

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Amaratunga v. Northwest Atlantic Fisheries Organization*,  
2015 NSSC 101

**Date:** 2015-04-20

**Docket:** *Halifax*, No. 267432

**Registry:** Halifax

**Between:**

Tissa Amaratunga

*Plaintiff*

v.

Northwest Atlantic Fisheries Organization

*Defendant*

**Judge:** The Honourable Justice Michael J. Wood

**Heard:** January 20, 2015, in Halifax, Nova Scotia

**Counsel:** David A. Copp, for the Plaintiff  
John T. Shanks, and Richard M. Dunlop, for the Defendant

**By the Court:**

[1] Tissa Amaratunga was fired from his position as the Executive Secretary of the Northwest Atlantic Fisheries Organization (“NAFO”) on June 24, 2005. On June 15, 2006 Mr. Amaratunga sued NAFO for damages arising out of the termination of his employment. In its defence NAFO claimed immunity as an international organization and said the Courts of Nova Scotia did not have jurisdiction to adjudicate the claim.

[2] The immunity defence was litigated up to the Supreme Court of Canada which issued a decision on November 29, 2013 (*Amaratunga v. Northwest Atlantic Fisheries Organization* 2013 SCC 66). In that decision the Supreme Court held that NAFO enjoyed immunity from all of Mr. Amaratunga’s claims with the exception of one item. NAFO has now brought a motion for summary judgment which is intended to quantify Mr. Amaratunga’s remaining claim and bring the litigation to an end.

[3] Mr. Amaratunga opposes the summary judgment motion primarily on the basis that he has additional claims not covered by the Supreme Court immunity decision which he should be entitled to pursue.

[4] In order to consider the positions of the parties it is necessary to understand the circumstances of Mr. Amaratunga’s firing and the negotiations which followed. These are summarized at paragraphs 8 and 9 of the Supreme Court decision:

8 On the day of his dismissal, the appellant was informed by letter that he would receive a sum of \$153,149. That sum comprised two amounts. The first amount of \$102,193 represented his salary up to July 31, 2005, his leave entitlement and the separation indemnity due to him under rule 10.4 of the NAFO Staff Rules. The second amount of \$50,956, provided on a gratuitous basis, was intended to compensate the appellant for any financial disadvantages that might result from the termination of his employment. The appellant agreed with NAFO that the separation indemnity in the amount of \$80,987 would be paid in a first instalment of \$30,987 in 2005 and a second instalment of \$50,000 in 2006. The appellant also requested confirmation from NAFO that the gratuitous payment of \$50,956 would be paid without prejudice. NAFO did not respond to this request.

9 NAFO paid the appellant the amount due for salary, accrued leave and the first instalment of the separation indemnity in 2005. In February 2006, the

appellant received a single cheque for both the second instalment of the separation indemnity and the gratuitous payment. Because he had not received confirmation from NAFO that the gratuitous payment was without prejudice, he returned the cheque. A second cheque in the same amount was sent to the appellant in April 2006, and he returned it for the same reason.

[5] In his Statement of Claim, filed in June 2006, Mr. Amaratunga sought the following relief:

64. The Plaintiff Tissa Amaratunga has suffered loss and damages as a result of the facts and breaches of duty and implied terms of contract as pleaded herein and claims from NAFO:

1. the balance of Separation Indemnity due to the Plaintiff Tissa Amaratunga in the amount of \$50,000.00;
2. salary in lieu of reasonable notice;
3. general damages for emotional distress and mental anguish, infliction of personal and professional humiliation and deprivation of human dignity, injury to re-employment potential consulting income prospects, injury to professional reputation, loss of employment benefits and adverse effect on pension entitlement;
4. punitive or aggravated damages;
5. pre-judgement interest;
6. costs, and with the discretion of this Honourable Court, costs on a solicitor and client basis.

[6] The Statement of Claim outlined in detail the post termination dealings between the parties including those related to the so-called gratuitous payment of \$50,956.00.

[7] In order to put the Supreme Court decision in context it is necessary to briefly review the judicial history related to NAFO's immunity defence. The applicability of that defence was initially raised as a preliminary question of law. The Nova Scotia Supreme Court held that Mr. Amaratunga's claims were not subject to immunity as a result of NAFO's status as an international organization (2010 NSSC 346). That decision was appealed and the Nova Scotia Court of Appeal found in favour of NAFO and dismissed Mr. Amaratunga's action. The

Court of Appeal concluded that NAFO had immunity against all of the allegations in the Statement of Claim (2011 NSCA 73).

