Docket: 2018-2091(IT)I

BETWEEN:

JODI GARDNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 15, 2020, at Toronto, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant:	Philip Varmuza
Counsel for the Respondent:	Mike Chen

JUDGMENT

The appeal of the Appellant's 2015 taxation year's reassessment raised February 16, 2016 under the federal *Income Tax Act* (Act) is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to employment expense of $12,868 per subparagraph 8(1)(h.1)(ii) of the Act, with costs awarded to the Appellant fixed at $1,000, payable within 30 days of the issuance of the judgment in this appeal.

Signed at Ottawa, Canada, this 30th day of September 2020.

"B. Russell"

Russell J.

Citation: 2020 TCC 108
Date: 20201002
Docket: 2018-2091(IT)I

BETWEEN:

JODI GARDNER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The appellant Ms. Jodi Gardner appeals the reassessment raised February 16, 2016 under the federal *Income Tax Act* (Act) for her 2015 taxation year. The reassessment denied motor vehicle travel expenses she had claimed for driving between the location of her home office, located in Pickering, and her employer's principal place of business, located in Oakville - a one way distance of 72 kilometers. She submits that the $12,868 of claimed travel charges at issue is deductible as an employment expense per subparagraph 8(1)(h.1)(ii) of the Act. That statutory provision reads as follows:

> 8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto
>
> . . .
>
> (h.1) where the taxpayer, in the year,
>
> . . .

> (ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,
>
> amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer
>
> . . .

[2] The question, in the language of subparagraph 8(1)(h.1)(ii), is whether the subject claimed expenses ". . . were incurred for travelling in the course of the . . . employment . . .". The appellant says that the travel at issue is employment travel as the travel was between two places of her employment, one being her home office. The respondent says that the appellant is driving between her employer's place of business in Oakville and her home, and that that is personal travel not employment travel.

II. Evidence:

[3] The appellant was the sole witness testifying in this matter. In summary her evidence was that during the 2015 year she was employed by Coty Canada Inc. (CCI), which had offices within Canada and affiliates in the U.S. and abroad. CCI is part of a global beauty company producing and selling cosmetics, etc. CCI completed a Form T2200 "Declaration of Conditions of Employment" pursuant to subsection 8(10) of the Act for the appellant for that year. In that document, signed by CCI's chief financial officer, the appellant's position is given as "Sales Representative". It states also that the appellant's employment contract required her to use a portion of her home for work, and further that the percentage of her employment duties performed at her home office was 90%. The Form T2200 provides too that the appellant as employee was entitled to receive a motor vehicle allowance, and did so, and she did not have the use of a company vehicle.

[4] Her further evidence was that she worked daily from her home office speaking with customers and potential customers and members of her sales team. This would account for the 90% of her employment work referred to in the Form T2200. She would also meet with customers etc. from time to time by driving to locations of those persons, from her Pickering home office location.

[5] Apart from these functions, from time to time – perhaps on average once or twice a week – she would be required to travel to CCI's local place of business in

Oakville. Typically these trips would be for “one on one” meetings with her boss, meetings with the entire marketing team, and attending “town hall” meetings organized by CCI for all its employees across the country and beyond. She did not have her own office or workstation there. When she did need a place to work at when there, typically before of after the particular function that required her to be there, she would use the boardroom if empty, or her boss’s office if available. There were a few work cubicles, *i.e.* workstations there too, available for temporary use by anyone. Her required trips to the Oakville local office for CCI were more frequent during times of “spring planning” and “fall planning” for introduction of new beauty products to CCI’s Ontario market. The appellant also testified that she never worked from the Oakville office on a “9 to 5” basis, but attended there irregularly and for one or two hour visits for the several types of meetings etc. as noted above.

III. <u>Issue:</u>

[6] The issue in this matter is solely the question of whether the driving back and forth between the appellant’s home office in Pickering and CCI’s place of business in Oakville was employment travel and hence claimable as an employment expense per subparagraph 8(1)(h.1)(ii) of the Act. I understand from the parties that there is no issue as to the dollar amount that relates to this issue, being $12,868.

IV. <u>Analysis:</u>

[7] The appellant cites *Campbell et al. v. R.*, 2003 TCC 160 in support of her position that the motor vehicle travel at issue was between two employment-related locations and consequently that travel is not personal but rather is deductible as employment motor vehicle travel. *Campbell* is an informal procedure decision of Justice T. Margeson from 2003. (Coincidentally, I appeared in that matter 17 years ago as appellants’ counsel.) The decision established that when the work circumstances reasonably require that the worker have an office, and an office is not provided by the employer, then the worker can locate the required office somewhere including in their home and have it regarded as an employment location. That is, travel from the home office where much of the employment work is done, to the employer’s place of business for meetings etc., and return, constitutes employment travel and not personal travel.

[8] In the following year, *Campbell* was referred to with apparent approval by the Federal Court of Appeal in *Daniels v. R.*, 2004 DTC 6276 (FCA) at para 9, as follows:

> The case of *Campbell* . . . relied on by the applicant, can be distinguished on the facts. In *Campbell*, admissions were made at the outset that the appellants held an office with the School Board, that their homes were their main base from which they performed their duties and were consequently a regular place of work, that the School Board Building was also a regular place of work, and that attending regularly scheduled meetings to [*sic*] the School Board Building were part of their regular duties. <u>The Tax Court held that the appellants had two places of work and that the trips that gave rise to the claim for expenses were from one place of work to the other.</u> [underlining added for emphasis]

[9] Also, *Campbell* was in 2006 enthusiastically approved by Bowman, CJ in *Toutov v. Her Majesty*, 2006 TCC 187 (informal procedure). The Chief Justice of this Court wrote at paras. 2 and 3 of his reasons that, ". . . the general rule of course is that the cost of traveling from one's house to one's place of work is not a deductible expense . . . [b]ut the general rule is not inflexible and it admits of exceptions in some circumstances."

[10] At para. 6 of *Toutov*, the Chief Justice approvingly quoted Justice Margeson from *Campbell* (para. 13) as follows:

> <u>The evidence established beyond any doubt that when they left their offices in their homes and went to some other place to conduct business they were going from one place of business to another place of business and they did so when they were returning to their home offices.</u> <u>The Court does not consider it significant that after they came home they might have gone to bed or turned on the TV or had a sandwich or raided the refrigerator, whatever the case may be.</u> That does not militate against a finding that they were involved in business related activities on the way home. [underlining added for emphasis]

[11] In the matter at bar the respondent cited several authorities, largely for the above referenced "general rule", either preceding the 2003 *Campbell* decision or not dealing specially with *Campbell* – like circumstances. Also cited was *McCreath v. Her Majesty*, 2008 TCC 595 (general procedure) in which the appellant had relied upon *Campbell*. Justice Campbell of this Court declined to apply *Campbell* in *McCreath* because in *McCreath* the appellant *did* have an office available for him at the employment place of work, but nevertheless he chose to work from his home office (where he also did other unrelated work) and then sought to expense his travel from his home office to the employment place of work

(where he went for meetings, *etc*.) and return. The rationale of Justice Campbell in not applying *Campbell* was that in *McCreath* the appellant had office facilities at his place of employment but he personally chose to work from his home office rather than at the office available to him at his employment place of work.

[12] But that is not the situation in this appeal at bar. In this matter the appellant's Form T2200 is clear that her employer, CCI, required her to work from a home office and specifying that 90% of her work would be from there. Further the evidence was clear that the appellant did not have appropriate office facilities available for her at CCI's Oakville location.

V. Conclusion:

[13] Accordingly, I conclude that the appellant does fit within the *Campbell* type of situation. Thus the appellant's appeal will be allowed, with costs to the appellant fixed at $1,000, payable within 30 days of the issuance of the judgment in this appeal.

This Amended Reasons for Judgment is issued in substitution for the Reasons for Judgment dated September 30, 2020.

Signed at Ottawa, Canada, this 2nd day of October 2020.

"B. Russell"

Russell J.

CITATION:	2020 TCC 108
COURT FILE NO.:	2018-2091(IT)I
STYLE OF CAUSE:	JODI GARDNER AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 15, 2020
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
DATE OF JUDGMENT:	September 30, 2020
DATE OF AMENDED REASONS FOR JUDGMENT:	October 2, 2020

APPEARANCES:

Agent for the Appellant:	Philip Varmuza
Counsel for the Respondent:	Mike Chen

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