

Docket: 2007-2624(EI)

BETWEEN:

HERMEL BERTHELOT,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 17, 2008, at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for the Appellant: Max Stanley Bazin

Counsel for the Respondent: Mounes Ayadi

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision of the Minister of National Revenue, dated March 12, 2007, on the appeal made to him in respect of the period from May 22 to July 20, 2001, is confirmed.

Signed at Ottawa, Canada, this 7th day of February 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 2nd day of April 2008.

Brian McCordick, Translator

Citation: 2008TCC85
Date: 20080207
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REASONS FOR JUDGMENT

Lamarre J.

[1] The issue in the case at bar is whether the Appellant was employed in insurable employment with 9097-5665 Québec Inc./Services de Personnel Mainlist ("the Payor") from May 22 to July 20, 2001. The Minister of National Revenue ("the Minister") is of the opinion that she was not so employed. He relies on the following facts set out in paragraph 5 of the Reply to the Notice of Appeal ("the Reply") and reproduced below:

[TRANSLATION]

- (a) This file is part of a major investigation of several businesses, including the Payor, by HRSDC.
- (b) During the investigation, it was found that several companies were quickly changing names, e.g., Construction Ja-No Inc., Drakkar Construction Inc., 9080-5839 Québec Inc./Renwords, 9085-7186 Québec Inc./CINCO and 9097-5665 Québec Inc./Services de Personnels Mainlist (the Payor).
- (c) Immediately after any of these businesses closed, they were reopened under another business name with brothers, spouses or other relatives as nominees.

- (d) The businesses closed and moved when the creditors became too insistent, the workers demanded T4 slips or Records of Employment, or the federal or provincial government asked for information about operations.
- (e) All these businesses operated as placement agencies in the construction field, even though their CIDREQ records stated that they were construction, renovation, electrical, business management, labour management/supply or human resource management businesses.
- (f) The Payor in this matter, which incorporated on November 9, 2000, operated a labour management and supply business; the president, director and majority shareholder was Michel Brousseau.
- (g) Mr. Brousseau registered using an address on Monselet Street, but according to his own statement, he never did business at that address and his real address was at 9071 Pie IX Boulevard, Unit 6A, where he leased premises under the Payor's name.
- (h) The Payor operated as a labour supply business, primarily in the construction field.
- (i) The Payor recruited clients/employers as well as workers that it supplied to them.
- (j) There was a contract and/or agreement between the client/employer and the Payor, but there was no contract between the Appellant and the Payor.
- (k) The workers had to report their hours worked to the Payor by telephone.
- (l) Invoices were prepared and sent to the Payor's clients/employers, which then paid the Payor.
- (m) The following people were on the Payor's leased premises: a receptionist; Michel Brousseau, the President; Jessy Grenier, the person in charge of prospecting and pay; and Rival Cyr, the person in charge of recruiting workers.
- (n) Michel Brousseau was a nominee for the Payor. The true owner and manager of the business was Alain Couture.
- (o) In his first statement to an employment insurance officer, the Appellant claimed that he worked for the Payor as a [TRANSLATION] "messenger".
- (p) The Appellant claims that he had to bring nails, tools and other things to the construction workers; he was, he said, an errands person.

- (q) In the second version, which he gave to the investigations officer, he said that he went out to the sites to hand workers their wages.
- (r) Among other things, the Appellant claimed that he worked for the Payor from Monday to Friday and that he was paid a wage of \$16-\$17 per hour.
- (s) The people who worked on the Payor's premises confirmed that the Payor had no messenger or errands person and that Michel Brousseau looked after the distribution of wages.
- (t) The Payor business closed its doors in June 2001 at the latest, yet the Appellant submitted a Record of Employment (ROE) signed by Michel Brousseau on July 27, 2001, indicating that the last day worked was July 20, 2001.
- (u) In the summer of 2001, the Appellant made an EI benefit renewal claim in which he submitted two ROEs, including one signed by Mr. Brousseau, the Payor's representative.
- (v) The Appellant needed the ROE from the Payor in order to enable him to qualify for EI benefits.
- (w) The facts show that the ROE submitted by the Appellant was an ROE of convenience issued by the Payor solely to enable the Appellant to qualify for EI benefits.

[2] In summary, the Minister determined that the ROE issued by the Payor was one of convenience. The evidence discloses that the Appellant worked nights (from 10 p.m. to 5 a.m., five days per week) from mid-January 2001 to July 18, 2001, for a business called Services d'entretien Dupont. The Appellant quit his job with that business on one week's notice. The Appellant testified that he knew that this resignation, recorded on the ROE from that business, would not entitle him to employment insurance.

