Court File No. 2004-3295(IT)I

Citation: 2005TCC354

TAX COURT OF CANADA

IN RE: The Income Tax Act

B E T W E E N:

CLAUDE DIONNE,

Appellant,

- and -

HER MAJESTY THE QUEEN,

Respondent.

--- Held before Justice Campbell of The Tax Court of Canada, in Courtroom Number 2, 9th Floor, 200 King Street West, Toronto, Ontario, on the 3rd day of March, 2005.

REASONS FOR JUDGMENT

APPEARANCES:

K. AIRD For the Respondent

Dan W. Burtnick - Registrar/Digital Court Technician

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--- Upon commencing at 9:17 a.m.

I am delivering oral judgment in a matter that I heard yesterday, the appeal of Claude Dionne. This appeal is in respect to the Appellant's 2000, 2001, and 2002 taxation years. The Reply to the Notice of Appeal was late-filed, and, consequently, pursuant to subsection 18.16(4) of the *Tax Court of Canada Act*, the facts alleged in the Notice of Appeal are therefore presumed to be true for the purposes of the appeal unless the Respondent overcomes those presumptions and the burden, which is now on the Minister.

During the years under appeal, the Appellant was employed as a licensed millwright within the province of Ontario and worked for a number of employers at different work sites in each of the taxation years. As a millwright, the Appellant is a member of the Association of Millwrights of Ontario, which he referred to as his union. It was his local chapter of this union that obtained a list of potential jobs, for the Appellant, which the Appellant stated he could either accept or reject. Some of his jobs lasted from several days to months.

If he was able, he would drive from his home to the work site. He indicated that if he was required to work long daily hours he might stay in a motel close to the work site. He described one instance where

he located an apartment close to his work, for one employer and furnished that apartment. He stated that he required his vehicle to travel to and from his work, because it was sometimes in remote areas. He also needed his vehicle to carry his tools with him.

He stated that he saw in a Tax Bulletin a figure of $33.00 daily that would be reasonable to claim for meals, and settled on this amount when claiming meal expenses. He also claimed a small amount in each year for supplies, such as typewriter ribbon and paper, but stated these amounts were not related to his work as a millwright but instead were related to his work on potential patents.

And finally, the Appellant claimed the amount of $5,000.00 in 2001 and $5,500.00 in 2002 as legal fees which were paid to two different solicitors. The first solicitor was paid to obtain a security clearance for passage onto one of the job sites because the Appellant had pending assault charges against him, for which he eventually obtained a discharge. The second solicitor was paid legal fees in respect to a wrongful dismissal action against Ontario Hydro, one of his employers.

At the time of the audit, the Appellant had filed one Form T-2200, "Declarations of Conditions of Employment", although he had worked for a number of employers in each year.

At the hearing, the Appellant filed additional Forms T-2200, but some employers had still not provided a T-2200 form, although the Appellant had made requests for them to do so.

The issue then is whether the Appellant is entitled to deduct these other employment expenses, including legal fees, motor vehicle expenses, meals, lodging, and supplies, in each of the taxation years under appeal.

Subsection 8(1) of the *Act* specifies the various deductions that may be available to a taxpayer in computing income in a taxation year from an office or employment.

Subsection 8(2) contains a general limitation that no deductions except those permitted in subsection 8(1) are to be made in computing a taxpayer's income.

The first relevant deduction referred to in subsection 8(1) is contained at paragraph 8(1)(b), and that is "legal expenses of an employee where deductions are permitted for any amounts paid by a taxpayer in respect of legal expenses to collect or establish a right to salary or wages owed by an employer or former employer of the taxpayer."

The amounts paid to the first solicitor to obtain the security clearance so that the Appellant could

gain access to the work site in light of pending assault charges against him are in no way connected to fees expended to collect wages owed to the Appellant or to establish a right to those wages. The interpretation of paragraph 8(1)(b) does not extend to permit the Appellant a deduction for those legal fees.

The legal fees paid to the second solicitor are pursuant to a statement of claim commenced in December 1995, for wrongful dismissal. Apparently, this matter is still ongoing. Although the statement of claim refers to a loss of wages commencing March 21, 1995, his date of termination, as one of the five heads of damages, there is no evidence before me that the Appellant will be successful in this claim except for the statement of claim.

Although there was no evidence produced in this respect, except the statement of claim and the Appellant's evidence, because the Reply is late-filed the fact in paragraph 1 of the Appellant's Notice of Appeal is presumed correct unless evidence is adduced by the Minister to the contrary.

The Appellant claimed in paragraph 1 of his Notice that he incurred legal expenses to collect and establish his right to salary from a former employer. I am, therefore, prepared to allow the legal fees paid to the solicitor in respect to this statement of claim. The

only proof the Appellant filed to substantiate the amounts paid to his solicitor in these years was Exhibit A-4, a client ledger of Allen Welman, the solicitor, which covers the period from December 1995 to December 2002.

According to this ledger, the amounts reflect trust amounts held by the solicitor from which disbursements were made. In January 2001, the trust ledger showed an opening balance of $1,042.95 together with two further retainers paid in trust to Mr. Welman of $400.00 and $500.00 in 2002.

I am prepared to give the Appellant the benefit of the doubt here and allow him to claim the sum of $1,042.95 in legal fees in 2001 and the sum of $900.00 in 2002. I have nothing further before me to allow any additional amounts for legal expenses beyond those indicated in this trust ledger.

Pursuant to paragraph 8(1)(h), a taxpayer may claim a deduction for travel expenses incurred in the course of the office or employment where the taxpayer: (1) 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 (2) was "required under the contract of employment to pay the travel expenses incurred by the taxpayer in performance of duties of the office or employment."

In addition, in paragraph 8(1)(h.1), a taxpayer may claim motor vehicle expenses, except where he is paid an allowance that was not included in computing his income or claimed a deduction for the year under paragraph 8(1)(f) where, again, the taxpayer: (1) 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 (2) was "required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment."

In connection with these provisions, subsection 8(10) requires that amounts to be deducted pursuant to paragraphs 8(1)(h) and 8(1)(h.1) shall "not be deducted unless a prescribed form, T-2200, signed by the taxpayer's employer certifying that the conditions set out in these applicable sections are met and filed with the taxpayer's return for that particular taxation year."

The one form filed with the Minister was for the Appellant's employment with Jervis Webb for the month of July 2001 only. This form reported that the Appellant was not required to work away from the employer's place of business, which was a construction site in Brampton, or in different places for the employer, and, further, that the Appellant was not required to supply or pay for supplies consumed in the performance of

his employment duties. Therefore, in respect to the one form filed and the conditions of employment specified therein, the Appellant is not entitled to deduct travel or motor vehicle expenses pursuant to these provisions for his employment with that particular employer in July 2001.

The Appellant filed as Exhibit A-7 five T-2200 forms respecting employers in the year 2000, where he had ten employers, four T-2200 forms in the year 2001, where he had six employers, and two T-2200 forms in the year 2002.

The Respondent called Lisa Day, a payroll coordinator for Comstock Canada, who had completed both T-2200 forms filed by the Appellant for 2002 and one of the additional four forms filed for the 2001 taxation year. She confirmed the information contained in these three forms; that is, that the Appellant was not required to work away from his place of business or different places, that he received an allowance that was included in his T-4 slip, and that he was not required to be away for at least twelve hours from the municipality of the employer's place of business where the Appellant normally reported for work. Based on these three forms and Ms. Day's evidence, the Appellant is not entitled to deduct expenses under these provisions in respect to this employer for these periods.

The remaining forms in 2001 and 2002 contain an array of responses. Two of the forms, both completed for different periods in 2001 by Jervis Webb Company, indicated that the Appellant was not required to work away from the employer's place of business or in different places and that the Appellant was not required to be away for at least twelve hours. These forms were signed by two different people at Jervis Webb Company, one indicating the Appellant was required to pay his own expenses and one indicating the Appellant received an allowance. Based on the condition specified by the employer in these forms, the Appellant is not entitled to claim expenses pursuant to these provisions in respect to this employer for these periods.

The one other form available for 2001 was for employment with Aecon Industrial. This form indicated that the Appellant was not required, again, to be away at least twelve hours from the municipality of the employer's business but that he was required to work away from his employer's place of business or in different places. One of the forms in 2000 responded "no" to both of these questions while the remaining four forms submitted for the year 2000 indicated "yes" to both of these questions. In determining what I am to do with these remaining four or five forms that responded "yes" to both or one of the questions, I think it is reasonable and fair that I

consider them in the light of the evidence and the facts adduced at the hearing.

It was the Appellant's own evidence that he was not required generally to be away for more than twelve hours from the employer's place of business where he normally reported for work. He stated he was not asked to go to other job sites of that employer and could specifically recall only one occasion where he picked up a supply for an employer at a local Canadian Tire store.

The general rule is that expenses incurred by an employee in traveling to and from their work site are not deductible. The evidence in this case does not support any type of travel by the Appellant to other work sites as directed by the employer, but, simply, he incurred travel to and from his residence and his work which he sought to deduct.

The costs of such travel expenses are clearly personal here, and he is therefore not entitled to deduct those travel expenses, which include his proposed deduction for rental of an apartment and furniture which allowed him the convenience of proximity to his employment during the time period.

In respect to the cost of supplies, which was $100.00 or less in each of the three years, the Appellant's evidence was that supplies were basically

office supplies for his patent business and were not in relation to performance of his duties of employment as a millwright for the various employers during these periods. Therefore, the Appellant will not be entitled to claim as expenses those amounts for supplies in the years as they are not related to his employment.

Finally, in respect to the Appellant's claim for meals, subsection 8(4) states that except where the employee is required to be away from home for a period of at least twelve hours from the municipality of the employer's establishment or the business where the employee generally reports for work is located, this provision states that the employee may not deduct, in paragraphs 8(1)(f) or (h), "the cost of the meals consumed while away from home in the course of performing his employment duties".

The Appellant here was not a permanent employee. He was hired to complete certain items relating to his employer's contract of employment, and when he completed those, his work for that employer was done even though the project might not be finished. The Appellant ordinarily reported for work at a particular job site during a project, and, therefore, amounts expended on meals while working on that particular site are non-deductible under subsection 8(4) in computing his income.

Again, the evidence of the Appellant was that his employers never required him to work elsewhere on a temporary basis on their behalf so as to require the Appellant to be away for more than twelve hours from his usual job site where he reported to work. The claim in each year for meal expenses is therefore denied.

Finally, I want to make reference to the fact that the Appellant was visibly upset when handed a Book of Authorities by the Respondent during the hearing. He felt he was put at an unfair disadvantage as he did not have adequate time to review and respond properly.

I have on prior occasions advised Respondent counsel to ensure a self-represented Appellant has possession of the Book of Authorities at least a day or two prior to the hearing.

I understand the Appellant's frustration, but in reviewing the case law contained in the Book of Authorities I see nothing that would have changed my view of the facts presented to me in this appeal. I would have arrived at the same conclusions today, based on the relevant sections and evidence before me, without the case law included in the Book of Authorities.

In conclusion, the appeals are allowed, without costs, to permit the Appellant to claim the sum of $1,042.95 in 2001 and the sum of $900.00 in 2002 for

legal fees incurred to establish a right to wages and salary.

In all other respects, the appeals are dismissed.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of a digital audio recording
to the best of my skill and ability.

RACHEL L.A. ROSENBERG, CSR(A)
Chartered Shorthand Reporter

CITATION:	2005TCC354
COURT FILE NO.:	2004-3295(IT)I
STYLE OF CAUSE:	Claude Dionne and Her Majesty the Queen
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 2, 2005
REASONS FOR JUDGMENT BY:	The Honourable Justice Diane Campbell
DATE OF ORAL JUDGMENT:	March 3, 2005

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kandia Aird

COUNSEL OF RECORD:

Counsel for the Appellant:

Name:

Firm:

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