

Docket: 2010-1302(IT)I

BETWEEN:

KONRAD K. CZERCZAK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on October 1, 2010, at Toronto, Ontario.
Before: The Honourable Justice Lucie Lamarre

Appearances:

Agent for the Appellant: Dan F. White

Counsel for the Respondent: John Grant

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2006 and 2007 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of November 2010.

"Lucie Lamarre"

Lamarre J.

Citation: 2010 TCC 612
Date: 20101130
Docket: 2010-1302(IT)I

BETWEEN:

KONRAD K. CZERCZAK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre J.

[1] These are appeals from assessments for the appellant's 2006 and 2007 taxation years made by the Minister of National Revenue (**Minister**) under the *Income Tax Act (ITA)*. In computing his income, the appellant claimed employment expenses in the total amounts of \$53,276 and \$47,355 for each of those years respectively, as follows:

	2006	2007
Meals & Entertainment (50%)	\$19,585	\$13,882
Work Space in Home	\$18,000	\$10,000
Lodging	\$5,650	\$13,352
Parking	\$1,485	\$1,485
Motor Vehicle Expenses	\$8,556	\$8,635

[2] In reassessing the appellant, the minister disallowed the meal and entertainment, work space in home and lodging expenses, which totaled \$43,235 and \$37,234 for the 2006 and 2007 taxation years respectively.

[3] In court, the appellant revised the expenses claimed as follows (as per Exhibit A-1):

Revised Statement of Amounts in Dispute

As at October 1, 2010

2006	
Meals and Entertainment	\$9,248
Travel Expenses	\$1,148
Business Use of Home	\$3,600

2007	
Meals and Entertainment	\$7,421
Travel Expenses	\$3,564
Business Use of Home	\$3,000

[4] The respondent takes issue with the deductibility of these expenses. The respondent is of the view that the appellant neither paid nor incurred, nor was he required to incur, any of the disallowed expenses in order to earn employment income from his employer MTS Allstream Inc. (**Allstream**), other than some meal and entertainment expenses and travel and motor vehicle expenses incurred in the Greater Toronto Area only. In determining the appellant's tax liability for each of the 2006 and 2007 taxation years, the minister made the following assumptions of fact, set out in paragraph 20 of the Reply to Amended Notice of Appeal (**Reply**):

- a) the Appellant was employed by a telecommunications business, MTS Allstream Inc. ("Allstream"), as a partially commissioned sales account executive, throughout the 2006 and 2007 taxation years;
- b) the Appellant earned commission income from Allstream, in the amounts of \$81,333 and \$62,596 (both rounded) in 2006 and 2007, respectively;
- c) the Appellant did not submit a form T2200 ("Declaration of Employment Conditions") from Allstream, in respect of the 2007 taxation year;
- d) the Appellant's contract of employment with Allstream required him to pay for some meal and entertainment expenses and some travel and motor vehicle expenses, if incurred in the Greater Toronto area, which was his only area of travel;

- e) the Appellant's contract of employment with Allstream did not require him to pay any out of pocket expenses, if incurred outside of the Greater Toronto area, including trips he made outside of Canada;
- f) the Appellant did not incur any Business Meal and Entertainment expenses, whether in the Greater Toronto area or otherwise, and furthermore, the amounts claimed were unreasonable in the circumstances;
- g) the Appellant was provided with an office at Allstream's work location, the location he normally reported to for work;
- h) the Appellant was not required to pay for home office supplies, costs related to cell phones or an office assistant;
- i) the Appellant did not compute any personal use portion relating to his residence and/or his work space in home claim;
- j) the Appellant did not use ½ of his residence as a work space area, and any claim being made on that basis is not reasonable in the circumstances;
- k) even if the Appellant's contract of employment with Allstream required him to have a home office, it was not the place where the Appellant, at least 50% of the time, performed his duties of employment for Allstream, nor was it used exclusively and on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing his duties;
- l) the Appellant's contract of employment with Allstream did not require him to be away for at least 12 consecutive hours from the municipality and metropolitan area where Allstream is located; and
- m) the Appellant did not keep proper books and records for either of the 2006 and 2007 taxation years, to verify he incurred the expenses that were disallowed and that they were incurred for the purpose of earning his income from Allstream.

[5] The appellant testified in court. In the years at issue, he was a senior sales executive for Allstream, responsible for developing client relationships in the information technology (IT) sector, particularly with tier-one financial institutions (Bank of Montreal (**BMO**), Canadian Imperial Bank of Commerce (**CIBC**)) as well as with other tier-one financial companies within the Canadian marketplace. According to the appellant, there are three main players in that field in Canada, Allstream being one of them, and the others being Bell Canada and Telus Business Solutions.

[6] The appellant testified that he was recognized as a top performer by Allstream. He gave as an example a \$1.4 million contract awarded to Allstream by BMO for Internet connectivity services to the bank's main data centres. That contract was the result of the work and effort of his team at Allstream (Exhibits A-2 and A-3). The appellant said that he was ranked "No. 1" in Allstream's financial market sales for the three years he worked there, from 2005 to 2008 (see Transcript, p. 7). He explained that a deal like the one with BMO would typically take anywhere from four months to a year and a half to close. His primary objective was to establish key relationships with executives of his clients. He would do that face-to-face most of the time, either at the clients' place of business (60 per cent of the time) or at lunch or dinner meetings, or by entertaining the executives after business hours or during week-ends, at his own cost. The bill could range from a couple of hundred dollars to well over a thousand dollars.

[7] The appellant filed in court two Declaration of conditions of employment forms (**T2200 forms**) for 2006. The first one was typewritten and was signed on February 20, 2007, by S. Dankev, Director, for Allstream (Exhibit A-5). The second one was handwritten and was signed on April 22, 2007 by Chris Long, Director of Sales, for Allstream (Exhibit A-6). Both forms indicate that the employee's contract required him to pay his own expenses while carrying out the duties of his employment, that he was not reimbursed for those expenses (which would include meals, client entertainment, and travel for business), and that he was required to work away from the employer's place of business (the appellant's area of travel was the Greater Toronto Area). In the first T2200, it is indicated that the appellant was not required to be away for at least 12 consecutive hours from the municipality and metropolitan area of the employer's business where the employee normally reported for work. In the second T2200, the answer given to that same question is yes, along with the handwritten notation "every couple of months? varied" (Exhibits A-5 and A-6, question 8). In answer to question 10 on the T2200, it is indicated that the employee was required to use a portion of his home for work and that he was not reimbursed for any expenses associated therewith.

[8] The appellant explained that Mr. Dankev, who signed the first T2200, had moved on to a different role and that there was a new director of sales. He therefore asked the new director to sign a second T2200 for 2006, to be sure that he was covered with him also. The appellant explained as well that he would not have been able to sign the TD1X form allowing the employer to adjust the tax deducted at source to take into account commission expenses (a blank TD1X form was filed as Exhibit A-8) had he not been provided with a signed T2200 form from his employer. He said that he had a very limited expense budget from Allstream and that he would

not have expended the amounts claimed without being sure that the employer would sign the T2200 form (see Transcript, pp. 15-17 and pp. 24-26).

[9] The appellant also filed a T2200 for the 2007 taxation year that was signed on February 1, 2008, by Lance Hamilton, Sales Manager, for Allstream (Exhibit A-7). The answers on this form are virtually the same as those on the first T2200 filed for 2006 (Exhibit A-5). The appellant said that he reported to Mr. Hamilton in 2007.

[10] The appellant testified that sales representatives for Allstream were treated differently than other employees. He said that he brought in over \$20 million worth of new business, and that being so, he was advised to run his own franchise (Transcript, p. 37).

[11] With respect to the travel expenses at issue, a general ledger printout for 2007 was filed as Exhibit A-11. It covers specifically the expenses incurred personally by the appellant for a trip to Las Vegas to attend a three-day Black Hat conference on software security, for which he was not reimbursed.

[12] The appellant also filed a general ledger printout for 2006 (Exhibit A-12) showing airfare expenses that he apparently incurred to attend the 2006 Allstream Strategy Kick-off in Puerto Vallarta, Mexico. He explained that this event was organized by Allstream for the top performers within the organization. He testified that this expense which should normally have been covered by the employer was not because he and his wife missed their flight and he had to purchase new tickets. As evidence, he produced a Ticket Receipt Duplicate Copy issued by Amex Canada Inc, showing an amount of \$1,448.20. He explained that he had the use of an American Express card provided by Allstream for his business expenses. Normally, he would send the receipt to Allstream, which in turn would pay the bill. In this case, Allstream refused to pay. The appellant said that he paid that bill from his own TD bank account. He apparently tried to obtain a copy of the Amex statement of account but without success as the card belonged to Allstream and not to him (Transcript, pp. 33-36). I note however from Exhibit A-12 that the last four digits of the Amex card provided by Allstream to the appellant are 1005. On the Ticket Receipt Duplicate Copy, the last four digits of the Amex card used to make the payment on February 15, 2006 are 1025. Finally, the appellant's bank account history for the period from January 1, 2006 to December 31, 2007, filed as part of the same exhibit, does not show a specific payment of \$1,448.20. All this makes it very difficult to reconcile the amounts claimed by the appellant.

[13] With respect to the work space in home expenses, the appellant testified that he was required to work at home (Transcript, p. 37). In 2006, he was renting a one-level apartment of 800 square feet in downtown Toronto for \$1,200 per month, for a total of \$14,400 for the year (Exhibit A-13). He said that he had one room there that was devoted solely to his work, and it would have represented approximately 25 per cent of the total floor area (Transcript, p. 69). In 2007, he moved into a two-level condominium, in which he had space dedicated for use as an office (Exhibit A-14). According to Exhibit 14, there was a rental expense of \$1,000 per month, a matter which was not addressed by the appellant.

[14] With respect to the entertainment expenses, the appellant filed a general ledger printouts for 2006 and 2007 (Exhibits A-15 and A-16) itemizing his expenses in those years. They totalled \$50,682.80 for 2006 and \$61,245.30 for 2007, of which he now claims \$9,248 for 2006 and \$7,421 for 2007 (Exhibit A-1).

[15] In cross-examination, the appellant explained that he considerably reduced the expenses initially claimed by excluding unreceipted amounts (Transcript, p. 43). He further acknowledged that he filled out the T2200 forms himself, and had them signed afterwards. He also acknowledged that he was reimbursed for travel costs, hotel accommodation, meals, ground transportation, parking, entertainment expenses, office supplies and other general expenses totalling \$8,253.40 for 2006 and \$10,317.22 for 2007 (for which year vehicle expenses were also included) (Exhibit R-1, Tabs 7 and 8). Nonetheless, he claimed the expenses at issue against his income for tax purposes on the basis that they were discretionary expenses that he incurred to earn his commission income. He stated that the travel expenses were refused by Allstream and that the meal and entertainment expenses claimed were not even submitted to Allstream due to budget restrictions (according to the appellant, the limit set by Allstream was around \$200 to \$250 per month). Only parking, Internet and cellular telephone expenses were allowed throughout the year (Transcript, pp. 60-66).

[16] Ms. Julie Gil was called by the appellant to testify. She described herself as an office manager and said she had participated in the process of assessing and putting together the appellant's books and records (Transcript, p. 80). She did what she called "record reconstruction" (Transcript, p. 85). In so doing, she identified his expenses and reviewed his receipts and bank statements together with his tax returns. She noticed that the appellant had made online payments to an American Express account, but he did not provide her with any evidence that he himself held that credit card. It became apparent to her later on in the process that he was making payments on the corporate card (Transcript, pp. 81-82). She advised the appellant that expenses for which there were no receipts were not deductible for tax purposes. As for home

office expenses, the appellant initially claimed 100%, and she reduced the claim to the amount that is now claimed. She also reviewed all meal and entertainment expenses and reduced the claim to the amounts shown in Exhibit A-1.

[17] The respondent called Mr. Dario Gasparotto, Director, Human Resources Operations, who was responsible for, among other things, Allstream's sales and marketing department during the years at issue. On April 18, 2006, he sent an e-mail to the employees of Allstream, including the appellant, concerning T2200 forms for the 2005 taxation year (Exhibit R-1, Tab 4). It basically said that all employees would be reimbursed for their authorized and reasonable out-of-pocket expenses incurred while on company business and that T2200 forms would no longer be issued. The e-mail specifically stated that where the Canada Revenue Agency (**CRA**) requested that form from an employee, Mr. Gasparotto had to authenticate the form with his signature in order for it to be considered valid for tax filing purposes. In court, Mr. Gasparotto testified that he was also the one responsible for the T2200 forms in 2006 and 2007 (Transcript, p. 92). The appellant, in cross-examination, said that he had assumed that this did not apply to salespeople (Transcript, pp. 55-59).

[18] A policy regarding employee expenses was filed as Exhibit R-1, Tab 5. In the introduction, it says that reasonable expenses incurred in the normal course of business will be allowed, and that it is within the manager's discretion to determine whether expenses are reasonable and allowable. Mr. Gasparotto testified that this policy applied to salespeople in the years at issue (Transcript, p. 94), whereas the appellant had previously said in cross-examination that it did not (Transcript, pp. 67-68). While Mr. Gasparotto was not aware of any monthly cap on spending, he said that, according to the policy, it was up to the manager to approve expenses (Transcript, pp. 94-95).

[19] With respect to the trip to Las Vegas (Exhibit A-11), Mr. Gasparotto testified that although security training could be business-related, his understanding was that Allstream was not represented at the event in question (Transcript, pp. 96-97). He recognized, however, in cross-examination, that he did not have any first-hand knowledge of that convention and that his testimony had been based on a conversation he had had two weeks before trial with Rick Smith, who apparently was the sales manager to whom the appellant reported at the time (Transcript, pp. 107 and 122-123). With respect to the Allstream Strategy Kick-off (Exhibit A-12), he confirmed that it was an annual event to recognize the top salespeople, which was held in Mexico in 2006, and that the appellant was one of them. He said that Allstream paid for that trip, but he was not aware whether the expense for re-booking the appellant's flight was denied. With respect to the corporate credit card,

Mr. Gasparotto said that business-related expenses were to be paid by employees with that card and that Allstream automatically paid the bill, with which it then matched the expense forms submitted (Transcript, p. 99).

[20] Mr. Gasparotto confirmed that Mr. Chris Long, vice president, Sales, for the central region of Ontario, was responsible for signing the T2200 forms (Transcript, p. 104). He stated, however, that, having looked back at Allstream's sales organization, the appellant, being a salesman, was managed by Rick Smith, a sales manager, not Chris Long (Transcript, p. 107). According to Mr. Gasparotto, it did not make sense that Stewart Dankevy or Lance Hamilton would have signed the T2200 forms, as he did not recall either of them having been a sales manager (Transcript, pp. 103-104 and p. 109). He also mentioned that the T2200 forms filed by the appellant indicating that the employee's contract required the employee to pay his own expenses while carrying out the duties of his employment were, in light of Allstream's policy, erroneous (Transcript, pp. 105-106). He also said that employees were not required to pay business-related meal and entertainment expenses. These were reimbursed (Transcript, p. 108). With respect to the TD1X form referred to by the appellant, Mr. Gasparotto did not know what it was until shortly before trial. Finally, he said that it was possible the appellant was required to be away from the office for more than 12 hours (Transcript, p. 111).

[21] In cross-examination, Mr. Gasparotto acknowledged that he was not involved in the day-to-day activities of dealing with forms and procedures for the sales staff. He was working predominantly with sales directors and sales managers. He said that Allstream would issue T2200 forms on request. He testified that the company had committed to signing and filling out the T2200 forms if such were requested by the CRA. He also confirmed that Chris Long had the authority to sign the T2200 form for the appellant (Transcript, pp. 121-122).

