

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Boutcher v. Clearwater Seafoods Limited Partnership, 2009 NSSC 107

Date: 20090403

Docket: SH No. 244471

Registry: Halifax

Between:

Cecil Boutcher and Clyde Knickle

Plaintiffs

v.

Clearwater Seafoods Limited Partnership,
a Nova Scotia Limited Partnership

Defendant

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Judge: The Honourable Justice Douglas L. MacLellan

Heard: November 3rd, 2008 to November 7th, 2008, Halifax,
Nova Scotia

Subject: Civil Law; Action for wrongful dismissal

Summary: Plaintiffs were captains on scallop vessels owned by the defendant. Worked for a number of years prior to 1998 under oral agreement. After 1998 a number of written agreements were signed by both. Contracts contained termination clauses. In 2005 defendant terminated one plaintiff based on written contract and other plaintiff rejected offer of new position with company.

Issue: What are the legal consequences of the written agreements existing at the time of termination. Were plaintiffs wrongfully dismissed and if so what are appropriate damages. Did plaintiffs fail to mitigate damages.

Result: Written contract signed in 1998 estop plaintiffs from claiming based on employment prior to that time. For period after 1998 to 2003 plaintiff bound by terms of written contract. For period after 2003 the single trip agreements signed by plaintiffs not valid because of lack of consideration.

First plaintiff denied damages because of failure to mitigate. Second plaintiff entitled to damages for pay in lieu of notice for period after 1998. Total damages of \$55,500.00 awarded.

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