

**CASE NO.****VOLUME****PAGE**

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

MINISTER OF EDUCATION

NOVA SCOTIA TEACHERS UNION

- and -

(Appellant)

(Respondent)

C.A. No. 151009

Halifax, N.S.

CROMWELL, J.A.  
(orally)

APPEAL HEARD:

January 6, 1999

JUDGMENT DELIVERED:

January 6, 1999

WRITTEN RELEASE OF ORAL:

January 11, 1999

SUBJECT:       **Labour Law - Arbitration - Judicial Review of Arbitrator's Award**

SUMMARY:       Certain community college teachers received notice 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 (1994-1998) Regulations**. Pursuant to those **Regulations** they had "the right to obtain a benefit of the early retirement program by retirement in accordance ..." with those **Regulations**. The teachers elected to retire effective July 31, 1994. Under the collective agreement, a teacher who "is terminated" is entitled to severance pay. The employer refused to pay severance pay arguing that the teachers had not been terminated because they had elected to retire prior to the notices of termination becoming effective. An arbitrator upheld this position holding that a teacher could not both be terminated and retire. On an application to the Supreme Court, this award was quashed as being patently unreasonable. The Minister of Education appealed.

ISSUE:           Did the Supreme Court Judge err in concluding that the arbitrator's award was patently unreasonable?

RESULT:         The appeal was dismissed. There was no rational basis in the collective agreement to support the arbitrator's conclusion that a teacher could not both be terminated within the meaning of the collective agreement and retire pursuant to the early retirement program. Section 19 of the relevant **Regulations** contemplated precisely the state of affairs that the arbitrator considered impossible. The Supreme Court Judge was right to quash the award.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER  
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