

Docket: 2018-598(IT)I

BETWEEN:

ALEXANDRE LE BOUTHILLIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on January 18, 2019, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant: Yacine Agnaou  
Counsel for the respondent: Julien Dubé-Sénécal

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act*, dated October 6, 2016, for the 2013 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 27th day of August 2019.

«Réal Favreau»

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Favreau J.

Citation: 2019 TCC 176

Date: 20190827

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BETWEEN:

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Appellant,

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### **REASONS FOR JUDGMENT**

Favreau J.

[1] The appellant, Alexandre Le Bouthillier, is appealing a reassessment made under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended (the Act), by the Minister of National Revenue (the Minister), dated October 6, 2016, for the 2013 taxation year.

[2] When he filed his income tax return for the 2013 taxation year, the appellant claimed a deduction for employment expenses in the amount of \$27,406 as «other expenses». Under the reassessment, the Minister adjusted the deduction the appellant claimed for «other expenses» to \$2,999.

[3] To calculate the tax payable by the appellant, the Minister relied on the following facts:

- a) the appellant was a salaried employee at the Planora Inc. (Planora) company as Vice President of Science and Technology;
- b) the contract of employment stipulated that the annual base salary was \$200,000 and that the appellant could receive 25% of the base salary as an annual bonus;

- c) during the period at issue, the appellant reported employment income of \$22,364 and a retiring allowance of \$166,666.60 from Planora;
- d) the appellant received employment income from Planora for only a few weeks during the 2013 taxation year;
- e) when he filed his income tax return for the 2013 taxation year, the appellant claimed an amount of \$27,406 as «other expenses»;
- f) during the audit, the appellant provided a statement of employment expenses, on which the Minister adjusted the expenses as follows:

Employment expense	Amount reported	Amount claimed in the audit	Amount allowed	Amount disallowed
Entertainment		\$6,507	\$558	\$5,949
Lodging		\$603	\$0	\$603
Telephone and internet		\$2,504	\$14	\$2,490
Parking		\$56	\$0	\$56
Supplies		\$2,650	\$480	\$2,170
Travelling expenses		\$17,400	\$0	\$17,400
Work-space-in-the-home expenses		\$3,893	\$1,947	\$1,946
Total	\$27,406	\$33,613	\$2,999	\$30,614

- g) Under his contract of employment, the appellant was reimbursed for all expenses he incurred in the course of his duties;
- h) during the 2012 taxation year, Planora was sold;
- i) Jean-François Gagné was a shareholder of Planora;

- j) upon direction from the new shareholders and because he was the only representative in Canada, Jean-François Gagné only signed the Form T2200 «Declaration of Conditions of Employment»;
- k) Jean-François Gagné confirmed no conditions of employment;
- l) nearly all of the employment expenses the appellant claimed as «other expenses» were incurred after his contract of employment with Planora had ended;

#### Entertainment

- m) the amount of \$5,949 ( $\$11,898 \times 50\%$ ) claimed as entertainment expenses was not incurred by the appellant;
- n) the appellant was never away for 12 consecutive hours from the region where he was required to work;

#### Lodging

- o) the amount of \$603 claimed for lodging was not incurred in the course of the appellant's employment activities;

#### Telephone and internet

- p) the amount of \$2,490 claimed for telephone and internet was not incurred in the course of the appellant's employment activities;

#### Parking

- q) the amount of \$56 claimed for parking was not incurred in the course of the appellant's employment activities;

#### Supplies

- r) the amount of \$2,170 claimed for supplies is disallowed because it was incurred in connection with, among other things, the purchase of equipment, such as a monitor and headset;

#### Travelling expenses

- s) the amount of \$17,400 claimed for travelling expenses was not incurred in the course of the appellant's employment activities;

Work-space-in-the-home expenses

- t) at the time of the audit, the appellant claimed 25% of the following expenses:

	Statement of expenses
Monthly rent for 12 months	\$14,705
Electricity and heating	\$3,538
Furnace maintenance	\$127
Total expenses	\$18,370
Total of expenses claimed (25%)	\$3,893

- u) the Minister disallowed 50% of the amount claimed, that is, \$1,946, on the grounds that two people were responsible for lodging expenses.

Background

[4] Mr. Le Bouthillier became an employee of Planora Inc. (Planora) on March 27, 2002, the year it was incorporated. Planora developed and administered a scheduling system for staff of large air and rail companies and government organizations, such as hospitals.

[5] In June 2012, Planora was sold to RedPrairie Corporation, a private American company with its headquarters in Atlanta. As part of that transaction, Planora first transferred its technological assets to RedPrairie Corporation and subsequently paid a dividend to its shareholders, who ultimately sold all issued and outstanding shares of Planora to RedPrairie Canada Holdings Inc., a wholly owned subsidiary of RedPrairie Corporation.

[6] After the transaction described above, on July 5, 2012, the appellant signed an amended and restated indeterminate contract of employment with Planora. His duties were that of Vice President, Science and Technology, and he could perform them from Dijon, France, as he did previously. His base salary was \$200,000, and

he was entitled to an annual bonus of up to 25% of his base salary. In addition, the appellant was entitled to reimbursement for all reasonable expenses incurred in the course of his duties. However, rent and home office expenses, expenses associated with travelling between the company's offices and expenses for entertaining potential clients were not eligible for reimbursement. Jean-François Gagné signed the contract on behalf of Planora even though he was no longer in charge of Planora's employees.

[7] In the months that followed the sale of Planora to RedPrairie Corporation, RedPrairie Corporation itself merged with JDA Software Group Inc., headquartered in Arizona. Following that merger, the appellant's position at Planora was eliminated, and the appellant's employment was terminated on January 7, 2013, the very day the appellant was given the employment termination letter.

[8] The termination letter stipulated that the appellant was entitled to: (a) compensation for failure to give prior notice equivalent to 12 months of base salary, less withholding taxes and other statutory deductions; (b) vacation pay of \$6,474.74, less withholding tax and other statutory deductions; (c) a bonus of \$4,500, less withholding tax and other statutory deductions for services rendered in the fourth quarter of 2012; (d) a sum of \$6,500 to cover his lodging expenses; (e) a fixed sum of \$500 as compensation for the loss of benefits associated with his participation in the company's group benefits plans; and (f) access to the services of an agency offering an employee placement program, all at the company's expense.

[9] The termination letter stated that the appellant had until January 18, 2013, to submit his statements of expenses incurred for company business up to January 7, 2013.

[10] The termination letter also stipulated that the appellant was required to return in good condition all company property he had in his possession as well as confidentiality, non-solicitation and non-competition agreements.

[11] The appellant accepted the terms and conditions of the termination letter by signing the bottom of the letter on February 19, 2013, and by signing a release that same day. Jean-François Gagné signed the termination letter on behalf of Planora because he was Planora's only Canadian agent.

### Testimonies

[12] Jean-François Gagné testified at the hearing to explain that, although he signed the appellant's amended and restated contract of employment on July 5, 2012, and the appellant's termination letter on January 7, 2013, he was not personally involved in the negotiations with the appellant because the appellant did not report to him. According to him, the appellant's amended and restated contract of employment was prepared and negotiated by the human resources department at RedPrairie Corporation, and the appellant's termination letter was prepared and signed by the human resources department of JDA Software Group Inc.

[13] Mr. Gagné explained that he acted on an interim basis during the transition period between the sale of Planora and the merger with JDA Software Group Inc. and stated that he did not know the details of the specific agreements signed with the approximately 900 employees who lost their jobs after the merger in January 2013.

[14] Mr. Gagné was unable to explain why the Form T2200 (Declaration of Conditions of Employment) he signed for Planora on July 2, 2014, regarding the appellant's conditions of employment indicates a period of employment from January 1, 2013, to December 1, 2013, or the fact that the company asked the appellant to incur certain expenses (travel, internet and entertainment for corporate clients) for which the appellant did not receive allowances or reimbursement. Mr. Gagné admitted to having signed the form in question without verifying the accuracy of the information it contained. According to him, the document was prepared by the accounting department of JDA Software Group Inc.

[15] Annick Bernatchez testified at the hearing essentially to identify individuals to which the appellant had sent emails, which the appellant submitted into evidence, in 2013 after his employment was terminated. According to her, the appellant met occasional needs for the managers of JDA Software Group Inc. (human resources, information technology and taxation). The appellant hired Ms. Bernatchez in April 2011 to manage the office. She left the company in March 2012 for maternity leave and returned to work in April 2013. She left the Canadian subsidiary of JDA Software Group Inc. in November 2018, when the Montreal office closed.

[16] Mr. Le Bouthillier also testified at the hearing to explain the circumstances that led him to claim employment expenses for the 2013 taxation year. In 2013, Mr. Le Bouthillier was a Canadian resident on a three-year temporary assignment to Dijon, France, where he had a home office. Planora had an office in Paris at the time.

[17] As part of the audit conducted by the Canada Revenue Agency (CRA), the appellant provided the following information:

- Form T2200 (Declaration of Conditions of Employment) for 2013;
- Form T777 (Statement of Employment Expenses) for 2013;
- receipts for employment expenses (office supplies) and lodging;
- mileage logs for business trips;
- a log of business trips and transportation expenses;
- his contract of employment;
- a home office plan (dimensions) with a description of furniture and equipment used;
- telecommunications invoices;
- entertainment expenses.

[18] As explained in paragraph 15 above, the appellant submitted into evidence email exchanges he had with managers of JDA Software Group Inc., and those emails demonstrate the nature of the services he rendered after his employment with Planora ended. The services in question were occasional and intended to ensure a smooth transition of operations.

[19] On cross-examination, the appellant confirmed that, for the 2012 taxation year, he claimed employment expenses of only \$1,531 and no deductions for the rent for his office in Dijon and for work-space-in-the-home expenses.

#### The issue

[20] The issue concerns the deductibility of the employment expenses of \$30,614 the appellant claimed as «other expenses» for the 2013 taxation year.

