

Dockets: 2007-840(EI)
2007-841(CPP)

BETWEEN:

SURINDER KAUR SANDHU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on April 2, 2009 at Edmonton, Alberta

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Gursewak Sandhu

Counsel for the Respondent: Valerie Meier

JUDGMENT

The appeal with respect to decisions of the Minister of National Revenue made under the *Employment Insurance Act* and the *Canada Pension Plan* is dismissed, and the decisions that the appellant was not engaged in pensionable or insurable employment with The Indo Canadian Phulwari Publications Incorporated during the period from February 11 to 23, 2005 are confirmed.

Signed at Ottawa, Canada this 22nd day of April 2009.

“J. Woods”

Woods J.

Citation: 2009 TCC 217
Date: 20090422
Dockets: 2007-840(EI)
2007-841(CPP)

BETWEEN:

SURINDER KAUR SANDHU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The question in this appeal is whether Surinder Sandhu was engaged in insurable and pensionable employment with The Indo Canadian Phulwari Publications Incorporated (“Indo Canadian”) during the period from February 11 to 23, 2005.

[2] The Minister determined that Mrs. Sandhu was not an employee of Indo Canadian during this time. In fact, it is the position of the Minister that Mrs. Sandhu did not work for Indo Canadian at all during this period, whether as an employee or otherwise.

[3] The Minister suggests that the purported engagement was a fabrication that was designed to enable Mrs. Sandhu to accumulate sufficient insurable hours to qualify for employment insurance benefits. She had previously applied for employment insurance benefits and it was determined that she was about 39 hours short. The purported engagement with Indo Canadian, if accepted, would give her an additional 55 hours.

[4] Mrs. Sandhu, who required the assistance of an interpreter, was represented by her husband at the hearing.

[5] By way of background, this is the second time that this issue has come before the Court.

[6] On May 13, 2008, the issue came before Rossiter ACJ in Vancouver by way of appeals by Mrs. Sandhu and Indo Canadian.

[7] At the request of the Minister, the appeals were heard separately so that witnesses could be excluded from the courtroom. The Minister took no position as to which appeal should be heard first and at the request of the appellants the appeal of Indo Canadian proceeded first.

[8] With the benefit of hindsight, I question whether the Minister should have asked for Mrs. Sandhu's appeal to proceed first since she was the one seeking employment insurance benefits. In any event, the appeal of Mrs. Sandhu was adjourned, and it came before me in Edmonton almost a year later.

[9] I will begin the analysis by briefly reviewing the findings of Rossiter ACJ, who agreed with the Minister's position. According to the transcript of his oral reasons, Rossiter ACJ found that there were too many inconsistencies in the evidence of Mrs. Sandhu and Mr. Mahli, the owner of Indo Canadian, with what they had told other people at different times and that there were unsatisfactory explanations on some other matters.

[10] The witnesses for the appellant at the hearing before me were Mrs. Sandhu and Kashmir Hayer, who had a business in the same building as Indo Canadian. Mr. Mahli did not testify.

[11] Mrs. Sandhu's evidence in chief consisted of a written statement which included clarification of some of the prior inconsistencies that Rossiter ACJ had referred to.

[12] Based on the evidence as a whole, I am not satisfied that Mrs. Sandhu was engaged by Indo Canadian during the period at issue.

[13] My reasons can be stated briefly.

[14] First, the evidence presented by Mrs. Sandhu regarding the work that she purportedly did was far too vague and imprecise to satisfy me that there was any relationship between her and Indo Canadian.

[15] Second, the explanations of the inconsistencies that were provided by Mrs. Sandhu in her written statement (Exhibit A-1) were not persuasive. For example, Mrs. Sandhu states that her prior statement to an investigator about starting work in the afternoon was misunderstood because of translation problems. The prior statement was quite detailed, however, and it is unlikely that it was a simple translation problem.

[16] Third, there were inconsistencies in the evidence of Mrs. Sandhu and Mr. Hayer. Mrs. Sandhu suggested that Mr. Hayer had come to her home on his afternoon break a few times to relay a message as to whether she was required to come to work the next day. Mr. Hayer testified that he came to Mrs. Sandhu's home a few times but that this was never at his afternoon break. He stated that he came after he closed up shop around seven.

[17] Fourth, Mrs. Sandhu chose not to call Mr. Mahli as a witness. His testimony would have been much more probative than Mr. Hayer's. I make a negative inference from the failure to call Mr. Mahli in the circumstances of this case. It is appropriate to conclude that his testimony would not have been helpful to Mrs. Sandhu. I also note that Rossiter ACJ found Mr. Mahli's evidence to be unsatisfactory.

[18] As a result, the appeal with respect to Mrs. Sandhu's insurable and pensionable employment with Indo Canadian will be dismissed, and the decisions of the Minister of National Revenue will be confirmed.

Signed at Ottawa, Canada this 22nd day of April 2009.

“J. Woods”

Woods J.

CITATION: 2009 TCC 217

COURT FILE NOs.: 2007-840(EI)
2007-841(CPP)

STYLE OF CAUSE: SURINDER KAUR SANDHU AND
THE MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: April 2, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Woods

DATE OF JUDGMENT: April 22, 2009

APPEARANCES:

Agent for the Appellant: Gursewak Sandhu

Counsel for the Respondent: Valerie Meier

COUNSEL OF RECORD:

For the Appellant:

Name: n/a
Firm:

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