

NOVA SCOTIA COURT OF APPEAL

Citation: *International Longshoremen's Association, Local 269 v. Halifax Employers Association*, 2004 NSCA 101

Date: 20040817

Docket: CA 212732

Registry: Halifax

Between:

International Longshoremen's Association, Local 269

Appellant

v.

Halifax Employers Association

Respondent

Judge:

Cromwell, J.A.

Bateman, J.A. (Dissenting)

Appeal Heard:

May 17, 2004

Subject:

Labour Arbitration - Timeliness - Standard of Review

Summary:

An employee was discharged under the terms of a Last Chance Agreement ("LCA") which provided for summary dismissal if he breached any of its provisions.

Although there was a four day time limit for filing a grievance, the Union did not do so until two years after the dismissal. Before the arbitrator, the Union argued that the time for filing the grievance should be extended under s. 60 (1.1) of the **Canada Labour Code**, R.S.C. 1985, c. L-2 ("**Code**") and that the LCA should not be given effect because it offended the **Canadian Human Rights Act**, R.S. 1985, c. H-6. The arbitrator extended the time and allowed the grievance. A Chambers judge quashed his award and the Union appealed.

Issues:

1. What is the applicable standard of review?
2. Did the arbitrator commit reviewable error in extending the time for hearing the grievance?

Result: Appeal allowed, Bateman, J.A. dissenting.

Per Cromwell, J.A., Saunders, J.A. concurring: Only the extension of time issue is before the Court. The applicable standard of review is patent unreasonableness. The soundness or otherwise of the arbitrator's conclusions on the human rights aspect of the case was not argued. In extending the time, the arbitrator determined that the grievance related to the most serious industrial decision - discharge - and that the LCA on which the discharge was based was *prima facie* discriminatory under the **Canadian Human Rights Act**. He concluded that while other factors counted against the long extension of time sought by the Union, these two factors in the circumstances of this case constituted reasonable grounds for granting the extension. The arbitrator's conclusion is not patently unreasonable. The arbitrator also concluded that the employer would suffer no prejudice as a result of the extension. This conclusion was not patently unreasonable.

Per Bateman, J.A. dissenting: The applicable standard of review is patent unreasonableness. However, the arbitrator's decision was patently unreasonable because he failed to properly separate the preliminary issue of the extension of time from the merits of the grievance and in doing so gave s. 60(1.1) of the **Code** a patently unreasonable interpretation.

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 39 pages.