

BETWEEN:

FERIN N. YUSUF,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on February 18, 2011 at Vancouver, British Columbia

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Patrick Grayer (student-at-law)  
Aman Sandhu

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**JUDGMENT**

The appeal of the decision of the Minister of National Revenue made under the *Employment Insurance Act* that the appellant was not engaged in insurable employment with Seven Eight Six Trucking Ltd. during the period from October 1, 2009 to March 12, 2010 is dismissed, and the decision is confirmed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 2<sup>nd</sup> day of March 2011.

“J. M. Woods”

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Woods J.

Citation: 2011 TCC 133  
Date: 20110302  
Docket: 2010-2733(EI)

BETWEEN:

FERIN N. YUSUF,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Woods J.**

[1] In this appeal under the *Employment Insurance Act*, Ferin Yusuf appeals a decision of the Minister of National Revenue that she was not engaged in insurable employment with Seven Eight Six Trucking Ltd. (the “Payor”) during the period from October 1, 2009 to March 12, 2010.

[2] The Payor operates a delivery trucking service near Vancouver, British Columbia. The corporation is wholly-owned by Mohammed Yusuf Venkataya, who is the appellant’s husband.

[3] During the relevant period, the appellant was in charge of office matters for the Payor, which operated out of the family home.

[4] Since the appellant and the Payor are related, the employment is not insurable unless the Minister is satisfied that the appellant would have entered into a substantially similar contract of employment if she and the Payor were dealing at arm’s length.

[5] The Minister was not satisfied that the contract of employment reflected arm’s length terms and concluded that the employment was not insurable.

[6] The applicable legislative provisions are subsections 5(2) and (3) of the *Employment Insurance Act* and section 251 of the *Income Tax Act*. The relevant parts of these provisions are reproduced below:

*Employment Insurance Act*

**5(2)** Insurable employment does not include

[...]

(i) employment if the employer and employee are not dealing with each other at arm's length.

**5(3)** For the purposes of paragraph (2)(i),

(a) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the *Income Tax Act*; and

(b) if the employer is, within the meaning of that Act, related to the employee, they are deemed to deal with each other at arm's length if the Minister of National Revenue is satisfied that, having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[Emphasis added.]

*Income Tax Act*

**251(1)** Arm's length -- For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

[...]

(c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

[7] Based on the evidence presented at the hearing, I have concluded that the Minister's conclusion is reasonable and that it should be confirmed.

Discussion

[8] The appellant provided testimony on her own behalf. The respondent called Mr. Venkataya and the appeals officer, Peter Luo.

[9] The appellant testified that she worked on a full-time basis for both the Payor

and Scotia Advantage. At Scotia Advantage, she worked weekdays from 11 am to 7 pm. For the Payor, she testified that she worked each weekday from 5:30 to 10 in the morning and from 10 to 1:30 in the evening. Her rate of pay fluctuated from \$13 to \$15 per hour.

[10] According to the reply, the Minister did not assume that the appellant's work hours were as she had stated. He assumed only the work hours were "alleged" by the appellant.

[11] Even if the appellant had worked full-time hours for the Payor, counsel for the respondent submits that this is not consistent with arm's length terms of employment. It is submitted that an arm's length employee would not agree to such unusual hours of work at the low hourly wage that was given.

[12] I agree with the respondent's submission. It seems unlikely that an arm's length employee would agree to work at the stated hourly wage for five days a week at the two daily shifts that were alleged, starting early in the morning and finishing early the next morning.

[13] In any event, I am satisfied that the decision of the Minister is reasonable because the appellant and her husband did not provide clear and cogent evidence regarding the details of the employment relationship during the period at issue. Such details include the number of hours worked, the amount paid for the services, and how the pay was determined.

[14] The appellant submits that she should not be denied employment insurance benefits based on minor discrepancies in her pay and in her hours of work. I reject this submission because the evidence was not sufficiently detailed or cogent for me to determine whether the discrepancies were minor or not.

[15] The Minister's decision that the terms of employment were not substantially similar to arm's length terms was entirely appropriate in these circumstances.

[16] Before concluding, I would comment that the appellant expressed concern about the communication of the decision provided to her by the Canada Revenue Agency. I have set out below the explanation provided by the appeals division in a letter dated August 17, 2010.

After conducting a complete and impartial review of all of the information relating to the appeal, it has been determined that this employment was excluded from

insurable employment. After considering all of the circumstance [sic] of the employment, the Minister is not satisfied that a substantially similar contract of employment would have been entered into if you had been dealing with each other at arm's length. You were not dealing at arm's length with Seven Eight Six Trucking Ltd. Therefore, your employment was excluded from insurable employment.

[17] The above explanation could have been more clearly worded, and it is unfortunate that it was not. However, this does not affect the outcome of the appeal. In this regard, I am satisfied that the reply filed by the Minister is sufficiently clear as to the grounds for the Minister's decision.

[18] The appeal will be dismissed and the decision of the Minister will be confirmed.

Signed at Toronto, Ontario this 2<sup>nd</sup> day of March 2011.

“J. M. Woods”

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Woods J.

CITATION: 2011 TCC 133

COURT FILE NO.: 2010-2733(EI)

STYLE OF CAUSE: FERIN N. YUSUF and THE MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: February 18, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: March 2, 2011

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Patrick Grayer (student-at-law)  
Aman Sandhu

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

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