

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Michelin North America (Canada) Inc. v. Ross*, 2002 NSCA 166

**Date:** 20021230

**Docket:** CA 177445

**Registry:** Halifax

**Between:**

Michelin North America (Canada) Inc.

Appellant

v.

Richard Ross, The Nova Scotia Workers' Compensation Appeals Tribunal, and The Workers' Compensation Board of Nova Scotia

Respondents

and

Alliance of Manufacturers & Exporters Canada, carrying on business as Canadian Manufacturers & Exporters

Intervenor

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**JUDGE:** Freeman, J.A.

**APPEAL HEARD:** December 3, 2002

**SUBJECT:** Workers' Compensation; appeal of award by Workers' Compensation Appeals Tribunal for time lost due to symptoms of shift-work maladaptation syndrome; *Metropolitan Entertainment Group v. Durnford* (2000), 188 N.S.R. (2d) 318 (C.A.) considered.

**SUMMARY:** A worker who lost time due to a cognitive deficit resulting from his shift-work maladaptation syndrome was awarded compensation by the Workers' Compensation Board. The employer appealed to

the Workers' Compensation Appeals Tribunal, which dismissed the appeal, citing this court's decision in *Durnford*. The employer appealed to this court.

**ISSUE:** Were the symptoms of shift-work maladaptation syndrome an injury resulting from an accident arising out of and in the course of employment?

**RESULT:** The appeal was allowed and the award of compensation set aside. The worker's shift-work intolerance was a personal characteristic inherent to him. Unlike *Durnford*, there is no evidence that this condition is either caused or aggravated by the requirements of the job. Contrary to the Tribunal's holding based on its erroneous reading of *Durnford*, it cannot be said that simply because the condition manifests itself at work that the condition or its symptoms arise out of or in the course of employment.

**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 13 pages.**