

Citation: 2007TCC613
Date: 20071015
Dockets: 2007-2784(CPP)APP
2007-2832(EI)APP

BETWEEN:

NEW AGE TRANSPORT INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Applications heard on October 9, 2007 at Saskatoon, Saskatchewan

Before: The Honourable D.W. Beaubier, Deputy Judge

Appearances:

Agents for the Appellant: Allan Gustafson and Cecil Vail
Counsel for the Respondent: Myra Yuzak

REASONS FOR ORDER AND ORDER

Beaubier, D.J.

[1] These applications for an extension of time in which to file Notices of Appeal were heard together on common evidence at Saskatoon, Saskatchewan on October 9, 2007. Alan Gustafson and Cecil Vail, of Alvena, Saskatchewan, the two officers and only alleged employees of the Applicant testified. Danny Servetnyk, the Canada Revenue Agency (“CRA”) auditor on the income tax file relating to the Applicant testified for the Respondent.

[2] The Respondent filed the Affidavits of Karen Walchuk of Edmonton, Alberta which stated that on July 20, 2006, the Edmonton office of the CRA mailed three

letters to Messrs. Gustafson and Vail and to the Applicant denying the appeals of assessments levying CPP and EI contributions and premiums on them on the basis that the men were employees of the Applicant from January 1, 2004 to October 31, 2005. All of them say that they never got letters. Their proper addresses and postal codes were on the letters except that the name of the town on the letters was “Alvenia”, Saskatchewan and not “Alvena”.

[3] Mr. Servetnyk testified that the income tax office in Saskatoon spelled the name correctly as Alvena in all of its material and mailing and Mr. Vail testified that the name “Alvena” is correct.

[4] Mr. Gustafson and Mr. Vail are close friends and operate their business affairs together. Mr. Gustafson learned of the letters when Kevin Warren of CRA contacted him by telephone requesting T-4s for the alleged wages in February of 2007. Mr. Gustafson asked for the letters and received one of the original letters on March 26, 2007 (Exhibit A-1) with no covering letter. In the meantime, he had enquired about an appeal and learned that there was a 90 day appeal period. He followed this up further on June 13, 2007 by telephone and launched an appeal and this application for an extension of time on June 14, 2007. It is based on the premise that he received the notice on March 26, 2007 and his June 14, 2007 document is therefore within the 90 days in which to appeal.

[5] All of the witnesses who testified are believed. Messrs. Gustafson and Vail drive long distance trucks and do not pick up the company’s or their mail regularly at their mailboxes in the little town of Alvena. This also explains the haphazard time intervals in 2007, when the problem came to their attention.

[6] Rule 5(2) of the *Tax Court of Canada Rules of Procedure respecting the Employment Insurance Act* states that the “date of communication” to the Applicants of a determination or decision “is the date it is mailed ... in the absence of evidence to the contrary”.

[7] In this case, Messrs. Gustafson and Vail are believed when they testified that none of the addressees received the original letters – that is to say that they were not communicated with at that time. Moreover, the evidence is that there is a good reason for this: “Alvenia” is the place to which the letters were wrongly addressed.

[8] It is implicit that the Minister’s communication must be mailed to the correct address and for this reason the Court finds that the decision letters of July 20, 2006 were not received by the Applicant or Messrs. Gustafson and Vail on July 20, 2006.

Rather, the Applicant's letter (being the only letter in the envelope and which was sent without a covering letter) was received on March 26, 2007 which is therefore the date of communication to the Applicant company.

[9] Therefore, the appeals of the decisions of the Minister constituted valid and timely appeals by New Age Transport Inc. on June 14, 2007 and received by the Court on June 18, 2007.

Signed at Toronto, Ontario this 15th day of October, 2007.

"D.W. Beaubier"

Beaubier, D.J.

CITATION: 2007TCC613

COURT FILE NO.: 2007-2832(EI)APP and 2007-2784(CPP)APP

STYLE OF CAUSE: New Age Transport Inc. v. M.N.R.

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: October 9, 2007

REASONS FOR ORDER BY: The Honourable D.W. Beaubier,
Deputy Judge

DATE OF ORDER: October 15, 2007

APPEARANCES:

Agents for the Appellant:	Allan Gustafson and Cecil Vail
Counsel for the Respondent:	Myra Yuzak

COUNSEL OF RECORD:

For the Appellant:

 Name:

 Firm:

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