

Date: 20030204

Docket: A-468-01

Neutral Citation: 2003 FCA 62

**CORAM: DESJARDINS J.A.
LÉTOURNEAU J.A.
NADON J.A.**

BETWEEN:

**ATTORNEY GENERAL
OF CANADA**

Applicant

and

MONDO-TECH INTERNATIONAL INC.

Respondent

Hearing held in Montréal, Quebec, on February 4, 2003.

Judgment delivered from the bench at Montréal, Quebec, on February 4, 2003.

REASONS FOR JUDGMENT OF THE COURT:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
**(Delivered from the bench at Montréal, Quebec,
on February 4, 2003.)**

LÉTOURNEAU J.A.

[1] This is an application for judicial review of a decision of a Deputy Judge of the Tax Court of Canada setting aside the determination by the Minister of National Revenue that Carlos Perez Miqueiro (the worker) was in insurable employment with the respondent from

August 1, 1998 to January 12, 1999 within the meaning of the *Employment Insurance Act*, S.C. 1996, c. 23.

[2] An analysis of both the agreement between the Government of Canada and the respondent and the tripartite agreement between the respondent, the worker and Métalec Inc. (an analysis not done by the Deputy Judge) indicates that the worker was working as an intern for an international youth internship program. The analysis also shows that the worker was hired and paid by the respondent, that it assumed some responsibilities for the worker and that the worker had to submit to the authority of the respondent on any matter that related to the program or that might have an impact on the program. Lastly, it was the respondent who had the power, at its sole discretion, to rescind the agreement with the worker.

[3] In our view, these agreements show that the respondent was the worker's employer, and that the Deputy Judge erred in finding that the respondent acted as a mere intermediary.

[4] The Deputy Judge also erred in finding that the worker did not receive any remuneration because the amounts he received came from a grant from the Canadian International Development Agency. Article 4.1.15 of the tripartite agreement provided that the worker would be paid by the respondent on production of bills at the beginning of each month.

[5] Lastly, the Deputy Judge completely ignored the provisions of section 5 and paragraph

6(b) of the *Employment Insurance Regulations*, SOR/96-332, which state that employment of a trainee outside Canada or partly outside Canada is insurable employment provided that the conditions set out in those sections are met, which is the case here.

[6] For these reasons, the application for judicial review will be allowed with costs, the decision of the Deputy Judge of the Tax Court of Canada dated July 17, 2001 will be set aside, and the matter will be returned to the Chief Judge of the Tax Court of Canada or to a judge designated by him for a rehearing on the basis that the appeal by the respondent of the Minister's determination made on August 6, 1999 must be dismissed.

“Gilles Létourneau”

J.A.

Certified true translation

Mary Jo Egan, LLB

FEDERAL COURT OF CANADA
APPEAL DIVISION

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REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF CANADA
APPEAL DIVISION

SOLICITORS OF RECORD

DOCKET: A-468-01

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LÉTOURNEAU J.A.
NADON J.A.

STYLE OF CAUSE:

ATTORNEY GENERAL OF CANADA

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Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 4, 2003

REASONS FOR JUDGMENT OF THE COURT BY: Létourneau J.A.

DATED: February 4, 2003

APPEARANCES:

Nathalie Labbé
Mounes Ayadi

FOR THE APPLICANT

SOLICITORS OF RECORD:

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FOR THE APPLICANT