

SUPREME COURT OF NOVA SCOTIA

Citation: Bailey v. Canadian Union of Public Employees, Local 759,
2010 NSSC 34

Date: 20100127

Docket: Syd 306583/289111

Registry: Sydney

Between:

John Gabriel Bailey

Plaintiff / Respondent

v.

The Canadian Union of Public Employees, Local 759,
a trade union

Defendant / Moving Party

LIBRARY HEADING for ADDENDUM

Judge: The Honourable Justice Frank Edwards

Heard: January 18, 2010, in Sydney, Nova Scotia

Subject: Motion for Summary Judgment.

Facts: Plaintiff/Respondent had sued his union for breach of its duty of fair representation. Specifically, he alleged that the Union had abandoned his arbitration, had failed to provide him with the legal advice and agreeing that he could return to work in a job for which he was medically unfit. The Defendant/Moving Party brought a Motion for Summary Judgment.

Issue: Whether the Moving Party has shown that there is no genuine issue for trial, *and if so, whether the Respondent has shown that, on the facts that are not in dispute, his claim has a real chance of success.*

Result: Motion granted. The evidence is clear that the arbitration was settled, not abandoned. The Plaintiff/Respondent had access to the Union's legal counsel. If he wished to have independent

counsel, it was up to him to retain same. Further, the Union obtained agreement from the employer that it was accommodate Mr. Bailey in a position for which he was medically fit. The employer is still awaiting receipt of medical information from Mr. Bailey.

The Moving Party has shown that there is no genuine issue of fact to be determined at trial. The Respondent then failed to show that on the facts that are not in dispute, his claim has a real chance of success.

Cases Noted: ***Vaughn v. Hayden***, [2009] N.S.J. No. 364
Canadian Merchant Service Guild v. Gagnon [1984] 1
S.C.R. 509

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Defendant / Moving Party

Addendum to Decision dated January 25, 2010

Judge: The Honourable Justice Frank Edwards

Heard: January 18, 2010, in Sydney, Nova Scotia

Counsel: Robert Pineo, for the respondent/plaintiff
Ronald Pizzo, Esq., for the moving party/defendant

By the Court:

[1] This is an addendum to my decision (2010 NSSC 21) in the above released on January 25, 2010.

[2] In that decision, I found that the Moving Party had shown that there was no genuine issue of fact to be determined at trial.

[3] Though, in the particular circumstances of this case, the result is probably obvious, I should have then articulated the second part of the summary judgment test. The Moving Party, having discharged its onus, the onus then shifts to the Respondent, Mr. Bailey, to show that, on the facts that are not in dispute, his claim has a real chance of success.

[4] In the original decision, I found that Mr. Bailey's grievance was settled not abandoned; that it was up to him to retain counsel if he desired independent legal advice; and that he was not forced to return to work as a bus driver. I also found that the Union acted in accord with the principles set out in *Gagnon*.

[5] Given the factual basis remaining in light of those findings, Mr. Bailey's claim that his union breached its duty of fair representation has no chance of success. I am satisfied that Mr. Bailey has failed to show otherwise.

[6] I therefore reiterate that the motion for summary judgment is granted.

J.