

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Canadian Union of Public Employees, Local 108 v.  
Halifax (Regional Municipality)*  
2011 NSCA 41

**Date:** May 12, 2011

**Docket:** CA 332801

**Registry:** Halifax

**Between:**

Canadian Union of Public Employees, Local 108,  
Halifax Civic Workers Union

Appellant

v.

Halifax Regional Municipality

Respondent

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**Judge:** The Honourable Justice Joel Fichaud

**Appeal Heard:** March 30, 2011

**Subject:** Judicial Review of Labour Arbitration Award

**Summary:** The Union took an unjust dismissal grievance to arbitration. The arbitrator found there was just cause for dismissal. But the arbitrator's award stated a "condition subsequent" that would render his award "defeasible" – that the Union could reopen the hearing to lead evidence of the grievor's mental disability which would trigger the employer's duty to accommodate. That issue had not been presented during the arbitration despite that the arbitrator had urged the Union to pursue the issue. The Nova Scotia Supreme Court set aside the condition subsequent and upheld the portion of the award that determined there was just cause for dismissal. The Union appealed.

**Issue:** Did the judge err by setting aside the condition

subsequent to the award?

**Result:**

The Court of Appeal dismissed the Union's appeal. The Court applied the reasonableness standard of review. The arbitration award should not have introduced an issue that the parties had decided not to raise in their submission to arbitration.

**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 20 pages.**