Arguments

[22] The appellant's position is that he has proved that the T2200 forms were valid, and such being the case, he should be entitled to claim the expenses at issue against his commission income. He is of the view that he has proved that he did incur the expenses for which he was not reimbursed. Ms. Gil's testimony was that she verified this carefully. According to the T2200 forms, the appellant was required to have office space at home, which he did have and which he used exclusively for work purposes.

[23] On the other hand, the respondent is of the view that the evidence showed that the T2200 forms were not appropriately signed and thus they do not reflect the true intention of Allstream. The respondent argued that the appellant has not proven that he was required by his employer to incur the expenses at issue. This is supported by Allstream's policy, as stated by Mr. Gasparotto and set out in the documents filed as Exhibit R-1, Tabs 4, 5 and 6. It is reinforced by the fact that the employer would reimburse reasonable expenses only. According to Mr. Gasparotto, there were mistakes in the T2200 forms. In fact, the respondent suggested that there were inconsistencies in the sense that the appellant filed two T2200 forms for 2006 and that, according to Allstream's policy, meal and entertainment expenses were reimbursed to salespeople, which means that they were not required to pay such expenses out of their own pocket. Counsel for the respondent relied on the decision of Bowman A.C.J. (as he then was) of this Court in *Schnurr v. Canada*, [2004] T.C.J. No. 565 (QL), at paragraph 19, where he said that the T2200 form may be prima facie evidence but is not necessarily conclusive or determinative if the evidence shows it to be wrong.

[24] With respect to home office expenses, the respondent submitted that the evidence did not disclose that the appellant principally performed the duties of his employment at home, or that he used the home office space exclusively for the purpose of earning income as required by subsection 8(13) of the ITA.

Analysis

[25] As an employee, the appellant may only claim expenses as permitted by section 8 of the ITA. The relevant provisions applicable in the present case are reproduced hereinafter.

Deductions

Deductions allowed

8. (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

Sales expenses

(f) where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and

(i) under the contract of employment was required to pay the taxpayer's own expenses,

(ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph 8(1)(f)(iii) and received by the taxpayer in the year) to the extent that those amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph 8(1)(j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

Travel expenses

(h) where the taxpayer, in the year,

(i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

(ii) was required under the contract of employment to pay the travel expenses incurred by the taxpayer in the performance of the duties of the office or employment,

amounts expended by the taxpayer in the year (other than motor vehicle expenses) for traveling in the course of the office or employment, except where the taxpayer

(iii) received an allowance for travel expenses that was, because of subparagraph 6(1)(b)(v), 6(1)(b)(vi) or 6(1)(b)(vii), not included in computing the taxpayer's income for the year, or

(iv) claims a deduction for the year under paragraph 8(1)(e), 8(1)(f) or 8(1)(g);

General limitation

(2) Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

Meals

(4) An amount expended in respect of a meal consumed by a taxpayer who is an officer or employee shall not be included in computing the amount of a deduction under paragraph 8(1)(f) or 8(1)(h) unless the meal was consumed during a period while the taxpayer was required by the taxpayer's duties to be away, for a period of not less than twelve hours, from the municipality where the employer's establishment to which the taxpayer ordinarily reported for work was located and away from the metropolitan area, if there is one, where it was located.

Certificate of employer

(10) An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i) (ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer's employer certifying that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer's return of income for the year.

