

Docket: 2005-4008(EI)

BETWEEN:

ÉRIC MOREL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on October 3, 2006, at Roberval, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Christina Ham

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**JUDGMENT**

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

Signed at Ottawa, Canada, this 14th day of November 2006.

“Paul Bédard”

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Bédard J.

Translation certified true

on this 6th day of September 2007.

Daniela Possamai, Translator

Citation: 2006TCC550  
Date: 20061114  
Docket: 2005-4008(EI)

BETWEEN:

ÉRIC MOREL,

Appellant,

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THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

Bédard J.

[1] Éric Morel (the “Appellant”) is appealing a decision of the Minister of National Revenue (the “Minister”) under the *Employment Insurance Act* (the “Act”). In a letter dated June 22, 2005, the Minister informed the Appellant of his decision according to which:

- (i) in 1999, he worked from May 24 to October 8, accumulated 1,100 insurable hours and earned a total of \$14,400 in insurable earnings;
- (ii) in 2001, he worked from August 6 to October 19, accumulated 545 insurable hours and earned a total of \$6,750 in insurable earnings;
- (iii) in 2002, he worked from May 27 to October 25, accumulated 950 insurable hours and earned a total of \$13,500 in insurable earnings;

- (iv) in 2003, he worked from May 25 to October 5, accumulated 1,350 insurable hours and earned a total of \$18,000 in insurable earnings;

[2] In rendering his decision, the Minister assumed the following facts, set out in paragraph 7 of the Reply to the Notice of Appeal:

[Translation]

- (a) the payor operates a logging business specializing in brush cutting;
- (b) the payor's main clients were Bowater and Abitibi-Consolidated;
- (c) the payor's period of operations went from the snowmelt period to the first snowfall (end of May to October - November);
- (d) the payor hired between 30 and 90 brush cutters per year;
- (e) in 1999 and 2001, the Appellant worked for the payor as a brush cutter;
- (f) in 2002 and 2003, the Appellant worked for the payor as a journeyman; he had to show new employees how to do the work;
- (g) the Appellant worked 50 hours per week from Monday to Friday at noon, both as a slasher operator and a journeyman;
- (h) although the payor pled guilty to issuing false Records of Employment (ROEs) to his workers, the Appellant claims that he did not bank hours and that the ROEs issued to him are accurate;
- (i) in 1999, the Appellant claims that he worked from May 25 to September 24, whereas, in his statutory declaration dated and signed February 25, 2004, he states as follows [translation]: "I certainly did not stop working on September 24, 1999. To the best of my knowledge, I had to work two more weeks after the last day of work noted on the ROE;"
- (j) in 2001, the Appellant claims that he worked from August 6 to October 12, whereas, in his statutory declaration dated and signed February 25, 2004, he stated as follows [translation]: "I worked at least one more week than what was noted on the ROE, that is until October 19;"

- (k) in 2002, the Appellant claims that he worked from May 27 to October 18, whereas, in his statutory declaration dated and signed February 25, 2004, he stated as follows [translation]: “I worked at least one more week than what was noted on the ROE;”
- (l) in 2003, the Appellant claims that he worked from June 2 to December 5, 2003, whereas, in his statutory declaration dated and signed February 25, 2004, he stated as follows [translation]: “it is very clear in my mind that I banked one week at the beginning of the season; I started working on May 26, 2003, and not on June 2, 2003, as indicated on the ROE;”
- (m) the ROEs issued by the payor neither accurately reflect the periods worked or the insurable hours accumulated by the Appellant in 1999, 2001, 2002 and 2003 nor the insurable earnings earned by the Appellant in 2003;
- (n) for the period from May 24 to October 8, 1999, the Minister determined that the Appellant had accumulated 1,100 insurable hours and a total of \$14,400 in insurable earnings;
- (o) for the period from August 6 to October 19, 2001, the Minister determined that the Appellant had accumulated 545 insurable hours and a total of \$6,750 in insurable earnings;
- (p) for the period from May 27 to October 25, 2002, the Minister determined that the Appellant had accumulated 950 insurable hours and a total of \$13,500 in insurable earnings;
- (q) for the period from May 25 to December 5, 2003, the Minister determined that the Appellant had accumulated 1,350 insurable hours and a total of \$18,000 in insurable earnings;

[3] Among the facts set out in paragraph 7 of the Reply to the Notice of Appeal, only the facts set out in subparagraphs 7(a), 7(c), 7(e) 7(f), 7(g) were admitted by the Appellant. He denied all the rest.

[4] It should be noted at this point that the Appellant’s ROEs (Exhibit A-2) reveal that

- (i) in 1999, he worked from May 24 to September 24, accumulated 990 insurable hours and earned a total of \$10,500 in insurable earnings;

- (ii) in 2001, he worked from August 6 to October 12, accumulated 495 insurable hours and earned a total of \$6,750 in insurable earnings;
- (iii) in 2002, he worked from May 27 to October 19, accumulated 900 insurable hours and earned a total of \$13,500 in insurable earnings;
- (iv) in 2003, he worked from May 2 to December 5, accumulated 1,300 insurable hours and earned a total of \$19,500 in insurable earnings.

### Context

[5] The payor plead guilty in 2004 to issuing false ROEs to the workers, in 1999, 2001, 2002, 2003 and 2004, and was sentenced to pay a \$50,000 fine. The payor also established a “time-banking” system in addition to issuing records for periods during which the employees did not perform any work. As part of their investigation into the payor’s illegal practices, CPP/EI Coverage Officers ruled against 24 of the payor’s employees, of which 9 (including the Appellant) appealed the decision against them.

[6] In the statutory declaration (Exhibit I-1) the Appellant signed on February 25, 2004, at 12:33 p.m. at the offices of Human Resources Development Canada (HRDC) located at 1500 Des Érables Street, in Dolbeau, in the presence of Réal Couture, senior investigator with HRDC, the Appellant acknowledged having worked for the payor outside the periods indicated on the ROEs. It is important to understand that is it essentially on that basis that the Minister rendered the decision of June 22, 2005, against the Appellant. Now, the Appellant claims that the admissions in the statutory declaration were obtained by threat and intimidation. In short, in the case at bar, the Appellant, with whom the burden of proof rested, had to convince me that his version of the facts in connection with the meeting of February 25, 2004, was more credible than that provided by Mr. Couture.

[7] The relevant passages of the statutory declaration read as follows:

[Translation]

I acknowledge having banked or earned secondary income when I worked for Aménagement Myr. It was the end of the season in 1999. I certainly did not stop working on September 24, 1999. To the best of my knowledge, I had to work two more weeks after the last day of work noted on the ROE, that is until October 8, 1999. I remember that my two weeks banked were used to pay Mario Richard for my brush cutter. In 2001, still to the best of my knowledge, I worked at least one more week than what was noted on the ROE, that is until October 19, 2001. Also in 2002, I worked one week after the date noted on the ROE and therefore stopped working on October 25, 2002. For 2003, it is very clear in my mind that I banked one week at the beginning of the season; I started working on May 26, 2003, and not on June 2, 2003, as indicated on the ROE. For the hours banked or worked under the table while I was serving the waiting period, I was paid cash. No one can testify to that as these events occurred while I was alone with Mario Richard in his home. I did it because I needed the money. Mario Richard is the one who suggested doing things this way. He encouraged me by telling me that it would be more lucrative for me not to be put on the payroll right away, so I accepted his proposal. I knew I was making false statements by not disclosing to the Employment Insurance Commission that I was working. There are no mitigating circumstances to justify my actions except that I wanted more money.

[8] The relevant paragraphs of the appeal report (Exhibit I-2) read as follows:

[Translation]

26. In 1999 and 2001, the Appellant worked for the payor a slasher operator. In 2002 and 2003, as well as 2004 and 2005, he was a journeyman. As a journeyman, he had to show new employees the work and follow up with them. . . .
27. In 1999, he worked at the logging camp in Abitibi, in 2001 in Milot, in 2002 in Gérardville (Chibougamau) and in 2003 in Notre-Dame-de-Lorette.
28. When working as a brush cutter, he signed a contract with the payor specifying the amount per hectare, including the 4%.
29. . . .
30. With respect to brush cutting, he worked an average of 50 hours per week from Monday to Friday at noon. In 1999, he worked fourteen consecutive days, followed by seven days when he did not work. As a journeyman, he also worked 50 hours per week but from Monday to Friday.

31. ...
32. A regular team did on average 4 hectares per week, that is 2 hectares per worker.
33. In 1999, the payor paid him \$800 in advances on the amounts per hectare. In 2001, he was paid \$750 per week. If there was a surplus between the amount owed based on the number of hectares and the wages paid, the Appellant would receive an amount per kilometre equivalent to the surplus.
34. ...
35. ...
36. Contrary to his statutory declaration, the Appellant claims that he did not bank hours during the periods at issue.
37. Upon reading his statutory declaration, the Appellant denies all of the passages concerning the banking of hours. At the time, he already felt guilty and the HRSDC officer wrote what he wanted. He signed because he was obliged to do so. He adds that the evidence is the same as that in the statutory declaration of his brother Carl. (Tab A)
38. During the statutory declaration, he had no documents with him. He then sought out documents that could attest to what he said and gave them to a woman. He cannot remember who.  
(Tab A)
39. ...
40. The payor paid him a fixed salary as a brush cutter. However, when the payor adjusted it at the end based on the amounts owing for the hectares, the payor issued him a cheque for the surplus between the amount owed for the hectares and the wages paid by cheque bearing the kilometres. The amount was between \$1,000 and \$1,200. Basically, he was not paid per kilometre.
41. ...
42. ...
43. The Appellant denies having continued to work two weeks after the ROE was issued to him, that is from September 25 to October 12, 1999. He has

already provided an invoice for the purchase of furniture and a saw on September 23, 1999, proving that he was no longer working in the forest.

(Tab B)

44. For 2001, the Appellant traced a medical document proving that he was no longer working in the forest after October 12. [Document attached to his letter.]

(Tab C)

45. For 2002, he does not have any documents but he claims that he did not work from October 20 to October 26.

46. For 2003, he admits that he went into the forest on a Saturday morning to assess the condition of the land and that he injured himself. He states that he did not work between May 18 and May 31, 2003.

[Medical consultation: Monday, May 26; date of the accident: Saturday May 24.]

(Tab D)

### Appellant's testimony

[9] The Appellant's testimony is very brief and may be summarized as follows:

[Translation]

Mr. Couture and the RCMP officer intimidated and terrorized me into signing the statutory declaration even though I was aware that it was false. I never stated to the two investigators that I worked outside the periods indicated on the ROEs.

[10] The Appellant testified that he did not work for the payor during the week of October 16, 2001, because he had to go to Alma that week to meet with Dr. Raymond Gagnon. In support of his submissions, the Appellant filed in evidence Exhibit A-3 which indicates that Dr. Gagnon met with and examined the Appellant on October 16, 2001.

[11] The Appellant stated that he did not work during the week of May 28, 2003, because he had to go to Sagamie, Jonquièrre, that week to meet with Colette Richard, of the Direction de la révision de la Société de l'assurance automobile du Québec. In support of his submissions, the Appellant filed in



evidence Exhibits A-5 and A-6 which prove that the Appellant did in fact meet with Ms. Richard.

[12] To support his testimony that he did not work for the payor during the week of October 24, 2002, the Appellant filed in evidence Exhibit A-4 (municipal tax receipt) which demonstrates, according to him, that he was not in the forest and that, therefore, he did not work for the payor during the week of October 24, 2002.

#### Mr. Couture's testimony

[13] Mr. Couture, whose credibility was not challenged in this case, testified that

- (i) in 2004, as part of his investigation into the payor's activities, he met with 24 of its employees including the Appellant;
- (ii) he met with the Appellant at the offices of HRSDC on February 25, 2004, in the morning, in the presence of an RCMP officer;
- (iii) he wrote the statutory declaration based on the notes he took during the interview.
- (iv) he did not recall the RCMP officer asking the Appellant any questions;
- (v) the interview went well and that neither he nor the RCMP officer intimidated the Appellant or uttered direct or indirect threats against him, or forced the Appellant to sign the statutory declaration.

#### Analysis and conclusion

[14] The burden of proof rested with the Appellant. He had to convince me, on a balance of probabilities, that the Minister was wrong in rendering the decision of June 22, 2005. The Appellant's position is that the ROEs accurately reflect the periods worked, the insurable hours and the insurable earnings. The Appellant's evidence in that respect essentially rested on his testimony, which, I repeat, was contradicted by the statutory declaration. His position on the statutory declaration is that it was obtained by threat and intimidation.

[15] The Appellant did not absolutely convince me that he was threatened and intimidated during the meeting of June 25, 2004, in which Mr. Couture and the RCMP officer participated. The Appellant was content to say that he was threatened and intimidated without being able to give details on the threatening and intimidating behaviour of Mr. Couture and the RCMP officer, on the exact nature of the threats uttered by them or on the threatening language used at the meeting.

[16] As for the Appellant's vague, imprecise and illusory explanations that he was absent from work for two full weeks because he had to meet with Dr. Gagnon the first week and with Ms. Richard the second, they only reinforced my doubts about his credibility. His explanations seemed implausible, to say the least. In fact, the Appellant's explanations that it was not worth going in to work during a given week because he had a meeting might have been plausible if the meetings in question had taken place at locations very far from his home. In the case at bar, the evidence revealed that those meetings lasted no more than a few hours and that they took place not very far from the Appellant's home. The evidence also revealed that the Appellant could make the trip between his residence and his worksite in the forest in 90 minutes or less.

[17] In short, I had to choose between Mr. Couture's version of the facts and that of the Appellant. I chose the version of the facts presented by Mr. Couture simply because I found him to be more credible than the Appellant.

[18] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 14th day of November 2006.

“Paul Bédard”

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Bédard J.

Translation certified true  
on this 6th day of September 2007.  
Daniela Possamai, Translator

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COURT FILE NO.: 2005-4008(EI)  
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PLACE OF HEARING: Roberval, Quebec  
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DATE OF JUDGMENT: November 14, 2006

APPEARANCES:

For the Appellant: The Appellant himself

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COUNSEL OF RECORD:

For the Appellant:

Name:

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