

Dockets: 2005-1290(EI)
2005-1291(EI)
2005-1292(EI)
2005-1293(EI)

BETWEEN:

2158-3331 QUÉBEC INC.,
o/a LA MAISON DU PÊCHEUR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on August 10, 2006, at Percé, Quebec.
Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Georges Mamelonet

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeals under subsection 103(1) of the *Employment Insurance Act* are allowed and the decisions of the Minister of National Revenue are vacated in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 12th day of September 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 28th day of June, 2007.

Brian McCordick, Translator

Docket: 2005-1499(EI)

BETWEEN:

NADINE BEAUDRY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 10, 2006, at Percé, Quebec.
Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Georges Mamelonet

Counsel for the Respondent: Anne Poirier

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is allowed and the decisions of the Minister of National Revenue are vacated in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 12th day of September 2006.

"Alain Tardif"

Tardif J.

Citation: 2006TCC489

Date: 20060912

Dockets: 2005-1290(EI), 2005-1291(EI),
2005-1292(EI), 2005-1293(EI),
2005-1499(EI)

BETWEEN:

2158-3331 QUÉBEC INC.,
o/a LA MAISON DU PÊCHEUR,

and

NADINE BEAUDRY,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] The facts of the five instant appeals are similar enough that the parties consented to have all the appeals heard on common evidence.

[2] The Appellant Nadine Beaudry did not attend. However, Georges Mamelonet, the principal shareholder of the corporation, filed a power of attorney authorizing him to appear on her behalf.

[3] At the outset, Mr. Mamelonet admitted to all the facts alleged by the Respondent. Consequently, he is not contesting the facts set out in the statutory

declarations, nor is he contesting the contents of the numerous documents considered during the audit and the analysis that led to the determinations under appeal.

[4] Thus, Mr. Mamelonet has stated that his objections to the assessments are essentially based on the interpretation of the uncontested facts.

[5] Even though all the facts were admitted to, the parties called witnesses.

[6] For its part, the Appellant corporation called chef Sylvio Asselin, who has been working for the corporation for several years. Mr. Asselin explained that he liked his job and was very proud to be a member of the staff of the restaurant that operates as La Maison du Pêcheur.

[7] He testified that he began working at the restaurant at the bottom of the ladder, gradually working his way up by means of traineeships through specialized schools.

[8] He acknowledged that, in addition to the periods of work stated on the Records of Employment (ROEs), he would sometimes go to the restaurant to check on the delivery of products that he had ordered from home. In his view, this was a minimal task and accounted for an utterly marginal number of hours, which he was unable to estimate.

[9] He said that he did this in order to ensure that the restaurant ran properly. In addition, he said that he sometimes liked to go to his workplace, not to work, but to chat with his co-workers.

[10] The persons concerned by the instant appeals lived in the small community where the restaurant is located. They carried out responsibilities and made decisions in order to ensure that the business ran smoothly.

[11] The president of the corporation explained that the people in question had been working for the business for several years; some, in fact, had 15 to 20 years of experience. He also said that they started at the bottom, and that since they demonstrated ability as well as keen interest in their work, the corporation invested in developing their knowledge to such an extent that, over the years, they became the heads of their respective departments.

[12] Based on these facts, Mr. Mamelonet said that the people in question were very proud of their work and were concerned about the smooth operation of the business. He also emphasized that the people in question took initiatives without his direct or indirect involvement. In other words, he did not ask the persons concerned by the appeals to report to work or carry out certain tasks outside the periods stated in their ROEs.

[13] When people share a passion, and live in a small community far from major centres, it is quite normal and legitimate for bonds of friendship, solidarity and mutual assistance to form and develop over the years. In a context of this kind, it is easy to conceive of many unique situations where human relationships are very different from the standard that is often set based on what occurs in major cities.

[14] Be that as it may, the provisions of the *Employment Insurance Act* remain applicable.

[15] One must consider the context, that is to say, the complaints or unusual observations that raise legitimate suspicions about the accuracy of the facts set out in the ROEs.

