

Docket: 2008-458(EI)

BETWEEN:

4456735 MANITOBA LTD.
o/a NATIONAL HOME CLEANING SERVICES,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

PATRICIA JENSEN

Intervenor,

and

LISA WILSON

Intervenor.

Appeal heard on October 24, 2008, at Winnipeg, Manitoba
Before: The Honourable Justice D.W. Beaubier

Appearances:

Agent for the Appellant:

Daniel Gagnon

Articling Student for the Respondent:

Nalini Persaud

AMENDED JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed.

**This judgment is issued in substitution for the judgment dated
October 28th, 2008.**

Signed at Saskatoon, Saskatchewan, this 10th day of December 2008.

“D.W. Beaubier”

Beaubier D.J.

Citation: 2008TCC592

Date: 20081028

Docket: 2008-458(EI)

BETWEEN:

4456735 MANITOBA LTD.
o/a NATIONAL HOME CLEANING SERVICES, Appellant,
and
THE MINISTER OF NATIONAL REVENUE, Respondent,
and
PATRICIA JENSEN Intervenor,
and
LISA WILSON Intervenor.

Docket: 2008-459(CPP)

AND BETWEEN:

4456735 MANITOBA LTD.
o/a NATIONAL HOME CLEANING SERVICES, Appellant,
and
THE MINISTER OF NATIONAL REVENUE, Respondent,
and
PATRICIA JENSEN Intervenor,
and

LISA WILSON

Intervenor.

AMENDED REASONS FOR JUDGMENT

Beaubier, D.J.

[1] These appeals were heard together on common evidence at Winnipeg, Manitoba on October 24, 2008. Daniel Gagnon testified for the Appellant. Lisa Wilson testified on her own behalf. The Minister of National Revenue called Annette Bonneteau, one of the cleaners allegedly employed by the Appellant. Patricia Jensen did not appear.

[2] The particulars in dispute are set out in paragraphs 2 – 10 inclusive in the Reply to the Notice of Appeal #2008-458(EI). They read:

2. By letters dated July 20, 2007, the Winnipeg Tax Services Offices issued rulings that Annette Bonneteau (hereinafter “Bonneteau”), Patricia Jensen (hereinafter “Jensen”) and Lisa Wilson (hereinafter “Wilson”) were in insurable employment with the Appellant.

3. By a letter received September 10, 2007, the Appellant appealed to the Minister for a reconsideration of the rulings.

4. In response to the appeal, the Minister decided that:

- (a) Bonneteau was employed under a contract of service with the Appellant for the period January 1, 2006 to August 25, 2006.
- (b) Jensen was employed under a contract of service with the Appellant for the period January 1, 2006 to July 20, 2007, and
- (c) Wilson was employed under a contract of service with the Appellant for the period January 1, 2006 to February 28, 2007.

5. In so deciding as the Minister did with respect to Bonneteau, Jensen and Wilson (collectively hereinafter “the Workers”), the Minister relied on the following assumptions of fact:

- (a) the Appellant operated a house cleaning business;
- (b) the Appellant operated as National Home Cleaning Services;

- (c) Dan Gagnon (hereinafter “the Manager”) managed the Appellant’s business;
- (d) the Appellant obtained the clients (hereinafter “the Client”);
- (e) the Appellant had employees who called prospective Clients and solicited work;
- (f) the Manager negotiated the work to be done and the fees charged, with the Client;
- (g) the Workers performed house cleaning duties including dusting, vacuuming and general cleaning;
- (h) the Workers did not enter into written contracts with the Appellant;
- (i) the Workers earned a set percentage of what the Appellant charged;
- (j) the Workers earned 64% of the net fee if they were working alone and 32% of the net fee if they worked as a crew;
- (k) the Manager determined the Workers’ wage percentages;
- (l) the Manager determined the fees charged to the Client and the price of the jobs;
- (m) the Workers did not set their own fees for the jobs;
- (n) the Manager was involved in any changes in fees charged to the Client;
- (o) the fees charged could only be changed with the Manager’s approval;
- (p) the Workers received raises from time to time;
- (q) the Workers collected payments from the Client and submitted them to the Manager on a regular basis;
- (r) the Workers did not invoice the Appellant;
- (s) the Manager calculated the Workers’ pay;
- (t) the Appellant paid the Workers by cheque on a weekly basis;
- (u) the Manager and the Client determined the job schedule;

- (v) the Manger kept a schedule outlining the times and days the Workers were to work at each Client;
- (w) Bonneteau normally worked Thursday mornings and all day on Fridays;
- (x) Jensen and Wilson normally worked full-time, Monday to Friday;
- (y) the Workers were expected to complete the jobs assigned to them as scheduled;
- (z) the Manager had to approve any schedule changes;
- (aa) the Appellant had first call for the Workers time;
- (bb) the Appellant held the right to control the Workers;
- (cc) the Workers were hired for their expertise;
- (dd) the Appellant provided the Workers with a list of duties they were required to perform;
- (ee) the Manager assigned work to the Workers;
- (ff) the Workers normally worked as part of a crew;
- (gg) required tasks were shared within the crew;
- (hh) the Workers were expected to perform the services as assigned;
- (ii) the Workers normally attended the Manager's premises on a daily basis to pick up schedules, equipment or supplies or drop off payments;
- (jj) the Client contacted the Appellant if there were any problems with the work;
- (kk) the Appellant held the authority to change the Workers' method of work if a Client complained;
- (ll) the Appellant could terminate the Workers' employment;
- (mm) the Workers did not refuse work from the Appellant;
- (nn) if a Worker were unavailable, the Manager would reschedule the work or assign the work to another Worker;

