

NOVA SCOTIA COURT OF APPEAL

Citation: *Nurnber v. Workers' Compensation Board (N.S.) et al.*,
2004 NSCA 83

Date: 20040617
Docket: CA 203322
Registry: Halifax

Between:

Canada Post Corporation

Appellant

v.

Nova Scotia Workers' Compensation Appeals
Tribunal and The Workers' Compensation Board of Nova
Scotia and Robert Nurnber

Respondents

JUDGE: CROMWELL, J.A.

APPEAL HEARD: June 2, 2004

JUDGMENT DELIVERED: June 16, 2004

SUBJECT: **Workers' Compensation - Government Employees
Compensation Act, R.S.C. 1985, c. G- 8 ("GECA") - gradual
onset stress - whether stress arose out of and in the course of
employment**

SUMMARY: The respondent, Mr. Nurnber, a long time employee of Canada Post, claimed workers' compensation benefits on the basis that he was disabled by stress which he suffered as a result of ongoing

workplace harassment. His claim was rejected by a Hearing Officer but that decision was set aside and the claim was recognized by the Workers' Compensation Appeals Tribunal ("WCAT"). Canada Post appealed.

ISSUES:

1. Does the exclusion of gradual onset stress claims in s. 2(a) of the Provincial **Workers' Compensation Act**, S.N.S. 1994 - 95, c. 10, as amended, apply to **GECA** claims?
2. Is gradual onset stress an injury by accident within the meaning of **GECA**?
3. How is the question of whether workplace stress arises out of and in the course of employment to be determined?
4. Assuming that gradual onset stress claims are not excluded, are they to be recognized only where the employee's reaction to the workplace incidents is reasonable?

RESULT:

Appeal allowed and matter remitted to WCAT for a new hearing.

1. It is irrelevant whether the provincial limitation on stress claims applies to **GECA** and the real question is whether **GECA**, properly interpreted, provides for compensation of gradual onset stress.
2. The question of whether gradual onset stress is an injury by accident under **GECA** was not really considered by either the Hearing Officer or WCAT. Given that the appeal must be allowed on other grounds, the Court preferred not to express a final opinion on this point.
3. WCAT erred in law when it found that the question of the causal link between the stress and the workplace incidents was a matter exclusively for medical expert opinion. It further erred in finding that neither the nature of the workplace incidents nor the reaction of other employees to them was relevant to the causation question.
4. It was not necessary to decide whether there was a reasonableness limitation on the recovery of gradual onset

stress under **GECA**.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 10 pages.