

[OFFICIAL ENGLISH TRANSLATION]

Docket: 2000-2125(EI)

BETWEEN:

SYLVAIN PROULX,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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

Before: The Honourable Judge Alain Tardif

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Simon-Nicolas Crépin

JUDGMENT

The appeal is dismissed and the Minister's decision is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of February 2003.

"Alain Tardif"

J.T.C.C.

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Citation: 2003TCC77
Date: 20030225
Docket: 2000-2125(EI)

BETWEEN:

SYLVAIN PROULX,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] The appellant admitted that he had been employed by a large company, which had engaged in certain practices inconsistent with the *Employment Insurance Act* and its *Regulations*. The employer had established two logs for recording the hours worked by its employees so that the records of employment it issued when the worker was laid off stated that he had worked full weeks for

maximum insurable earnings, whereas in fact the work could be grouped together in a single week but performed over a much longer period of time.

[2] He acknowledged that he had participated in the system consisting in accumulating hours of work so that they were subsequently grouped together to constitute insurable weeks. The procedure is generally known as "time banking" or "bundling of hours".

[3] The procedure benefits the participating employee, who receives employment insurance benefits during weeks when he would not normally be entitled to them. In other situations, its benefits are greater than those to which he would normally be entitled. Since the insurance benefits of an employee working only two days in a week would thus be reduced for that same week, the two days are carried over.

[4] "Hour banking" or "bundling of hours" also enables the employee to receive much higher benefits since the reported insurable earnings generally amount to the insurable maximum; hours are banked until they total full weeks, that is to say until they make up five consecutive days of work. In fact, the work could have been done in one or two days over various weeks.

[5] For example, with an employee's express or tacit consent, an employer banks five days of work performed at a rate of one day a week and groups them together so that he can issue a record of employment as though the employee had worked the hours over five consecutive days. Overtime is often banked as well.

[6] In this case, everything was revealed in a large investigation involving more than 100 employee files. The investigation was followed by criminal prosecutions following which the employer pleaded guilty and was ordered to pay a large fine.

[7] The appellant admitted that he had been involved in the "time bank". His only argument in support of the appeal was that he had been more a victim than an accomplice. That unfortunately is not sufficient ground to explain his participation, all the more so since he had benefited from the practice at the time, without ever denouncing it.

[8] To justify his failure to denounce the practice, the appellant submitted that he would obviously have lost his job if he had taken such an initiative. However, the work was regulated by statutes and regulations and workers also had a powerful union organization which could very well have denounced the system

without that having any consequences for the worker or workers at the origin of the denunciation. The practice could also have been denounced as part of a group initiative, thus preventing any vendetta against the person or persons who took the initiative. There is no doubt that the appellant agreed at least tacitly to the time banking practice.

[9] The burden of proof is on the appellant, who, in order to win his case, had to prove that his records of employment were consistent with the actual situation with regard to the dates on which his work was performed. In other words, he would have had to show that he had not participated directly or indirectly in any scheme to falsify all the information relating to the performance of his work.

[10] As the appellant did not make that essential proof, his appeal must be dismissed.

Signed at Ottawa, Canada, this 25th day of February 2003.

"Alain Tardif"

J.T.C.C.