

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia Government and General Employees Union v. Capital District Health Authority, 2006 NSSC 16

Date: 20060116

Docket: SH 246169

Registry: Halifax

IN THE MATTER OF: The *Arbitration Act*, R.S.N.S. 1989 c.19

-AND-

IN THE MATTER OF: An Application by the Nova Scotia Government and General Employees Union for an Order under Section 15(2) of the *Arbitration Act* to set aside a part of the Supplemental Award dated March 7, 2005 of an Interest Arbitration Board

Between:

The Nova Scotia Government and General Employees Union

Applicant

v.

The Capital District Health Authority

Respondent

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Judge: The Honourable Justice A. David MacAdam

Heard: December 15, 2005, in Halifax, Nova Scotia

Subject: Arbitration - Standard of Review - *Functus Officio* - Time to Appeal

Summary: Union and Employer referred issues relating to settling a Collective Agreement to an Interest Arbitration Board. In its majority decision, with the Employer nominee dissenting, the Board made a number of decisions, including awarding three “catch-up” adjustments over three years. The Board retained jurisdiction in respect to implementation of its award. The Employer wrote the Board Chair raising a number of issues, including eligibility for the second and third “catch-up” adjustments. The Union objected on the basis the Board was *functus officio* and without jurisdiction to again deal with this issue. The Board, in a written decision, indicated it would reconvene and deal with a number of issues including the issue of “catch-up” adjustment eligibility. The Board subsequently convened a further hearing and issued a Supplemental Award.

Issue: At issue is whether the Board was *functus officio* on the question of “catch-up” eligibility, whether the Union by waiting until receipt of the Boards Supplemental Award was out of time to appeal the Boards decision to exercise jurisdiction on this question, and the Standard of Review of the Boards decision to exercise jurisdiction.

Result: Although the Union may have been entitled to appeal the interim decision by the Board to exercise jurisdiction, it was also entitled to wait until the filing of the Supplemental Award before filing its appeal. The Union was not out of time to appeal the decision on jurisdiction.

The Board was *functus* in respect to the issue of eligibility for “catch-up” adjustments.

The Standard of Review, in respect to the Boards exercise of jurisdiction, is one of “correctness”. The Board cannot, mistakenly create jurisdiction, where jurisdiction does not exist.