

Docket: 2006-1132(EI)

BETWEEN:

JANE SHATTLER,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on August 17, 2006, at Sept-Îles, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Benoit Mandeville

JUDGMENT

The appeal is dismissed and the decision rendered by the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of October 2006.

"Paul Bédard"

Bédard J.

Citation: 2006TCC492
Date: 20061010
Docket: 2006-1132(EI)

BETWEEN:

JANE SHATTLER,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] This is an appeal against a decision by the respondent that the appellant did not hold insurable employment during the period from May 15 to July 30, 2005 (the "relevant period") while working for 9036-8556 Québec Inc. (the "payer").

[2] To justify and explain his decision, the respondent relied on the following assumptions of fact:

5) The Appellant was related to the Payer within the meaning of the *Income Tax Act* because:

- a) the company has been incorporated on June 4, 1996;
- b) during the period under review, the shareholders of the payer were:
 - the Appellant with 32% of the shares,
 - Brian Shattler, Appellant's father, with 17% of the shares,

- Sally Kippen, Appellant's mother, with 17% of the share [*sic*],
 - Stacey Shattler, Appellant's sister, with 34% of the shares;
- c) the Appellant was related to a group of person [*sic*] who controls the Payer;
- d) the Appellant is in a non arm's length relationship with the Payer as defined in section 251 of the *Income Tax Act*.
- 6) In reaching his determination, the Respondent, the Minister of National Revenue, relied on the following assumptions of fact:
- a) the Payer operated a fishing boat under the name of "le C.J. Stacey";
- b) the Payer fishes turbot, halibut and few wrinkles [*sic*] in the Sept-Îles zones;
- c) during the 2004 season, the members of the crew were: Brian Shattler, Captain of the boat, Charlene Shattler, Brent Anderson and the Appellant, fishermen's helpers;
- d) during the 2005 season, the members of the equipage (crew) were: Brian Shattler, Captain of the boat ; Charlene Shattler and Brent Anderson, fishermen's helpers;
- e) during the period under review, the Appellant did not work on the boat, she never went out fishing because she was pregnant;
- f) during that period, the appellant worked for the Payer as a clerk or secretary;
- g) the duties of the Appellant were:
- wash clothes (laundry work) after each catch (her father [*sic*] and sister's clothes only, for approximately one hour of work at each time),
 - prepare meals prior to each catch (in fact sandwiches for 3 persons for an average of one hour of work at each time),
 - made deposit at bank (always made by her father, she only accompanied him),

- prepare the cheques for the bills to be paid (without no [sic] signing authority).
- h) previously to the period under review, the Payer never hired anyone to do those duties;
 - i) those duties were done by her father;
 - j) during the period under review, the Appellant generally worked at her father's house;
 - k) the Appellant did not have any schedule of work to follow;
 - l) the Payer did not have any control of the hours worked by the Appellant;
 - m) during the period under review, the Appellant received a fixed salary of \$900 per week, regardless of hours (60 hours per week at \$15 per hour);
 - n) the Appellant had a verbal agreement with the Captain and all members of the boat that everyone would receive the same salary during the fishing season;
 - o) her salary remained unchanged whether she did same hours as other fishermen or not;
 - p) she kept her fisherman [sic] salary as a clerk because it was easier to calculate;
 - q) considering the small duties of the Appellant, her salary was not reasonable;
 - r) considering her small workload, it is not reasonable to conclude that the Payer would have hired an other person, at the same salary, to do those tasks.

[3] All the facts alleged in paragraphs 5 and 6 of the Reply to the Notice of Appeal were admitted except those in subparagraphs 5(b), 6(g), 6(q) and 6(r), which were denied.

[4] During the relevant period, the appellant received a fixed salary of \$900 per week for a total of \$9,900. The appellant claimed that she worked an average of 60 hours per week for a total of 660 hours.

[5] It must be noted that the respondent determined that this employment was not insurable because it was subject to paragraph 5(2)(i) of the *Employment Insurance Act* (the "Act"). The respondent submitted 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 was not reasonable to conclude that the appellant and the payer would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[6] The Federal Court of Appeal has repeatedly defined the role conferred on Tax Court of Canada judges by the *Act*. That role does not allow the judges to substitute their discretion for that of the Minister of National Revenue (the "Minister"), but carries with it the obligation to "verify whether the facts inferred or relied on by the Minister are real and were correctly assessed having regard to the context in which they occurred, and after doing so ... to decide whether the conclusion with which the Minister was "satisfied" still seems reasonable."¹

[7] In other words, before deciding that the conclusion with which the Minister was satisfied still seems reasonable, I must, in light of the evidence before me, verify whether the Minister's assumptions are, in spite of everything, valid in whole or in part, considering the factors stated in paragraph 5(3)(b) of the *Act*.

[8] Therefore, it is appropriate to ask whether the appellant and the payer would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[9] The appellant had the burden of proving that in the present case the Minister did not exercise his discretionary power in accordance with the applicable principles, that is, of showing that he did not examine all the relevant facts, or has failed to take into account elements that were relevant, or took into account facts that were not real. In this case, only the appellant testified in support of her position.

Appellant's testimony

[10] The appellant testified that during the relevant period:

¹ *Légaré v. Canada (Minister of National Revenue – M.N.R.)*, [1999] F.C.J. No. 878 (Q.L.), at paragraph 4.

