

SUPREME COURT OF NOVA SCOTIA

Citation: Bowater Mersey Paper Company Ltd. v. Communications, Energy & Paperworkers Union of Canada, Local 141, 2009 NSSC 193

Date: 20090325

Docket: Hfx No. 303131

Registry: Halifax

IN THE MATTER OF

The *Trade Union Act*, R.S.N.S. 1989, c.475, s.1 and the *Arbitration Act*, R.S.N.S. 1989, c.19

- and -

A Grievance by the Communications, Energy & Paperworkers Union of Canada, Local 141 concerning signs being made by an outside contractor

- and -

An Application by Bower Mersey Paper Company Limited for an order to quash and set aside the Award of Bruce Archibald, Q.C. date September 8, 2008

BETWEEN:

Bowater Mersey Paper Company Limited

Applicant

- and -

Communications, Energy & Paperworkers
Union of Canada, Local 141

Respondent

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: March 25, 2009 in Halifax, Nova Scotia

Subject: Labour Law; Interpretation of Collective Agreement; Duty on Arbitrator

Summary: Several grievances filed relating primarily to having signs made by an outside contractor. The arbitrator's decision cites a comment in argument by Union counsel which he describes as an afterthought and proceeds to decide the arbitration on the afterthought of what might or might not constitute "minor installation".

Issue: Question of procedural fairness. Whether arbitrator fulfilled

statutory duty under section 43(1)(a) of the *Trade Union Act*.

Result:

Deciding issue not one raised in written or oral argument by either party. Deciding issue not tested by direct evidence or cross-examination or argument. An arbitrator made determination to consider as the deciding and only determinative issue, an issue that had never been addressed by counsel. It was incumbent upon the arbitrator to fulfill the statutory duty “**shall give full opportunity to the parties to the proceedings to present evidence and make submissions**”. The arbitrator's decision quashed. Recommend parties leave issue to another time; however, recognize entitlement should they wish to have the matter reheard before a new arbitrator.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***