Tax Court of Canada  Cour canadienne de l'impôt

2001-2326(EI)

BETWEEN:

EASTERN ONTARIO HEALTH UNIT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeals of
(2001-2329(EI), 2001-2327(CPP) and 2001-2330(CPP))
on February 6, 2002 at Ottawa, Ontario, by
the Honourable Judge Terrence O'Connor

Appearances

Counsel for the Appellant:	George Rontiris Trisha Gain, Student-at-Law
Counsel for the Respondent:	Rosemary Fincham Nicolas Simard, Student-at-Law

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JUDGMENT

The appeal is allowed and the decision of the Minister is vacated.

Signed at Ottawa, Canada, this 5th day of April, 2002.

"T. O'Connor"

J.T.C.C.

Tax Court of Canada

Cour canadienne de l'impôt

Date: 20020405
Docket: 2001-2326(EI)
2001-2329(EI)
2001-2327(CPP)
2001-2330(CPP)

BETWEEN:

EASTERN ONTARIO HEALTH UNIT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

O'Connor, J.T.C.C.

[1] All four appeals were heard at Ottawa, Canada on February 6, 2002. The appeals were heard on common evidence. They all have the same issue. The first two appeals, namely 2001-2326(EI) and 2001-2327(CPP) deal with a worker named Lori Prieur and the other two appeals, namely 2001-2329(EI) and 2001-2330(CPP) deal with a worker named Catherine A. Séguin.

[2] The Respondent's Reply in the employment insurance appeal with respect to Lori Prieur (2001-2326(EI)) sets forth the following as the basic facts:

> 1. He admits the facts stated in the Notice of Appeal that Lori Prieur (the "Worker") was only an applicant at the time of payment and the Worker did not provide any services to the Appellant.
>
> 2. He admits the facts stated in the Notice of Appeal that the Worker was required to attend information and assessment

sessions if she wished to continue to be considered as an applicant.

3. He admits the facts stated in the Notice of Appeal that not all the applicants or workers were successful.

4. He admits the facts stated in the Notice of Appeal that there was no salary paid to the Worker and the Appellant felt that there had to be some incentive for the Appellant to continue with the lengthy selection process therefore, reasonable allowances were paid.

5. He admits the facts stated in the Notice of Appeal that the Worker did not provide any services to the Appellant.

6. He admits the facts stated in the Notice of Appeal that all sessions were given at the Casselview Club in Casselman which is approximately 50 km from the Appellant's office in Cornwall which meant that the Worker had to travel approximately 100 km every day to attend these sessions.

7. He admits the facts stated in the Notice of Appeal that the Worker was paid a weekly allowance of $200.00.

...

10. The Appellant appealed a ruling to the Respondent for the determination of the question of whether or not the Worker was employed in insurable employment, for the period from February 29, 2000 to March 31, 2000, within the meaning of the Employment Insurance Act (the "Act").

11. By letter dated May 9, 2001, the Respondent informed the Appellant that it had been determined that the Worker's engagement with the Appellant, during the period in question, was insurable employment for the reason that the Worker was employed pursuant to a contract of service.

12. In making his decision, the Respondent relied on the following assumptions of facts:

(a) the Worker received a five week mandatory training course in order to be considered as a home care worker;

(b) the Worker received the training at the Casselview Golf Club in Casselman, Ontario;

(c) the Worker carpooled along with four other people from areas surrounding Cornwall to the training course at the Casselview Golf Club;

(d) the Worker and all other trainees were each paid $200.00 per week while on training, by the Appellant;

(e) 19 persons received the training and only 15 workers were eventually hired.

...

14. He submits that the Worker was engaged by the Appellant in insurable employment, within the meaning of paragraph 5(1)(a) of the Act and subsection 6(b) of the Employment Insurance Regulations.

[3] The Replies in all of the other appeals are substantially the same with the obvious exception that the employment insurance appeals refer to the *Employment Insurance Act* (EI) and the Canada Pension Plan appeals refer to the *Canada Pension Plan* (CPP).

ANALYSIS AND DECISION

[4] What I must determine is whether the engagement between the Appellant and the Worker was a contract of service or an activity of taking courses which for a successful applicant would lead to permanent employment. An allowance was paid to generously compensate for food and travel. Can that be considered as equivalent to salary or remuneration?

[5] On this point I was referred to dictionary definitions of apprenticeship and training. I was also referred to a decision of Archambault, T.C.J. in *Charron v. Minister of National Revenue*, [1994] T.C.J. No. 47 in which the following was stated:

> 14. Although traditionally the contract of apprenticeship seems to have existed between tradesmen, I do not think that for purposes of the Act its scope should be limited to this kind of activity. A young scientist can learn his trade from contact with

> experienced researchers just as an apprentice electrician can from a master electrician. Further, the fact that s. 3(1)(a) refers to employment "under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person" indicates that Parliament clearly intended the idea of insurable employment to be as wide as possible for the purposes of the Act. In my opinion, the relationship between the appellant and the payer meets the definition of insurable employment stated in the Act.
>
> 15. In preparing this decision, I have considered the decisions by this Court in The Ontario Cancer Institute and the Minister of National Revenue (92-28(C.P.P.)) and The Hospital for Sick Children and the Minister of National Revenue and Carol O'Beirne (92,585(UI)) and (92,61(C.P.P.)). I feel that these decisions should be limited to the facts of those cases. Thus, in The Hospital for Sick Children, ... Judge Christie concluded that there was no contract under which the intervener undertook to perform services for the payer:

[6] Counsel accentuates that the $200.00 per week overcompensated the workers for the expenses they incurred and consequently should in some way be considered to the extent of the overcompensation as salary. Counsel for the Respondent points out that the legislation governing EI and CPP is social legislation and is not to be easily avoided. If people are paid something in the nature of a wage the *Acts* should apply and deductions should be made. Counsel for the Appellant points out that, as mentioned in the pleadings, no services were performed by the workers and no salary *per se* was paid. Admittedly $200.00 per week was advanced to cover expenses. It may have exceeded the actual expenses incurred and that seems to be the case but I do not think that that automatically converts it to a salary with the consequence that there was a contract of service.

[7] For the following principle reasons I find there was no contract of service:

1. The Replies themselves state the Workers provided no services and received no salary.

2. The Workers were in a training program hoping to succeed and get a job.

3. The courses were given by a third party who selected the successful applicants.

4. The allowances for travel and food were strictly that during the training program.

5. As Christie, A.C.J. said in *The Hospital for sick Children and Minister of National Revenue*, (92-585(UI)):

> There being no contract under which the intervenor engaged herself to perform services for the appellant, that is the end of the matter. Indeed the absence of such a contract precludes further sensible discussion about a contract of service or a contract for services.

[8] Consequently the appeals are allowed and the decisions of the Minister are vacated.

Signed at Ottawa, Canada this 5th day of April, 2002.

"T. O'Connor"

J.T.C.C.

COURT FILE NO.:	2001-2326(EI), 2001-2329(EI), 2001-2327(CPP), 2001-2330(CPP)
STYLE OF CAUSE:	Eastern Ontario Health Unit v. Minister of National Revenue
PLACE OF HEARING:	Ottawa, Canada
DATE OF HEARING:	February 6, 2002
REASONS FOR JUDGMENT BY:	The Honourable Judge Terrence O'Connor
DATE OF JUDGMENT:	April 5, 2002

APPEARANCES:

Counsel for the Appellant:	George Rontiris Trisha Gain, Student-at-Law
Counsel for the Respondent:	Rosemary Fincham

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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