

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Clarke, C.J.N.S.; Hart and Roscoe, J.J.A.

Cite as: Chapman Performance Cars Inc. v. Nova Scotia (Labour Standards Tribunal),  
1992 NSCA 63

**BETWEEN:**

CHAPMAN PERFORMANCE CARS INC.	)	Eric B. Durnford, Q.C.
	)	for the Appellant
Appellant	)	
- and -	)	
	)	Jonathan Davies
	)	for the Respondent
LABOUR STANDARDS TRIBUNAL	)	Labour Standards Tribunal
(NOVA SCOTIA)	)	
Respondent	)	Appeal Heard:
	)	October 13, 1992
- and -	)	
	)	Judgment Delivered:
	)	October 13, 1992
TIMOTHY WALTER BELL	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

**THE COURT:** Appeal dismissed from order of Labour Standards Tribunal per oral reasons for judgment of Clarke, C.J.N.S.; Hart and Roscoe, J.J.A., concurring.

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

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

The issue in this appeal is whether the Labour Standards Tribunal committed an error of law or jurisdiction in its order dated February 17, 1992. It determined the appellant constructively dismissed the respondent from his position as Shop Foreman. Pursuant to the provisions of the **Act** (R.S., 1989, c. 246), it ordered the appellant to pay the respondent \$3,423.16 consisting of two categories of vacation pay, a bond deduction and four weeks pay in lieu of notice.

After hearing the evidence of witnesses for both the appellant and the respondent, the Board wrote at pages 2-3 of its decision in L.S.T. No. 869:

"The Tribunal finds the facts in this matter to be as follows:

In May of 1990 Mr. Bell was promoted to shop foreman and was provided with a written job description. On June 27, 1990 the employer hired Glen Miller, the Service Manager's cousin as Assistant Service Manager and gave him some of Mr. Bell's duties. The Tribunal finds that over the next few months Mr. Bell's job description was substantially altered. Initially Mr. Bell was given fourteen responsibilities as shop foreman. Five of these responsibilities were given completely to Glen Miller and another two responsibilities were to be shared with Mr. Miller.

Mr. Bell testified that other employees noticed these changes and began to question his authority. The Tribunal finds the Mr. Bell voiced his concern about these changes and eventually was told by Mr. Backman that if he didn't like the changes he could quit.

The Tribunal finds that the employer made substantial changes to Mr. Bell's job description. The changes were of a sufficient magnitude that Mr. Bell was entitled to treat these changes as constructive dismissal. Mr. Bell did so and is entitled to notice pursuant to Section 72 (1) (c) of the Labour Standards Code. Mr. Bell's weekly wages were six hundred and eighty dollars (\$680.00) per week."

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The appellant contends the Tribunal erred in law in deciding the respondent was constructively dismissed and in addition that it made findings of fact and drew inferences which were not supported by the evidence.

There is no error with respect to jurisdiction. The matters raised in the respondent's complaint

were within the jurisdiction of the Tribunal. They related to the issue whether the appellant had done "anything prohibited by this Act". On such an issue s. 20(1) provides:

... the Tribunal shall decide the question and the decision or order of the Tribunal is final and conclusive and not open to question or review except as provided by subsection (2).

Subsection (2) of s. 20 deals with the scope of appeal. It says:

(2) Any party to an order or decision of the Tribunal may, within thirty days of the mailing of the order or decision, appeal to the Appeal Division of the Supreme Court on a question of law or jurisdiction.

Constructive dismissal occurs where the changes made in the employment relationship materially and fundamentally affect the contract of employment. The burden of establishing that, by a preponderance of evidence, is upon the employee, here the respondent. Whether there has been a constructive dismissal is a question of fact.

A review of the evidence and the entire record in this proceeding persuades us that there was evidence to support the findings of fact made by the Tribunal including the time factors involved. In such a circumstance it is not for this court to retry the case and substitute its opinion for that of the Tribunal. The Legislature by s. 20(1) has provided otherwise where, as here, no question of law arises.

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The appeal is dismissed without costs.

C.J.N.S.

Concurred in:

Hart, J.A.

Roscoe, J.A.

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CHAPMAN PERFORMANCE CARS INC.

Appellant

- and -

LABOUR STANDARDS TRIBUNAL (NOVA SCOTIA)

Respondent

- and -

TIMOTHY WALTER BELL

Respondent

**ORDER FOR JUDGMENT**

REASONS FOR JUDGMENT having been delivered by Clarke, C.J.N.S.; Hart and Roscoe , JJ.A. concurring;

IT IS ORDERED THAT the appeal is dismissed from the order of the Labour Standards Tribunal dated February 17, 1992, whereby it found for the respondent and ordered the appellant to pay the respondent, in total, \$3,423.16;

DATED at Halifax, Nova Scotia, this 13th day of October, 1992.

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Registrar