

NOVA SCOTIA COURT OF APPEAL

Citation: *Stark International Inc. v. Nova Scotia (Labour Board)*, 2025 NSCA 85

Date: 20251210

Docket: CA 544269

Registry: Halifax

Between:

Stark International Inc.

Appellant

v.

Nova Scotia Labour Board under the *Nova Scotia Labour Standards Code*, and
Cory Gray, and the Attorney General of Nova Scotia

Respondents

Judges: Van den Eynden, Derrick and Beaton, JJ.A.

Appeal Heard: In writing

Facts: The Labour Standards Board awarded an employee pay in lieu of notice after finding he was terminated by Stark International Inc. The company argued the employee had quit and thus was not entitled to such payment. Stark International attempted to appeal the Board's decision, but issues arose regarding the timeliness of the appeal filing (paras [1-3](#)).

Procedural History:

- Labour Standards Board, February 11, 2025: Awarded the employee \$3,329.75 pay in lieu of notice after finding he was terminated by Stark International Inc. (para [1](#)).

Parties' Submissions:

- Appellant: Argued that the Board erred in law by misinterpreting and misapplying sections 21(5) and 21(6) of the Labour Standards Code, and by failing to consider the reasons for what the Board had said was a late filing of the appeal (paras [14-15](#)).

- Respondents: The Respondents – the Labor Standards Board and the Attorney General of Nova Scotia – chose not to file facts.

Legal Issues:

- Did the Board err in law by finding the appeal was filed out of time under sections 21(5) and 21(6) of the Labour Standards Code?

- Did the Board err by failing to consider the appellant's reasons for filing the appeal out of time and declining to hear the appeal?

Disposition: With the consent of the Appellant and the Labour Board and Attorney General of Nova Scotia, the appeal was dealt with in writing. The appeal was allowed with costs.

Reasons: Per Derrick J.A. (Van den Eynden and Beaton JJ.A. concurring):

The Court found that the Board incorrectly interpreted sections 21(5) and 21(6) of the Labour Standards Code. The appellant's appeal was filed on time via email, in accordance with the Board's Rules of Procedure, which deem email service effective on the date of transmission. The Board erred by dismissing the appeal without considering the appellant's explanation for what the Board incorrectly perceived was a late filing. The matter was remitted to the Board for the merits of the appellant's appeal to be heard and determined (paras [17-22](#)).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 23 paragraphs.

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Appeal Heard: In writing

Held: Appeal allowed without costs, per reasons for judgment of
Derrick, J.A.; Van den Eynden and Beaton, JJ.A. concurring

Counsel: Mallory Adams, for the appellant
Respondents Nova Scotia Labour Board and Attorney General
of Nova Scotia, watching briefs only

Reasons for judgment:

Facts

[1] On February 11, 2025, the Labour Standards Board (“the Board”) awarded Cory Gray, \$3,329.75 pay in lieu of notice following a finding he had been terminated from his employment by the appellant. The position of the appellant before the Board was that Mr. Gray had quit which did not require payment in lieu of notice.

[2] The appellant received the order and decision on February 11, 2025.

[3] Through its CEO, Nancy Walsh, the appellant sought to appeal the Board’s decision by filing the requisite appeal form by email on February 21, 2025. She then sent the original by mail. The record indicates the Board received the mailed appeal form on February 27, 2025.

[4] In an email on February 28, 2025, the Board acknowledged receipt of the appeal but raised an issue of timeliness that needed to be addressed. The appellant was invited to provide a written explanation by March 7, 2025 for what the Board described as a late filing.

[5] The Board also provided the parties with several dates for a Case Management Conference (“CMC”). On March 5, 2025, Ms. Walsh emailed the Board to advise she was out of the country but could try and make March 19, one of the proposed dates, work. Later that same day the Board confirmed March 19 as the date for the CMC.

[6] On March 20, 2025, the Board emailed the parties to indicate: (1) the appellant had not provided a written explanation for the late-filing either on March 7, 2025 or thereafter; and (2) the appellant had not been present at the CMC on March 19. As a result, the Board advised it was closing the file as “unprocessed”.

[7] On March 25, 2025 Ms. Walsh emailed the Board to apologize for missing the CMC on March 19. She explained that while she had been out of the country her phone had broken which compromised her ability to communicate effectively. When she replaced the phone on her return, her new phone only restored pre-March 4 data leaving her with an enormous backlog of emails. Dealing with an overwhelming amount of correspondence, the CMC slipped her mind.

