

SUPREME COURT OF NOVA SCOTIA

Citation: MacNeil v. Nova Scotia (Attorney General), 2010 NSSC 167

Date: 20100427
Docket: Hfx. No. 267469
Registry: Halifax

Between:

Wilfred A. MacNeil

-and-

The Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia, **The Nova Scotia Teachers Union** and **The Strait Regional School Board**

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Judge: The Honourable Justice Robert W. Wright

Heard: April 14 and 15, 2010 in Halifax, Nova Scotia

Written

Decision: April 27, 2010

Subject: Labour and Employment - Court's jurisdiction to hear action involving employment dispute where plaintiff was under a collective bargaining regime - Civil Procedure Rule 13.04 - summary judgment motions on the evidence.

Summary: After working as a teacher for the Strait Regional School Board for approximately 20 years, the plaintiff became one of its directors in 1996 and later accepted a work secondment with an outside agency between 2000-2002. The secondment contract of employment provided that the plaintiff was to be returned to his position with the school board at the end of its term without abatement of his benefits, privileges or seniority.

The plaintiff was also a member of the Nova Scotia Teachers Union which was a party to collective agreements both with the Minister of Education and the local school board under the two-tiered collective bargaining regime established by the *Teachers Collective Bargaining Act*.

When the plaintiff returned to active employment with the school board in 2002, he was demoted to the position of a Vice-Principal in the school system which he accepted under protest. His salary was subsequently reduced accordingly but the union declined to pursue his requested grievance. After his retirement in 2005, he commenced this action in 2006 claiming damages against the school board and AGNS for constructive dismissal and damages against the union for breach of the duty of fair representation. He also claimed against the school board and AGNS for unpaid salary alleged to be owing to him under his employment secondment contract. All three defendants ultimately brought motions for summary judgment on the evidence, although the motion by the union was discontinued during the course of the hearing.

Issue: The main issue to be decided was whether the jurisdiction of the court to hear the action was ousted by the existence of the collective bargaining regime in existence at the time.

Held: Although the plaintiff principally based his claim on the wording of the employment secondment contract above recited (to which the school board was a party but AGNS was not) the essential character of the main dispute was the plaintiff's placement in the school system upon his return to active employment with the school board at the end of his secondment. This main dispute fell within the ambit of the collective agreements which, under the legal principles established in the well-known case of **Weber v. Ontario Hydro** [1995] 2 S.C.R. 929, ousted the jurisdiction of the court to hear that dispute.

The second area of dispute, that for unpaid salary based on the employment secondment contract, fell outside the ambit of the collective bargaining regime and hence the court had jurisdiction to hear that part of the claim. The court was satisfied that the plaintiff had shown a real chance of success with respect to that part of the claim as against SRSB but not as against AGNS as a non-party to that contract.

The action will therefore continue against the union for breach of the duty of fair representation and against the school board for the unpaid salary claim.

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