

Docket: 2019-2451(IT)I

BETWEEN:

WADE KENNETH MASON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 28, 2022, at Victoria, British Columbia

Before: The Honourable Justice Dominique Lafleur

Appearances:

Agent for the Appellant: Arthur William Mason

Counsel for the Respondent: Mark Shearer

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**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeal of the reassessment made under the *Income Tax Act* (the “Act”) for the 2017 taxation year is allowed, without costs. The reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that in computing his employment income for the 2017 taxation year, Mr. Mason is entitled to deduct additional motor vehicle expenses totalling \$2,131 under paragraph 8(1)(h.1) of the Act.

Signed at Montreal, Quebec, this 21st day of June 2022.

“Dominique Lafleur”

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Lafleur J.

## **REASONS FOR JUDGMENT**

### I. BACKGROUND

[1] This appeal is from a reassessment under the *Income Tax Act*, RSC 1985, c. 1 (5th Supp) (the “Act”) in respect of Mr. Mason’s 2017 taxation year. When filing his income tax return for 2017, Mr. Mason, who is employed as a construction foreman for Wetherell Contracting Ltd. (“Wetherell”), claimed as a deduction in computing his employment income motor vehicle expenses totalling \$9,853, representing 90% of the total expenses of \$10,948 that he incurred using his personal vehicle, a Ford F350 truck (the “Truck”), during that year.

[2] The Minister of National Revenue (the “Minister”) only allowed a deduction for motor vehicle expenses totalling \$7,175. The Minister disallowed the remaining \$2,678 of the motor vehicle expenses, which represented expenses that Mr. Mason incurred while travelling from his house to Wetherell’s various construction sites and vice versa, on the basis that they were personal expenses and therefore were not deductible under paragraph 8(1)(h.1) of the Act.

[3] At the commencement of the trial, the Respondent conceded additional deductible motor vehicle expenses of \$489. Furthermore, as indicated in his notice of objection and as confirmed at the hearing, Mr. Mason reduced his total claim to \$9,306, representing 85% of the total motor vehicle expenses that he incurred in 2017. The total amount of motor vehicle expenses remaining in issue in this appeal is \$1,642.

[4] At the hearing, only Mr. Mason testified. I found that his testimony was reliable and credible and that he was a very straightforward witness.

## II. ISSUE

[5] The sole issue in this appeal is whether motor vehicle expenses totalling \$1,642 incurred by Mr. Mason while travelling from his house to various worksites of his employer and vice versa are properly deductible under paragraph 8(1)(h.1) of the Act.

## III. APPLICABLE PRINCIPLES UNDER THE ACT

[6] Paragraph 8(1)(h.1) of the Act 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

...

### **Motor vehicle travel expenses**

**(h.1)** where the taxpayer, in the year,

**(i)** was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or in different places, and

**(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

**(iii)** received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(b), not included in computing the taxpayer's income for the year, or

**(iv)** claims a deduction for the year under paragraph 8(1)(f).

[7] The general rule under the Act is that the expenses of travelling from an employee's house to his or her place of work and vice versa are personal expenses. These expenses are not deductible under paragraph 8(1)(h.1) of the Act because they are not incurred in the course of the employee's duties (*Hogg v Canada*, 2002 FCA 177 [*Hogg*], at para 9; *Smith v Canada*, 2019 FCA 173, at para 41 and *Daniels v Canada* (Attorney General), 2004 FCA 125 [*Daniels*], at para 7).

[8] As indicated by the Federal Court of Appeal, the expression “expenses incurred for travelling in the course of the office . . .” necessarily requires that the expenses be incurred by an employee while performing his or her employment duties (*Hogg*, at para 13). A distinction must be made between an employee who incurs travelling costs to get to work, which are not deductible expenses, and an employee who incurs travelling costs while performing his or her employment duties, which are deductible expenses (*Hogg*, at para 11).

[9] Over the years, the case law has recognized exceptions to the general rule, for example where taxpayers’ houses were found to be essential places of business as mandated by their employer.

[10] In *Campbell v R*, 2003 TCC 160 [*Campbell*], the Court found that the employees’ offices in their houses and their employer’s place of business were both regular places of work and that the employees were required to travel between the two locations in the course of carrying out their employment duties. *Campbell* did not deal with a deduction for motor vehicle expenses under paragraph 8(1)(h.1) of the Act, but rather dealt with whether a travel allowance was exempt from taxation under paragraph 6(1)(b) of the Act because it was received by the employees for travelling in the performance of their employment duties. The reasoning in *Campbell* was followed in *Toutov v R*, 2006 TCC 187, in the context of a deduction of motor vehicle expenses.

[11] The Federal Court of Appeal distinguished *Campbell* in *Daniels*, but referred to that case with approval (*Daniels*, at para 9).

[12] Furthermore, in *Hoedel v R* (1986), 86 DTC 6535 (FCA) [*Hoedel*], a police officer who had charge of a police dog was required to take the dog home with him and take the dog on various personal errands, such as grocery shopping, to socialize the dog. The evidence showed that non-compliance with these instructions could result in negative performance evaluations. The Federal Court of Appeal held that the trips from the police station to the officer’s home and necessary trips such as to the veterinarian were a requirement of his duties of employment. Accordingly, expenses related to those trips were deductible. However, the Court found that trips for personal errands were not deductible.

#### IV. PARTIES' POSITIONS

[13] Mr. Mason alleges that the motor vehicle expenses he incurred while travelling from his house to Wetherell's various worksites and vice versa are deductible under paragraph 8(1)(h.1) of the Act because his employer required him to bring employer-owned tools, equipment and materials home with him each night for maintenance and safekeeping and to transport those tools, equipment and materials to various worksites the next day. Hence, Mr. Mason alleges that the travelling is related to his employment and is not personal in nature.

[14] The Respondent alleges that the motor vehicle expenses incurred by Mr. Mason while travelling from his house to Wetherell's various worksites and vice versa are not deductible under paragraph 8(1)(h.1) of the Act because those trips represented Mr. Mason simply driving to work, like any other employee, and are therefore personal and not incurred in the course of Mr. Mason's employment duties.

#### V. ANALYSIS

[15] The sole issue before me is whether expenses totalling \$1,642 incurred by Mr. Mason while travelling from his house to various worksites of his employer and vice versa are deductible under paragraph 8(1)(h.1) of the Act. Two of the conditions set out in paragraph 8(1)(h.1) of the Act are in issue. I therefore must determine the following: whether Mr. Mason was ordinarily required to carry on employment duties away from his employer's place of business or in different places, and whether the expenses were incurred for travelling in the course of Mr. Mason's employment. The other conditions that must be met for allowing a deduction of motor vehicle expenses in computing employment income are not in issue in this appeal.

[16] For the following reasons, I find that, on a balance of probabilities, Mr. Mason was ordinarily required to carry on his employment duties in different places, namely in his garage, located at his house, where he repaired and maintained his employer's tools and equipment and stored them as well as materials, and at Wetherell's various worksites, where he supervised his crew and constructed homes.

[17] I also find that, on a balance of probabilities, the motor vehicle expenses incurred by Mr. Mason while travelling from his house to various worksites of his employer and vice versa are expenses incurred for travelling in the course of his employment with Wetherell.

[18] Accordingly, I conclude that the motor vehicle expenses totalling \$1,642 incurred by Mr. Mason while travelling from his house to various worksites of his employer and vice versa are properly deductible under paragraph 8(1)(h.1) of the Act.

*Carrying on of employment duties in different places*

[19] Wetherell is involved in the construction business and typically builds houses and townhouses. As a foreman with Wetherell, Mr. Mason was responsible for a crew of 17 persons. During 2017, Wetherell carried on approximately 50 projects at numerous construction sites.

[20] I accept Mr. Mason's testimony that tool maintenance was an important part of his employment duties as foreman because his crew needed to have the proper tools and equipment to complete work each morning. I also find that part of Mr. Mason's employment duties was to make sure that workers were in place each workday morning at a designated construction site and ready to work with properly functioning tools, equipment and materials.

[21] The evidence showed that as part of Mr. Mason's employment duties, Wetherell required him to bring its tools, equipment and materials home with him each night to secure them in his garage (located at his house), to repair any broken tools and equipment, and to deliver tools, equipment and materials to Wetherell's worksites the next morning for work. The evidence also showed that Mr. Mason used a designated spot in his garage to store and repair Wetherell's tools, equipment and materials. Mr. Mason also kept personal hand tools and a tool belt in his garage. He takes his tool belt to work each day but does not take the personal hand tools to work.

[22] Typically, each workday morning, Mr. Mason would go to his garage, load his employer's tools, equipment and materials into his Truck and determine which worksites he and his crew were required to work at that day. Mr. Mason would then drive to the assigned worksite and ensure that his crew was set up and organized for work. He would sometimes have to transport some of his crew and tools and equipment to another worksite during the day. Depending on the day, Mr. Mason

would sometimes have to go to the lumber store to get materials. He occasionally towed a trailer owned by Wetherell or transported a generator and scaffolding to use on the worksite.

[23] At the end of each workday, Wetherell required Mr. Mason to load up all of Wetherell's tools, equipment and materials from the worksite into his Truck and take them home to his garage. Mr. Mason would unload the tools, equipment and materials in the designated spot in his garage, clean the tools and equipment, and repair them as needed. Because tools were often broken during a workday, the evidence showed that Mr. Mason had to regularly repair tools in his garage at night.

[24] Mr. Mason also testified that there was a big risk that tools, equipment and materials would be stolen from worksites and that taking the tools, equipment and materials back to his garage for secured nightly storage was a solution for his employer to avoid such theft.

[25] The Respondent urged the Court to distinguish *Campbell* on the basis that Mr. Mason did not perform the majority of his employment duties in his garage. For the following reasons, I disagree with the Respondent's argument.

[26] *Campbell* dealt with a factual scenario that was very similar to that of Mr. Mason. The reasoning in *Campbell* should therefore be applied in this appeal. In *Campbell*, the Court was satisfied that the employees had two places of work: one in their office in their home and a second at their employer's office. On the facts of that case, the employees mainly worked in their home office and less frequently travelled to their employer's office. The Court found without any doubt that both places were "regular" places of work (para 10). Hence, the Court held that the employees' trips from their homes to their employer's place of business were part of carrying out their employment duties (para 14).

[27] I find that Mr. Mason's duties of repairing, cleaning and storing tools, equipment and materials in his garage were requirements of his employment and that he was ". . . ordinarily required to carry on the duties of the . . . employment . . . in different places" (subparagraph 8(1)(h.1)(i) of the Act). This subparagraph does not require that the majority of the employment duties be carried on in different places but that the employee be ordinarily required to carry on the duties of employment in different places.

[28] "Ordinarily" is defined as follows in the Oxford English Dictionary, online (<<https://www.oed.com/>>):

1. In conformity with a rule or established custom or practice; according to settled method; as a matter of regular practice or occurrence. *Obsolete.*
2. In the ordinary or usual course of events or state of things; in most cases; usually, commonly.
3. In an ordinary or unexceptional way.
4. In an ordinary degree; to the usual extent.

[29] A person will therefore be considered to ordinarily carry on employment duties in different places for purposes of subparagraph 8(1)(h.1)(i) of the Act if he or she is carrying out employment duties at different places in the ordinary or usual course of events or states of things. Mr. Mason falls squarely within this definition.

[30] The evidence showed that in the ordinary course of a day, Mr. Mason was required to carry out employment duties in his garage and at Wetherell's various construction sites. He was ordinarily required to store his employer's tools, equipment and materials in his garage to avoid theft, and to maintain and repair his employer's tools and equipment in his garage. He was also ordinarily required to transport those tools, equipment and materials to the worksite the next day in order for his crew to be able to properly work.

[31] While Mr. Mason may have worked most of his workday at Wetherell's various construction sites, this cannot detract from the fact that his garage was a place where he ordinarily performed duties required by his employer. There is no evidence before the Court that Mr. Mason performed the duties of storing, repairing and maintaining tools, equipment and materials in any other place aside from his garage. For this set of duties, his garage was a regular place of work.

[32] Form T-2200, introduced in evidence as Exhibit A-1 (the "T2200"), states that part of Mr. Mason's job requirements include carrying Wetherell's equipment, tools and materials home for nightly storage in his garage. It states that Wetherell required Mr. Mason to pay expenses related to taking Wetherell's tools and equipment home for secure storage. Furthermore, it states that Mr. Mason's contract of employment requires him to use his garage for this purpose.

[33] Hence, the T2200 indicates that Wetherell chose to require Mr. Mason to carry out these duties in his garage. Mr. Mason's garage was effectively designated by Wetherell as the place of work wherein Mr. Mason was to perform part of his employment duties for Wetherell.



[34] There is nothing in this case to suggest that Mr. Mason chose on his own volition to conduct his required employment duties at home in his garage. There is no evidence that Mr. Mason could have chosen to carry out those required duties in any other location besides his garage.

*Expenses incurred for travelling in the course of his employment*

[35] The Respondent argued that Mr. Mason's trips from his house to Wetherell's worksites and vice versa were not undertaken in the course of his employment duties and urged the Court to distinguish Mr. Mason's scenario from that in *Hoedel*. The Respondent argued that the key finding in *Hoedel* was that the taxpayer would face unfavourable reviews and negative job evaluations if he did not comply with the requirement to take his dog home with him. The Respondent argued that the Court had no evidence before it that Mr. Mason would face unfavourable reviews or evaluations if he were not to comply with the requirement to take Wetherell's tools, equipment and materials home with him and so argued that *Hoedel* did not apply to Mr. Mason's situation.

[36] For the following reasons, I disagree with the Respondent's argument.

[37] In my view, the evidence adduced at the hearing showed that Mr. Mason's situation is an exception to the general rule that expenses incurred to travel from an employee's house to his or her place of work and vice versa are personal expenses and therefore not deductible. Mr. Mason's situation is similar to the exceptions set out in *Campbell* and is analogous to the situation considered by the Federal Court of Appeal in *Hoedel*.

[38] I am of the view that Mr. Mason's costs for travelling from his house to Wetherell's various construction sites and vice versa are expenses incurred by him for travelling in the course of his employment duties. Mr. Mason's workday did not finish when he left Wetherell's construction sites to go home. His workday continued in the designated spot in his garage and only finished when Wetherell's tools and equipment were repaired and all tools, equipment and materials were safely stored for the night. Mr. Mason's workday did not start when he arrived at Wetherell's construction sites. His workday started when he loaded Wetherell's tools, equipment and materials in his Truck and transported them to the designated worksite for his crew to use.

[39] The T2200 clearly states that Mr. Mason's contract of employment requires him to take tools, equipment and materials home each night for storage and to incur

expenses to carry out those duties. The T2200 shows that Mr. Mason was required to incur those expenses while travelling in the course of carrying out his employment duties.

[40] Furthermore, even if I have no evidence on whether Mr. Mason would face negative consequences if he failed to comply with those duties, I can infer that there is a reasonable possibility that Mr. Mason could have faced negative consequences if he failed to comply with those duties. Surely, Mr. Mason could face negative consequences if he left tools, equipment and materials at a job site and those tools, equipment and materials were stolen, or his crew regularly was to work with broken tools or no tools at all.

## VI. CONCLUSION

[41] For the foregoing reasons, the appeal is allowed, without costs.

[42] In computing his employment income for 2017, Mr. Mason is entitled to deduct additional motor vehicle expenses under paragraph 8(1)(h.1) of the Act totalling \$2,131, which is comprised of:

- (i) an amount of \$489, as conceded by the Respondent at the commencement of the trial; and
- (ii) an amount of \$1,642, as I found, on a balance of probabilities, that Mr. Mason was ordinarily required to carry on his employment duties in different places and that those expenses incurred by Mr. Mason while travelling from his house to Wetherell's various worksites and vice versa are expenses incurred for travelling in the course of his employment with his employer.

Signed at Montreal, Quebec, this 21st day of June 2022.

“Dominique Lafleur”

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Lafleur J.

CITATION: 2022 TCC 65  
COURT FILE NO.: 2019-2451(IT)I  
STYLE OF CAUSE: WADE KENNETH MASON and  
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PLACE OF HEARING: Victoria, British Columbia  
DATE OF HEARING: April 28, 2022  
REASONS FOR JUDGMENT BY: The Honourable Justice Dominique Lafleur  
DATE OF JUDGMENT: June 21, 2022

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