

Date: 20010405
Docket: CA 168185

NOVA SCOTIA COURT OF APPEAL

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

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

BETWEEN:

PICTOU LANDING BAND COUNCIL

Appellant

- and -

HUBERT NICHOLAS

Respondent

REASONS FOR JUDGMENT

Counsel: Ray E. O'Blenis for the appellant
Timothy G.J. Daley for the respondent

Appeal Heard: April 5th, 2001

Judgment Delivered: April 5th, 2001

THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Freeman, J.A. concurring.

CROMWELL, J.A.: (Orally)

- [1] 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.
- [2] 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.
- [3] The Band appeals.
- [4] Conduct may constitute acceptance of an offer. Although phrased in various ways in the authorities, the essence of the principle is that an offer may be accepted by an offeree's conduct which a reasonable person, viewing the matter objectively, would interpret as acceptance.
- [5] The Band raises a number of points which amount to an argument that the judge erred on this record in drawing the inference of acceptance by conduct. However, we are all of the view that none of these points, individually or collectively, justify appellate interference with the judge's finding. He 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. While there is one misstatement of the evidence in the judge's reasons, there is no reversible error in either his findings of fact or the inferences he drew from the evidence. In our view, there is no basis for appellate intervention.
- [6] The Band also submits that the judge erred in failing to deduct certain wages which it claims were earned by Mr. Nicholas during the period of the renewed contract. The evidence at trial was unclear as to whether these wages were, in fact, earned during the period. The Band accepts that it had the burden of proof on this issue. We see no error, on the evidence at trial, in not deducting these amounts.

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

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

Freeman, J.A.