

Date: 19980521

Docket: C.A. 143646

**NOVA SCOTIA COURT OF APPEAL**

Cite as: Nova Scotia (Workers' Compensation Board) v. Rose,  
1998 NSCA 112

**Clarke, C.J.N.S.; Hart and Flinn, JJ.A.**

**BETWEEN:**

WORKERS' COMPENSATION BOARD	)	David P. S. Farrar
OF NOVA SCOTIA	)	John R. Ratchford
	)	for the Appellant
	)	
Appellant	)	
- and -	)	
	)	Sarah Bradfield
WORKERS' COMPENSATION APPEALS	)	for the Respondent
TRIBUNAL OF NOVA SCOTIA and	)	Tribunal (Watching
KENNETH ROSE	)	Counsel only)
	)	
Respondents	)	
	)	Kenneth H. LeBlanc
	)	Linda L. Zambolin
	)	for the Respondent
	)	Kenneth Rose
	)	
	)	Appeal Heard:
	)	May 21, 1998
	)	
	)	
	)	Judgment Delivered:
	)	May 21, 1998
	)	
	)	
	)	

**THE COURT:** Appeal dismissed from decision of Workers' Compensation Appeals Tribunal, per oral reasons for judgment of Clarke, C.J.N.S.; Hart and Flinn, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

Leave having been granted, the Workers' Compensation Board of Nova Scotia appeals from the decision of the Workers' Compensation Appeals Tribunal dated November 12, 1997. The Appeals Commissioner decided that Kenneth Rose suffered from an industrial disease, being industrial bronchitis, which arose out of his employment. She found that his condition resulted in a compensable injury under s. 9(1) of the former **Act**, R.S.N.S. 1989, c. 508. This is a former **Act** case.

After 38 years of employment at Sydney Steel, Mr. Rose retired on March 1, 1984. He worked at the coke ovens, the blast furnace, the mills, the open hearth, the foundry and the acid plant. Throughout practically all of his employment, he was exposed to smoke and gases.

His accident report, alleging he was suffering from industrial bronchitis, was filed on October 26, 1988. The Hearing Officer denied the claim on the principal grounds that the time limits provided in s. 84(1) had not been met and the evidence failed to establish a causal connection between his employment and the industrial disease. Mr. Rose appealed to the Tribunal.

In our opinion, the Appeals Commissioner correctly interpreted **Doward** (1997), 160 N.S.R. (2d) 22, to the effect that in the circumstances giving rise to this case under the

former **Act**, she was entitled and, if she deemed appropriate, to substitute her opinion for that of the Hearing Officer so long as she arrived at a result that is not patently unreasonable.

Upon a review of the evidence and all the underlying circumstances, the Commissioner was satisfied that Mr. Rose suffered from an industrial disease within the meaning of the former **Act** and that the evidence which was not considered by the Hearing Officer established a causal connection.

Referring to the medical evidence, she wrote in part:

... All evidence on file favours the Appellant, evidence provided at the request of the Workers' Compensation Board, and evidence standing uncontradicted. Especially noteworthy is the Form 51 dated May 5, 1993, signed by Dr. Dobson, which states: "Dr. Dill was asked to assess this client in relation to his claim for disability benefits for industrial bronchitis. See his report of April 8, 1993. He has recommended a 10% disability award." Dr. Dobson has expressed no opinion contrary to Dr. Dill's. When all evidence falls on one side of the scale, with nothing to balance on the other side, necessarily the weight-bearing side must be accepted as true...

The Appeals Commissioner applied the benefit of the doubt provisions of s. 24. In doing this she interpreted the section correctly. The decision on the application of the benefit of the doubt provisions to the facts is not patently unreasonable. The Commissioner concluded that Mr. Rose suffered a compensable injury in the course of his employment pursuant to s. 9.

We have reviewed the record in detail. We are satisfied that the Workers' Compensation Appeals Tribunal made no reversible errors. The appeal is dismissed.

Clarke, C.J.N.S.

Concurred in:

Hart, J.A.

Flinn, J.A.

NOVA SCOTIA COURT OF APPEAL

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WORKERS' COMPENSATION BOARD )  
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Appellant )  
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WORKERS' COMPENSATION APPEALS )  
TRIBUNAL OF NOVA SCOTIA and )  
KENNETH ROSE )  
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Respondents )  
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REASONS FOR  
JUDGMENT BY:  
  
Clarke, C.J.N.S.  
(Orally)