[8] On March 27, 2025 the Board sent Ms. Walsh an email advising that “As the file was closed as unprocessed, you may seek to file an appeal again”. She was directed to file a written statement explaining why the appeal was being filed outside the timelines set out in s. 21(5) of the *Labour Standards Code*¹ and why the Board should provide an extension of time.

[9] On April 9, 2025 Ms. Walsh forwarded completed appeal forms, including the one dated February 21, 2025. The Board acknowledged receipt of the appeal on April 23, 2025 in an emailed letter to the parties, and said:

The initial filing of this appeal on **February 27, 2025** appeared to be late. Section 21(5) of the Code sets out a 10-day period for filing an appeal of an order. Section 21(6) of the Code allows for the extension of the appeal timeline. The Board has discretionary authority to extend the time for filing an appeal, provided it is satisfied that there is a valid reason for the late filing.

(emphasis in the original)

[10] On April 23, 2025, Ms. Walsh emailed the Board to indicate she had been advised the appeal could be submitted by email before the deadline, to be followed by the original documents being sent by regular mail. Ms. Walsh said as a result she had believed “as long as the appeal was received by email by the deadline, it would be considered timely”.

[11] On May 12, 2025, the Board issued its “decision letter regarding the Appellant’s appeal filed on **April 9, 2025**, pursuant to Section 21 of the *Labour Standards Code*”. The Board’s letter referred to the “previous appeal filed on February 28, 2025 which was also submitted late” without an explanation. Citing the absence of a submission from the appellant to explain the delay “in this current appeal”, the Board formally dismissed the appeal.

[12] On May 14, 2025 the Board emailed Ms. Walsh to advise, “The Board proceeding has now concluded and your matter is no longer before the Board”. The email informed her of the option to appeal the decision to this Court.

Issues, Standard of Review and Analysis

[13] Section 21(5) of the *Labour Standards Code* provides that an order of the Board may be appealed within ten days of it being served. Section 21(6) allows the Board to extend the time for filing an appeal after the ten days.

¹ RSNS 1989, c. 246 [Code].

[14] The appellant appeals on the grounds that:

- 1) By finding the appeal was filed out of time, the Board erred in law by misinterpreting and misapplying ss. 21(5) and 21(6) of the *Code*.
- 2) The Board erred by failing to consider the appellant's reasons for filing the appeal out of time and declining to hear the appeal.

[15] The appellant sought to appeal the Board's award in favour of Mr. Gray pursuant to the *Code*'s provisions in s. 20. Ss. 20(2) provides for an appeal from such an order or decision of the Board to this Court on a question of law or jurisdiction. In ss. 20(5) the *Code* directs that:

The Nova Scotia Court of Appeal shall hear and determine the question or questions of law arising thereon and remit the matter to the Board, with the opinion of the Court thereon.

[16] The *Code* contemplates an appeal to this Court therefore the appellate standard of review applies. As we are statutorily limited to reviewing questions of law or jurisdiction, the standard is one of correctness.²

[17] The Board incorrectly interpreted ss. 21(5) and (6) of the *Code*. The appellant's appeal was not filed out of time. It was filed on February 21, 2025 by email which was within ten days of the appellant being served with the order.

[18] Rule 7.04(c) of the Labour Board's Rules of Procedure³ provides for filing with the Board by email. Rule 7.05 establishes that email service is deemed effective on the date of transmission.

[19] The Board confirmed receipt of the appellant's appeal form by email on February 21, 2025, within 10 days of the appellant receiving the Board's order and decision.

[20] On April 23, 2025, Ms. Walsh indicated to the Board she had understood that as long as the appeal was received via email by the deadline it would be considered to have been filed on time.

² *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 37.

³ Labour Board's Rules of Procedure, empowered by s. 12(1) of the *Labour Board Act*, S.N.S. 2010, c. 37.

[21] The Board erred by dismissing the appeal when it was filed in accordance with the Board's Rules of Procedure and not late, and without consideration of Ms. Walsh's April 23 statement.

[22] The Board's decision to dismiss the appeal is reversed. The appeal was filed within the time requirements. The matter is remitted to the Board for the merits of the appellant's appeal to be heard and determined.

Disposition

[23] The appeal is allowed without costs.

Derrick, J.A.

Concurred in:

Van den Eynden, J.A.
Beaton, J.A.