[3] According to the Appellant, at the same time as he did this job, he worked for the Payor during the daytime from May 22 to July 20, 2001. He said that he was hired to make deliveries to construction sites, deliver wages to employees and invoices to clients, and make bank deposits for certain employees. It is precisely this job that the Minister questions.

[4] Counsel for the Respondent successfully pointed out certain contradictions in the evidence that cause me as well to doubt the veracity of this employment.

[5] First of all, the Appellant began by saying that he applied for employment with the Payor by passing by its office, and was hired by the receptionist to do the work described above. This is already questionable because the premises are not visible from the street, and the Appellant no longer knew what floor the business was on, and was unsure of the address. He said that he sometimes handed people wages in cash, and therefore sometimes walked around carrying amounts up to \$4,000. Yet he was hired without further formality within a few days of applying for his employment, having provided no references. Later in his testimony, he said that Daniel Methot, whom he had known for a long time, had recommended that he apply for a job. Mr. Methot was allegedly also the person with whom he negotiated his salary.

[6] It is not a very credible starting point to suggest that a person was hired without any checks and then entrusted with rather significant sums of money, which, moreover, constituted the pay of other employees.

[7] The Respondent called Line Simoneau, the major investigations officer at the Department of Human Resources (HRD), as witness. During her investigation, she noticed that the Payor was one of a series of businesses that advertised themselves as personnel agencies and had been investigated for issuing false ROEs. In fact, Alain Couture, the instigator of all these businesses, was convicted on related criminal charges.

[8] Ms. Simoneau stated that Daniel Methot, with whom the Appellant acknowledged having negotiated, managed the operations of the business operating under the Payor's name (Mainlist). During her investigation, she met Mr. Methot and others involved in all of Mr. Couture's businesses. Based on her investigation, no one was hired as an errands person. Very few people were responsible for handing the various employees their pay and handling cash amounts. The Appellant was not one of them. Moreover, based on her investigation, no one was paid by direct deposit into a bank account. This contradicts the testimony given by the Appellant, who said that such direct deposits were among his duties. In addition, the investigation revealed that the Payor shut down no later than the end of June 2001. The ROE states that the Appellant's last day worked was July 20, 2001, This is another contradiction in the evidence, which was not explained by the Appellant.

[9] I agree with the Respondent that that the evidence, on a balance of probabilities, points to something else, namely that this job with the Payor was fictitious. An initial finding can be made that the Appellant deposited paycheques for the entire period in issue (though the Appellant did say that some of these cheques bounced). This suggests that he may have been remunerated by the Payor.

[10] However, the Appellant's evidence falls apart on the question of what work he actually did. In order for employment to be insurable, there must, in addition to remuneration, be work under a contract of service (paragraph 5(1)(a) of the *Employment Insurance Act*). But the contradictions identified in the evidence raise serious doubts as to whether the Appellant actually rendered services to the Payor. The Appellant was unable to satisfy me or show that the allegations of fact in the Reply, on which the Minister relied when he determined that there was not genuine employment, were unfounded. As Justice Garon (as he then was) held in *Duquette et al. v. The Queen*, 93 DTC 833, [1993] T.C.J. No. 757 (QL), ". . . the Minister may rely on statements by third parties and on the report of a commission of inquiry and take for granted that what it advances is true. The onus is on the Appellant to demolish those presumptions." (See the reference in *Vézina v. Canada*, [2001] T.C.J. No. 564 (QL), at paragraph 16.)

[11] In fact, the Federal Court of Appeal has confirmed that our Court is justified, under a broadened discretion conferred by subsection 18.15(4) of the *Tax Court of Canada Act*, in admitting hearsay evidence if it is relevant and reliable (see *Selmeci v. Canada*, [2002] F.C.J. No. 1086 (QL), at paragraph 8). In the instant case, the allegations in the Reply were sufficiently clear and the Appellant had the onus of showing that these allegations were erroneous. He did not discharge this onus, and his testimony alone had several weaknesses.

[12] In my opinion, the Appellant has not shown on a balance of probabilities that he held genuine employment with the Payor during the period in issue.

[13] The appeal is dismissed and the Minister's decision is confirmed.

Signed at Ottawa, Canada, this 7th day of February 2008.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 2nd day of April 2008.

Brian McCordick, Translator

CITATION: 2008TCC85

COURT FILE NO.: 2007-2624(EI)

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PLACE OF HEARING: Montréal, Quebec

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REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: February 7, 2008

APPEARANCES:

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