

CASE NO.

VOL. NO.

Eastern Bakeries Limited

Applicant

- and -

Bakery, Confectionery and Tobacco
International Union, Local 446

Respondent

Justice Gerald R.P. Moir

Halifax, NS

S.H. 172937

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[Cite as: Eastern Bakeries Ltd. v. Bakery, Confectionery and Tobacco International Union, Local 446, 2001 NSSC 181]

Date of Decision: November 29, 2001

Subjects: Judicial review, consensual arbitrator, change in practice, excess of jurisdiction and application of law to facts; Estoppel by conduct, application in arbitration proceedings.

Summary: Employees, who were paid by commission, made deliveries and serviced their routes with company trucks. For thirty years they had been allowed to take the truck home at the end of the workday. Not long after collective agreement, the employer required delivery of the trucks to the company yard although the employees were sometimes required to service customers after hours. An arbitrator held the employer was estopped from changing the practice. Arbitrator had jurisdiction to determine issues of arbitrability. Employers sought review.

Conclusions: Application of the law of estoppel was more an issue of "arbitrability" than "jurisdiction". On the functional or pragmatic approach, the issue was at the core of jurisdiction and attracted the high standard of deference. While application of estoppel merely on the basis of past practice may amount to excess of jurisdiction, the arbitrator's decision was based upon more than mere past practice. There was some evidence supporting findings of representation and detrimental reliance. The case did not meet the threshold for judicial interference.

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