

Citation: 2009 TCC 296

Docket: 2006-3021(EI)

BETWEEN:

LINDA BELLAVANCE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REVISED VERSION OF TRANSCRIPT
OF REASONS FOR JUDGMENT**

I ask for the revised version of the Reasons for Judgment delivered at the September 9, 2008, hearing in Moncton, New Brunswick, to be filed. This version was revised to correct small errors and improve style and clarity.

Signed at Toronto, Canada, this 2nd day of June 2009.

"Robert J. Hogan"

Hogan J.

Translation certified true
on this 11th day of August 2009.

Elizabeth Tan, Translator

Citation: 2009 TCC 296
Docket: 2006-3021(EI)

TAX COURT OF CANADA
Re: *Employment Insurance Act*

BETWEEN:

LINDA BELLAVANCE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT
DELIVERED BY THE HONOURABLE JUSTICE ROBERT HOGAN

Tax Court of Canada,
Courts Administration Service,
Crowne Plaza Hotel, 1005 Main Street, Moncton, New Brunswick
Tuesday, September 9, 2008

APPEARANCES:

Linda Bellavance

For the appellant

Marie-Claude Landry

Counsel for the respondent

ALSO PRESENT:

Serge Laforge

Clerk/technician

Hélène Amélie Boudreau-Laforge

Legal stenographer

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(Revised version of transcript of reasons for judgment given at the hearing in Moncton, New Brunswick on September 9, 2008)

DECISION PRONOUNCED ORALLY BY MR. JUSTICE HOGAN, J.T.C.C.

I will summarize. The issue was whether, as declared in the proceedings, the employment of Linda Bellavance, the appellant, was insurable during the period in question, as defined under paragraph 4 of the reply to the notice of appeal.

The basic question for the court is: was there an employee/employer relationship between the them during the period in question, during which there was a layoff—but with the claim by the appellant that she was called back immediately thereafter, to work at the same duties she performed previously?

I listened to the appellant attentively and found she testified very openly. I asked many questions and she always answered them directly.

She shared two facts with me; first, that the company operated before March and second...this fact was corroborated by the company's accountant who admitted that there was in fact

an undeclared operation, then later a decision to declare the income in question.

Ms. Bellavance testified that after her layoff, she was called back, and the Court has no reason to doubt this, she was called back to her duties and was again an employee of the company in question.

When I asked Stéphane Leblanc questions, I do not believe he testified as honestly as Ms. Bellavance.

At first, I asked this question to test his credibility: was there any undeclared income? He was evasive. I continued my line of questioning, and finally he answered yes, there may have been at the beginning, there was.

Then, when I asked about the "pocket bike," he was evasive, and finally admitted there was undeclared income.

The Court therefore has strong reservations as to this witness's credibility.

I asked for his explanation of the new arrangement. He said Mr. Leblanc, after the... There was a break and then a new legal arrangement that came into force with Mr. Leblanc, giving him more freedom than before.

The reason—before, he was not managing the company well, he took too much money, then it was decided that he would have more freedom, and he would decide himself how to manage the company, build it up and find money.

I have trouble believing this version of the facts because normally, I think...

The company owner testified... He showed that he is an informed businessman. I would tend to think that normally, during financially difficult times, the reigns would be tightened, that the manager at fault would have his wings clipped, not be given more freedom.

I do not have to decide on this issue, but one of the conclusions I draw from these facts is that they entered into a new contract, which they called a "management contract" but it was the same employment contract that existed before and after since he remained an employee of the company in question and was an employee in a management position.

He or the owner could also call Ms. Bellavance back and there could have been a relationship of subordination either with her husband or the accountant working at the time; Ms. Bellavance did in fact continue working during the period in question.

As for the company owner, I asked a few questions about the undeclared income and he replied, [TRANSLATION] "I am not aware, I didn't know, I was not always there." He did not admit to it.

I asked him about the "pocket bikes" and undeclared income and: [TRANSLATION] "But I am not there, I don't know."

However, he knew that the company was not running well, so there, I am a little...I do not give much credibility to his testimony.

As a result, my decision will be based on the facts and Ms. Bellavance's testimony, which was frank...

The issue before the court is one of believing there was an employment relationship during the period in question, and I find that there was insurable employment during that period.

I will not make a decision on the other issue because it is not a question that was put before me.

Thank you.

Translation certified true
on this 11th day of August 2009.

Elizabeth Tan, Translator

CITATION: 2009 TCC 296

COURT FILE NO.: 2006-3021(EI)

STYLE OF CAUSE: LINDA BELLAVANCE v.
THE MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: Moncton, New Brunswick

DATE OF HEARING: September 9, 2008

REASONS FOR JUDGMENT: The Honourable Justice Robert Hogan

DATE OF REASONS FOR JUDGMENT
PRONOUNCED ORALLY: September 9, 2008

DATE OF JUDGMENT: September 28, 2008

DATE OF AMENDED REASONS
FOR JUDGMENT: June 2, 2009

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Marie-Claude Landry

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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