

CANADA / JUDGMENT

Northern Mountain Helicopters Inc. v. British Columbia (Workers' Compensation Board)

2000 BCCA 395

COURT

British Columbia Court of Appeal

DECIDED

16 June 2000

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2000 BCCA 395 Citation: Northern Mountain Helicopters Inc. v. Workers' Compensation Board of British Columbia Date: 20000616 2000 BCCA 395 Docket: CA025261/ CA025306 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Chief Justice McEachern June 16, 2000 The Honourable Mr. Justice Donald The Honourable Madam Justice Huddart Vancouver, B.C. CA025261 BETWEEN: NORTHERN MOUNTAIN HELICOPTERS INC. PETITIONER (RESPONDENT) AND: WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, AND THE ATTORNEY GENERAL FOR CANADA as a representative of Her Majesty and Her Servants employed by the Department of Human Resources and Development (Canada) RESPONDENTS (APPELLANTS) CA025306 BETWEEN: NORTHERN MOUNTAIN HELICOPTERS INC. PETITIONER (RESPONDENT) AND: WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, AND THE ATTORNEY GENERAL FOR CANADA as a representative of Her Majesty and Her Servants employed by the Department of Human Resources and Development (Canada) RESPONDENTS (APPELLANTS) S.A. Nielsen and L. Courtenay S. Macdonald appearing for the Appellant Workers' Compensation Board of British Columbia appearing for the Appellant The Attorney General of British Columbia A.D. Louie and R.M. Yamanouchi A.M. Grant appearing for the Respondent The Attorney General for Canada appearing for the Respondent Northern Mountain Helicopters Inc.

- [1] DONALD, J.A.: This is an appeal by the Workers' Compensation Board of British Columbia and the Attorney General of British Columbia from a judgment given by Madam Justice Saunders, then of the Supreme Court, on 30 October 1998 in which she declared that the occupational health and safety regime for the ground crew employees in the petitioner's heli-logging operations is federal rather than provincial.
- [2] The decision may be found at (1998), 61 B.C.L.R. (3d) 361 (S.C.), [1999] 8 W.W.R. 674 (B.C.S.C.) and at [1998] B.C.J. No. 2525 (Q.L.)(B.C.S.C.).

- [3] The appellants allege a number of errors in the judgment, but in my opinion none of the allegations is made out. The Chambers judge found the relevant facts and applied them to the appropriate tests for determining constitutional jurisdiction over employees. In particular, she found that the ground crew employees were integral to an aeronautics undertaking, a matter assigned to the federal government under the peace, order and good government provision in s. 91 of the Constitution Act, 1867: *Johannesson et al v. Municipality of West Saint Paul*, [1952] 1 S.C.R. 292. Moreover, she found that the helicopter operations formed part of a larger transportation undertaking and were not a discrete business whose constitutional characteristics could be separately assessed.
- [4] The facts supporting the finding of functional integration were compelling. The employees in question variously construct the loads, attach them to the line from the helicopter, and detach them at the landing site. These activities require close interaction between ground crew and pilot. The core undertaking of the petitioner is transportation by air, here the transportation of logs by air. The loading and unloading of cargo is essential and integral to the carriage of goods; hence it was decided in the *Stevedoring Reference (Re Validity and Applicability of the Industrial Relations and Disputes Investigation Act (Eastern Canada Stevedoring Company Ltd.))*, [1955] S.C.R. 529, that longshoremen were federally regulated as part of navigation and shipping under s. 91(10) of the Constitution Act, 1867.
- [5] I would dismiss the appeal for the reasons given by the judge below with which I am in substantial agreement.
- [6] Fresh evidence was adduced before us to establish that for a period of approximately 1 1/2 years the petitioner operated a logging company in a joint venture with a provincial logging contractor. This occurred after the facts considered by the Chambers judge. As of May, 1999, the company discontinued the joint venture and resumed its previous mode of operation. The decision in this appeal is limited to the circumstances when the dispute arose.
- [7] MCEACHERN, C.J.B.C.: I agree.
- [8] HUDDART, J.A.: I agree.
- [9] MCEACHERN, C.J.B.C.: The appeal is dismissed. "The Honourable Mr. Justice Donald"

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Prepared on 29 October 2026 · Esheria