

Citation: 2003TCC828  
Date: 20031113  
Docket: 2003-424(EI)  
2003-423(CPP)

BETWEEN:

GORDON DICKISON,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

**REASONS FOR JUDGMENT**  
**(delivered orally from the Bench at  
Regina, Saskatchewan on October 2, 2003)**

**Beaubier, J.**

[1] These appeals were heard together on common evidence at Regina, Saskatchewan on October 1, 2003. The Appellant was the only witness.

[2] The particulars in appeal are set out at paragraphs three to eight inclusive of the Reply to the Notice of Appeal, number 2003-424(EI), which read:

3. On February 1, 2002, Human Resources Development Canada requested a ruling from the Canada Customs and Revenue Agency with respect to, among other things, whether the Worker was engaged in insurable employment with the Appellant during the period from September 15, 2001 to November 1, 2001.

4. By letter dated May 9, 2002, a CPP/EI Coverage Officer with the Canada Customs and Revenue Agency advised the Appellant of his ruling that, among other things:

- (a) the Worker was employed in insurable employment during the period from September 15, 2001 to November 3, 2001, as the Worker was employed pursuant to a contract of service;

- (b) Bert Baxter Transport Ltd. (hereinafter referred to as "Baxter") was the actual employer of the Worker; and
- (c) the Appellant was the deemed employer of the Worker, since the Appellant paid the Worker.

5. By Notice of Appeal dated July 12, 2002, Baxter appealed to the Minister for reconsideration of the ruling that it was the actual employer of the Worker.

6. By letter dated November 29, 2002, the Minister advised the Appellant of his decision that the employment of the Worker was insurable during the period from September 15, 2001 to November 3, 2001 as the Worker was employed under a contract of service and was, therefore, an employee of the Appellant.

7. In deciding as he did, the Minister relied on the following assumptions of fact:

- (a) Baxter is in the business of transporting freight;
- (b) the Appellant owned a tractor trailer unit described as IHO, 9300 Tractor/S/N 2HSFBASR7TC033507 (hereinafter referred to as the "Truck");
- (c) pursuant to a written agreement between the Appellant and Baxter effective July 12, 2000, the Appellant agreed to lease the Truck to Baxter;
- (d) although there was no written agreement between the Appellant and Baxter with respect to the Appellant providing a driver for the Truck, both the Appellant and Baxter agreed that the Appellant would provide a driver for the Truck;
- (e) pursuant to a written agreement between the Appellant and the Worker, the Appellant hired the Worker to drive the Truck;
- (f) other than the Truck, the Worker did not drive any other vehicles of the Appellant;
- (g) the Appellant paid the Worker in respect of driving the Truck;

- (h) the Worker was paid at a rate of \$0.34 per mile, plus \$25.00 for tarping and \$50.00 for layovers;
- (i) the rate of pay received by the Worker was set by the Appellant;
- (j) the Appellant required that the Worker treat the Truck with respect and maintain it to proper safety standards;
- (k) if the Truck needed repairs, other than for regular or ordinary maintenance and for those repairs of a safety or regulatory nature, the Worker was required to obtain authorization from the Appellant with respect to payment and the source of the repairs;
- (l) Baxter instructed the Worker with respect to where and when he was to pick up and deliver loads;
- (m) the Worker was required to check in with Baxter by telephone on a daily basis;
- (n) the Appellant conducted a road test on the Worker;
- (o) Baxter provided the Worker with a fuel card;
- (p) the cost of the fuel charged on the fuel card that was given to the Worker was charged back to the Appellant by Baxter;
- (q) Baxter also charged back to the Appellant the cost of insurance, tolls, cell phones, workers' compensation and repairs;
- (r) generally, the Worker charged all the expenses he incurred;
- (s) the Worker was reimbursed in respect of the expenses he incurred;
- (t) the Worker was able to obtain cash advances of up to \$50.00 U.S. per day on the fuel card;
- (u) the cash advances received by the Worker, along with a \$5.00 surcharge from Baxter, were charged back to the Appellant by Baxter;

- (v) the Appellant deducted the cash advances from the wages and/or the expense reimbursements it paid to the Worker;
- (w) Baxter provided the Appellant with detailed statements twice per month in respect of the use of the Truck (the “Statements”);
- (x) the Statements included a revenue section which indicated, among other things, the total revenue earned, the departure and arrival dates, the origin and destination of the trips and the number of kilometres driven;
- (y) the Statements included a deductions section which indicated the total deductions made in respect of expenses or charges such as, cash advances, surcharges, cell phones, drug and alcohol service charges (for drug and alcohol tests), gas, repairs, insurance, workers’ compensation, weigh scale fees and tolls; and
- (z) the Worker was employed under a contract of service with the Appellant.

