

Docket: 2002-2978(EI)

BETWEEN:

COMMUNITY LIVING HUNTSVILLE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard together with the appeal of *Community Living Huntsville*
(2002-2979(CPP)) on December 10, 2003 at Toronto, Ontario

Before: The Honourable N. Weisman, Deputy Judge

Appearances:

Counsel for the Appellant: Ian St. John

Counsel for the Respondent: John Grant

JUDGMENT

The appeal is allowed and the decision of the Minister is varied in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 22nd day of December 2003.

"N. Weisman"

Weisman, D.J.

Citation: 2003TCC932
Date: 20031222
Dockets: 2002-2978(EI)
2002-2979(CPP)

BETWEEN:

COMMUNITY LIVING HUNTSVILLE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Weisman, D.J.

[1] At issue in these appeals is whether Peter C. Last ("Last") was engaged under a contract of service with the Appellant from April 24, 2000 to October 25, 2001.

[2] On April 18, 2000, counsel for the Appellant sent Last a letter which stated:

"... the Board has terminated your employment effective immediately.

... You are not to enter onto or attend at the business premises of Community Living Huntsville or any of their programs at any time or for any purpose. ..."

[3] It was agreed between the parties that Last would receive \$7,952.58 in severance pay; that his salary would be continued with partial benefits being paid for 18 months to October 25, 2001, but that he would perform no further services for the Appellant.

[4] The continuing benefits provided to Last were life and dependent life, and health and dental coverage. His long-term disability ("LTD") and accidental death and dismemberment ("ADD"), coverage, however, were terminated.

[5] The Appellant also had a registered retirement savings plan ("RRSP") to which its employees contributed while it did not. The Appellant informed the carrier on May 3, 2000 that Last should be removed from its group plan and personal coverage provided thereafter. Unfortunately the carrier failed to act upon these instructions and a reminder letter was sent on October 19, 2001.

[6] At issue in this appeal is the characterization of the 18-month "salary continuation" paid to Last. If it was a continuation of his salary, the employer/employee relationship subsisted until October 25, 2001, and the Appellant was responsible for source deductions thereon, even though Last did no work, *Canada (Attorney General) v. Sirois*, [1999] F.C.J. No 523 (FCA). If it was a true retiring allowance (even though none of the Appellant's letters or records of employment refer to it as such), the Appellant was not so responsible.

[7] Paragraph 4 of Canada Customs and Revenue Agency bulletin No. IT-337R3 deals with retiring allowances as follows:

4. Whether an individual has retired is a question of fact. Continued participation in a former employer's health plan (for example, providing medical, dental and long term disability coverage) for a restricted period of time would not, in itself, indicate that employment has not terminated, particularly if the employer's plan specifically permits former employees to be covered under the plan; however, if pension benefits continue to accrue to the individual the accrual indicates that there is an employment relationship, since such benefits only accrue to employees. The fact that the employer does not require an individual to report to work is not, by itself, determinative of whether the individual has retired. For example, an individual who has been given a leave of absence for educational purposes is still an employee.

[8] Given this, the continued provision of life, dental, and health insurance coverage by the Appellant to Last is not determinative. Particularly in view of the termination of his long-term disability and accidental death and dismemberment coverage. The continuation of Last on the Appellant's group RRSP plan is more germane as this is reserved for employees.

[9] Two factors are noteworthy in this regard. First, the Appellant did all it could to remove Last from its group plan as early as May 3, 2000. Second, it

provided no benefit to him throughout the period in question since it did not make contributions to the plan.

[10] In my view, the employment relationship between the Appellant and Last terminated on April 18, 2000. The lawyer's letter of that date is unequivocal. The RRSP carrier was notified to arrange a personal plan for Last. His LTD and ADD were discontinued. While his life, health and dental coverage were continued this is not uncommon with former employees.

[11] I find that the 18 months of "salary continuation" paid to Last between April 24, 2000 and October 25, 2001 was a retiring allowance, and that the Appellant was not responsible for source deductions thereon.

[12] In the result the appeals will be allowed, and the decision of the Minister varied accordingly.

Signed at Toronto, Ontario, this 22nd day of December 2003.

"N. Weisman"

Weisman, D.J.

CITATION: 2003TCC932

COURT FILE NO.: 2002-2978(EI) and 2002-2979(CPP)

STYLE OF CAUSE: Community Living Huntsville and
M.N.R.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 10, 2003

REASONS FOR JUDGMENT BY: The Honourable N. Weisman,
Deputy Judge

DATE OF JUDGMENT: December 22, 2003

APPEARANCES:

Counsel for the Appellant: Ian St. John

Counsel for the Respondent: John Grant

COUNSEL OF RECORD:

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