Work space in home

(13) Notwithstanding paragraphs 8(1)(f) and 8(1)(i),

(a) no amount is deductible in computing an individual's income for a taxation year from an office or employment in respect of any part (in this subsection referred to as the "work space") of a self-contained domestic establishment in which the individual resides, except to the extent that the work space is either

(i) the place where the individual principally performs the duties of the office or employment, or

(ii) used exclusively during the period in respect of which the amount relates for the purpose of earning income from the office or employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the office or employment;

(b) where the conditions set out in subparagraph 8(13)(a)(i) or 8(13)(a)(ii) are met, the amount in respect of the work space that is deductible in computing the individual's income for the year from the office or employment shall not exceed the individual's income for the year from the office or employment, computed without reference to any deduction in respect of the work space; and

(c) any amount in respect of a work space that was, solely because of paragraph 8(13)(b), not deductible in computing the individual's income for the immediately preceding taxation year from the office or employment shall be deemed to be an amount in respect of a work space that is otherwise deductible in computing the individual's income for the year from that office or employment and that, subject to paragraph 8(13)(b), may be deducted in computing the individual's income for the year from the office or employment.

[26] The appellant was employed in connection with the selling of information technology for Allstream in the years at issue and was remunerated in part by commissions. Thus, to be able to deduct expenses in computing his income from employment, he must meet the requirements of paragraph 8(1)(f) of the ITA. As regards the conditions to be met, the points that are at issue before me are: 1) whether the appellant was required under his contract of employment to pay his own expenses; 2) whether he was ordinarily required to carry on the duties of his employment away from the employer's place of business; and 3) whether he was in receipt of an allowance for travel expenses that was not included in his income.

[27] With respect to meals consumed by an employee, subsection 8(4) states that a deduction will be permitted pursuant to paragraph 8(1)(f) only if the meals were consumed during a period while the employee was required by his duties to be away, for a period of not less than twelve hours, from the municipality where the employer's establishment to which the employee ordinarily reported for work was located.

[28] Concerning work space in home, subsection 8(13) provides that, notwithstanding paragraph 8(1)(f), an amount will be deductible from income in respect of such work space only if the work space 1) is the place where the individual principally performs the duties of his employment, or 2) is used exclusively for the purpose of earning income from his employment and used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of that employment.

[29] Furthermore, subsection 8(10) requires the taxpayer to file a prescribed form (T2200) signed by his employer certifying that the conditions set out in the aforementioned provisions were met in the year.

[30] On the three T2200 forms filed by the appellant, it is stated that the employee was required to pay his own expenses while carrying out the duties of his employment, and the appellant's area of travel is specified as being the Greater Toronto Area. On all three forms, it is also indicated that the employee was required to pay other expenses (meals, entertainment, travel, and car) for which he did not receive any allowance or repayment. It is stated as well that he was required by his contract of employment to use a portion of his home for work. With respect to meals, one form (Exhibit A-6, question 8) indicates that the appellant was required to be away for at least 12 consecutive hours from the municipality where he normally reported for work, while on the other two forms (Exhibits A-5 and A-7, question 8) the answer to the same question is negative.

[31] The evidence revealed that it was the appellant who filled out those forms. He asked three different people to sign them. Mr. Gasparotto testified that he was the one who was responsible for signing these forms when they were requested by the CRA. He also said that Chris Long was authorized to sign, even though it appeared that in the years in question the appellant reported to a sales manager by the name of Rick Smith. He also mentioned that it did not make sense for Stewart Dankevych and Lance Hamilton to have signed the other two forms. He acknowledged, however, that he was not involved in the day-to-day activities of dealing with forms and procedures for the sales staff. Mr. Gasparotto said that Allstream's employees were not required to pay out of their own pocket business-related meal and entertainment expenses. According to the employer's policy, reasonable expenses incurred in the normal course of business, as approved by the employee's manager, would be reimbursed to the employee. Mr. Gasparotto also said that business-related expenses were to be paid by the employee with the corporate credit card provided to the employee by the employer, and that Allstream would pay the account. Finally, he said that it was

possible that the appellant was required to be away from the office for more than 12 hours.

