NOVA SCOTIA COURT OF APPEAL

Citation: *MacEachern v. Workers' Compensation Board (N.S.)*, 2003 NSCA 45

Date: 20030424
Docket: CA 190222
Registry: Halifax

Between:

Workers' Compensation Board of Nova Scotia

Appellant

v.

Workers' Compensation Appeals Tribunal and William MacEachern

Respondents

Judges: Roscoe, Freeman, and Bateman, JJ.A.

Appeal Heard: April 16, 2003, in Halifax, Nova Scotia

Held: Appeal allowed per reasons for judgment of Bateman, J.A.; Freeman and Roscoe, JJ.A. concurring.

Counsel: Paula Arab and David Farrar, for the appellant
Alexander MacIntosh, for the respondent Tribunal
Anne Clark and Kenneth LeBlanc, for the respondent MacEachern

Reasons for judgment:

[1] This is an appeal by the Workers' Compensation Board ("WCB") from an October 28, 2002 decision of the Workers' Compensation Appeals Tribunal ("WCAT").

[2] The facts are not in dispute. The respondent, William MacEachern, was employed at the Lingan Country Club during the 1995 golf season. On July 25, 1996 Mr. MacEachern's physician notified the WCB that Mr. MacEachern had been off work since October 5, 1995 due to generalized anxiety disorder resulting from severe mental abuse to which he had been subjected by co-workers at the Lingan Country Club.

[3] Mr. MacEachern had been dismissed from his employment on August 5, 1995. No accident or injury had been reported to his employer. His claim for compensation on account of the stress occasioned at work was, by the case manager's decision of December 27, 1996, dismissed. It was the case manager's conclusion that the events leading to Mr. MacEachern's claim did not fall within the definition of "accident" contained in s.2(a) of the **Workers' Compensation Act**, S.N.S. 1994-1995, c. 10 (the "current **Act**"). That decision was not appealed.

[4] Mr. MacEachern subsequently submitted an additional medical report and requested reconsideration of the December 27, 1996 decision. By decision dated November 29, 1999 the case manager determined that the new information submitted did not meet the criteria for "new evidence" as defined by WCB Policy 8.1.7(R)(1). Thus, the December 27, 1996 decision remained final.

[5] The November 29, 1999 decision was appealed to a hearing officer who dismissed the appeal on February 10, 2000. That decision was not appealed.

[6] Mr. MacEachern again submitted further new information and requested a reconsideration. A case manager found that the additional information was not sufficient to warrant a reversal of the December 27, 1996 decision.

[7] Mr. MacEachern unsuccessfully appealed the case manager's decision to a hearing officer. That further decision (April 9, 2001) was appealed to WCAT.

[8] On October 29, 2001 WCAT found that the new information did meet the threshold test for "new evidence" and directed a reconsideration by the WCB of the case manager's December 27, 1996 decision.

[9] On the reconsideration the WCB determined that the "new evidence" was not sufficient to warrant a reversal of the original decision. Mr. MacEachern appealed this decision unsuccessfully to a hearing officer and then further appealed to WCAT. The Tribunal, on its own motion, raised the question, which is central to this appeal, of whether the applicable definition of "accident" was that under the former **Act** (**Workers' Compensation Act**, R.S.N.S. 1989, c. 508) rather than that under the current **Act**.

[10] In a decision dated October 28, 2002, the Tribunal held that the definition of accident in the former **Act** governed the appeal, Mr. MacEachern having been injured before the current **Act** came into effect on February 1, 1996. The Tribunal further determined that the new evidence did justify altering the December 27, 1996 decision. Mr. MacEachern's circumstances fell within the former definition of accident, held the Tribunal, and he was therefore entitled to compensation. The matter was remitted to the Board's Client Services Department for implementation.

[11] The Board has appealed this decision. Counsel for Mr. MacEachern consented to leave.

[12] It is the Board's position on this appeal that the Tribunal erred in law in determining that the former **Act** was applicable to Mr. MacEachern's circumstances. We agree. It is our view that this appeal must be allowed. The Tribunal erred in law in applying the definition of accident from the former **Act**.

[13] In **Nova Scotia (Workers' Compensation Board) v. Muise** (1998), 170 N.S.R. (2d) 253; N.S.J. No. 182 (Q.L.)(C.A.), Mr. Muise, had, in 1993, strained his back in the course of his employment. He was awarded temporary total disability benefits extending to March 31, 1994.

[14] Mr. Muise applied for a further period of temporary total disability benefits running from March 31, 1994 to August 31, 1994. This claim was denied by a Review Officer and was unsuccessfully appealed to a hearing officer (decision March 6, 1995).

[15] On February 1, 1996 the current **Act** came into force, in substantial part. On April 1, 1996 Mr. Muise's estate appealed the hearing officer's decision. There being new evidence, the Appeal Commissioner referred the matter back to the hearing officer. By decision dated March 13, 1997, applying the policies of the current **Act**, the hearing officer declined to award further temporary total disability benefits. The estate again appealed. On further appeal WCAT found that the board erred in applying the new policies to the Muise claim as he was injured before the policies were put into effect. The additional benefits were granted. In allowing the appeal from the Tribunal's decision and responding to arguments advanced on behalf of Muise that to apply the current **Act** would lead to an impermissible, retrospective application this Court said:

> **[41]** Clearly, the current **Act**, save where a contrary intention appears (as in s. 228), is intended to apply to parties who had suffered injuries prior to its enactment. This is exemplified by the inclusion of the Transitional Provisions, ss. 226 to 237. These sections specifically refer to workers who were injured either before March 23, 1990 (the date **Hayden** was released and the date after which no compensation has been provided pursuant to the provisions of the former **Act**), or before the current **Act** came into force. Sections 226 to 230 are primarily directed at the recalculation of compensation paid pursuant to the former **Act**. What is not specifically addressed in the wording of those sections is the resolution of the outstanding claims of workers, injured before the effective date of the new legislation. I conclude that the legislators intended that those claims be decided in accordance with the new legislation, unless a contrary intention appears. The drafters of the legislation could not have been unaware of the backlog, documented in the Minister's paper of October 1994. In the face of the inability of the Board of Directors to devise an acceptable compensation policy within the former s. 45 and given the fact that no permanent awards were made pursuant to the **Hayden** decision, it could not have been the intention of the legislature that unresolved claims be decided in accordance with the former **Act**. That **Act** had proved to be unworkable in the face of **Hayden**. To suggest that it was the intention of the legislature to keep the former **Act** alive for the purpose of thousands of unresolved claims is incompatible with the "circumstances in which it was passed" (**Healy**, supra).

[16] Although Mr. MacEachern was "injured" while the former **Act** was in force, his claim was first made under the current **Act** (subsequent to February 1, 1996). It is our view that the above comments from **Muise** are equally applicable to Mr. MacEachern's claim. There is no "contrary intention" leading to the conclusion that unclaimed events, such as this, are to be governed by the former **Act**. The claim must be adjudicated applying the current **Act**, including the current

definition of “accident”. This view is further supported by the decision of this Court in **Nova Scotia (Workers’ Compensation Board) v. Johnstone** (1999), 181 N.S.R. (2s) 247; N.S.J. 454 (Q.L.) (C.A.) where Justice Freeman, writing for the Court, observed:

> **[4]** The **Act** referred to is the **Workers' Compensation Act**, S.N.S. 1994-95 c. 10, all relevant sections of which were proclaimed November 21, 1995, to come into force February 1, 1996. Sometimes referred to as the "new" or "current" **Act**", it repealed what is known as the "old **Act**," or "former **Act**," **Workers' Compensation Act,** R.S.N.S. 1989, c. 508. While transitional difficulties persist, the general rule is that, except where contrary intentions appear, outstanding claims which arose prior to February 1, 1996, are to be determined under the new **Act**--see **Workers' Compensation Board (N.S.) v. Muise et al.** (1998), 170 N.S.R. (2nd) 253; 515 A.P.R. 253 (C.A.), leave to appeal to Supreme Court of Canada refused (1999), 236 N.R. 396; 176 N.S.R. (2d) 357;538 A.P.R.357.

[17] Accordingly, the appeal is allowed and the matter remitted to the Tribunal for determination based upon an application of the relevant provisions of the current **Act**.

Bateman, J.A.

Concurred in:
Freeman, J.A.
Roscoe, J.A.