[8] The Supreme Court of Canada reviewed the law related to immunities granted to international organizations. It concluded that NAFO was entitled to immunity by virtue of an instrument known as the *NAFO Immunity Order* which stated that the organization would have protection “to such extent as may be required for the performance of its functions”.

[9] The Supreme Court concluded that NAFO’s management relations with its senior officials fell within the immunity which had been granted to the organization. The Court’s rationale for coming to this conclusion is found in paragraphs 57 and 58:

57 In the case at bar, the appellant was the Deputy Executive Secretary of NAFO, the second-in-command in the Secretariat. He directly supervised other staff and was responsible for the scientific aspect of NAFO's mission. That alone would be sufficient to conclude that immunity is required in this case in order for NAFO to perform its functions. NAFO must have the power to manage its employees, especially those in senior positions, if it is to perform its functions efficiently. To allow employment-related claims of senior officials to proceed in Canadian courts would constitute undue interference with NAFO's autonomy in performing its functions and would amount to submitting its managerial operations to the oversight of its host state's institutions.

58 This result would flow from the very nature of the appellant's legal proceedings. In his statement of claim, he alleges that the Executive Secretary "engaged in improper management practices": Statement of Claim, A.R., vol. II, at p. 13. He also seeks punitive damages. In doing so, he is asking the Nova Scotia Supreme Court to pass judgment on NAFO's management of its employees. That, in my view, would constitute interference with NAFO's internal management, which goes directly to its autonomy.

[10] The only exception to the immunity protection was Mr. Amaratunga’s claim for a separation indemnity under the NAFO Staff Rules. The Supreme Court concluded that this claim should be allowed to proceed for the following reasons :

64 The appellant also claims the balance of the separation indemnity in the amount of \$50,000. Although the Court of Appeal did not address this issue directly, it concluded that NAFO enjoys immunity from all the appellant's claims. NAFO submits that because the appellant's statement of claim inextricably links

his attacks on its management with its failure to pay the second allotment of the separation indemnity, it enjoys immunity from this claim as well. In my view, this position is untenable.

65 First, this claim relates solely to rule 10.4 of the NAFO Staff Rules, which provides that a separation indemnity must be paid to any departing employee, regardless of the reasons for the termination of the employment relationship. The enforcement of rule 10.4 would not amount to submitting NAFO's managerial operations to the oversight of Canadian courts. The separation indemnity claim would in no way interfere with NAFO's performance of its functions.

[11] The Supreme Court remitted the separation indemnity claim to this Court for adjudication. NAFO takes the position that this claim amounts to \$50,000.00 and is the only issue remaining for adjudication related to Mr. Amaratunga's employment with NAFO. Mr. Amaratunga disagrees.

[12] On September 3, 2014 Mr. Amaratunga commenced an application in court against NAFO. In that litigation he claimed payment of the amount of \$50,956.00 which he said had been approved for payment to him following his termination. He also sought general damages. The grounds set out in Mr. Amaratunga's Notice of Application identified the amount claimed as the so-called gratuitous payment referred to in the pleadings in his earlier action and described in the Supreme Court decision. He alleges that this amount has become a severance benefit within the meaning of the NAFO Staff Rules and was impressed with a trust in his favour.

[13] Mr. Amaratunga's two proceedings, the application in court and action, were consolidated by consent order issued on January 15, 2015.

[14] Mr. Amaratunga says that the claims which remain viable are not limited to the separation indemnity as described by the Supreme Court in its decision. He says they include the additional payment of \$50,956.00 as well as general damages and aggravated and punitive damages arising from NAFO's refusal to pay the amounts due to him.

[15] The motion which I heard was brought by NAFO and framed as a summary judgment on evidence. It was unusual because NAFO was asking for a determination of the amount which it owed to the plaintiff. Mr. Amaratunga was not seeking summary judgment on his claim against NAFO. Through the course of argument at the hearing it became clear that NAFO was admitting liability for the

separation indemnity in the amount of \$50,000.00 and with that admission was requesting that the remainder of the claims by Mr. Amaratunga be dismissed.

