

BETWEEN:

JEAN-MARC GEOFFROY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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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

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**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"

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J.T.C.C.

BETWEEN:

JEAN-MARC GEOFFROY,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Tardif, J.T.C.C.**

[1] The appellant admitted being employed by a major corporation that engaged in certain practices not in compliance with the *Employment Insurance Act* and the *Employment Insurance Regulations*. The employer set up two sets of books for recording the hours worked by its employees, so that the Records of Employment it issued when workers were laid off indicated that they had worked full weeks with maximum insurable earnings. It might be that the hours were combined into a single week but the work was actually performed over a much longer period.

[2] The appellant acknowledged participating in the system of accumulating hours of work that were later combined in order to constitute insurable weeks. This system is commonly known as "banking hours" or "accumulating hours".

[3] This system is profitable for participating employees: they receive employment insurance benefits during weeks for which they would not normally be entitled to them; in other situations, their benefits are higher than those to which they would normally be entitled. Under this system, employees working only two days during a week would receive lower employment insurance benefits for that week, and the two days would be carried forward.

[4] "Banking hours" or "accumulating hours" also allows employees to receive much higher benefits, since the insurable earnings declared usually total the maximum amount; the hours are accumulated until they total full weeks of five consecutive working days. The work might actually be done on one or two days per week over a number of weeks.

[5] For example, an employer, aided and abetted expressly or tacitly by the employee, accumulates five working days at the rate of one day per week, and combines them in order to issue a Record of Employment indicating that the employee worked the hours on five consecutive days. Often, overtime hours are banked as well.

[6] In this case, the entire system was uncovered during a major investigation involving over 100 employee files. The investigation resulted in legal action, following which the employer pled guilty and was given a hefty fine.

[7] The appellant acknowledged being involved in the system of "banking hours". His only argument in support of his appeal was that he was more a victim than an accomplice. Unfortunately, that argument does not adequately explain his participation, particularly since at the time he benefited from the system without ever blowing the whistle on it.

[8] In order to justify the fact that he did not blow the whistle on the system, the appellant argued that he would clearly have lost his job if he had taken such action. However, his employment was governed by legislation and regulations, and the workers also had the benefit of a powerful union organization that could very well have blown the whistle on the system without incurring repercussions on the worker or workers initiating the whistle-blowing. The whistle could also have been blown collectively, thus avoiding any vendetta against the individual or individuals taking the initiative. There is no doubt that the appellant more or less tacitly agreed to the system of "accumulating hours".

[9] The onus was on the appellant; in order to win his case, he would have had to establish that the dates work was performed indicated on his Records of Employment reflected reality. In other words, he would have had to establish that he did not participate directly or indirectly in any stratagem aimed at falsifying data concerning the performance of his work.

[10] Since the appellant has not adduced this vital evidence, his appeal must be dismissed.

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

"Alain Tardif"

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J.T.C.C.

CITATION: 2003CCI78

COURT FILE NO.: 2000-1996(EI)

STYLE OF CAUSE: Jean-Marc Geoffroy  
and the Minister of National Revenue

PLACE OF AUDIENCE: Trois-Rivières, Quebec

DATE OF HEARING: January 29, 2003

REASONS FOR JUDGMENT BY: The Honourable Judge Alain Tardif

DATE OF JUDGMENT: February 25, 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