[OFFICIAL ENGLISH TRANSLATION]

98-1073(UI)

BETWEEN:

MARC MARTINEAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on February 7, 2000 at Québec, Quebec, by

the Honourable Deputy Judge G. Charron

Appearances

For the Respondent:	the Respondent himself
Counsel for the Respondent:	Pascale O'Bomsawin

JUDGMENT

The appeal is dismissed and the Minister's decision confirmed in accordance with the attached Reasons for judgment.

Signed at Ottawa, Canada, this 1st day of May 2000.

"G. Charron "

D.J.T.C.C.

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Date: 20000501
Docket: 98-1073(UI)

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MARC MARTINEAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Charron, D.J.T.C.C.

[1] This appeal was heard at Québec, Quebec, on February 7, 2000, for the purpose of determining whether the appellant held insurable employment within the meaning of the *Employment Insurance Act* (the *Act*) when employed by Construction Raoul Pelletier inc., the payer, from June 3 to December 13, 1991.

[2] In a letter dated July 29, 1998, the respondent informed the appellant that the employment in question was not insurable because it did not meet the requirements of a contract of service and there was no employer-employee relationship between him and the payer during the period under appeal.

Statement of facts

[3] The facts relied on by the Minister are described at paragraph 5 of the Reply to the Notice of Appeal (the "Reply") as follows:

> [TRANSLATION]
>
> (a) The payer operated a residential and commercial excavation, heavy machinery rental and snow removal business. (admitted)
>
> (b) The payer's business was operated year-round. (admitted)
>
> (c) In 1991, the appellant says he purchased a 10-wheel truck for $10,000 to operate his own business. (admitted)
>
> (d) The appellant claims that he was engaged in transportation for the payer during the period in issue. (admitted)

(e) During the period in issue, the appellant's truck allegedly broke down for two or three months and the appellant claims he repaired it himself. (admitted)

(f) The appellant claims that he worked for the payer at the time as a mechanic, while running errands in the payer's pick-up. (admitted)

(g) The appellant mentioned that, during that period, he had only worked a day or two a week for the payer, then claimed that he had worked between 35 and 40 hours a week during the entire period in issue. (admitted to 35)

(h) The appellant worked on his truck and was the only person who drove it. (admitted)

(i) The appellant claims that he received $8 an hour when he ran errands and $10 an hour when he worked as a mechanic. (admitted)

(j) The appellant's record of employment states that he was alleged to have received fixed remuneration of $680 a week (more than

68 hours a week) during all the weeks in the period in issue. (denied as drafted)

(k) The appellant was the sole owner of his truck and he alone paid all its operating expenses. (admitted)

(l) The record of employment submitted by the appellant is false because it does not reflect the true situation regarding the work actually done and the remuneration earned. (denied)

[4] The appellant admitted that all the subparagraphs of paragraph 5 of the Reply to the Notice of Appeal were true, except those which he denied, as indicated in parentheses at the end of each subparagraph.

Marc Martineau's Testimony

[5] Paul-Émile Martineau, the appellant's brother, requested permission to assist the appellant because he is deaf. Permission was granted. In 1991, during the above period, Marc Martineau purchased a 10-wheel truck for $10,000 to operate his own transportation business. During the period in issue, he was engaged in transportation for Construction Raoul Pelletier Inc. In the course of his trips, the

appellant's truck broke down and had to undergo repairs for two or three months. The appellant did his own repairs, while running errands and doing mechanical jobs for the payer 35 hours a week, at a rate of one or two days during the entire period. He earned $8 an hour for running errands and $10 an hour for mechanical jobs while employed by the payer. Marc Martineau is the sole owner of his truck and paid all its expenses. After consulting his brother Paul-Émile, he admitted that he had received unemployment benefits to which he had not been entitled. His record of employment from June 3 to December 13, 1991, states that he worked 22 weeks for the payer at a fixed salary of $680 a week. However, in subparagraph (g) of the Reply to the Notice of Appeal, he amended his statement and said that he had only worked a day or two a week for the payer, 35 hours in all, during the entire period in issue. Further on, he claimed that he had often worked 68 hours a week. The appellant paid his truck's operating expenses for items such as repairs, gasoline, licence plates, insurance and traffic tickets for driving violations.

Fernande Vignola-Martineau's Testimony

[6] Fernande Martineau explained that the appellant was paid $40 to $45 an hour when he worked with his truck and only $10 when he drove that of the payer.

The payer arranged to spread out the appellant's hours so that he could pay him an equal salary of $680 a week, including deductions for income tax, unemployment insurance and accident insurance throughout the period in issue.

[7] The appellant failed to have the payer's representative Ghyslain Pelletier, testify, even though he was present.

Analysis of the Facts in Relation to the Law

[8] It must now be determined whether the activity carried on by the appellant is included in the concept of insurable employment, that is, whether there was a contract of service.

[9] The case law has laid down four essential tests for identifying a contract of employment. The leading case is *Montreal v. Montreal Locomotive Works Ltd.*, [1947] 1 D.L.R. 161. Those tests are: (1) control, (2) ownership of the tools, (3) chance of profit and (4) risk of loss. The Federal Court of Appeal added thereto the "degree of integration" in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553, but this list is not exhaustive.

[10] The evidence showed that the work performed by the appellant was done under no one's direction and that there was no relationship of subordination between the payer and him. The appellant owned the truck he used to do his work. Accordingly, the services rendered by the appellant were in the nature of a contract for services, not a contract of service.

[11] Every agreement or arrangement providing for terms and conditions of payment of remuneration on the basis not of the time or period of performance of the remunerated work, but of other objectives such as benefiting from the provisions of the Act vitiates the nature of the contract of service.

[12] Furthermore, there is no room for other considerations such as generosity or convenience. It has often been said that unemployment insurance is a social measure designed to assist those who actually lose their employment and not a subsidy program to assist business or benefit claimants who bend or alter the structure and terms and conditions of payment of the remuneration which their work performance calls for.

[13] Every agreement or arrangement to accumulate or spread out hours has the effect of vitiating the contract of service, particularly since this creates a

contractual relationship which is not very or not at all conducive to the existence of a relationship of subordination, an essential component of a contract of service.

[14] The burden was on the appellant to prove his entitlement and he did not discharge that burden to the Court's satisfaction. On the contrary, he made false statements.

[15] Therefore, the appeal is dismissed and the Minister's decision confirmed.

Signed at Ottawa, Canada, this 1st day of May 2000.

"G. Charron "

D.J.T.C.C.