[16] The investigators noticed that the dates on various invoices that were issued to the business, but also bore the names of certain employees, sometimes preceded or were subsequent to the periods stated on those employees' ROEs. Based on these observations, they doubted the accuracy of the dates on which the periods of employment were said to have begun and ended.

[17] At this stage, the person responsible for the file determined that the people whose names were stated on the invoices had performed work outside the periods stated in the Records of Employment. He assumed that the people concerned had worked eight hours on the date that their name was stated on the invoice, even though it takes only a few seconds to affix one's signature.

[18] The Court must choose between two versions of the facts. According to the first version, the employees were at work for short times during the periods in question. This version was put forth in the testimony of the person who runs the corporation, as well as the cook, who is directly concerned by one of the instant appeals. The second version was put forth by the person responsible for analyzing the file, who made the determination that the employees worked full eight-hour days based on the fact that their names were found on an invoice.

[19] I tried to find out whether the investigation revealed that the practice of working certain hours, but not reporting them, was engaged in by all the corporation's 40 or so employees — in other words, whether it was generalized or very widespread. The findings with respect to this practice concerned only some employees, specifically, those who had important duties within the organization and had been working at the restaurant for many years (i.e. 15 years or more).

[20] I have frequently stated that the employment insurance program is not a business support program or a way for businesses to reduce their payroll. I have also stated that all work must generally be remunerated.

[21] I have often heard explanations like "It was not work, it was volunteering," or "It was not work because I wasn't being paid." In most cases where such statements are made, the parties are not dealing with each other at arm's length.

[22] In the case at bar, the parties concerned by the employment contract were dealing with each other at arm's length, and the seasonal factor is not part of the equation.

[23] The facts are not in dispute. However, they are interpreted very differently. I feel it is important to note, from the outset, that the parties to the employment contract are not related to each other and are at arm's length from each other.

[24] After examining all the relevant facts, I find that I have no reason not to accept Mr. Mamelonet's explanations regarding the circumstances that account for the presence of certain employees on restaurant premises at times when the ROEs adduced in evidence stated that they were not working. I have no reason to reject his testimony, which I found, under the circumstances, to be reasonable and credible.

[25] These were very short, sporadic attendances which frequently had nothing to do with the paid work. The employees in question had accrued several years of service, and, over the years, they had developed an attachment to the restaurant, which was a source of pride for them.

[26] They were passionate about their work and cared a great deal about the smooth operation of the business. Since their community was small, they developed bonds of friendship and solidarity that extended beyond the framework of the employment relationship; it is because of this very special context and these equally exceptional facts that I find for the Appellants.

[27] The case at bar is comparable to that of a model employee who, while watching television, thinks about the next day, plans his work, and precisely schedules each of the different tasks that he will need to perform.

[28] Such mental work, which, though unsolicited, is beneficial to the employer, is most often unpaid.

[29] However, people who demonstrate such a dynamic, enthusiastic attitude toward their job are often recognized for their efforts and build a solid foundation for their career development, thereby compensating, in a sense, for the lack of pay. Naturally, this is an unusual situation where it is difficult, if not impossible, to come to an absolute conclusion, because human beings are enigmatic.

[30] Based on the jobs that were done by the persons concerned by the instant appeals, they were clearly key players in the business. They carried out their responsibilities with dedication and interest.

[31] Consequently, the appeals are allowed and the determinations of the Minister of National Revenue are vacated.

Signed at Ottawa, Canada, this 12th day of September 2006.

"Alain Tardif"

Tardif J.

Translation certified true
on this 28th day of June, 2007.
Brian McCordick, Translator

CITATION: 2006TCC489

COURT FILE NOS.: 2005-1290(EI), 2005-1291(EI), 2005-1292(EI),
2005-1293(EI), 2005-1499(EI)

STYLES OF CAUSE: 2158-3331 Québec Inc., o/a La Maison du
Pêcheur and Nadine Beaudry and MNR

PLACE OF HEARING: Percé, Quebec

DATE OF HEARING: August 10, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENTS: September 12, 2006

Appearances:

Agent for the Appellants: Georges Mamelonet

Counsel for the Respondent: Anne Poirier

COUNSEL OF RECORD:

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