

Date: 20061130

**Dockets: A-689-04
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A-704-04
A-705-04**

Citation: 2006 FCA 392

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

BETWEEN:

CLAUDE TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

JACQUES TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

MICHEL TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

RÉMI TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

NADINE LEBLOND

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

SÉBASTIEN ROY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

BENOÎT ROY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

ALEX FOURNIER

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

STÉPHANE AUBUT

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

DENIS LÉVESQUE

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

MARTINE CÔTÉ

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

STÉPHANE APRIL

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

GUY ROUSSEAU

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

BETWEEN:

VALÈRE JALBERT

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Hearing held at Québec, Quebec, on November 29, 2006.

Judgment delivered at Québec, Quebec, on November 30, 2006.

REASONS FOR JUDGMENT OF THE COURT

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REASONS FOR JUDGMENT OF THE COURT

[1] The appellants, 14 in number, are appealing a decision of Mr. Justice Angers of the Tax Court of Canada dated February 10, 2004.

[2] In his decision, the judge upheld the decision of the Minister of National Revenue (the Minister) dated February 7, 2000, that the employment of five of the appellants at Service Agro-mécanique inc. (the employer) was not insurable on the ground that they would not have entered into a similar contract of employment had they been dealing with the employer at arm's length. With respect to the nine other appellants, the Minister determined their insurable hours and insurable earnings.

[3] Specifically, the judge found that it was reasonable for the Minister to decide that the employment of the five appellants who were not at arm's length with their employer was not insurable; in the case of the nine other appellants, the judge concluded that, absent sufficient evidence, the Minister's determination regarding their insurable hours and insurable earnings should not be altered.

[4] Despite the efforts of their counsel, Mr. St-Jean, the appellants have not persuaded me that Angers J. made an error in fact or in law that would justify our intervention.

[5] Regarding the appellants who were not at arm's length with the employer, the judge considered, *inter alia*, the documentary evidence indicating that they were frequently and regularly at their place of employment outside of their work period; the judge also considered the employer's

minutes of meetings, which supported the respondent's position that a scheme to abuse the employment insurance system had been put in place.

[6] In addition, the judge considered and rejected the appellants' argument that they were working without pay since, in his view, the amount of work produced by the appellants was completely unreasonable and, consequently, could only amount to an abuse of the employment insurance system.

[7] Finally, the judge did not believe the appellants' testimony that they had not done much work while they were laid off.

[8] The judge came to similar conclusions with respect to the nine appellants who were at arm's length with the employer.

[9] First, he did not accept their testimony regarding the time spent at their place of employment while they were laid off given that, in his opinion, they had tried to minimize how often they were there.

[10] Based on the documentary evidence before him, the judge was satisfied that these appellants were frequently and regularly at their place of employment.

[11] He also took into account, correctly in my view, that the employer had pleaded guilty to 29 counts of issuing false records of employment.

[12] Accordingly, I would dismiss the appeal with costs. A copy of these reasons will be placed in each of the related dockets in lieu of reasons.

“Marc Noël”

J.A.

“I concur.
Desjardins, J.A.”

“I concur.
Nadon, J.A.”

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKETS: A-689-04, A-690-04, A-691-04,
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STYLE OF CAUSE: Claude Tremblay, Jacques
Tremblay, Michel Tremblay,
Rémi Tremblay, Nadine Leblond,
Sébastien Roy, Benoît Roy, Alex
Fournier, Stéphane Aubut, Denis
Lévesque, Martine Côté, Stéphane
April, Guy Rousseau, Valère
Jalbert v. MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: Québec

DATE OF HEARING: November 29, 2006

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: DESJARDINS and NOËL, J.J.A.

DATED: November 30, 2006

APPEARANCES:

Frédéric St-Jean
Simon-Nicolas Crépin

FOR THE APPELLANTS
FOR THE RESPONDENT

SOLICITORS OF RECORD:

Frédéric St-Jean
Sainte-Foy, Quebec
Department of Justice Canada
Montréal, Quebec

FOR THE APPELLANTS
FOR THE RESPONDENT