Date:19991118
CA 157776

NOVA SCOTIA COURT OF APPEAL

[Cite as:Logan v. Pafco Insurance Co., 1999 NSCA No. 143]

BETWEEN:

PAFCO INSURANCE COMPANY	)	David A. Miller, Q.C. and
	)	M. Chantal Richard
Appellant	)	for the appellant
	)	
- and -	)	
	)	Robert L. Barnes, Q.C. and
RUSSELL LOGAN	)	Kelly A. Sullivan
	)	for the respondent
Respondent	)	
	)	
	)	Gordon N. Forsyth and
- and -	)	Gail Gatchalian
	)	for the Applicant/Intervenor
	)	
MAINLAND COUNCIL BUILDING TRADES	)	Application heard:
	)	November 18, 1999
Applicant/ Intervenor	)	
	)	Decision delivered:
	)	November 18, 1999
	)	
	)	

BEFORE THE HONOURABLE JUSTICE FLINN IN CHAMBERS

FLINN J.A.: (in Chambers)(Orally)

[1] This is an application by the Mainland Council Building Trades, an affiliation of all construction trade unions in Nova Scotia. The applicant seeks leave to intervene in this appeal from a decision of Justice Boudreau of the Supreme Court.

[2] In an action by the respondent against his automobile insurer, the appellant, the respondent claimed Schedule “B”, Loss of Income Benefits, arising because of injuries he received in an automobile accident. The appellant refused to pay the benefits claiming that the respondent was not employed at the date of the accident nor had he been actively engaged in employment for six months out of the year preceding the accident. Actual employment at the date of the accident, or deemed employment, is a requirement for payment of such benefits.

[3] Justice Boudreau allowed the respondent’s claim. He decided that the respondent was actively engaged in an occupation or employment, for profit or wages, because of his eligibility to receive work under the Collective Agreement between his Union, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and the employers in the construction industry. In the alternative, Justice Boudreau found that the respondent was actively engaged in his occupation as a plumber for the minimum six month period required under Schedule “B” because he was subject to recall by his employer, Sawyer’s & Associates Limited through to the end of the construction project at the hospital.

[4] The appellant insurer has appealed Justice Boudreau's decision. Its grounds of appeal are that the learned trial judge erred in fact and law by holding that the respondent qualified for loss of income benefits payable pursuant to Part II of Section B of the Standard Automobile Policy for the Province of Nova Scotia on the basis either:

(a) that the respondent was employed at the time of the accident; or

(b) that the respondent was actively engaged in an occupation or employment for wages or profit at the date of the accident; or

(c) that the respondent had been actively engaged in an occupation or employment for wages or profits for any six months out of the preceding 12 months prior to the motor vehicle accident.

[5] I have considered the submissions of counsel, both written and oral, and the authorities referred to, particularly the recent decisions of this Court in **Arrow Construction Products Ltd. v. Nova Scotia (Attorney General)** (1996), 148 N.S.R. (2d) 392 (Bateman, J.A.) **R. v. Regan (G.A.)** (1999) 174 N.S.R. (2d) 1(Cromwell, J.A.), **Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board**, (1999) N.S.J. No. 73 (Q.L.) (Pugsley, J.A.).

[6] I have decided to exercise my discretion under **Civil Procedure Rule** 62.35 by denying this application. I agree with the submissions of counsel for the appellant:

1. that the applicant has, at best, an indirect interest in this appeal;

2. that the issue on appeal involves the statutory interpretation of the Schedule B provisions in the **Insurance Act**;

3. that this appeal is case specific and not one which will affect the state of the law on Schedule B provisions; and

4. that the applicant does not bring a unique perspective to the interpretation of the Schedule B provisions. Its position, as evidenced by the reasons of the trial judge, was successfully advanced by counsel for the respondent at the trial. On this appeal the respondent is in a position to make all the arguments of fact and law which the applicant wishes to make concerning the respondent's eligibility, as a construction worker, for Schedule B benefits.

[7] The application is, therefore, dismissed. I will order that the applicant pay to the appellant its costs of this application which I fix at $500.00 plus disbursements.

Flinn, J.A.