[16] Mr. Amaratunga argued that the claim for the so-called gratuitous payment of \$50,956.00 was not included in the original Statement of Claim and therefore not subject to the Supreme Court decision on immunity. In relation to that claim as well as those for general, punitive and aggravated damages he says there are significant factual disputes and therefore summary judgment should not be granted.

[17] I agree with counsel for Mr. Amaratunga that if the claims for the gratuitous payment as well as general, aggravated and punitive damages remain available, summary judgment cannot be considered due to the existence of factual disputes requiring trial. The central question for my determination is whether these claims are potentially still available.

[18] I am satisfied the Supreme Court has determined that everything sought by Mr. Amaratunga in his Statement of Claim was subject to the indemnity save for the claim arising from Rule 10.4 of the NAFO Staff Rules. I come to this conclusion because the Nova Scotia Court of Appeal had struck out Mr. Amaratunga's entire action and this was upheld by the Supreme Court with the sole exception of the separation indemnity. The nature of that claim is clear when one examines the provisions of Staff Rule 10.4 which states:

- a) In the event of separation from service with the Secretariat, staff members shall be compensated an indemnity equivalent to the rate of two (2) weeks current salary for every year of service, free of all deductions, limited to a maximum of 40 weeks;
- b) For the purposes of entitlements in accordance with these staff rules, an employee of the Professional Category (Rule 3.1(a)) may receive credit for continuous years of service prior to joining NAFO in federal or provincial governments (and international equivalencies) and in other international organizations as agreed by a signed contract between the employee and NAFO;
- c) The Executive Secretary will determine the acceptability of past years experience of an employee in the General Services Category (Rule 3.1(b))

[19] It is obvious the gratuitous payment of \$50,956.00 is not part of the calculation of the separation indemnity pursuant to this provision. That is

confirmed by paragraph 8 of the Supreme Court decision as well as the letter of June 24, 2005 from NAFO to Mr. Amaratunga providing a breakdown of the amounts proposed to be paid to him. To the extent that Mr. Amaratunga attempts to argue that the gratuitous payment falls within the Supreme Court's limited exemption from immunity, he is wrong.

[20] In his original Statement of Claim Mr. Amaratunga sought general, aggravated and punitive damages and these were all found to be within NAFO's immunity. The circumstances outlined in that pleading include the failure to pay the separation indemnity and the gratuitous payment. There is no basis for Mr. Amaratunga to argue that a claim for such damages is still available for consideration by this Court.

[21] The final issue which I must consider is whether the gratuitous payment is still claimable since it was not included in the specific relief sought in paragraph 64 of the Statement of Claim. It is apparent from a reading of the entire Statement of Claim that Mr. Amaratunga was looking for damages arising out of the termination of his employment including damages for various breaches of duty and implied terms of contract. The gratuitous payment and the negotiations related to it are set out in detail in that pleading.

[22] I am satisfied that any claim related to the gratuitous payment was encompassed in the damages sought by Mr. Amaratunga and therefore subject to the Supreme Court determination of immunity.

[23] If I am wrong in my interpretation of the Statement of Claim I still believe that any new allegations by Mr. Amaratunga relating to the payment of the gratuitous amount are caught by the immunity defence. As noted by the Supreme Court, NAFO is entitled to autonomy in managing its employees and this function should not be subject to the oversight of Nova Scotia Courts. If a claim for damages arising out of the termination of Mr. Amaratunga's employment is immune from the jurisdiction of this Court, surely alleged breach of an agreement intended to compensate him for disadvantages arising from that termination are also excluded.

### **Conclusion and Disposition**

[24] I agree with the submissions of NAFO that the only claim by Mr. Amaratunga that falls within this Court's jurisdiction is for payment of the separation indemnity under Rule 10.4 of the NAFO Staff Rules. This is

\$50,000.00 and judgment will be entered against NAFO in that amount. Mr. Amaratunga's entitlement to interest, if any, will also have to be assessed. If the parties are unable to agree I will hold a hearing for purposes of determining that entitlement.

[25] If the parties are unable to resolve the issue of costs related to the summary judgment motion, I will receive written submissions within 30 days or alternatively include that issue in any hearing to determine the interest question.

Wood, J.