#### Positions of the parties



[21] The appellant argues that the facts on record demonstrate that he is entitled to deduct the expenses claimed. According to him, it is necessary to look at all of the facts on record and determine the common intention of the parties. The Form T2200 prepared by his employer on July 2, 2014, clearly reflects the reality, indicating that he was an employee of Planora until December 1, 2013. Moreover, Jean-François Gagné confirmed in his testimony that, to his knowledge, the appellant continued to perform tasks to finalize certain files and ensure the smooth transfer of other files after signing the termination letter on January 7, 2013, and that he interacted with other employees of JDA Software Group Inc. during that transition period. According to the appellant, those two elements overcome the assumptions of fact on which the Minister based the assessment.

[22] According to the respondent, the Form T2200 signed by Jean-François Gagné has no probative value because he did not prepare the document and because he signed it without verifying the accuracy of the information it contained. In the respondent's view, the appellant's employment at Planora ended on January 7, 2013, and the termination letter did not require the appellant to perform any supplementary duties after his employment ended, aside from returning the property belonging to Planora that he had in his possession. The appellant cannot deduct the expenses he claimed because he was under no obligation to incur those expenses as part of his employment.

### Legislative framework

[23] The Act contains very specific provisions on the deductibility of employment expenses.

[24] Subsection 8(2) of the Act stipulates that only the amounts provided in that section may be deducted in computing a taxpayer's income from employment.

[25] In this case, the only provisions of the Act that could permit a deduction are paragraph 8(1)(h) and subparagraph 8(1)(i)(iii), which stipulate that:

8(1) . . .

(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 travelling 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

...

(i) an amount paid by the taxpayer in the year, ... if the amount paid ... is required to be included in the taxpayer's income for the year, as

...

(iii) the cost of supplies that were consumed directly in the performance of the duties of the ... employment and that the ... employee was required by the contract of employment to supply and pay for ...

[26] With regard to meal expenses, subsection 8(4) of the Act imposes specific conditions. No meals may be claimed unless the functions of the employee:

- a) required the employee to be away from the municipality and from the metropolitan area where the employer's establishment to which the employee ordinarily reported for work was located;
- b) for a period of not less than twelve hours.

[27] Subsection 8(4) reads as follows:

(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.

[28] Lastly, subsection 8(10) of the Act requires that the prescribed Form T2200 be signed by the employer as a prior condition to the deductibility of the employment expenses. Subsection 8(10) reads as follows:

(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.

### Analysis

[29] As a general rule, employers provide their employees with what they need to perform their duties. If employees are required to incur expenses in the course of their duties, employers provide them with an allowance to reimburse them for the expenses they incurred. For employees to be entitled to claim employment expenses, they must demonstrate that their contract of employment required them to incur certain expenses and that they were not reimbursed for those expenses.

[30] In this case, the termination letter dated January 7, 2013, did not stipulate that the appellant was required to pay any particular expenses.

[31] The appellant gave a general testimony on the nature of the services he rendered after January 7, 2013, and the nature of the expenses he incurred, but he presented no evidence concerning the existence of specific written or verbal employment conditions or of an explicit agreement with any party under which he was required to pay the expenses he claimed.

[32] On the contrary, the termination letter dated January 7, 2013, clearly states that the appellant's position was eliminated and that he was no longer an employee of Planora as of January 7, 2013.

[33] The termination letter even stipulated that the appellant was entitled to reimbursement of his employment expenses incurred up to January 7, 2013.

[34] The only evidence the appellant submitted to establish that he was an employee of Planora from January 1, 2013, to December 1, 2013; that he had to incur his own expenses in the course of his duties that were not all reimbursed; and that he had to travel to places other than Planora's business locations is Form T2200, signed by Jean-François Gagné on July 2, 2014.

[35] Unfortunately for the appellant, I cannot give that form any probative value because Mr. Gagné admitted in his testimony that he had signed it without verifying the accuracy of the information it contained and because it contradicts the termination letter dated January 7, 2013. Under the circumstances, the Form T2200 cannot be considered a determining factor in the appellant's conditions of employment because the evidence leads to different conclusions.

[36] Based on an objective reading of the termination letter, there is no indication of any obligation on the appellant's part to perform any duties or incur any expenses in order to receive the compensation provided in the letter, aside from returning the property of Planora he had in his possession in good condition. The compensation equivalent to 12 months' salary is for the failure to provide reasonable notice of termination. The payment of that compensation is not subject to any conditions, aside from signing a release.

### Conclusion

[37] The expenses the appellant claimed are not deductible because they were not incurred for the purpose of earning employment income and because the appellant was not bound by contract to pay for those expenses without reimbursement from Planora.

[38] The expenses the appellant incurred between January 1 and January 7, 2013, were reimbursable expenses. Those expenses cannot be deducted if the appellant did not submit a reimbursement request before January 18, 2013, as required.

[39] Consequently, the appeal is dismissed.

Signed at Montréal, Quebec, this 27th day of August 2019.

«Réal Favreau»

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Favreau J.

CITATION: 2019 TCC 176

COURT FILE NO.: 2018-598(IT)I

STYLE OF CAUSE: ALEXANDRE LE BOUTHILLIER AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 18, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: August 27, 2019

APPEARANCES:

Counsel for the appellant: Yacine Agnaou  
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