

Docket: 2000-2310(EI)

BETWEEN:

PAUL AUCLAIR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on January 29, 2003 at Trois-Rivières, Quebec

Before: The Honourable Judge Alain Tardif

Appearances:

For the Appellant: The appellant himself

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is allowed and the Minister's decision is varied, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

Citation: 2003TCC29
Date: 20030331
Docket: 2000-2310(EI)

BETWEEN:

PAUL AUCLAIR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] The appellant was employed by a company that had set up a system of "accumulating hours" or "banking hours". The purpose of the system was to combine hours worked sporadically over a certain period into insurable weeks, as if those hours had been worked consecutively during the same week.

[2] The appellant stated that he never participated in a system of "banking hours" because he and his immediate superior had very strained relations that created an atmosphere of mutual mistrust.

[3] The appellant also explained that he worked alone in an isolated garage far from the locations where the activities of the companies involved in the system of "banking hours" took place.

[4] At the time of the investigation, the appellant adduced as Exhibit A-1 a statement by one of his superiors that reads as follows:

March 24, 1998

Revenue Canada
Trois-Rivières

Dear Sir or Madam:

I am writing to confirm that Paul Auclair occasionally picked up parts from our suppliers in Trois-Rivières, without being paid, when he was required to travel to Shawinigan in order to pick up his pay cheque or to report on repairs made at the garage in Trois-Rivières.

The garage in Trois-Rivières is located at 8850, boulevard Parent, to which location Mr. Auclair is assigned for the winter.

Normand Cossette
Stores person
Les Constructions et Pavages Continental

[5] The content of this letter was brought to the attention of Lucie Vaugeois, the person responsible for the appellant's case; when the appellant sent it to her, she did not give it any probative value. She even concluded the appellant was not credible, thus brushing aside any explanations without even checking with the person who signed the letter.

[6] According to Ms Vaugeois, who was one of the persons responsible, the major investigation established that by far most if not all of the employees of the company for which the appellant worked were involved in the system of "banking hours".

[7] In the face of the evident assumption that all the employees without exception participated in the system of "banking hours", any indication or information to the contrary was dismissed as not credible or even false.

[8] Although an investigation may make it possible to reach definitive conclusions, I do not consider it appropriate to dismiss for no reason any factor that may justify a different conclusion.

[9] In other words, even though a responsible, in-depth investigation shows that by far most of the employees may have participated in an illegal operation, I do not consider that fact sufficient to conclude automatically that there are no exceptions or that anyone who argues to the contrary is automatically lying.

[10] In this case, it appeared clear to me that the appellant's case was dealt with on the assumption that there was no doubt that he was just as involved as the other workers in the system of "banking hours".

[11] In this case, the factors on which Ms Vaugeois relied were few in number; it might have been possible for these factors to create an assumption that this case was like all the rest. Was that situation in itself a sufficient and appropriate basis for absolute conclusions, particularly since, from the beginning of the investigation, the appellant endeavoured to establish that he did not aid or abet the system in any way? I think not.

[12] Instead, I consider that the appellant was a victim of hasty, inadequately-founded conclusions. Further checks should have been made and the case, specifically the claims made at the time of the investigation, should have been investigated in greater depth.

[13] I must make a determination on a balance of evidence, of which the burden was on the appellant; the appellant provided plausible explanations. If the onus were to prove beyond any doubt, I would have to dismiss the appellant's appeal.

[14] Since a less demanding burden of proof is required, since the appellant has provided plausible explanations and since the decision being appealed from was more intuitive than rational, I find that the balance of evidence supports the appellant's position, and I allow his appeal accordingly.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

CITATION: 2003TCC29

COURT FILE NO.: 2000-2310(EI)

STYLE OF CAUSE: Paul Auclair
and the Minister of National Revenue

PLACE OF HEARING: Trois-Rivières, Quebec

DATE OF HEARING: January 29, 2003

REASONS FOR JUDGMENT BY: The Honourable Judge Alain Tardif

DATE OF JUDGMENT: March 31, 2003

APPEARANCES:

For the Appellant: The appellant himself

For the Respondent: Simon-Nicolas Crépin

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada