

NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia Government and General Employees Union v. Nova Scotia
(Transportation and Infrastructure Renewal), 2010 NSCA 85

Date: 20101103

Docket: CA 324157

Registry: Halifax

Between:

Nova Scotia Government and General Employees Union

Appellant

v.

Her Majesty the Queen in the Right of the Province of
Nova Scotia, representing the Department of Transportation
and Infrastructure Renewal

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: September 29, 2010

Subject: Labour law; jurisdiction of adjudicator; standard of review;
Article 40.01 of the Nova Scotia Civil Service Master
Agreement.

Summary: By consent, an adjudicator was appointed to decide a grievance concerning whether the Province breached the Civil Service Master Agreement by creating a new position in one of its departments. The adjudicator found it did, and ordered the parties to negotiate the pay rate for the new position in accordance with the Agreement. The parties failed to agree on the pay rate. The Union asked the adjudicator to determine the pay rate. The Province took the position the adjudicator did not have the jurisdiction to decide this issue. The adjudicator found he had jurisdiction. His decision was appealed to the Supreme Court. The judge reviewed the adjudicator's decision on the standard of correctness and found the adjudicator erred. The judge found the arbitrator had only been appointed to determine

whether a new position had been created. The pay rate issue was a separate issue requiring a fresh appointment of an adjudicator in accordance with the **Civil Service Collective Bargaining Act**, R.S.N.S. 1989, c. 71.

Issue: Did the judge err in applying the standard of correctness to his review of the adjudicator's decision? Did he err in finding the adjudicator had no jurisdiction to determine the pay rate?

Result: Appeal dismissed. The judge followed the required procedure to determine the standard of review to apply and correctly concluded the standard was correctness. He made no error in concluding the pay rate issue was separate and required a fresh appointment of an adjudicator.

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 12 pages.