**B. ISSUE TO BE DECIDED**

8. The issue to be decided is the Worker was employed under a contract of service with the Appellant.

[3] Assumptions 7(a), (b), (c), (d) by trade usage, (e) by Exhibit A-1, Ex 5), and the fact that this was the only truck available for Lloyd Hayward, (f), (g), (h), (i), (j), (k), (l), (m), (n) - Exhibit R-1, which document effectively refutes Mr. Dickison’s contrary testimony, (o), (p), (t), (v), (w), (x) and (y) were not refuted. Assumption (z) is the subject of the litigation.

[4] With respect to the remaining assumptions:

- 7(q) Baxter paid \$75 of the monthly cell phone bill and Mr. Hayward paid the rest.
- 7(r) Mr. Hayward paid all his personal expenses.
- 7(u) Mr. Hayward paid these.

[5] The Appellant drew up a contract (Exhibit A-1, Ex 5) which Mr. Hayward signed.

It reads as follows:

#### BROKER OPERATOR CONTRACT

I, Lloyd Hayward have agreed to work as a broker operator for Gordon Dickison. As a broker operator, I am to operate for a term depending on the amount of work available. My movements are controlled by Bert Baxter Ltd. to which Gordon Dickison has his vehicle(s) leased to. I will treat the vehicle(s) with respect, and maintain said vehicle(s) to proper safety standards. If truck or trailer need repairs, other than regular or ordinary maintenance and those of a safety or regulatory nature Gordon Dickison or Bert Baxter Ltd. must give authorization for payment and source of repair.

The contract shall begin on Summer 2001 and shall commence on the first available load offered by Bert Baxter Ltd. The contract shall cease at the option and in the order of Bert Baxter Ltd, Gordon Dickison and the broker operator.

I allow Gordon Dickison to deduct all cash advances from my contract payment. I will be reimbursed for all bills that the vehicle has incurred and will hand them in. All bills have to be dated and state what they are for. Any cost incurred to said vehicle(s) that is of my doing, I agree the cost shall be deducted from my contract.

The rate of contract payment is based on Bert Baxter Ltd. computer paid miles to the truck at the rate of \$.34/mile.

Tarping @ \$25.00

Layover @ \$50.00

Tolls @ what ever Gordon Dickison receives from Bert Baxter Ltd. If they are not reported, they can not be paid back to the contractor.

I understand I am to be responsible for any recordings of my income with the government. GST will not be charged from the broker operator to Gordon Dickison as this contract is considered interlining. I understand these terms and am satisfied with them.

SIGNATURE "Lloyd Hayward"

SIGNATURE "Gordon Dickison"

In essence this contract delegates to Bert Baxter Ltd. control over Mr. Hayward on behalf of the Appellant. Bert Baxter Ltd. exercised the control accordingly and the Appellant paid Mr. Hayward.

[6] As a result, using the tests set out in *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025, the Court finds:

1. Control – was exercised by the Appellant pursuant to the contract drawn by the Appellant and accepted by Mr. Hayward.
2. Ownership of Tools – The main operating "tool", the tractor, was owned by the Appellant; any trailer was owned by Bert Baxter Ltd., whom the Appellant designated as his agent in the contract; and Mr. Hayward owned some small repair tools.
3. Chance of Profit and Risk of Loss – Mr. Hayward had little risk of loss as any layover would reimburse him at \$50 per day, which is not much, but he had the tractor cab. Mr. Dickison testified that Mr. Hayward was responsible for any costs he incurred arising from his negligence which were not otherwise insured by the tractor insurance. However, normally these would be covered by his operator insurance. His "profit" was his mileage rate. On the whole, the liability point is somewhat ambiguous and in the Court's view may very well be overridden by the fact that the Appellant's contract does not impose this liability on Mr. Hayward, in which case such costs would be the Appellant's.
4. Integration – Mr. Hayward was wholly integrated into the one truck he was driving. None of the Appellant's other trucks were available to him.

[7] Mr. Hayward was not in business for himself. He was a truck driver in the employ of the Appellant, paid by the Appellant pursuant to the Appellant's own contract and in control of the Appellant's agent.

[8] The appeal is dismissed.

Signed at Ottawa, Canada this 13th day of November 2003.

"D. W. Beaubier"

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Beaubier, J.

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COURT FILE NO.: 2003-424(EI)  
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STYLE OF CAUSE: Gordon Dickison v. The Minister of  
National Revenue

PLACE OF HEARING: Regina, Saskatchewan

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REASONS FOR JUDGMENT BY: The Honourable Justice Beaubier

DATE OF REASONS FOR  
JUDGMENT: November 13, 2003

APPEARANCES:

Agent for the Appellant: Joseph Carson

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