

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Downey v. Cranston, 2009 NSSC 336

**Date:** 20091116

**Docket:** Hfx No. 177887

**Registry:** Halifax

**Between:**

Terrence Downey

Plaintiff

and

David Cranston, Robert Fisher, Board of Trustees Halifax Port International,  
International Longshoremen's Association, Halifax Employers Association  
Pension Plan and Halifax Employers Association Welfare Trust Plan

Defendants

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**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** January 15 - 18, 2008, in Halifax, Nova Scotia

**Subject:** Eligibility for benefits under the Halifax Longshoremen's Pension Plan and Welfare Plan.

**Summary:** The Plaintiff had worked for 26 years as a non-union worker on the Halifax Waterfront. He was invited to become a member of the union. This opened up the further possibility of eligibility for pension and welfare benefits that are only available to union members. Unfortunately the Plaintiff became permanently and totally disabled after having worked only 245 ½ hours as a member of the union. To become eligible for pension benefits and other medical and disability benefits under the Welfare Plan, so-called, the Plaintiff had to meet certain minimum work requirements. His work-related injuries prevented him from doing so.

The Plaintiff was mistakenly credited with hours worked while in receipt of Workers Compensation Benefits and was reimbursed for certain medical expenses under the Welfare Plan for which he was not entitled. Once the mistake was realized, the Trustees of the Plan instructed the Plan Administrator to advise the Plaintiff that he was not eligible for

such coverage. The Trustees did not seek reimbursement of the amount paid in error. Later he was offered additional compensation for medical expenses incurred during a subsequent three-year period provided he agreed not to make any further claims for either medical expenses or a disability pension. The Plaintiff chose, instead, to sue.

**Issue:** Is the Plaintiff eligible for Pension Plan and Welfare Plan benefits after working just 245 ½ hours as a member of the International Longshoremen's Association?

**Result:** The Plaintiff failed to satisfy the eligibility requirements for membership in the Pension and Welfare Plans which are only available to union members. Union members are not automatically covered by the two plans. They must first meet certain eligibility requirements. The Trustees would have been in breach of their duty of good faith and evenhandedness to eligible Plan members had they authorized the payment of benefits to an ineligible person. The Plaintiff's claim for benefits or, alternatively, damages for breach of contract and breach of trust, is dismissed.