- (i) her duties and responsibilities went far beyond those alleged in subparagraphs 6(f) and 6(g) of the Reply to the Notice of Appeal. She explained that she made 45 new fishing nets, repaired fishing nets, cleaned the payer's fishing boat and office and, lastly, did some administrative work such as paying bills and making entries in the logbook;
- (ii) she spent 360 hours making those 45 new fishing nets -- she explained that it takes an average of one hour to make one net;
- (iii) she spent 22 hours repairing fishing nets;
- (iv) she spent 22 hours cleaning the payer's boat;
- (v) she also spent 22 hours cleaning the payer's office;
- (vi) she spent 34 hours doing laundry work -- she explained that after each catch she washed her father's and sister's clothes and that it took her an average of one hour to do so;
- (vii) she spent 34 hours preparing meals -- she explained that before each catch she spent an average of one hour preparing meals for the members of the crew;
- (viii) she spent 5 hours making 5 bank deposits -- she testified that she drove her father to the bank since he was too tired to drive himself;
- (ix) the payer would have had to hire someone else to do her job if she had been unable to accept the position;
- (x) only Brent Anderson (a fisherman is helper and the only employee dealing at arm's length with the payer) was paid weekly on a regular basis.

[11] It is worth mentioning that the appellant gave birth to a child on July 31, 2005, a day after quitting her job.

Previous declaration

[12] On September 20, 2005, the appellant filled out a questionnaire² at the request of Human Resources and Skills Development Canada (the "questionnaire"). It is worth citing a few excerpts therefrom:

Question #2

What was your job title? / And what were your main duties?

Clerk / 40 nets are done in March – @ 7 hours each (During season: wash clothes after each catch, prepared meals prior to each catch), make deposits at bank, & pay bills.

Question #13

Are your hiring conditions (such as salary, schedule, insurance salaries, bonuses, or other..) in which you may receive, being granted to all other employees equally in the same way? (Kindly specify)

My salary remained unchanged – whether I did same hours as other fisherman or not. I kept my fishermans salary [sic] as clerk because it was easier to calculate.

Question #17

What methods are used to register your hours? (Clocking in (punch card), time sheets, calendar where hours scheduled and worked marked in, .. other) (Kindly specify)

no hours recorded for anybody. (March-hours included in salary paid during fishing season.) I went to Dads when I wanted.

Question #23

To the best of your knowledge, would the business have had to hire someone else to do your job if you were unable to accept the position?

...NO...

Dad would have done it like before.

Question #26

Who occupied this position before you did?

3 years ago, My Mom (didn't get salary received bonus year end via profits), since then Dad did it on his own.

Is this person still employed with the business?

...NO...

Mom took ill 3 years ago. When she did it, she was not on payroll. Dad paid her personally at year End. (Maybe via dividends??).

Analysis and conclusion

² Exhibit I-1.

[13] I note that the appellant's testimony contradicts her previous statements³ in the questionnaire regarding the period of the year in which the new fishing nets were made (in March as opposed to the relevant period), the number of nets that were made (45 as opposed to 40), and the number of hours needed to make a new fishing net (7 as opposed to 8 hours). It is also hard to believe that the new fishing nets were made, if any were actually made, during the relevant period (the fishing season) rather than before the opening of the fishing season, in the month of March for instance.

[14] I also note that the appellant testified that the payer would have had to hire someone else to do her job if she had been unable to accept the position. Again, the appellant's testimony clearly contradicts the answer she had given previously in responding to question 23 of the questionnaire.

[15] Concerning the tasks related to the cleaning of the payer's boat and office, I would point out that those tasks were mentioned neither in the questionnaire nor in the notice of appeal.

[16] As to the number of hours spent doing laundry work (34 hours) and preparing meals (34 hours), I find it remarkable that the appellant could come up with the exact number of hours there and yet could not remember the number of catches that took place in the relevant period when cross-examined by respondent's counsel.

[17] The appellant simply did not convince me that her duties and responsibilities went beyond those alleged in subparagraphs 6(f) and 6(g) of the reply to the notice of appeal and consequently that she spent 360 hours making new fishing nets during the relevant period, 22 hours repairing fishing nets and 44 hours cleaning the payer's boat and office.

[18] In fact, the appellant did not convince me that the Minister did not examine all the relevant facts, or that he failed to take into account elements that were relevant, or that he took into account facts that were not real. I am of the opinion, after reviewing the evidence, that the appellant and the payer would not have entered into a similar contract of employment if they had been dealing with each other at arm's length.

³ Exhibit I-1.

[19] In light of the evidence before me and after reviewing the factors stated in paragraph 5(3)(b) of the *Act* and verifying the validity of the Minister's claim, the conclusion with which the Minister was satisfied seems reasonable to me.

[20] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 10th day of October 2006.

"Paul Bédard"

Bédard J.

CITATION: 2006TCC492
COURT FILE NO.: 2006-1132(EI)
STYLE OF CAUSE: Jane Shattler v. M.N.R.
PLACE OF HEARING: Sept-Îles, Quebec
DATE OF HEARING: August 17, 2006
REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard
DATE OF JUDGMENT: October 10th, 2006

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Benoit Mandeville

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada