

Date: 20050505

**Dockets: A-192-04
A-193-04**

Citation: 2005 FCA 165

**CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
PELLETIER J.A.**

BETWEEN:

FRANCINE PROVOST

and

THE MINISTER OF NATIONAL REVENUE

A-192-04

Appellant

Respondent

TIBÉRIO MASSIGNANI

and

THE MINISTER OF NATIONAL REVENUE

A-193-04

Appellant

Respondent

Hearing held at Montréal, Quebec, on May 5, 2005.

Judgment delivered from the bench at Montréal, Quebec, on May 5, 2005.

REASONS FOR JUDGMENT OF THE COURT:

LÉTOURNEAU J.A.

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TIBÉRIO MASSIGNANI

Appellant

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec, on May 5, 2005)

LÉTOURNEAU J.A.

[1] These are two appeals from a decision of the Tax Court of Canada. At the conclusion of his decision, the trial judge said that in his opinion the job performed by the two appellant parties was not an insurable employment owing to the non-arm's length relationship that existed between them and the company Les Confections Tiva Inc. (Tiva) that hired them.

[2] Tiva had established a scheme by which the employees worked the minimum number of weeks required to qualify for unemployment-insurance benefits. However, these workers had to continue performing services for Tiva, at a reduced wage, during their periods of unemployment.

[3] The judge found that there was a genuine contract of employment between the appellant parties and Tiva. The lawfulness of this determination was not disputed before us. We are obliged to accept it, therefore.

[4] From there, we arrive at his conclusion that the appellant parties accepted conditions of employment that other workers would not have accepted and that this acceptance is explained by the non-arm's length relationship they maintained with Tiva. But according to the evidence, the appellant parties participated in the scheme and performed their employment under the same conditions as the other employees who themselves were at arm's length from Tiva. It is therefore incorrect to conclude

that they enjoyed an advantage in comparison with the other employees because of their non-arm's length relationship and that by that token their employment was not insurable. Needless to say, this result, at which we are obliged to arrive, in no way prejudices the issue of the eligibility of the appellant parties for unemployment benefits.

[5] For these reasons, the appeals will be allowed, the decision of the Tax Court of Canada judge will be set aside and the two cases will be sent back to the Chief Judge of the Tax Court of Canada or the judge he designates for redetermination on the basis that the two appellant parties held an insurable employment for the periods in dispute. The appellant parties will be entitled to the disbursements in each of the two dockets, but to only one set of costs.

“Gilles Létourneau”

J.A.

Certified true translation

Kelley Harvey, BCL, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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STYLE:

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LÉTOURNEAU J.A.

APPEARANCES:

Pierre Lupien

FOR THE APPELLANT

Anne Poirier

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Montréal, Quebec

FOR THE APPELLANT

John H. Sims, Q.C.

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Deputy Attorney General of Canada

Montréal, Quebec

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