA SCOTIA TEACHERS UNION

Respondent

REASONS FOR
JUDGMENT BY:

CROMWELL, J.A.
(Orally)