

SUPREME COURT OF NOVA SCOTIA

Citation: Halifax (Regional Municipality) v. Canadian Union of Public Employees, Local 108, 2010 NSSC 234

Date: 20100617

Docket: Hfx 297912

Registry: Halifax

Between:

The Halifax Regional Municipality

Applicant

v.

Canadian Union of Public Employees,
Local 108 – Halifax Civic Workers' Union

Respondent

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Judge: The Honourable Justice Glen G. McDougall

Heard: June 17, 2009

Written Decision: June 18, 2010

Subject: Judicial Review; Application to quash or, alternatively, to set aside the award of an arbitrator in a labour matter.

Summary: The employer, after a progressive series of discipline, terminated its employee. The Union grieved the matter pursuant to the provisions of the Collective Agreement and the *Trade Union Act*. A hearing was conducted and adjourned to give the employee and the Union more time to gather more evidence of a suspected disability. When the hearing got underway again no further evidence of a disability was offered. The arbitrator then ruled in favour of the employer and dismissed the grievance subject to the proviso that should the employee wish to present further evidence of a disability he could indicate his desire to do so within 30 days.

Issue: (1) Standard of review; (2) Requirement for arbitrator to provide a final and binding decision; (3) Duty to accommodate; (4) Burden of proof; (5) Issue estoppel and abuse of process.

Result: The Union and the employee were given an opportunity to present evidence of a potential disability and decided not to avail themselves of that opportunity. The arbitrator, after affording them that opportunity, was required to render a decision that was final and binding. While rendering a decision the arbitrator kept the door open for a further opportunity by imposing a “condition subsequent” to his final decision. He lacked the jurisdiction to do so. The employee’s termination is confirmed.

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