- (oo) the workers did not hire their own helpers or replace themselves;
- (pp) the Workers did not work for others while performing services for the Appellant;
- (qq) when a Worker was hired they normally worked alongside an experienced Worker for a time;
- (rr) the Appellant provided all of the tools and equipment required including mops, brooms and vacuums;
- (ss) the Appellant did not charge the Workers for the use of the Appellant's equipment;
- (tt) the Appellant paid for any repairs required to equipment;
- (uu) Bonneteau and Jensen provided their own vehicles;
- (vv) the Appellant paid Bonneteau and Jensen a vehicle allowance;
- (ww) Wilson normally rode with Jensen to the jobsites;
- (xx) the Appellant provided all of the supplies required;
- (yy) the Workers did not incur any expenses in the performance of their duties;
- (zz) the Workers were not responsible for bad debts;
- (aaa) the Appellant bonded the Workers;
- (bbb) the Appellant provided insurance coverage;
- (ccc) the Workers did not put any of their own funds or assets at risk;
- (ddd) the Workers did not have a chance of profit or risk of loss;
- (eee) the Workers did not have business trade names;
- (fff) the Workers did not manage their own staff or resources to perform the services;
- (ggg) Jensen did not declare income from the Appellant on her 2006 income tax return;

- (hhh) Bonneteau's and Wilson's intent was employment while performing services for the Appellant, and
- (iii) the Workers were not carrying on their own businesses while performing services for the Appellant.

B. ISSUE TO BE DECIDED

6. The issue to be decided is whether the Workers were employed under a contract of service with the Appellant during the periods under review.

C. STATUTORY PROVISIONS, GROUNDS RELIED ON AND RELIEF SOUGHT

7. The Respondent relied on, among other things, paragraph 5(1)(a) and subsection 2(1) of the *Employment Insurance Act*.

8. The Respondent submits that Bonneteau was engaged in insurable employment within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* as she was engaged under contract of service with the Appellant for the period January 1, 2006 to August 25, 2006.

9. The Respondent submits that Jensen was engaged in insurable employment within the meanings of paragraph 5(1)(a) of the *Employment Insurance Act* as she was engaged under a contract of service with the Appellant for the period January 1, 2006 to July 20, 2007.

10. The Respondent submits that Wilson was engaged in insurable employment within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* as she was engaged under a contract of service with the appellant for the period January 1, 2006 to February 28, 2007.

[3] All of the assumptions in paragraph 5 of the Reply were either confirmed by the evidence or were not refuted excepting or subject to the following as referred to by the subparagraph:

(j) At first it was 60% and then they negotiated a raise to 64%.

(k) The 60% was prefixed by the manager. The 64% was negotiated.

(p) See (j) and (k).

(q) This was done at the end of each day when the workers got resupplied and their assignments for the next day.

(ff) Some worked in pairs and some worked alone.

(ll) And the workers could quit.

(mm) The workers could and once did refuse work after an argument.

(yy) The vehicle drivers used their own vehicles and bought their own gas.

(fff) See (yy) comment re vehicles.

(iii) Is the subject of the dispute.

[4] Using the criteria established in *Weibe Door Services Ltd. v. MNR* [1986] 3 F.C. 553 for reviewing contracts respecting a question of employment, the Court finds:

- (1) Control – The Appellant got the contracts and fixed the prices, the number of homes a worker would clean each day, the length of time the work would take and the workers reported to National at the end of each day for their supplies and assignments for the next day. The workers delivered any fees they had collected to National then.
- (2) Tools – All tools and supplies were National's, except the vehicle and gas of the workers.
- (3) Risk of Profit or Loss - The workers were paid their percentage amounts whether National was paid or not. The workers did not hire helpers or replacements.
- (4) Integration – It might seem that the workers were separate from National. But National did not let Mrs. Wilson take time off for her honeymoon. She testified that she only had one day off in the course of a year. This degree of control, the daily reports and assignments, the weekly pay by National of their daily percentages and the fact that National satisfied and obtained the contracts and assigned the work to be done and the times, durations and locations of the work **indicate** that the workers were integrated into National's work.

[5] The workers were not performing the services as persons in business on their own accounts.

[6] The appeals are dismissed.

**These reasons are issued in substitution for the reasons dated
October 28th, 2008**

Signed at Saskatoon, Saskatchewan, this 10th day of December 2008.

“D.W. Beaubier”

Beaubier D.J.

CITATION: 2008TCC592

COURT FILE NO.: 2008-458(EI)
2008-459(CPP)

STYLE OF CAUSE: 4456735 MANITOBA LTD. o/a
NATIONAL HOME CLEANING
SERVICES AND M.N.R.
AND PATRICIA JENSEN, LISA WILSON

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: October 24, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: October 28, 2008

DATE OF AMENDED JUDGMENT December 10, 2008

APPEARANCES:

Agent for the Appellant:	Daniel Gagnon
Articling Student for the Respondent:	Nalini Persaud

COUNSEL OF RECORD:

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