

Docket: 2003-359(EI)

BETWEEN:

MOHINDER KAUR VIRK,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on June 27, 2003 at Vancouver, British Columbia

Before: The Honourable Mr. Justice L.M. Little

Appearances:

Agent for the Appellant: Daljit Dhanoa

Counsel for the Respondent: Raj Grewal

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JUDGMENT

The appeal is dismissed, without costs, and the decision of the Minister of National Revenue is confirmed in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 14th day of July 2003.

"L.M. Little"

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Little, J.

Docket: 2003-360(CPP)

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Little, J.

Citation: 2003TCC488  
Date: 20030714  
Docket: 2003-359(EI)  
2003-360(CPP)

BETWEEN:

MOHINDER KAUR VIRK,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Little, J.**

##### A. FACTS

[1] The Appellant claims to have worked for Brar Blueberry Farms ("Brar") during the period from July 22, 2001 to October 13, 2001 (the "Period").

[2] During the Period Brar owned approximately nine acres of land located at 34643 Townshipline Road, Abbotsford, B.C. Approximately seven of the nine acres were planted in blueberry bushes.

[3] The Appellant claims that during the Period she worked for Brar. She said that she picked blueberries, weeded, and placed sawdust around the blueberry bushes.

[4] Counsel for the Respondent filed a Form referred to as Employee Earnings (Exhibit R-5). The Form states that the Appellant worked the following hours for Brar:

	<u>Hours</u>
July 22 – 31	73
August 1 – 31	309
September 1 – 30	312
October 1 – 13	<u>64</u>
	758

(Note – this Form indicates that the Appellant worked for Brar for 94 days straight, from July 22, 2001 to October 13, 2001, without any time off work. The lowest number of hours recorded was six hours per day. The highest number of hours recorded per day was 12 hours per day).

[5] Brar issued a Record of Employment showing that the Appellant worked 805 hours during the Period. The explanations for the difference between 758 hours and 805 hours was the method (admitted by counsel for the Appellant to be incorrect) by which Brar calculated overtime.

[6] On the 18th day of October 2001 the Appellant signed a Record of Employment showing that she worked a total of 805 hours during the Period.

[7] The Appellant maintains that she is entitled to receive benefits during the Period under the *Employment Insurance Act* (the "*E.I. Act*") and pensionable employment during the Period under the *Canada Pension Plan* (the "*Plan*").

[8] The Minister denied the claim made by the Appellant under the *E.I. Act* on the following basis (paragraphs 6, 7 and 8 from the Reply to the Notice of Appeal):

6. She relies on paragraph 5(1)(a) and subsection 2(1) and section 91 of the *EI Act*, as amended.
7. She submits that she correctly determined that the Appellant was not employed by Brar in insurable employment during the Period as the Appellant was not employed under a contract of service within the meaning of paragraph 5(1)(a) of the *EI Act*.
8. She submits that the ROE and the cheque issued by Brar to the Appellant were shams designed to give the appearance that the Appellant worked and had sufficient hours of insurable employment to entitle her to collect employment insurance benefits.

[9] The Minister denied the claim made by the Appellant under the *Plan* on the following basis (paragraph 7 of the Reply to the Notice of Appeal):

7. She respectfully submits that she correctly determined that the Appellant was not employed by Brar in pensionable employment during the Period as the Appellant was not employed under a contract of service within the meaning of paragraph 6(1)(a) of the *Plan*.

B. TAX ISSUES

[10] (a) Is the Appellant entitled to receive benefits under the *E.I. Act*?

- (b) Was the Appellant engaged in pensionable employment during the Period within the meaning of paragraph 6(1)(a) of the *Plan*?

C. ANALYSIS

[11] Counsel for the Respondent called Harby Rai ("Ms. Rai"), an official of the Canada Customs and Revenue Agency ("CCRA") as a witness.

[12] Ms. Rai testified that she had interviewed Mr. Jarnail Singh Brar (the owner of Brar Blueberry Farms) and she had interviewed the Appellant. Ms. Rai filed a Report of the discussions during the interviews (Exhibit R-7).

[13] Ms. Rai noted that there were a number of contradictions between the answers received from Mr. Brar and the answers received from the Appellant. A careful analysis of Ms. Rai's Report shows the following contradictions in the answers provided.

[14] The following questions were asked by Ms. Rai of Mr. Brar and the Appellant:

Question by Ms. Rai:

Who picked Mohinder Kaur Virk up each day and dropped Mohinder Kaur Virk off each day?

Answer by Mr. Brar:

Her family members mostly picked her up and dropped her off. At times he might give her a ride if she didn't have a ride. (Page 4)

Answer by Appellant:

Jarnail picked her up everyday and dropped her off everyday, sometimes in the van, sometimes in the car. He also picked up two other workers when he picked her up. (Page 3)

Question:

Did the farm labour contractor workers do the weeding with Mohinder Kaur Virk?

Answer by Mr. Brar:

No, farm contractor only picked berries. They did not do any other jobs. (Page 6)

Answer by Appellant:

Yes the farm labour contractor workers also did the weeding. Page 4)

Further answer by Appellant. Workers doing the weeding with her. (Page 4)

Question by Ms. Rai:

Did anybody help Mohinder Kaur Virk to put the sawdust around the berry bushes?

Answer by Mr. Brar:

She did it herself. She would fill the wheelbarrow herself and take it to the plants. Sometimes the children helped her also. The sawdust was not too far from the blueberry plants. He, himself did not help her with the sawdust. (Page 6)

Answer by the Appellant:

Jarnail himself helped her put the sawdust around the bushes. Jarnail would load the wheelbarrow with sawdust, then she would fill her bucket with sawdust from the wheelbarrow and put it around the bushes. (Page 5)

Question – Was Mohinder Kaur Virk paid weekly, bi-weekly or monthly? How often was Mohinder Kaur Virk paid in 2001?

Answer by Jarnail:

He thinks that the Appellant was paid by one cheque at the end of the season. (Page 12)

Answer by the Appellant:

I was paid by cheque every two weeks and then one cheque paid at the end for her balance. (Page 9)

[15] The Report contained a number of additional contradictions in the answers made by Mr. Brar and the answers made by the Appellant.

[16] The burden of proof is on the Appellant to establish on a balance of probabilities that there was work performed by the Appellant under a contract of service, that the Appellant worked the hours set out in Exhibit R-5 and that the Appellant was paid the amount shown on the Record of Employment (Exhibit R-6).

[17] In analysing the facts before me and particularly the contradictions referred to above I have concluded that the Appellant has not satisfied the onus of establishing that the Minister was wrong in denying her to claim benefits during the Period under the *Employment Insurance Act*.

[18] I have also concluded that the Appellant has not satisfied the onus of establishing that the Minister was wrong in denying her claim to pensionable employment during the Period under the *Plan*.

[19] The appeals are dismissed, without costs, and the Minister's determination is confirmed.

Signed at Vancouver, British Columbia, this 14th day of July 2003.

"L.M. Little"

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Little, J.



CITATION: 2003TCC488

COURT FILE NO.: 2003-359(EI)  
2003-360(CPP)

STYLE OF CAUSE: Mohinder Kaur Virk and  
The Minister of National Revenue

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 27, 2003

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice L.M. Little

DATE OF JUDGMENT: July 14, 2003

APPEARANCES:

Agent for the Appellant: Daljit Dhanoa

Counsel for the Respondent: Raj Grewal

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada