

Citation: 2007TCC350
Date: 20070625
Docket: 2006-2479(IT)I

BETWEEN:

DEBBRA LOUBIER,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on May 30, 2007 at Toronto, Ontario)

Little J.

A. FACTS

[1] The Appellant was an employee of Revenue Canada, now known as the Canada Revenue Agency (the “CRA”).

[2] The Appellant commenced working for Revenue Canada in 1981.

[3] In 1984 and 1990, the Public Service Alliance of Canada (the PSAC) presented human rights complaints on behalf of certain employees represented by its female-dominated occupational groups to the Canadian Human Rights Commission (the Commission). Approximately 200,000 federal employees were involved in this application.

[4] The complainants maintain that the Treasury Board (the Employer of the Appellant and the other employees), had acted contrary to section 11 of the *Canadian Human Rights Act* (the “CHRA”), by failing to provide equal pay for work of equal value (this is referred to hereinafter as pay equity).

[5] On July 29, 1998, the Canadian Human Rights Tribunal (the Tribunal) upheld the complaints and held that the Treasury Board had acted in violation of section 11 of the *CHRA*. The Tribunal ordered the Treasury Board to pay the Appellant and other civil servants a pay equity wage, adjusted retroactively to March 8, 1985.

[6] The Tribunal's Order also ordered that interest be paid on the net amount of direct wages calculated as owing for each year of the retroactive period, plus post-judgment interest.

[7] The Attorney General of Canada appealed the decision to the Federal Court, Trial Division.

[8] On October 19, 1999, the Federal Court, Trial Division, rejected the Attorney General's appeal of the Order.

[9] On October 29, 1999, the PSAC and Treasury Board entered into the Memorandum of Agreement. Pursuant to the Memorandum of Agreement, the Appellant received the amount of \$22,506.30, described as interest, in the 2000 taxation year.

[10] Public Works and Government Services of Canada issued a T5 slip for the 2000 taxation year to the Appellant, indicating the payment of \$22,506.30, as interest.

[11] When filing her income tax return for the 2000 taxation year, the Appellant included the amount of \$22,506.30 in her income. The Appellant was assessed by the CRA as filed on May 3, 2001.

[12] On August 22, 2001, the Appellant filed a Notice of Objection. On June 2, 2006, the CRA confirmed the assessment.

B. ISSUE

[13] In her Notice of Appeal dated August 2, 2006, the Appellant asked whether the inclusion of interest in the amount of \$22,506.30 was done in accordance with the *Income Tax Act* (the “*Act*”) in the 2000 taxation year.

C. ANALYSIS AND DECISION

[14] From my analysis of all of the relevant documents, including the Partial Agreed Statement of Facts signed by both parties, I have concluded that the payment in issue is described, defined and calculated as interest by the decision of the Tribunal on July 29, 1998. Furthermore, interest was specified in the Agreement between PSAC and Treasury Board in an Agreement dated October 29, 1999. The payment was not damages or some other type of payment; the payment was purely interest.

[15] Paragraph 12(1)(c) of the *Act* reads as follows:

There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:

...

- (c) subject to subsection (3) and (5), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

[16] It should be noted that the Partial Agreed Statement of Facts indicates that the interest was not included in the Appellant's income for a previous year.

[17] The question that I must address is what is interest for the purpose of paragraph 12(1)(c) of the *Act*. In this case, the evidence indicates that the interest was paid to the Appellant and to the other complainants in respect of the Federal Government's retention of monies which should have been paid to female employees from March 8, 1985 to the date of the award.

[18] I believe that the Court decision which is helpful to explain the application of paragraph 12(1)(c) of the *Act* is the decision of Madam Justice Reed in *Miller v. The Queen*, 85 DTC 5354. Reading from that case, I want to emphasize one or two points. Justice Reed said:

... It is open to the parties to govern their relationship by retroactive agreements:

[19] That is what the parties did here. They agreed on a retroactive agreement and they agreed to specify interest not compound interest as requested by the representative of the PSAC, but simple interest. Furthermore, Justice Reed said at page 5359:

In my view, the \$62.51 was genuinely a payment of interest. The parties agreed that their relationship would be governed on the basis of the retroactive agreement. This involved the retention of monies owing to the Plaintiff for which compensation was ultimately paid. The compensation paid was described by the parties and the arbitration board as interest. It was calculated on an accrual basis by reference to a normal rate of interest, then current, or with respect to the employer's cost of borrowing. I can see no reason why this does not fall within the meaning of the word "interest" as it is used in section 110.1 of the *Income Tax Act*.

[20] Based on my analysis of the facts and relying upon the Federal Court decision in *Miller* quoted above, I have concluded that the interest payment in the amount of \$22,506.30 received by the Appellant in the year 2000 is properly included in the Appellant's income for the 2000 taxation year in accordance with paragraph 12(1)(c) of the *Act*.

[21] The appeal is dismissed without costs.

Signed at Toronto, Ontario, this 25th day of June 2007.

"L.M. Little"

Little J.

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COURT FILE NO.: 2006-2479(IT)I

STYLE OF CAUSE: Debra Loubier and
Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 30, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF ORAL JUDGMENT: May 30, 2007

APPEARANCES:

For the Appellant: The Appellant herself

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