

NOVA SCOTIA COURT OF APPEAL

Citation: *Enterprise Cape Breton Corporation v. Hogan*,
2013 NSCA 33

Date: 20130307

Docket: CA 385259

Registry: Halifax

Between:

Enterprise Cape Breton Corporation (formerly
Cape Breton Development Corporation)

Appellant

v.

Peter Hogan, The Nova Scotia Workers' Compensation
Appeals Tribunal, Workers' Compensation Board, and the Attorney General of Nova
Scotia

Respondents

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

Appeal Heard: November 26, 2012

Subject: **Workers' Compensation Act, S.N.S. 1994-95, c. 10. Government Employees Compensation Act, R.S.C. 1985, c. G-8. Workers' Compensation General Regulations, N.S. Reg. 22/96, as amended. Board Policy 3.1.1R2. Benefits under an Early Retirement Incentive Program (ERIP). Temporary Earnings-Replacement Benefits (TERB). Statutory Interpretation. Legislative History and Intent. Standard of Review. Failing to Answer a Question Remitted to it.**

Summary: When the coal mines of Cape Breton closed in 2001 the worker elected to receive ERIP benefits. He also received TERB for a compensable knee injury suffered during the course of his

employment. The issue was whether the worker's ERIP should be included in the calculation of his post-injury earnings when determining his TERB. The employer appealed the WCAT decision which held that the ERIP benefits should not be included in the worker's pre- and post-injury earnings profile for the purpose of calculating his TERB.

The employer said the WCAT ignored important evidence relating to legislative history and intent which caused it to render an unreasonable decision that produced absurd results. In the alternative the employer argued that the WCAT had failed to answer a question remitted to it which was to declare the effective date when the Workers' Compensation Board had changed its practice concerning the treatment of ERIP benefits.

Held:

Appeal dismissed. The Tribunal did not err by failing to consider the evidence relating to legislative history and intent. It applied the proper rules of statutory interpretation. Its decision and the reasoning which led to it fell within a range of possible, acceptable outcomes, defensible on both the facts and the law. Evaluating the evidence and deciding the weight that ought to be attached to it is a matter for the decision-maker. The Tribunal did not err in failing to address a question remitted to it. Nothing in the record established that the parties expected WCAT to decide the effective date in the worker's case, or that failing to do so would constitute grounds for appeal. Nonetheless, this was a point which would, ultimately, need to be resolved. Ordinarily such a question would be referred back to the WC Board so as to take advantage of the incremental, tiered review established within the workers' compensation regime. However, that would not be appropriate in this case. Instead, this single issue would be referred back to the same three Appeal Commissioners who were in the best position to decide the point.

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 31 pages.