[32] The employer's policy clearly states that employees will be reimbursed for authorized and reasonable out-of-pocket expenses they incur on company business and that T2200 forms would no longer be issued. That policy is, in my view, contrary to the answers given on the T2200 forms. Indeed, if the employer reimbursed all reasonable business expenses, there was no need to require the employee to incur other expenses for business purposes. To say otherwise is tantamount to asserting that the appellant was required to pay for unreasonable expenses. The appellant provided three T2200 forms, all signed by different people. These forms are not consistent with the policy. They were filled in by the appellant himself. Although Mr. Gasparotto acknowledged that he was not directly involved with the salespeople, he still had a senior position in the organization and was in charge of implementing the said policy (as evidenced by the e-mail he sent to all employees, including the appellant, which was filed as Exhibit R-1, Tab 4). In the circumstances, it is difficult for me to give any credence to the T2200 forms without having heard the explanations of the people who signed them. As stated by Bowman A. C. J. in *Schnurr, supra*, the T2200 form is prima facie evidence, but may not be conclusive or determinative if the evidence shows it to be wrong. I am of the view that the respondent established that that prima facie evidence was contradicted by the policy put in place by Allstream.

[33] Looking at each of the categories of expenses claimed by the appellant in the present appeals, I come to the conclusion that none of them are deductible.

[34] Meal and entertainment expenses were reimbursed to the appellant to the extent that they were reasonable. It is my understanding that those claimed in his tax returns were not even presented to his employer for approval. In that context, it is difficult to conclude that those expenses were required to be incurred for the benefit of the employer.

[35] Travel expenses were also reimbursed by the employer. From the employer's policy, I can infer that if there was no reimbursement for the trip to Las Vegas, the trip was not required or it was not considered a reasonable expense by Allstream. Furthermore, it is my understanding that the appellant was not ordinarily required to carry out the duties of his employment outside the Greater Toronto Area. As Bowie J. of this Court suggested in *Morgan v. Canada*, [2007] T.C.J. No. 307 (QL), at paragraph 12, there is a difference between being permitted to do something and being required to do something. In this case, if Allstream did not require the appellant

to attend that conference, the appellant is precluded from deducting that expense under either paragraph 8(1)(f) or paragraph 8(1)(h) of the ITA in computing his income. With respect to the cost of re-booking the flight to Mexico, it is my understanding that that trip had already been paid for by Allstream. The fact that the appellant and his wife missed their flight is a personal matter, which is another reason for the expense not being deductible. Finally, it is not clear from the evidence whether that extra cost was in fact charged on the corporate credit card and then ultimately paid by the appellant.

[36] With respect to the work space in home, the appellant testified that he met his clients at their place of business 60 per cent of the time. Therefore, it cannot be said that he principally performed the duties of his employment at home. Furthermore, the evidence has not convinced me that that space was used exclusively for the purpose of earning income and that it was used on a regular and continuous basis for meeting customers or other persons in the ordinary course of performing the duties of the appellant's employment. First, as I previously said, I have difficulty relying on the T2200 forms to conclude that the appellant was required to have an office at home. The fact that the T2200 forms are not consistent with the employer's policy taints the accuracy of the information given in those forms since the persons who signed them were not present to testify. The documents filed by the appellant as Exhibits A-13 and A-14 in support of his work space in home claim are insufficient, in my view, to allow a deduction. I find the testimony of the appellant in this regard to be self-serving and I am not convinced that he never used that space for personal purposes. Furthermore, for 2007, the appellant did not explain how he calculated the amount of the expenses claimed. I therefore conclude that no amount can be deducted pursuant to subsection 8(13) of the ITA for work space in home.

[37] Given the context as a whole, I do not see how I can conclude that the expenses claimed were 1) required to be incurred and 2) reasonable. The appellant has not convinced me on a balance of probabilities that the expenses were deductible pursuant to section 8 of the ITA.

[38] The appeals are dismissed.

Signed at Ottawa, Canada, this 30th day of November 2010.

"Lucie Lamarre"

Lamarre J.

CITATION: 2010 TCC 612
COURT FILE NO.: 2010-1302(IT)I
STYLE OF CAUSE: KONRAD K. CZERCZAK v. HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: October 1, 2010
REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre
DATE OF JUDGMENT: November 30, 2010

APPEARANCES:

Agent for the Appellant: Dan F. White

Counsel for the Respondent: John Grant

COUNSEL OF RECORD:

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Name:

Firm:

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