

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
PICTOU LANDING BAND COUNCIL (Appellant)	- and -	HUBERT NICHOLAS (Respondent)
CA 168185	Halifax, N.S.	CROMWELL, J.A. (Orally)

Cite as: Nicholas v. Pictou Landing Band, 2001 NSCA 60

APPEAL HEARD: April 5th, 2001

JUDGMENT DELIVERED: April 5th, 2001

WRITTEN RELEASE OF ORAL: April 6, 2001

SUBJECT: Employment Contract — Renewal — Wrongful dismissal

SUMMARY: Mr. Nicholas sued the Pictou Landing Band Council for wrongful dismissal. He had been hired by the Band as a teacher under a one year contract. The contract obliged Mr. Nicholas to indicate by April 30 of each year whether he would like to have the contract of employment renewed for a further year and the Band to inform him by April 30 of each year whether it intended to renew the contract for a further year. At trial, Cacchione, J. found that: (a) Mr. Nicholas advised prior to April 30 of 1998 that he would like to have the contract renewed and that this constituted an offer to renew the contract; (b) although the Band did not formally communicate its intention as required by the contract, its conduct amounted to acceptance of the offer with the result the contract was renewed for the period July 1998 to July 1999; and (c) that Mr. Nicholas was dismissed without cause in August of 1998 and was entitled to damages equal to the amount due to him under the renewed fixed term contract subject to certain adjustments. The Band appealed.

ISSUES:

1. Did the judge err in finding that the Band's conduct was an acceptance of Mr. Nicholas' offer to renew the contract?
2. Did the judge err in failing to deduct wages allegedly earned during the period of the renewed contract?

RESULT: Appeal dismissed with costs. The judge accepted Mr. Nicholas' evidence that the Band Manager assured him he would have a job for the upcoming school year and attached considerable weight to the fact that the Band continued to pay Mr. Nicholas at the contract rate after the initial one year contract expired. There was no reversible error in either his findings of fact or the inferences he drew from the evidence.

As to mitigation, the evidence at trial was unclear. The Band accepts that it had the burden of proof on this issue. The trial judge did not err, on the evidence at trial, by not deducting these amounts.

The appeal is dismissed with costs fixed at \$1200 (which is 40% of the trial costs) plus disbursements.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.