

NOVA SCOTIA COURT OF APPEAL

Citation: *Halifax (Regional Municipality) v. Canadian Union of Public Employees, Local 108*, 2014 NSCA 19

Date: 20140221

Docket: CA 417281

Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

Canadian Union of Public Employees, Local 108

Respondent

Judge: The Honourable Justice J.E. (Ted) Scanlan

Appeal Heard: February 3, 2014, in Halifax, Nova Scotia

Subject: Appeal from a Judicial Review

Summary: A supervisor said he detected the smell of marijuana coming from an employer owned vehicle occupied by two employees. The matter was investigated and the employees were suspended without pay for two days for failing to cooperate in the investigation. That suspension was eventually upheld. The employer directed one of the employees to undergo a risk assessment in an attempt to assess the risk that his drug use may present to the public and workplace. He was found not to be cooperative in that risk assessment and his employment was terminated.

The termination was grieved and he was reinstated by an arbitrator with full pay other than the two days' pay noted above. The employer applied to the Supreme Court for judicial review of the arbitrator's decision. In addition the employer suggested that the court should consider ordering the employee to undergo a risk assessment even if the termination was not upheld because of concerns the employer had in relation to the *Occupation Health and Safety Act*,

S.N.S. 1996, c. 7 (*OHSA*).

Issues:

- (1) Did the judge err in not overturning the arbitrator's decision?
- (2) Should the Court of Appeal make an order requiring the employee to undergo a risk assessment?

Result:

Appeal dismissed. The reviewing judge applied the appropriate standard of review. The employer was not entitled to present issues on judicial review or on this appeal that were not before the arbitrator.

The rights and obligations of the employer under the *OHSA* were not diminished as a result of this proceeding. The limits of those rights, powers and obligations were not within the scope of this appeal.

Respondent awarded costs of \$2,500

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 9 pages.