

NOVA SCOTIA COURT OF APPEAL

Citation: *New Scotland Soccer Academy v. Nova Scotia (Labour Standards Tribunal)*, 2012 NSCA 40

Date: 20120417

Docket: CA 354453

Registry: Halifax

Between:

Kathy Baker, carrying on business under the firm
Name 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

Appeal Heard: February 2, 2012

Subject: **Labour Standards Tribunal. Labour Standards Code, R.S. c. 246. Small Claims Court. Jurisdiction. Standard of Review. *Functus Officio. Res Judicata. Costs.***

Summary: The appellant claimed the Labour Standards Tribunal lost jurisdiction when its investigator closed the file after being notified by the respondent's lawyer that they had started an action in the Small Claims Court. When the respondent and his lawyer changed their minds and decided to renew the claim under the provisions of the **Labour Standards Code**, the appellant said the Tribunal was barred from considering the matter by the application of the doctrines of *functus officio* and *res judicata*. She also claimed significant costs on account of the delay, inconvenience and aggravation of having to defend

herself from a claim that the Tribunal's investigator had "dismissed".

Held:

Appeal dismissed. This was not a case where a party had attempted to re-litigate a matter where the cause of action, or material issues, had already been decided. Actions taken by the Tribunal's investigator were purely administrative. Nothing he did was "final" or could be considered as a conclusive adjudication of the merits. That task fell within the Tribunal's jurisdiction. The doctrines of *functus officio* and *res judicata* had no application to these circumstances.

Much of the "costs" award sought by the appellant were not costs at all, but rather separate heads of damage for which she sought compensation. Such demands for damages are not properly characterized as "costs" on appeal to this Court.

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 16 pages.