

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160304**

**Docket: A-56-15**

**Citation: 2016 FCA 76**

**CORAM: GAUTHIER J.A.  
RENNIE J.A.  
GLEASON J.A.**

**BETWEEN:**

**RANDY URQUHART**

**Appellant**

**And**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Fredericton, New Brunswick, and Halifax, Nova Scotia on February 25, 2016.

Judgment delivered at Ottawa, Ontario, on March 4, 2016.

**REASONS FOR JUDGMENT BY:**

**RENNIE J.A.**

**CONCURRED IN BY:**

**GAUTHIER J.A.  
GLEASON J.A.**

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**REASONS FOR JUDGMENT**

**RENNIE J.A.**

[1] This is an appeal from the decision of the Tax Court of Canada delivered January 15, 2015 (Judgment issued January 21, 2015). In that decision, the Tax Court dismissed the appellant's appeal from the decision of the Minister of National Revenue disallowing certain expenses incurred by the appellant as deductions from employment income. For the reasons that follow, the appeal should be allowed in part.

[2] By way of background, the appellant was employed by Towne Sales and Service Ltd. (Towne), a Ford dealership in Miramichi, New Brunswick. There was no written contract of employment.

[3] There were two elements to the appellant's employment. He received a fixed salary for his work as a sales manager and a commission for his sales as a car salesman. In respect of this aspect of his employment, the appellant incurred various expenses to support his sales. These included: mobile phone charges; postage for sending cards to clients; promotion costs for support of local sports teams; gifts to mechanics to ensure prompt service on behalf of the appellant's clients at the dealership; vehicle transfer costs to bring new cars to Miramichi for delivery to customers to obtain the higher commission the dealership agreed to pay the appellant if the cars were present in Miramichi; cost of installing accessories on certain cars he sold; providing mechanical assistance in the case of the breakdown of a recently sold vehicle; and providing a vehicle when the purchaser's vehicle was in for service.

[4] Section 8 (1) (f) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) stipulates that before expenses can be deducted from employment income the taxpayer must be required, under the contract of employment, to pay the expenses.

[5] The decision of the judge as to whether the expenses were "required under the employment contract" calls for an interpretation of a contract, a question of mixed fact and law: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. As such, the decision of the judge with respect to the terms of a contract will only be reversed on appeal if it

can be established that the judge made a palpable and overriding error, or erred in respect of an extricable question of law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

[6] The judge erred in two respects. In construing the contract, he relied on the personal perspective of the employer as to what was “required under the contract” without consideration of whether, regarding the contract objectively, it was an implicit or implied term that the employee would be required to incur certain costs in order to earn the commissions contemplated by the contract; see *Sattva* at para 49.

[7] Secondly, the judge erred in failing to address the possibility that some of the expenses might be “required under the contract” and others might not. He did not identify and segregate those expenses that were related to development and marketing of the appellant’s sales (which he was not required to incur under the contract) and those expenses which, when the employment contract was viewed objectively, were directly needed for the appellant to fulfill his responsibilities and obtain his entitlements under the contract (to sell cars and earn commissions) and were expressly agreed with the dealership (charge back). To be specific, the latter included:

- i. the freight and transportation costs to bring cars to the dealership, and
- ii. the cost of purchasing accessories to be included on delivery of a vehicle, or shortly thereafter and which the appellant and the dealership had agreed to share. These would not include the costs of accessories that the dealership was not prepared to finance at all nor would it include gifts to the mechanics to install the accessories.

[8] Indeed, the appellant’s evidence (including the invoices and pink slips for charges back) demonstrate a mutual understanding that these expenses were required. Without them, the appellant could not earn the higher percentage commission that the dealership had agreed to pay

him if a vehicle was present in Miramichi, or could not deliver the merchandise that the dealership had agreed to deliver to a client. As such, these expenses should be distinguished from prudent or innovative expenditures merely aimed at *helping* produce income by building positive client relations.

[9] Given the amounts in dispute and the legal costs incurred, this is an appropriate case to exercise the authority under s. 52(c)(ii) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. I would allow the appeal in part, with each party bearing its own costs and direct the Minister to vary the assessment so as to allow the deductions for costs incurred by the taxpayer for the transportation of vehicles back to the dealership for delivery to customers, and for the expenses incurred to purchase accessories or enhancements to vehicles where the dealership was also covering part of the costs and the expense was charged back.

[10] With respect to the costs of the appellant's motion made in writing to add certain documents, it is clear that part of those documents were indeed useful and were referred to during the hearing. However given that the appeal is only allowed in part, each party should bear their own costs.

"Donald J. Rennie"

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J.A.

"I agree  
Johanne Gauthier J.A."

"I agree  
Mary J.L. Gleason J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-56-15

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA, DATED  
JANUARY 21, 2015, DOCKET NO. 2013-2565(IT)I.)**

**STYLE OF CAUSE:** RANDY URQUHART V. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** FREDERICTON, NEW BRUNSWICK

**DATE OF HEARING:** FEBRUARY 25, 2016

**REASONS FOR JUDGMENT BY:** RENNIE J.A.

**CONCURRED IN BY:** GAUTHER J.A.  
GLEASON.J.A.

**DATED:** MARCH 4, 2016

**APPEARANCES:**

Kevin C. Toner FOR THE APPELLANT

David I. Besler FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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