Docket: 2010-3680(IT)I

BETWEEN:

MARTIAL MORISSETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 12, 2012, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the appellant:	Catherine Saint-Germain
Counsel for the respondent:	Marie-France Dompierre

JUDGMENT

The appeal from the assessment made under the *Income Tax Act*, by the Minister of National Revenue for the 2009 taxation year is allowed and the reassessment is vacated in accordance with the attached Reasons for Judgment delivered orally at the hearing.

Signed at Ottawa, Canada, on this 13th day of February 2012.

"Alain Tardif"

Tardif J.

Translation certified true
on this 18th day of October 2012

François Brunet, Revisor

Citation: 2012 TCC 37
Date: 20120213
Docket: 2010-3680(IT)I

BETWEEN:

MARTIAL MORISSETTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT
(Delivered orally from the bench on January 12, 2012)

Tardif J.

[1] This is an appeal from an assessment made in respect of the appellant by the Minister of National Revenue (the Minister) under the *Income Tax Act* for the 2009 taxation year regarding $2,040 received as a taxable allowance from an office or employment.

[2] First, I think it is important note that the underlying facts of the case, which the Minister took into account to explain and justify the assessment being appealed from, have been admitted.

[3] The dispute mainly involves the interpretation of the admitted and available facts.

[4] The facts admitted by the appellant are as follows:

(a) During the taxation year at issue, the appellant was an employee of the St. Lawrence Seaway Management Corporation (the employer);

(b) The employer's collective agreement provides a fixed amount of $20 per meal when the appellant;

- works more than two hours overtime;
- works outside of his regularly assigned place of work;
- does not have access to the place where he normally eats;

(c) During the taxation year at issue, the appellant received $2,040 as meal allowances from his employer;

(d) The employer included this amount as income from an office or employment on the "Statement of Remuneration Paid T4" form.

[5] The judgment was delivered orally from the bench. Moreover, the transcript is attached to this judgment and is an integral part thereof. Since the judgment could have an impact or effects on some other cases, I take the liberty of briefly summarizing the judgment from the bench.

[6] The appeal raises two issues: the first is whether the fact that the employer identifies a meal allowance as a taxable benefit is a relevant, serious and valid indication to bind the Agency in that it must validate the employer's interpretation.

[7] The answer is negative, particularly if it is the product of a superficial and arbitrary analysis.

[8] In this case, it would appear that the allowance was treated differently over the years. At the beginning, the expenses were simply reimbursed according to disbursements. As this process entailed an administrative burden, the employer suggested a simplified management process, which the workers endorsed.

[9] Subsequently, then the allowances were made payable and deemed non-taxable. Lastly, after a directive was issued stating that an allowance of more than $17 per meal would be considered unreasonable, the employer unilaterally concluded that this was a taxable benefit. Thus, after this directive was issued, the employer modified its approach; it then included the amount on the workers' T-4 slips; including the appellant's form.

[10] The second issue is whether or not the allowance is a reasonable amount.

[11] Whether the amount was reasonable must be determined for the period in issue and not in relation to contemporary conditions. I do not believe that the amount of such an allowance should be a set amount. Several factors can and must be taken into consideration. I would include in particular salaries, the region, the cost of an average normal meal, which obviously must include tax and tip.

[12] In the case at bar, I do not believe that the exercise requires an in-depth analysis, especially since I have noted that the appellant often had to pay that amount to have ordinary, reasonable meals with no extras.

[13] The respondent's determination that the amount is unreasonable is not based on any evidence or relevant factor; it is based on an essentially arbitrary approach. I thus decide that the allowance of $20.00 was entirely reasonable in that it corresponds to the real costs incurred, which, moreover, were clearly proven by the evidence.

[14] As a result, the appeal is allowed and the assessment under appeal is vacated.

Signed at Ottawa, Canada, on this 13th day of February 2012.

"Alain Tardif "

Tardif J.

Translation certified true
on this th day of September 2012

François Brunet, Revisor

APPENDIX

[OFFICIAL ENGLISH TRANSLATION]

TAX COURT OF CANADA
RE: INCOME TAX ACT

2010-3680(IT)I

BETWEEN: MARTIAL MORISSETTE
Appellant,

and

HER MAJESTY THE QUEEN,
Respondent.

Held before the Honourable Justice ALAIN TARDIF, Tax Court of Canada, in the offices of the Courts Administration Service, Montréal, Quebec,
on January 12, 2012.

REASONS FOR JUDGMENT

APPEARANCES:

CATHERINE SAINT-GERMAIN
For the appellant

Marie-France Dompierre
For the respondent:

Registrar/technician: Julie Lafrenière

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IT-5577 JEAN LAROSE, O.S.

HIS HONOUR: Listen, I am ready to render my decision immediately, which means, in my opinion, that there is no doubt whatsoever in my mind as to the decision required under the circumstances.

In the light of the introductory remarks of the parties, it was very easy to narrow the issue in dispute in the sense that… it was then confirmed by the admissions that specifically addressed, involved and focused on, the presumptions of fact that the Agency made in making the assessment. Moreover, all of the presumptions of fact were admitted. Thus, as far as I am concerned, there is very little ambiguity with respect to the facts available on the basis of which a decision can be rendered in this case.

The Court will add some nuances and precisions, but which, in my opinion, do not in any way change the facts that were presumed in the reply to the notice of appeal. In particular, the evidence shows that the employer, at one time, reimbursed those expenses and that it had become complicated and complex in that the prices on the invoices varied, there were often taxi fares added to that and I do not think it is an exaggeration to state that under similar circumstances, for an organization like that of the appellant's employer, it had become, in a way, monstrous with respect to administration.

Indeed, it is a phenomenon that is seen increasingly such that employers who obviously aim to reduce management and

administrative costs, to use methods that are easier, less expensive and more efficient and that, in some way, will deal with problems.

Thus, in this case, the two parties agreed that, in specific circumstances, there would be an allowance paid to employees of the employer.

I understood from the introductory remarks and the documentary evidence filed that if the $20 amount at issue had been $16, $17 or $18, the case probably would have never ended up in the Tax Court of Canada.

Thus, we have to ask whether between $18 and $20 there is enough room to deem unreasonable something that was considered reasonable in June 2009. Starting at $17 in 2009 and extrapolating what it could represent, this would imply an increase of more or less five percent (5%) per year.

That seems to me… Listen, as far as I'm concerned, that seems completely, completely, completely, in line with what could be called or deemed reasonable. It is most certainly not unreasonable to be allocated $20 to cover the cost of a meal and related expenses. I mean, the example was well chosen, the appellant in the circumstances was not working overtime but he was working more than fifty kilometres (50 km) outside of his region. He was quite right to refer to everything surrounding the situation in some way. The morning and

afternoon coffee break, lunch, I don't think it's splitting hairs, as a whole it involves considering whether $20 is excessive and unreasonable.

With respect for the contrary view, I conclude that it seems entirely, entirely within the accepted standards of reasonableness, especially since it is something that was negotiated; it is something that the employer agreed to; it is something that the employer, for reasons that concern him, and I have to comment on the statements made by Counsel for the Agency, namely, that the that the main witness this morning should have been the employer.

In this regard, I would state that not necessarily because of the fact that the employer is not an appellant; it is the individual affected by the decision who appeared in court this morning. I mean, the employer, in my view, of course, could have testified, but the appellant bears the burden of proof, but that does not prevent the respondent from also submitting evidence, if the respondent is of the opinion that the evidence to be filed by the appellant will be contrary to the respondent's claims. That does not prevent her from calling a witness to contradict in this case, in particular, the appellant.

The employer, according to the appellant's explanations, reimbursed the actual expenses at one time. Then it changed its way of doing things, way of operating, method of managing expenses and it would appear that for a given period there were no problems, it was seen as reasonable and

respecting the applicable standards. But suddenly, probably after reading the document issued by the Agency dated June 11, 2009, the employer decided to change its way... its way of dealing with that matter by unilaterally deciding that $20 was not the amount indicated in a paragraph in which in fact... an amount of up to $17 will be regarded as reasonable.

It's true, 2009 is the period covered by the assessment in issue, but $20, $17, is in any event, in my opinion, and we're in the Montréal area, that seems to me, as far as I am concerned... Of course it is not something that can be resolved the same way as a simple mathematical exercise, but $20 in 2009-2010-2011, in the circumstances, seems to me to be quite, quite appropriate.

So that answers the question or the aspect of reasonableness. As for the way in which the amount was treated by the employer, listen, the employer was likely acting in good faith, it did not … I assume that it did not act in bad faith, but in my opinion, it was not up to the employer to decide unilaterally what the ultimate tax treatment of this amount should be.

The approach should have been that both parties, and if that had been the case these two parties in a common approach had referred to Revenue Canada, at that point they would have received a notice that would have probably satisfied both parties, that would have had the effect of

probably ensuring that the Department could have more quickly and easily worked with them to assess the versions of the two parties at issue and would have been able to make a decision that I am convinced would have probably been acceptable to both parties.

While the employer decided unilaterally to describe this amount as a taxable benefit, in my opinion, that does not bind the Court in any way.

For all of these reasons, obviously, I would allow the appeal, and vacate the assessment and I ask the Department to review the file so that it is restored to... or such that the amount that was treated as taxable be treated as non-taxable.

END OF REASONS FOR JUDGMENT: 11:13 a.m.

Translation certified true
on this 18th day of October 2012

François Brunet, Revisor

CITATION:	2012 TCC 37
COURT FILE NO.:	2010-3680(IT)I
STYLE OF CAUSE:	Martial Morissette v. Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 12, 2012
REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
DATE OF JUDGMENT:	February 13, 2012

APPEARANCES:

Counsel for the appellant:	Catherine Saint-Germain
Counsel for the respondent:	Marie-France Dompierre

COUNSEL OF RECORD

For the appellant:

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