

Date: 20000928  
Docket: C.A. 159172

**NOVA SCOTIA COURT OF APPEAL**

[Cite as: Boudreau v. Nova Scotia (Workers' Compensation Board), 2000 NSCA 106]

**Flinn, Chipman and Saunders, J.J.A.**

**BETWEEN:**

BLAIR W. BOUDREAU

Appellant

- and -

NOVA SCOTIA WORKERS' COMPENSATION APPEAL TRIBUNAL,  
THE NOVA SCOTIA WORKERS' COMPENSATION BOARD and  
P. A. WOURNELL CONTRACTING LTD.

Respondents

---

**REASONS FOR JUDGMENT**

---

Counsel: Ronald Knox on behalf of the appellant  
Sarah Bradfield on behalf of the respondent, WCAT  
Janet E. Curry and Paula Arab O'Leary on behalf of the  
respondent, WCB  
Mr. Wournell, in person

Appeal Heard: September 28, 2000

Judgment Delivered: September 28, 2000

THE COURT: The appeal is allowed, without costs, and the matter is  
remitted back to the Workers' Compensation Board, per oral  
reasons for judgment of Flinn, J.A.; Chipman and Saunders,  
J.J.A. concurring.

**FLINN, J.A.** (Orally)

[1] This is an appeal by the worker from a decision of the Workers' Compensation Appeals Tribunal which denied the worker earnings replacement benefits.

[2] The Tribunal accepted the fact that the injury complained of was work related, and that the medical evidence was supportive of the fact that the worker was unable to work after April 26, 1997. The Tribunal, however, denied the worker's appeal on the following basis:

The Appellant [worker] has not established that he has suffered a wage loss as a result of a work related injury which took place on September 17, 1996. In light of evidence to the contrary, that the Employer had no work for the [worker] after April 26, 1997, the Tribunal does not find that any wage loss suffered by the [worker] was as a result of the work injury.

[3] Between November 1996 and April 1997 the worker was on seasonal layoff from his employment, drawing unemployment insurance. The Hearing Officer, in a decision dated October 28, 1997, writes:

The Worker stated that he was told in November by Mr. Wournell [the employer] that he would be called back to work in May.

[4] There was also evidence before the Hearing Officer that when the worker reported to his employer (on May 5, 1997) that he was filing a claim with the Workers' Compensation Board with respect to the injury in question, the employer wrote a letter to the Board. He objected to the worker's claim on the basis that the worker suffered no injury while in his employ. The following is noted, in the Hearing Officer's decision of October 22, 1997:

The Worker indicated that he contacted Mr. Wournell [the employer] in May about his foot and back and [the employer] was totally shocked and indicated to the Worker that he could not get away with this.

[5] The Hearing Officer, although denying the worker's claim, made the following finding:

I find that subsequent to the Worker's contact with the Employer in May, 1997, there was a chilling effect on the employment relationship such that the Worker was not called into work further.

[6] Section 88(f) of the **Workers' Compensation Act**, S.N.S. 1995-96, c. 1, provides as follows:

88 No employer shall, directly or indirectly,

...

(f) discipline or discriminate against a worker who reports an accident or makes a claim for or receives compensation pursuant to this **Act**.

[7] In light of the factual finding of the Hearing Officer, which I have quoted above, and to which no reference was made in the Tribunal's decision, the conclusion of the Tribunal that the worker had not established that he suffered a wage loss after April 26, 1997, is patently unreasonable. Therefore, the decision to deny the worker earnings replacement benefits on that basis cannot stand.

[8] The appeal is, therefore, allowed. This matter is remitted to the Workers' Compensation Board to fix the earnings replacement benefits to which the worker is entitled after April 26, 1997. Further, if it is determined that, subsequent to April 26, 1997, the worker's injury has become permanent, the

Board is to deal with the issue as to whether the worker has suffered a permanent medical impairment according to the definition in the **Workers' Compensation Act**.

[9] There will be no order as to costs.

Flinn, J.A.

Concurred in:

Chipman, J.A.

Saunders, J.A.