

Docket: 2003-611(EI)

BETWEEN:

PRW GRAPHIC GROUP INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on common evidence with the appeal of *PRW Graphic Group Inc.*
(2003-612(CPP)) on December 9, 2003 at Toronto, Ontario

Before: The Honourable W.E. MacLatchy, Deputy Judge

Appearances:

Agent for the Appellant: Peter Phillips

Counsel for the Respondent: John Grant

JUDGMENT

The appeal is dismissed and the assessment is confirmed in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 30th day of January 2004.

"W.E. MacLatchy"
MacLatchy, D.J.

Citation: 2004TCC31
Date: 20040130
Dockets: 2003-611(EI)
2003-612(CPP)

BETWEEN:

PRW GRAPHIC GROUP INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

MacLatchy, D.J.

[1] These appeals were heard on common evidence on December 9, 2003 at Toronto, Ontario.

[2] By Notice of Assessment dated February 15, 2002, the Appellant was assessed for failure to remit \$4,046.08 in employment insurance premiums and \$5,696.94 in Canada Pension Plan contributions in respect of Kenneth Scott, Richard Plagenz and Robert Munro (the "Workers"), and for related penalties and interest, for the year 2001.

[3] The Appellant appealed to the Respondent for reconsideration of the assessment, and the Respondent confirmed the assessment by letter dated October 30, 2002.

[4] The evidence for the Appellant was given by one of the partners who owned and operated the business which was involved in offset printing.

[5] The workers were commissioned salesmen who were to bring printing business to the Appellant. The workers were provided with a desk and office space and equipment such as a fax machine, telephone and some secretarial services.

Each worker had a weekly draw against their commission incomes; such commission rate and draw amounts were set by the Appellant. The workers had daily business hours from 9:00 a.m. to 5:00 p.m. and were required to report frequently to the Appellant as to their business prospects and progress of any existing contracts. The Appellant's owners had to approve of any contracts submitted by the salesmen. The Appellant had the right to terminate the services of the salesmen at its option.

[6] This Court must examine the complete relationship between the Appellant and the salesmen to determine whether the salesmen were employees of the Appellant or independent contractors on their own account. Guidance has been given by the Federal Court of Appeal in *Wiebe Door Services v. M.N.R.*, 87 DTC 5025, where it was suggested that a four-in-one test be applied to the existing facts gleaned in evidence. Those tests included control, ownership of tools, chance of profit and risk of loss.

[7] The question of control can be difficult in this day and age by reason of the fact that often the worker may have far superior knowledge of his work than his employer could because of the skill and experience needed by that worker. But notwithstanding this, the employer may still have the ultimate control or have control even though it is infrequently used.

[8] The evidence given seemed to support the fact that there was an element of control exercised over the workers. The Appellant set the commission and draw rates arbitrarily in accordance with what it may have determined to be the standards in the industry. These rates were not negotiable. The workers had to be in constant contact with the Appellant and keep it abreast with the possibility of business. Contracts and quotes were to be approved by the Appellant or there could be no commission payable.

[9] The Appellant had the right to terminate the workers if it so determined - the ultimate control factor. Based on these facts, it would appear that there existed control with the Appellant.

[10] The ownership of tools. The Appellant provided the workers space for their work together with the usual office amenities such as telephone, fax copy machines and some secretarial assistance. The workers did not require their own work tools although many did have a vehicle and some office equipment at their homes. It was not evident that they were operating their own business from their homes. The

workers could operate and perform their services from the offices of the Appellant. It would appear that ownership of tools was that of the Appellant.

[11] Chance of profit. The workers could profit from their efforts only to the extent of their own time and ability. They had no investment in the business nor part ownership in the overall venture.

[12] Risk of loss. It appeared that there was no risk of loss if the client did not pay the Appellant. The workers received their commission once the contract was consummated.

[13] The further recommendation as an assist to attempt to determine the existing relationship between the parties was the 'integration' test. Were the workers an integral part of the business of the Appellant or were they operating their own businesses as separate entities from that of the Appellant? The facts in this case would support the conclusion that the workers were not carrying on their own businesses but were an integral part of the business operation of the Appellant. None of the workers had a business registered and each used business cards indicating they were representing the Appellant as salesmen. The workers were personally required to perform their expected function for the Appellant.

[14] It is always the burden on this Court to determine the relationship existing between the Appellant and the workers by not only using the guidelines alone but by examining the whole of the relationship existing. On this basis, the evidence adduced supports the decision that the workers were employees of the Appellant and that they performed their services pursuant to contracts of service. Source deductions should have been made and employer contributions paid on their behalf by their employer pursuant to the relevant legislation.

[15] These appeals are dismissed and the assessments are hereby confirmed.

Signed at Toronto, Ontario, this 30th day of January 2004.

"W.E. MacLatchy"

MacLatchy, D.J.

CITATION: 2004TCC31

COURT FILE NO.: 2003-611(EI) and 2003-612(CPP)

STYLE OF CAUSE: PRW Graphic Group and M.N.R.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 9, 2003

REASONS FOR JUDGMENT BY: The Honourable W.E. MacLatchy,
Deputy Judges

DATE OF JUDGMENT: January 30, 2004

APPEARANCES:

Agent for the Appellant: Peter Phillips

Counsel for the Respondent: John Grant

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
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