

Docket: 2007-326(EI)

BETWEEN:

GATIEN MOREAU,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Gatien Moreau (2007-333(EI))
on November 3, 2008, at Percé, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Denis Paradis

Counsel for the Respondent: Vlad Zolia

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed on the ground that during the relevant period, March 5, 2001, to June 1, 2001, Mr. Moreau was not employed in insurable employment with 9097-5655 Québec Inc., operating as "Mainlist," and the decision by the Minister of National Revenue is affirmed, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 6th day of January 2009.

"Paul Bédard"

Bédard J.

Translation certified true
on this 13th day of February 2009.

Elizabeth Tan, Translator

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JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* is dismissed on the ground that during the relevant period, March 5, 2001, to June 1, 2001, Mr. Moreau was not employed in insurable employment with 3773647 Canada Inc., operating as "Le Groupe Ohmz & Gars Électrique" and the decision by the Minister of National Revenue is affirmed, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 6th day of January 2009.

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Bédard J.

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Appellant,

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THE MINISTER OF NATIONAL REVENUE,

Respondent.

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REASONS FOR JUDGMENT

Bédard J.

[1] On September 28, 2006, the Appellant asked the Minister of National Revenue (the Minister) to decide whether he held insurable employment within the meaning of the *Employment Insurance Act* (the Act) during the period of March 5, 2001, to June 1, 2001 (the relevant period) while working for 9097-5655 Québec Inc., operating as Service de Personnels Mainlist (Mainlist). On September 18, 2006, the Appellant also asked the Minister to rule on whether he held insurable employment within the meaning of the Act during the relevant period while working for 3773647 Canada Inc., operating as Le Groupe Ohmz & Gars Électrique (Ohmz). On November 24, 2006, the Minister informed the Appellant of his decision that he did not hold insurable employment with Mainlist during the relevant period. On November 24, 2006, the Minister also informed the Appellant of his decision that he did not hold insurable employment with Ohmz during the relevant period. The Appellant is appealing from these two decisions rendered by the Minister.

[2] In making his decision in docket 2007-333(EI), the Minister decided the Appellant did not hold insurable employment based on the following presumptions of fact:

- (a) the Payor was incorporated on June 12, 2000; **(no knowledge)**
- (b) according to the Registraire des entreprises, number 1149491947, the Payor's shareholders were Alain Couture, majority shareholder, and Noël Deshaies, second largest shareholder; **(no knowledge)**
- (c) the Payor had a registered business, "Groupe Ohmz & Gars électrique"; **(no knowledge)**
- (d) Noël Deshaies, electrician, described the Payor as a company offering electrician's services; **(no knowledge)**
- (e) the Appellant was a journeyman electrician; **(admitted)**
- (f) the Appellant stated that he got his job from an ad in a newspaper from the Chandler region; **(admitted)**
- (g) the Appellant was allegedly hired by Alain Couture; **(admitted)**
- (h) the Appellant allegedly worked on electrical installations and wiring in houses in Laval; **(admitted)**
- (i) according to the Appellant, he started working when he wanted and submitted his hours to the Payor's foreman; **(denied as written)**
- (j) on August 3, 2005, in an unsigned statement at Human Resources and Skills Development Canada, Noël Deshaies declared that the Payor did not have any activity and that it was a dummy corporation; **(no knowledge)**
- (k) on August 3, 2005, in an unsigned statement at Human Resources and Skills Development Canada, Noël Deshaies stated he did not know the Appellant; **(no knowledge)**
- (l) on November 19, 2001, in his signed statutory declaration at Human Resources Development Canada, the Appellant claimed he worked for Alain Couture operating "Le Groupe Ohmz & Gars Électrique"; **(admitted)**

- (m) during the relevant period, the Appellant claims he was paid by 9097-5665 Québec Inc., operating as "Mainlist" with three NSF cheques; **(admitted)**
- (n) the Appellant provided a representative of the Respondent with a pay stub from April 30, 2001, for \$750 and another from May 18, 2001, for \$1,000 with the word "*prêt*" [loan] on each; **(admitted)**
- (o) in fact, during the 13 weeks of the relevant period, the Appellant received no compensation; **(denied as written)**
- (p) on November 16, 2006, the Appellant told a representative of the Respondent that he never calculated the total amount he did not receive from the Payor; **(denied as written)**
- (q) the Appellant declared to a representative of the Respondent that he was to be paid at the Commission de la Construction du Québec (CCQ) rate; **(admitted)**
- (r) for the relevant period, the Appellant submitted a claim to the CCQ for 729 hours; that claim was denied by the CCQ; **(admitted)**
- (s) in his tax report for 2001, the Appellant had no income except \$10,738 in employment-insurance benefits; **(admitted)**
- (t) during the relevant period, there was no relationship of subordination between the Appellant and the Payor; **(denied)**
- (u) during the relevant period, there was no compensation between the Appellant and the Payor. **(denied)**

[3] In making his decision in docket 2007-326(EI), the Minister decided that the Appellant did not hold insurable employment based on the following presumptions of fact:

- (a) the Payor was incorporated on November 9, 2000; **(no knowledge)**
- (b) the Payor operated a placement company for construction workers; **(no knowledge)**

- (c) on November 19, 2001, in his statutory declaration signed at Human Resources Development Canada, the Appellant declared that he worked for Alain Couture operating "Le Groupe Ohmz & Gars Électrique " (**no knowledge**)
- (d) on November 15, 2006, the Appellant told a representative of the Respondent that during the relevant period, he worked solely for 3773647 Canada Inc. operating "Le Groupe Ohmz & Gars Électrique"; (**admitted**)
- (e) during the relevant period, the Appellant claims he was paid by the Payor; (**admitted**)
- (f) in fact, during the 13 weeks of the relevant period, the Appellant did not receive any compensation from the Payor or from "Le Groupe Ohmz & Gars Électrique"; (**denied as written**)
- (g) in his claim with the Commission de la Construction du Québec (CCQ), for 729 hours, which the CCQ denied, the Appellant described Ohmz & Gars Électrique as his employer for the relevant period; (**admitted**)
- (h) the Appellant did not perform services for the Payor. (**denied**)

[4] The Appellant testified. Moreover, Normand Ross and Marc Wagner testified in support of the Appellant's position. Line Simoneau, major investigation officer at Human Resources Development (HRD) and Lyne Courcy, the appeals officer in charge of these cases, testified in support of the Respondent's position.

Testimony of Ms. Simoneau

[5] The Respondent had Ms. Simoneau testify. During her investigation, she noted that Mainlist was part of a group of businesses claiming to be temp agencies and who were under investigation for issuing false records of employment. Ms. Simoneau explained that the ringleader of all these businesses, Alain Couture, was convicted on related criminal charges. She also noted that according to the business ledger, the shareholders in Ohmz during the relevant period were Mr. Couture, majority shareholder, and Noël Deshaies, second-largest shareholder. Ms. Simoneau explained that Mr. Deshaies told her that he did not know he was a shareholder in Ohmz, that it was a dummy corporation, that he never worked for Ohmz and he did not know

either the Appellant or Mr. Ross. Lastly, Ms. Simoneau stated that Ohmz did not issue a record of employment for the Appellant.

Testimony of Normand Ross and Marc Wagner

[6] Essentially, according to the testimony of Mr. Ross and Mr. Wagner, they worked at the same time as the Appellant at the same work site, during the relevant period. Mr. Ross explained that he worked with the Appellant at the same work site for two weeks in March 2001. Mr. Wagner also explained that he worked with the Appellant at the same work site for four or five weeks in March and April 2001. I immediately make note that one must be careful, to say the least, with Messrs. Wagner and Ross' testimony because they live in the same neighbourhood as the Appellant and are long-time friends of his.

[7] The relevant parts of the Report on an Appeal (Exhibit I-9) regarding information Ms. Courcy obtained from the Appellant during a phone conversation with him are worth citing:

2. Since there was no work in Gaspésie, an electrician friend living in Montreal suggested the Appellant go to Montreal for work, which he did. He went to the CCQ office in Montreal and to the union to register. Since they did not have work for him, he searched for and found a job with Ohmz & Gars Électrique.
3. The Appellant indicated he did not work for Mainlist during the period of March 5, 2001, to June 1, 2001, but for Ohmz & Gars Électrique (*namely 3773647 Canada Inc.*). All he knew of this company was that Noël Deshaies was the one who described the company as an electrician.
4. He was hired by Alain Couture to work at Ohmz & Gars Électrique. He had seen Mr. Couture but did not know him.
5. The Appellant worked on Renaissance Street in Laval. The work site included 12 new houses. He installed electrical outlets and wiring. He also did electrical repairs on Robert Street.

6. The Appellant worked with Noël Deshaies, electrician, and Norman Ross, electrician apprentice. He also worked a week or two with Michel Lancup.

...

9. There were two or three different foremen on the work sites, including Mr. Leblanc. The Appellant did not see Alain Couture except the one time he went to the work site and was to speak to him, but did not. As for Michel Boutin, he saw him a few times at work but did not have anything to do with him or Marco Couture, president of Cogebo, who brought materials.

10. The Appellant stated that his work on weekends was the same as during the week, and was still with Ohmz & Gars Électrique (*namely 3773647 Canada Inc.*).

11. He could start working when he wanted because there was always someone at the work site. He worked an average of 60 hours a week and sometimes he worked 90 hours a week. When asked why the detailed hours indicate a maximum of 70 hours, he verified the document and said it was a long time ago, but if it says 70 hours, then he worked 70 hours.

12. Ohmz & Gars Électrique (*namely 3773647 Canada Inc.*) was to pay him at the hourly CCQ rate. In fact, he received a first paycheque of \$527.11, and then two cheques for advances for \$750 and \$1,000. These cheques were all NSF. He did not receive any other amounts.

13. When asked why he worked 13 weeks without being paid, he said he relied on the CCQ representative and believed it would be resolved. He was in too deep and believed he would be paid.

14. When asked why the pay stub for the \$527.11 indicated 40 hours when he listed 60 hours on his time record, the Appellant said it was really 50 hours and did not know why he received a paycheque for only 40 hours.

...

16. To meet his needs, the Appellant borrowed money from his mother and his brother.
17. When asked why the pay stubs for the \$750 and \$1,000 cheques indicate "loan" and not salary, the Appellant said it was an advance. Since he was in Laval and his cheques went through his account in Gaspésie, it took time before he realized they were NSF.
18. The Appellant does not know why he indicated "Mainlist" as the employer on his employment-insurance application when he worked only for Ohmz & Gars Électrique (*namely 3773647 Canada Inc.*). Although he does not know why, the three cheques he received were from "Mainlist."
- ...
20. The Appellant indicated that his meeting with the investigators (Madeleine Cabot and Line Simoneau) went well. He does not have a copy of the declaration. Upon reading the statutory declaration during our meeting, the Appellant did not make any changes. He stated that he dealt with Mr. Leblanc, foreman, and not Alain Couture. When asked why he did not mention Mr. Leblanc in his statutory declaration, he did not know. He added that Michel Boutin was the foreman for around one week only. (Tab D)
- ...
22. He never calculated the total amount he did not receive from Ohmz & Gars Électrique (*namely 3773647 Canada Inc.*).

[8] In this case, a few general comments should be made regarding the Appellant's credibility. As a reminder, he was practically the only person (aside from Messrs. Wagner and Ross) to testify in support of his appeals. I note that the Appellant only really submitted a single document in support of his position, namely a copy of two cheques in his name drawn from the bank account of Mainlist (Exhibit A-1). In my opinion, it would not be wise to grant credibility to the Appellant's testimony without supporting or probative evidence in the form of documentation or credible testimony. The Appellant's replies were generally vague, imprecise, ambiguous and often unlikely. Not only were his responses imprecise but they were also often contradicted

by documentary evidence and his prior statements. To show how little credibility the Appellant's testimony had, we will examine three fairly significant examples. First, the Appellant testified that he worked seven days a week during the relevant period, from 7:00 a.m. to 6:00 p.m., nearly 70 hours a week. However, the document he sent to Ms. Courcy (Exhibit I-3) indicates that:

- (i) during the first week of the relevant period, he allegedly worked 50 hours over five days;
- (ii) during the second week of the relevant period, he allegedly worked 60 hours over six days;
- (iii) during the third week of the relevant period, he allegedly worked 60 hours over six days;
- (iv) during the fourth week of the relevant period, he allegedly worked 70 hours over seven days;
- (v) during the fifth week of the relevant period, he allegedly worked 63 hours over seven days;
- (vi) during the sixth week of the relevant period, he allegedly worked 40 hours over four days;
- (vii) during the seventh week of the relevant period, he allegedly worked 50 hours over five days;
- (viii) during the eighth week of the relevant period, he allegedly worked 70 hours over seven days;
- (ix) during the ninth week of the relevant period, he allegedly worked 60 hours over six days;
- (x) during the tenth week of the relevant period, he allegedly worked 60 hours over six days;
- (xi) during the eleventh week of the relevant period, he allegedly worked 50 hours over five days;

- (xii) during the twelfth week of the relevant period, he allegedly worked 50 hours over five days;
- (xiii) during the thirteenth week of the relevant period, he allegedly worked 46 hours over five days.

Moreover, the Appellant's application for unemployment indicates he worked an average of 50 hours a week during the relevant period. Additionally, a pay stub (Exhibit I-2) indicates that the Appellant allegedly worked 40 hours during the week ending March 17, 2001. From all this, we have four different versions regarding the hours of work for the week ending March 17, 2001.

[9] The second example deals with the Appellant's testimony on his compensation. The evidence shows that the Appellant was not compensated for the work he allegedly carried out during the 13 weeks of the relevant period. First, the Appellant claimed that Ohmz (and not Mainlist) was to pay at the rate prescribed by the order in effect at the time in the construction field. In fact, the Appellant received a first cheque for \$527.11 (Exhibit I-2) for the week ending March 17, 2001; this cheque was NSF. Moreover, the Appellant provided a copy of two cheques (Exhibit A-1) in his name, drawn from the bank account of Mainlist (and not Ohmz). The first, for \$750 was dated April 20, 2001. The other, for \$1,000 was dated May 18, 2001. On both cheques, the word "loan" appears. They were both also NSF cheques. The Appellant claimed that he did not receive any other amounts. The Appellant stated that he learned the cheques were NSF many months later because they had to go through Gaspésie. I must immediately note that the cheque dated May 18, 2001, has a statement dated May 22, 2001, indicating that it was NSF. Basically, the Appellant declared that he worked for 13 weeks without compensation because he realized too late that the cheques were NSF. The Appellant explained that he was "in too deep" and had to [TRANSLATION] "believe the promises made that he would be paid." It is absolutely unthinkable that the Appellant would have worked for 13 weeks at 70 hours a week without compensation. The Appellant's entire version regarding his non-compensation for the hours he allegedly worked is quite simply implausible.

[10] Third, the Appellant testified that his employer during the relevant period was Ohmz. However, his application for unemployment indicates his employer was Mainlist. And yet, the three cheques were drawn on the bank account of Mainlist, not Ohmz. The Appellant was unable to explain this contradiction. His testimony on this subject was simply incomprehensible.

[11] Lastly, the declarations Mr. Deshaies made to Ms. Simoneau and Ms. Courcy that Ohmz was a company with no activity during the relevant period and that he did not know the Appellant only confirmed my doubts that the Appellant was not employed under a contract of service within the meaning of paragraph 5(1)(a) of the Act, either with Mainlist or with Ohmz. I conclude that the Appellant did not hold any insurable employment during the relevant period.

[12] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 6th day of January 2009.

"Paul Bédard"

Bédard J.

Translation certified true
on this 13th day of February 2009.

Elizabeth Tan, Translator

CITATION: 2009 TCC 4

COURT FILE NO.: 2007-326(EI)

STYLE OF CAUSE: GATIEN MOREAU and M.N.R.

PLACE OF HEARING: Percé, Quebec

DATE OF HEARING: July 23 and November 3, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: January 6, 2009

APPEARANCES:

 Counsel for the Appellant: Denis Paradis

 Counsel for the Respondent: Vlad Zolia

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