

Date: 20080429

Docket: A-372-07

Citation: 2008 FCA 162

**CORAM: DÉCARY J.A.
SHARLOW J.A.
TRUDEL J.A.**

BETWEEN:

EUGENIE E. EATON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Winnipeg, Manitoba, on April 29, 2008.

Judgment delivered from the Bench at Winnipeg, Manitoba, on April 29, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on April 29, 2008)

SHARLOW J.A.

[1] This is an appeal by Ms. Eugenie E. Eaton from a judgment of Justice Hershfield of the Tax Court of Canada (2007 TCC 555) dismissing her appeal from income tax assessments for 2000, 2001 and 2002. We have concluded that her appeal cannot succeed.

[2] Ms. Eaton is now retired but before her retirement she was a federal government employee. She was employed in a position that was classified as “clerical and regulatory” (CR). In 1984 the Public Service Alliance of Canada (PSAC) filed with the Canadian Human Rights Tribunal a

discrimination complaint on behalf of employees in certain female dominated occupations, including those classified as CR. The complaint alleged that employees in those categories were not being paid at the same rate as employees in male dominated categories doing work of equal value.

[3] The Tribunal found the complaint to be valid, and granted a remedy (see *Public Service Alliance of Canada v. Canada (Treasury Board)*, [1998] C.H.R.D. No. 6 (QL); an application for leave to appeal was dismissed *Canada (Attorney General) v. Public Service Alliance of Canada (T.D.)* (1999), [2000] 1 F.C. 146). The remedy was an order of the Tribunal requiring the federal government to pay each person on whose behalf the complaint had been made an amount reflecting the shortfall in salary from March 8, 1985, plus interest. The claim for compensation for hurt feelings was dismissed.

[4] The amounts payable as a result of the Tribunal's order were determined on the basis of agreements between the federal government and the PSAC. In Ms. Eaton's case, the remedy resulted in her receiving a number of payments. Some were identified as retroactive salary, some as interest, and some as additional superannuation benefits as a consequence of the retroactive salary increase. Ms. Eaton argued in the Tax Court, and now argues in this Court, that the amounts she received should be characterized as non-taxable damages.

[5] Justice Hershfield rejected Ms. Eaton's argument. His conclusion follows another decision of the Tax Court, *Van Elslande v. Her Majesty the Queen*, 2007 TCC 370, which in turned followed the decision of this Court in *Morency v. Canada*, 2005 FCA 16.

[6] Ms. Eaton argues that she should not be treated as having received retroactive salary because the federal government has not made a retroactive adjustment for the overtime and acting pay that she earned while she was a government employee, and because the pension benefits to which she is entitled under the *Canada Pension Plan* (CPP) have not been increased to reflect what the federal government says is a higher retroactive salary.

[7] For the purposes of this appeal, we do not need to determine whether Ms. Eaton is correct when she says that her share of the pay equity award was insufficient, and that her CPP benefits have not been adjusted upward. Even if she is correct on both points, it would not assist her in this appeal. The only question properly before this Court is whether the payments in question are taxable. The answer to that question is based on the legal character of the payments. It does not depend on whether the federal government correctly determined the amount of the compensation owed to Ms. Eaton, or the amount of consequential benefits such as Ms. Eaton's CPP entitlement.

[8] Based on our review of the Tribunal's decision and the subsequent agreements, the only reasonable conclusion is that amounts received as a result of the award are taxable. Amounts paid to compensate for the shortfall in salary are taxable as income from employment. Amounts paid as interest on the underpaid salary are taxable as interest. Amounts paid as additional superannuation benefits resulting from the higher retroactive salary are taxable as pension income.

[9] This appeal will be dismissed, in the circumstances without costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-372-07

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
JULY 6, 2007, DOCKET NO. 2006-2531(IT)I)**

STYLE OF CAUSE: Eugenie E. Eaton v.
Her Majesty the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: April 29, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (DÉCARY, SHARLOW,
TRUDEL J.J.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Eugenie Eaton ON HER OWN BEHALF

Jeff Pniowsky FOR THE RESPONDENT

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