

Citation: 2004TCC44  
Date: 20040123  
Docket: 2003-2044(EI)  
2003-2045(CPP)

BETWEEN:

DR. JOHN BOITSEFSKI,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

**REASONS FOR JUDGMENT**  
**(delivered orally from the Bench at  
Cornerbrook, Newfoundland on October 27, 2003)**

**Bell, J.**

[1] I have concluded without any difficulty that the Appellant should succeed in this appeal. And I will simply, at the beginning, adopt the reasons that Mr. Russell had given us. I will adopt as my reasons his comments under the headings of control, which do not need repetition right here on the record, and of tools and of a chance of profit. I believe he said that the risk of loss was minor, but was in favour of the Appellant. I do not have to make a judgment on that one way or the other because I think the other three bases are so overwhelmingly powerful that we do not have to worry about that.

[2] On integration, I agree with him that the business can continue without the witness, Deborah Loder. He could do his own work, including the work that she did.

[3] The agreement did say that she was an independent contractor, not in writing, but that was agreed between them and we see no rebutting evidence from Ms. Loder.

[4] It was clear from her answers that she was not challenging the fact that her own status was that of an independent contractor until she talked to an accountant who had some ideas. I am not quite sure what they were but they were driven initially, according to what I heard, by the fact that she had no expenses to deduct and then gravitated into the question of employment insurance based upon a different status. And it seems to me that that was why it was pursued with an application, I suspect, to Revenue Canada or the Agency, whichever it was at that time, for a ruling as to her status.

[5] Now, I commented, Mr. Hickey, when you were making your submission, about your language when you said that, and I'm going to repeat this. She did not believe that she had the freedom to set her own hours. She did not believe that she had to work to establish business. She did not believe that she had the flexibility respecting hours. She did not believe that she could work elsewhere. It was her opinion that she had to request time off. And although you did not use the word in the next phrase, it was implicit that it was her opinion that she was not free to take vacation without approval. And quite frankly, I don't put much weight upon the little incident where the doctor said no, and then later on apologized to her and told her that she could take the time off, as I recall it. And we will never know what all the circumstances surrounding that exchange were. Sometimes people are in such state that it is provocative on the part of he or she who asserts and is received as having been provocative by he or she who hears.

[6] Then Mr. Hickey, I am not criticizing you at all, but I do not have a lot of ability to apply weight to the fact that she did not do certain things, did not bring in work, that she did not have business cards, that she did not try to sell, she did not pass out toothbrushes, that she did not take patients when she left, that she could not work when the doctor was not there, and that the office manager looked after billing, et cetera, pulled files and put them away; and that she did not have any opportunity of discussing what the Appellant says was so, i.e. the arrangement made when she agreed to become an independent contractor. I do not think she said that without some comprehension. That is my impression from what I heard. And her evidence impressed me more as not being sure about certain things and kind of quietly having done nothing more than deciding that she was not an independent contract, was an employee, and was going to pursue that, because she did not pursue it at all. So, she knew she was using those tools, for example, and it might have occurred to her at some point how that was being paid for. On that basis, I am allowing the appeal of the Appellant.

Page: 3

Signed at Ottawa, Canada, this 23rd day of January, 2004.

"R.D. Bell"

---

Bell, J.

CITATION: 2004TCC44

COURT FILE NO.: 2003-2044(EI) and 2003-2045(CPP)

STYLE OF CAUSE: Dr. John Boitsefski v. M.N.R.

PLACE OF HEARING: Cornerbrook, Newfoundland

DATE OF HEARING: October 27, 2003

REASONS FOR JUDGMENT BY: The Honourable Justice R.D. Bell

DATE OF REASONS FOR JUDGMENT: January 23, 2004

APPEARANCES:

For the Appellant: Bruce Russell

Counsel for the Respondent: Martin Hickey

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada