

Docket: 2002-4154(EI)

BETWEEN:

KATIE D. HAYWARD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on July 18, 2003 at Toronto, Ontario

Before: The Honourable W.E. MacLatchy, Deputy Judge

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Bonnie Boucher
Carol Calabrese

JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 19th day of August 2003.

"W.E. MacLatchy"
MacLatchy, D.J.

Citation:2003TCC527
Date:20030819
Docket: 2002-4154(EI)

BETWEEN:

KATIE D. HAYWARD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

MacLatchy, D.J.

[1] The appeal was heard on July 18, 2003 at Toronto, Ontario.

[2] D.J. McRae Contracting Ltd., the Payor, appealed a ruling to the Minister of National Revenue, (the "Minister") for the determination of the question of whether or not the Appellant was employed in insurable employment while engaged by it for the period from January 1 to December 31, 2001, within the meaning of the *Employment Insurance Act* (the "Act").

[3] By letter dated October 10, 2002, the Minister informed the Appellant and the Payor that it had been determined that the Appellant's engagement with the Payor, during the period in question, was insurable employment for the reason that the Appellant was employed pursuant to a contract of service.

[4] In making his decision, the Minister relied on the following assumptions of fact:

- a) The Payor is a business involved in general contracting;
- b) The shareholders of the Payor are:

percentage of shares

Appellant	25%
Rick Hayward	25%
Edward Laffey	25%
Dawn Laffey	25%

- c) Rick Hayward is the Appellant's spouse;
- d) Edward Laffey is the Appellant's nephew;
- e) Dawn Laffey is Edward Laffey's spouse;
- f) The Appellant's duties for the Payor included accounting duties and various clerical and related duties;
- g) The Appellant performed the services at the Payor's offices and at times at her home;
- h) The Appellant was paid an annual salary of \$35,000.00;
- i) The Appellant was paid regularly on a bi-weekly basis;
- j) The Appellant's wages were determined by the Payor;
- k) The Payor could terminate the Appellant's employment at anytime;
- l) The Payor owned all the tools and equipment;
- m) The Appellant's duties were integral to the Payor's business.

All of the above assumptions were accepted as correct by the Appellant.

[5] The issue before this Court is whether the Appellant was employed under a contract of service pursuant to paragraph 5(1)(a) of the *Act* and further whether the Appellant was in excluded employment within the meaning of paragraph 5(2)(i) of the *Act*.

[6] A careful and complete cross-examination of the Appellant was conducted by counsel for the Respondent. The evidence elicited from the Appellant indicated that no one shareholder could bind the Payor. There was no one shareholder that had control of the corporation that was related to the Appellant. The Appellant was

related to her husband but not to the other two equal shareholders and her husband did not control the corporation.

[7] The Appellant was hired by the corporation with a clear job description that included operating the internal organization of the company. She was not controlled during the general internal operation of the corporation but was subject to being terminated at the behest of the corporation. The corporation provided the Appellant with an office and all the tools she could require to perform her duties. She was paid a flat salary and was not in a position to profit from the performance of her duties. It is true she would profit from the financial success of the corporation but that was separate and apart from her duties as an employee. She would not suffer any risk of loss. It was the corporation that would be responsible for any loss occasioned in the operation of its business. She had flexible hours and could operate from her home if it was more convenient for her. She was also provided with health and dental coverage and given a car allowance by the corporation. She was an integral part of the operation of the business of the corporation. It was the business of the corporation and not her business as such.

[8] Reviewing the total relationship between the corporation and the Appellant, the Court has reached the conclusion that the Appellant was employed pursuant to a contract of service and her employment would be insurable within the meaning of the *Act*. The further conclusion as indicated above, that the Appellant was not related to the Payor, would confirm that the Appellant and the Payor were dealing with each other at arm's length and the employment of the Appellant was not excluded employment within the meaning of the *Act*.

[9] Reference was made to a recent decision of this Court cited as *Campbell v. Canada (Minister of National Revenue – M.N.R.)*, [1998] T.C.J. No. 571, given by Porter, D.J., dealing with the meaning "at arm's length". The law was well researched and recorded in the judgment commencing at paragraph 5 through and including paragraph 26 and this Court adopts the reasoning contained therein.

[10] The appeal is dismissed and the decision of the Minister is hereby confirmed.

Signed at Toronto, Ontario, this 19th day of August 2003.

"W.E. MacLatchy"
MacLatchy, D.J.

CITATION: 2003TCC527
COURT FILE NO.: 2002-4154(EI)
STYLE OF CAUSE: Katie D. Hayward and M.N.R.
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: July 18, 2003
REASONS FOR JUDGMENT BY: The Honourable W.E. MacLatchy
Deputy Judge
DATE OF JUDGMENT: August 19, 2003

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Bonnie Boucher
Carol Calabrese

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
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