CASE NO. VOLUME **PAGE** 

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

WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

(Appellant)

- and -

WORKERS' COMPENSATION APPEALS TRIBUNAL OF NOVA SCOTIA and KENNETH ROSE (Respondents)

C.A. No. 143646 Halifax, N.S. Clarke, C.J.N.S.

(orally)

APPEAL HEARD: May 21, 1998

JUDGMENT DELIVERED: May 21, 1998

May 27, 1998 WRITTEN RELEASE OF ORAL:

WORKERS' COMPENSATION ACT, R.S.N.S. 1989, c. 508, ss. 24, 9. SUBJECT:

SUMMARY:

Mr. Rose retired in 1984 after working 38 years at Sydney Steel where during practically all of his employment, he was exposed to smoke and gasses. He filed an accident report in 1988 alleging that as a result of his employment, he was suffering from industrial bronchitis. The Hearing Officer denied his claim on the principal grounds that he had not met the time limits provided in s. 84(1) and the evidence failed to establish a causal connection between his employment and the industrial disease. Mr. Rose appealed to the Workers' Compensation Appeals Tribunal. The Appeals Commissioner reversed the decision of the Hearing Officer. It decided Mr. Rose suffered from an industrial disease which arose out of his employment. The Workers' Compensation Appeals Tribunal found his condition resulted in an injury compensable under s. 9(1). The Workers' Compensation Board appealed.

Did the Workers' Compensation Appeals Tribunal err. ISSUE:

The appeal was dismissed. The Court decided the Appeals RESULT:

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, the Commissioner was entitled, and if 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.

The Court found that the Workers' Compensation Appeals Tribunal applied the benefit of the doubt provisions of s. 24 correctly. It concluded the decision on the application of the benefit of the doubt provisions to the facts is not patently unreasonable and that the conclusion of the Appeals Commissioner that Mr. Rose suffered a compensable injury in the course of his employment pursuant to s. 9 was not a reversible error.

Note: This is a former Act case.

This information sheet does not form part of the Court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 3 pages.