

BETWEEN:

BUANDERIE BEAUDOIN INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on February 19, 2003 at Trois-Rivières, Quebec

Before: The Honourable Judge Alain Tardif

Appearances:

Agent for the Appellant: Sylvie Daneau

Counsel for the Respondent: Stéphane Arcelin

JUDGMENT

The appeal is dismissed and the Minister's decision is confirmed, in accordance with the Attached Reasons for Judgment.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

Citation: 2003TCC133
Date: 20030331
Docket: 2001-4236(EI)

BETWEEN:

BUANDERIE BEAUDOIN INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This appeal is from an October 10, 2001 decision by the respondent that the work performed by Sylvie Daneau for Buanderie Beaudoin inc., the appellant company, during the period from June 1, 2000 to May 29, 2001 constituted insurable employment.

[2] The assumptions of fact on which the decision was based were the following:

- (a) the appellant company was incorporated on November 11, 1999;
- (b) the shareholders in the appellant company are Michel Beaudoin and Fiducie Michel Beaudoin, holding 100 Class D voting shares and 10 Class A voting shares respectively;
- (c) the appellant company operates a business specializing in the industrial and commercial laundering of sheets and towels for motels, restaurants and garages;
- (d) the business's annual sales figures amount to approximately \$550,000;
- (e) the business's hours of operation are from 8:00 a.m. to 5:30 p.m., Monday to Friday;

- (f) in addition to Michel Beaudoin and the worker, during the period at issue the business had 11 employees, three of whom were travelling representatives;
- (g) the business's customers are located mainly in the municipalities of Victoriaville, Drummondville and Sherbrooke;
- (h) Michel Beaudoin is the worker's spouse;
- (i) Beaudoin invested \$100,000 of his own money in the business and financed the rest by means of a loan in the amount of \$300,000;
- (j) the worker's main duties were to do all appellant company's bookkeeping, including follow-up on accounts payable and receivable, invoicing by computer, remittance of provincial and federal taxes, and payment of suppliers;
- (k) in addition, in her spouse's absence the worker looked after the routine management of the business;
- (l) on average, Michel Beaudoin spent 75 per cent of his time travelling for the purposes of customer service;
- (m) during the period at issue, the worker worked 40 hours per week;
- (n) the worker was paid \$500 per week.

[3] Ms Daneau, representing the appellant company, admitted the truth of paragraphs (a), (c) to (h), and (k) to (n).

[4] After the oath was administered to Ms Daneau, I explained to her that she had the burden of proof, adding that in order to discharge that onus she had to adduce material evidence establishing that during the period at issue she enjoyed conditions of employment largely shaped by the non-arm's length relationship between herself and her spouse, who controlled the business.

[5] In other words, she had to establish that the work done for the appellant company was performed much differently from the way in which it would have been performed by a third party.

- Were her wages higher, or lower, than those that should have been paid to a third party performing the same work?

- Did she enjoy, or was she deprived of, conditions of employment or advantages to which a third party would not have had access?
- Were the terms and conditions governing the performance of the work comparable, or not, to those that would have existed if the work had been performed by a third party?

[6] The only representations by Ms Daneau were to the effect that, under her marital regime (partnership of acquests), she was a joint investor in the appellant company and therefore had a chance of profit and a assumed risk of loss depending on the business's success or lack of success.

[7] I then reminded Ms Daneau that the evidence should focus on the terms and conditions governing the performance of her work for the appellant company, so that comparisons could be drawn with work performed by a theoretical third party hired to assume the same responsibilities.

[8] Although the issue of investment could certainly have affected the employment contract, simply investing or being wholly or partly responsible for the financing was not in itself material in excluding the work from insurable employment.

[9] I told Ms Daneau that those aspects were secondary unless her financial participation directly affected the employment contract between herself and the appellant company.

[10] Depending on the terms and conditions governing the performance of the work, even holding shares in a company does not exclude work from insurable employment. In this case, Ms Daneau was not a shareholder and her financial involvement resulted from her matrimonial regime and status. Furthermore, her status did nothing to change the situation, since Parliament itself has expressly provided that any work performed by a person whose spouse controls the entity for which the work is performed is excluded from insurable employment.

[11] Not only did Ms Daneau not elaborate on this nonetheless basic point, but she also spontaneously admitted that a third party would have performed the same work in the same way and under the same conditions of employment, thus confirming that the decision being appealed from was justified.

[12] Since I believed that Ms Daneau had not understood the repercussions of her admissions, I once again explained to her, using examples, what she had to establish in order to show that her appeal was justified.

[13] Ms Daneau then simply added that she had no special representations to make and that her only concern was to point out that she had invested in the business and therefore accepted all the future consequences, both favourable and unfavourable, of her investment. As far as the day-to-day work was concerned, it had been and was performed as any other person the appellant company might have hired would have performed it.

[14] In order for this appeal to have succeeded, the evidence would have had to establish that the work performed during the period at issue was done differently and under special conditions of employment: did the worker enjoy advantages, or was she subjected to disadvantages, in performing her work?

[15] Not only was such evidence not adduced, but Ms Daneau also stated that she assumed her responsibilities practically as any other person the appellant company might have assigned would have performed it.

[16] Ms Daneau's statements that her status had no effect on the way in which she performed her work, and that she enjoyed no special advantages and was subjected to no disadvantages, confirm that the decision being appealed from was justified. In order for this appeal to have succeeded, the evidence would have had to establish that the worker's employment contract was in no way comparable or similar to that of a person dealing with the employer at arm's length.

[17] In the absence of such evidence, I must confirm that the decision being appealed from was justified and dismiss the appeal.

Signed at Ottawa, Canada, this 31st day of March 2003.

"Alain Tardif"

J.T.C.C.

CITATION: 2003TCC133

COURT FILE NO.: 2001-4236(EI)

STYLE OF CAUSE: Buanderie Beaudoin inc. and
Her Majesty the Queen

PLACE OF HEARING: Trois-Rivières, Quebec

DATE OF HEARING: February 19, 2003

REASONS FOR JUDGMENT BY: The Honourable Judge Alain Tardif

DATE OF JUDGMENT: March 31, 2003

APPEARANCES:

Agent for the Appellant: Sylvie Daneau

Counsel for the Respondent: Stéphane Arcelin

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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