

Docket: 2009-1435(EI)

BETWEEN:

FRANCE GIRARD,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on June 2, 2010, at Chicoutimi, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the appellant:	The appellant herself
Counsel for the respondent:	Sharon Bahk

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**JUDGMENT**

The appeal pursuant to subsection 103(1) of the *Employment Insurance Act* is dismissed and the decision rendered by the Minister of National Revenue dated January 29, 2009, is confirmed.

Signed at Ottawa, Canada, this 11th day of June 2010.

"Lucie Lamarre"

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Lamarre J.

Translation certified true  
on this 6th day of July 2010.

Elizabeth Tan, Translator

Citation: 2010 TCC 315  
Date: 20100611  
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FRANCE GIRARD,

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### **REASONS FOR JUDGMENT**

Lamarre J.

[1] The appellant is appealing a decision by the Minister of National Revenue (the Minister) according to which: (1) she did not hold insurable employment from August 31, 2006, to August 31, 2008, and (2) the amounts she received for lost wages and loss of employment were a retiring allowance within the meaning of the *Employment Insurance Act* (EIA) and the *Insurable Earnings and Collection of Premiums Regulations* (Regulations), which is not considered insurable earnings.

[2] The appellant was dismissed from her employment with 9088-3620 Québec Inc. Iris Jonquière (Iris), on August 31, 2006. She challenged her dismissal by filing two complaints with the Commission des normes du travail. On August 16, 2007, the Commission des relations du travail (Commission) rendered a decision ordering Iris to pay the appellant, as lost wages and loss of employment, the equivalent of the salary and other benefits lost as a result of her dismissal and an additional amount equal to a year's salary (see the Commission's August 16, 2007, decision, Exhibit A-2).

[3] The appellant received employment insurance after her dismissal. Following the Commission's August 16, 2007, decision, Human Resources and Skills Development Canada sent a letter to the lawyer the Commission designated to defend the appellant in her illegal dismissal complaint, indicating that the amount granted to the appellant as wages (following the Commission's decision) led to an \$11,903 overpayment of employment-insurance benefits (see December 4, 2007, letter, Exhibit A-1).

[4] In the meantime, Iris challenged the Commission's decision. An agreement was finally reached between Iris and the appellant (signed December 10, 2007, by Iris and December 24, 2007, by the appellant) in which Iris agreed to pay \$21,000 as compensation for lost wages and other benefits, and a second amount of \$21,000 as compensation for lost employment. Through this agreement, Iris agreed to pay the appellant the difference between the \$42,000 and the amount to be paid to Human Resources Development Canada (employment insurance) minus the applicable deductions in such cases. Iris also agreed to repay the Receiver General for Canada the overpayment amount owing. The appellant thereby granted Iris a full release (see Release and transaction, Exhibit A-4).

[5] On January 23, 2008, counsel for the Commission des normes du travail sent the appellant a cheque for \$12,587.41, representing the net amount after all deductions and a photocopy of a cheque for \$11,903 in repayment to the Receiver General for Canada (Exhibit A-3). During the hearing before me, the appellant explained that the deductions counsel referred to in the January 23, 2008, letter included \$571.29 for employment insurance.

[6] The appellant challenges the repayment of \$11,903 to the Receiver General for Canada on the ground that the payment received allowed for employment insurance benefits because the payment was granted "as wages."

[7] Unfortunately for the appellant, I cannot agree with her on this. The \$42,000 paid by Iris was a retiring allowance within the meaning of paragraph 1(1)(b) of the Regulations, which is not considered insurable earnings under paragraph 2(3)(b) of the Regulations. These provisions state:

**Insurable Earnings and Collection of Premiums Regulations**

1. (1) The definitions in this subsection apply in these Regulations.

"retiring allowance" means an amount received by a person

...

(b) in respect of a loss of an office or employment of the person, whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment or a competent tribunal.

2. (1) For the purposes of the definition "insurable earnings" in subsection 2(1) of the Act and for the purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is

...

(2) For the purposes of this Part, the total amount of earnings...[excludes] any unpaid amount that is in respect of overtime or that would have been paid by reason of termination of the employment.

(3) For the purposes of subsections (1) and (2), "earnings" does not include:

...

(b) a retiring allowance;

[8] In this case, it was not challenged that Iris was to pay \$42,000, minus the applicable deductions, to the appellant in regard to her loss of employment in accordance with the Commission's decision. Such an amount is in keeping with the definition of retiring allowance, which is not considered insurable earnings. Moreover, the appellant did not work after August 31, 2005, and did not hold insurable employment.<sup>1</sup>

[9] Therefore, the employment-insurance benefits for \$11,903 that she received following her loss of employment on August 31, 2006, and for which she was then paid by her employer Iris, was to be reimbursed to the Receiver General for Canada, under articles 45 and 46 of the EIA, which state:

Return of benefits by claimant

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<sup>1</sup> See section 9.1 of the *Employment Insurance Regulations*, which states:

**9.1** Where a person's earnings are paid on an hourly basis, the person is considered to have worked in insurable employment for the number of hours that the person actually worked and for which the person was remunerated.

**45.** If a claimant receives benefits for a period and, under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person subsequently becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to the claimant for the same period and pays the earnings, the claimant shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have been paid if the earnings had been paid or payable at the time the benefits were paid.

Return of benefits by employer or other person

**46.** (1) If under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer or other person shall ascertain whether an amount would be repayable under section 45 if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits

Return of benefits by employer

(2) If a claimant receives benefits for a period and under a labour arbitration award or court judgment, or for any other reason, the liability of an employer to pay the claimant earnings, including damages for wrongful dismissal, for the same period is or was reduced by the amount of the benefits or by a portion of them, the employer shall remit the amount or portion to the Receiver General as repayment of an overpayment of benefits.

[10] The appellant can therefore not recover the \$11,903. However, I feel that the appellant could be reimbursed for the deductions that were made for employment-insurance contributions<sup>2</sup> taken from the payment she received and that is not considered insurable earnings, under subsections 96(1) or 96(2) of the EIA, which state:

Refund—overpayments

**96.** (1) If a person has made an overpayment on account of their employee's premiums, or has made a payment of employee's premiums during a year when the person was not employed in insurable employment, the Minister shall refund to the person the amount of the overpayment or payment if the person applies in writing to the Minister within three years after the end of that year

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<sup>2</sup> According to the appellant, this represents \$571.29.

Refund—appeal decision

(2) If an amount on account of a premium has been deducted from the remuneration of a person during a year, or has been paid by an employer with respect to a person employed by the employer during a year, and by a decision on an appeal under section 91, 92 or 103 it is decided that the amount so deducted or paid exceeds the amount required to be deducted or paid, or should not have been deducted or paid, the Minister shall refund the excess amount or the amount that should not have been deducted or paid if the person or the employer applies in writing to the Minister within 30 days after the decision is communicated to the person or employer, as the case may be.

[Emphasis added.]

[11] The appellant must apply to the Minister on this matter, within the time limit provided.

[12] Regarding the appeal before this Court, I have no choice but to dismiss the appeal.

Signed at Ottawa, Canada, this 11th day of June 2010.

"Lucie Lamarre"

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Lamarre J.

Translation certified true  
on this 6th day of July 2010.

Elizabeth Tan, Translator

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COURT FILE NO.: 2009-1435(EI)  
STYLE OF CAUSE: FRANCE GIRARD AND M.N.R.  
PLACE OF HEARING: Chicoutimi, Quebec  
DATE OF HEARING: June 2, 2010  
REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre  
DATE OF JUDGMENT: June 11, 2010

APPEARANCES:

For the appellant: The appellant herself  
Counsel for the respondent: Sharon Bahk

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada