

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *New Scotland Soccer Academy v. Nova Scotia (Labour Standards Tribunal)*, 2011 NSCA 88

**Date:** 20110922

**Docket:** CA 354453

**Registry:** Halifax

**Between:**

Kathy Baker, carrying on business under the firm name and style of New Scotland Soccer Academy

Appellant

v.

The Labour Standards Tribunal, Attorney General of Nova Scotia and Frederico Luis Otto Krause

Respondents

**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Motion Heard:** September 22, 2011, in Halifax, Nova Scotia, in Chambers

**Held:** Motion for date and directions and waiver of delivery of appeal book and factum to respondent Krause granted

**Counsel:** Appellant in person  
Dale Darling, for the respondents, The Labour Standards Tribunal and Attorney General of Nova Scotia  
Respondent Frederico Luis Otto Krause not appearing

**Decision:**

[1] This case came before me in Chambers this morning as a motion for date and direction initiated by the appellant who is self-represented. She wishes to have her appeal set down for hearing. She seeks my directions in the face of her declared inability to serve the respondent Frederico Luis Otto Krause with today's motion or any further notifications that may result in her appeal being scheduled. Besides the appellant, I also heard from Ms. Darling, counsel representing both the Labour Standards Tribunal and the Attorney General of Nova Scotia. Mr. Krause did not appear.

[2] The background is a bit peculiar. Briefly stated, the appellant, Kathy Baker, carried on business under the firm name and style of New Scotland Soccer Academy. She operated the business from 1999 until 2008. She ran after school programs designed to engage elementary students in sporting activities, and also provided coaching and training for elite teams competing in tournaments outside the local area.

[3] She hired the respondent, Frederico Luis Otto Krause (Mr. Krause), in the summer of 2006 as a soccer coach. He was then a student at St. F.X. University. Evidently their business relationship ran smoothly for the first two years. Matters started to deteriorate such that in May, 2008 the appellant confronted Mr. Krause with what she referred to as "negligence and performance issues" which arose, in part, over concerns the appellant had that Mr. Krause was neglecting his duties, and had started to work for a competitor, behind her back.

[4] This led to a meeting between the two on May 26th, 2008 when she terminated their existing contract but offered him a part-time job as a coach. He declined and filed a complaint with the Director of Labour Standards.

[5] His complaint was reviewed by a complaints officer who, ultimately, determined that Mr. Krause was owed approximately \$6,000 for back pay, vacation pay, as well as damages for constructive dismissal and discrimination. That assessment was later confirmed in the Director's order that the appellant pay Mr. Krause \$6,026, less statutory deductions.

[6] At one point during this ongoing dispute the appellant claimed that the Tribunal lacked jurisdiction to hear Mr. Krause's complaint on the basis that he had also commenced an action, claiming the same relief, in the Nova Scotia Small Claims Court. The appellant says the Tribunal "closed" its file on account of Mr. Krause's decision to pursue his action for damages in the Small Claims Court. For reasons that I need not explore here, the Tribunal later determined that Mr. Krause, represented by counsel, had withdrawn his action in the Small Claims Court and had left Canada. Accordingly, the Tribunal concluded that it retained jurisdiction to review the matter, which apparently came before it in the form of an appeal launched by Ms. Baker (see, for example, para. 54 of the Tribunal's decision dated July 25, 2011 bearing LST No. 2272, 2011 NSLST 30).

[7] Ms. Baker now appeals to this Court from that decision of the Tribunal.

[8] In its decision the Tribunal allowed Ms. Baker's appeal in part by effectively halving the award initially ordered by the Director.

[9] While Ms. Baker appears to have initiated the appeal to the Tribunal and was partially successful in doing so, she now challenges the jurisdiction of that same body, saying that once the Tribunal "closed" the file, it relinquished any authority to consider Mr. Krause's complaint. Her notice of appeal to this Court states one ground of appeal:

The Tribunal had no jurisdiction in the matter because the Respondent, Krause, had abandoned his complaint and the matter was concluded.

[10] The only issues before me this morning are whether I ought to set the appeal down for hearing and, if so, whether I ought to waive the requirement that the respondent Mr. Krause be given proper notice of today's hearing and the scheduled appeal.

[11] In the affidavit sworn by Ms. Baker on September 19, 2011 to support today's motion, she describes her difficulties in locating Mr. Krause whether through e-mail, Facebook, his spouse, or the Halifax lawyer who represented him at part of the hearing before the Tribunal.

[12] In her affidavit Ms. Baker swears:

9. That I understand Mr. Krause is living in or near Grenoble, France.

although she does not declare the source of her belief.

[13] The decision under appeal states at para. 38:

38. ... The Small Claims Court matter has now been withdrawn and indeed the Complainant is no longer in the Country. ...

[14] Attached to the appellant's affidavit is an e-mail to her from Mr. Adam Panko, Mr. Krause's former solicitor. The e-mail is dated August 26th, 2011 and it reads:

Dear Kathy:

I am writing to advise you that I am no longer representing Mr. Krause in any new action that you may make and that I am not able to provide you with any further information about him.

Sincerely

Adam Panko

[15] Mr. Panko does not say that he does not know where Mr. Krause is, or that he has no ability to contact him.

[16] **Civil Procedure Rule 90.30** provides:

**90.30(1)** An appellant must do both of the following unless a judge of the Court of Appeal permits otherwise

....

(b) deliver a copy of the appeal book to each respondent. ...  
(Underlining mine)

**CPR 90.32(1)(b)** imposes much the same obligation with respect to the factum.

[17] Counsel for the respondents agrees that the appellant has made reasonable efforts to notify Mr. Krause, and that the appeal ought to be set down for hearing. She will co-operate with the appellant in gathering the appropriate material to include in the appeal book.

[18] Based on the record before me I am prepared to exercise my discretion and waive the requirement that the appellant deliver a copy of the appeal book or factum to Mr. Krause. It would appear that Mr. Krause has left Canada and may be residing in France. I infer that he is well aware of the Tribunal's decision under appeal because he was represented by Mr. Panko at the hearing. I accept that the appellant has exhausted all reasonable efforts to communicate with Mr. Krause. I find that he must be aware that the Tribunal partially allowed Ms. Baker's appeal and reduced the award of \$6,026 originally ordered by the Director to \$2, 884.40 (subject to applicable statutory deductions).

[19] The present appeal is restricted to the issue of jurisdiction and has not raised any challenge to the quantum of the award. In my view, the narrow issue of jurisdiction will involve the appellant, and the other named respondents, they being the Labour Standards Tribunal, and the Attorney General of Nova Scotia. Based on the record before me, this single issue does not appear to be a subject to which Mr. Krause would wish to contribute by way of written or oral submissions. I find that Mr. Krause has chosen not to participate.

[20] This appeal will not be heard until some time in 2012. If Mr. Krause were to become aware of the appeal and decide to participate, I expect that there would be ample time for him to seek leave to join in these proceedings.

[21] For all of these reasons, I am prepared to set this appeal down for hearing and fix dates for the exchange of facta as well as the contents of the appeal book. Based on discussions this morning with the parties, it would appear to me that the appeal book should be confined to the record before the Tribunal, in other words, a complete transcript of the hearing and all of the exhibits. Ms. Darling confirmed that the transcript is being prepared and should be available within four weeks, if not sooner. She has gathered all of the exhibits and will be able to furnish copies to the appellant by next week. Given the level of co-operation that is evident, I simply advised the parties that I expected they would agree on the precise contents of the appeal book. Should any dispute arise, I asked the parties to bring the matter

back before me before my term in Chambers ends on Friday, November 4, 2011. Ms. Baker confirmed that as far as she is concerned she has copies of all of the necessary “record” and would not require any further disclosure from the respondents. Finally, counsel for the respondents agreed with the course of action I proposed in bringing notice of these proceedings to the attention of Mr. Krause, as will be described in [23], *infra*.

[22] Accordingly, I fixed the following schedule:

Appeal Book due November 4, 2011

Appellant’s Factum due November 25, 2011

Respondents’ Factum due December 21, 2011

Appeal to be heard Thursday, February 2, 2012 at 10:00 a.m.

I will leave the subject of costs, if any, arising from today’s Chambers appearance, to the panel that hears the appeal.

[23] In terms of notifying Mr. Krause of today’s proceedings, I will only oblige the appellant to send a copy of my decision and order, once filed, by prepaid registered mail addressed to his former solicitor, Mr. Adam Panko, 7020 Mumford Road, Suite 402, Halifax, NS, B3L 4S9, and marked for Mr. Krause’s attention. If Mr. Panko has current contact coordinates for Mr. Krause, I would expect him to provide a copy of these reasons to Mr. Krause. Whether that transpires or not, the appellant will have done all that is required. From this point forward in the conduct of this appeal, Ms. Baker need only deal with the Registrar and counsel representing the other named respondents, they being the Labour Standards Tribunal, and the Attorney General of Nova Scotia.

Saunders, J.A.