

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Human Rights Commission) v. Multibond Inc.*,
2003 NSCA 122

Date: 20031120

Docket: CA197091

Registry: Halifax

Between:

The Nova Scotia Human Rights Commission

Appellant

v.

Dural, a division of Multibond Inc.
and Cyril D. Kaiser

Respondents

Judge: Hamilton, J.A.

Appeal Heard: November 12, 2003

Subject: *Administrative law, Human Rights Act, Issue Estoppel*

Summary: After being employed by Dural for 11 months, Mr. Kaiser was fired. Before being fired, he was diagnosed with a medical illness that eventually prevented him from working. He did two things as a result of being fired. He sued Dural in the Supreme Court for wrongful dismissal and made a complaint under the Human Rights Act. In his statement of claim in the Supreme Court he claimed that he was fired without just cause and without appropriate notice. He claimed his dismissal was unjust and discriminatory since he was fired because of his medical condition. He claimed increased damages due to the discriminatory and wrongful method of and motivation behind his dismissal, at a time when he was disabled. In his complaint under the Act he claimed Dural discriminated against him by firing him because of his medical condition.

The wrongful dismissal action in the Supreme Court proceeded first. Mr. Kaiser was successful at trial receiving damages calculated on his being entitled to nine months notice in addition to compensation for a car, vacation pay, benefits and prejudgement interest. The trial judge found that although Mr. Kaiser was incompetent, Dural's defence to his wrongful dismissal action, he was not grossly incompetent so as to amount to just cause since he had not been given any training as to how to do his job and had not received any warning that his job performance was unacceptable before being fired. In his decision the trial judge found that Mr. Kaiser's medical condition was not taken into account when Dural decided to fire Mr. Kaiser, by finding as a fact that Dural made its decision to fire Mr. Kaiser before even Mr. Kaiser knew of his medical condition.

After the wrongful dismissal trial was complete, a board of inquiry was appointed under the Act to hold a hearing into Mr. Kaiser's complaint. By agreement of counsel, the board held a preliminary hearing to consider Dural's application that the complaint should be dismissed without a full hearing on the basis of res judicata, issue estoppel or abuse of process. Following the preliminary hearing the board found that the Commission and Mr. Kaiser were estopped from proceeding to a full hearing since the trial judge had already adjudicated the same issue that was before the board. In reaching its decision the board found the trial judge had jurisdiction to adjudicate the discrimination issue since it arose in the context of a wrongful dismissal action that the trial judge had jurisdiction to decide. The Commission appealed the board's decision on this preliminary matter to this court.

Issues: 1. Did the board of inquiry err in determining that the trial judge had jurisdiction, as part of the wrongful dismissal action that was properly before it, to adjudicate the issue of discrimination?

2. If not, did the board of inquiry err by considering irrelevant matters, such as the cost of a full hearing and the particular remedies sought, in determining that the Commission and Mr. Kaiser were estopped from having a full hearing before the Board to deal with Mr. Kaiser's complaint? or

3. Did the board of inquiry err in determining that Mr. Kaiser and the Commission were estopped from having a full hearing before the Board to deal with Mr. Kaiser's complaint because of issue estoppel?

Result: The appeal was dismissed. The standard of review is one of correctness.

The board did not err in determining the trial judge had jurisdiction to deal with Mr. Kaiser's claim that Dural discriminated against him in the context of the wrongful dismissal action that was properly before him. The facts of this case distinguish it from the Bhadauria and Ayangma cases because in this case Mr. Kaiser was properly before the Supreme Court on his wrongful dismissal action and made the issue of discrimination an intrinsic part of his wrongful dismissal case that the trial judge had to consider. Also, the wording of the statute being considered was different. Nor did the board err in considering the costs involved in a full hearing and the remedies being sought, in deciding to dismiss the complaint without having a full hearing. There is nothing in the Act or the case law limiting the factors to be considered by the board in a case such as this. Finally, the board did not err in finding that the Commission and Mr. Kaiser were estopped from proceeding to a full hearing on Mr. Kaiser's complaint. The law relating to issue estoppel was correctly stated and applied by the board.

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 17 pages.