

Docket: 2007-4087(OAS)

BETWEEN:

DJIVAPREMDJEE BADOURALY,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES
AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of *Djarina Goulamaly*
(2007-4092 (OAS)) on February 19, 2008, at Montréal, Quebec

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Claude Lamoureux

JUDGMENT

Whereas the Appellant appealed to a Review Tribunal from a decision made by the Respondent under the *Old Age Security Act*, R.S.C. 1985, c. O-9 ("the Act");

And whereas the ground of the Appellant's appeal was the amount of his income for the 2005 base year, and this ground was referred for decision to the Tax Court of Canada under subsection 28(2) of the Act;

Having heard the Appellant's testimony, and the submissions of the Appellant and of counsel for the Respondent;

The Court holds that the Respondent did not err in determining the amount of the Appellant's income for the 2005 base year. The appeal is therefore dismissed, and the Commissioner of Review Tribunals shall be notified accordingly.

Signed at Ottawa, Canada, this 2nd day of April 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 9th day of May 2008.

Brian McCordick, Translator

Docket: 2007-4092(OAS)

BETWEEN:

DJARINA GOULAMALY,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES
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on February 19, 2008, at Montréal, Quebec

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Claude Lamoureux

JUDGMENT

Whereas the Appellant appealed to a Review Tribunal from a decision made by the Respondent under the *Old Age Security Act*, R.S.C. 1985, c. O-9 ("the Act");

And whereas the ground of the Appellant's appeal was the amount of Mr. Badouraly's income for the 2005 base year, and this ground was referred for decision to the Tax Court of Canada under subsection 28(2) of the Act;

Having heard the Appellant's testimony, and the submissions of the Appellant and of counsel for the Respondent;

The Court holds that the Respondent did not err in determining the amount of Mr. Badouraly's income for the 2005 base year. The appeal is therefore dismissed, and the Commissioner of Review Tribunals shall be notified accordingly.

Signed at Ottawa, Canada, this 2nd day of April 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 9th day of May 2008.

Brian McCordick, Translator

Citation: 2008TCC182
Date: 20080402
Dockets: 2007-4087(OAS),
2007-4092(OAS)

BETWEEN:

DJIVAPREMDJEE BADOURALY,
DJARINA GOULAMALY,

Appellants,

and

THE MINISTER OF HUMAN RESOURCES
AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Jorré J.

[1] This is a reference from a Review Tribunal under subsection 28(2) of the *Old Age Security Act* ("the Act").

[2] Both appeals were heard on common evidence.

[3] In 2004, Mr. Badouraly was laid off by his employer, which paid him only two weeks of salary as severance pay. The Appellant was, however, entitled to a greater amount.

[4] Mr. Badouraly had to file a complaint with the Commission des normes du travail du Québec. Subsequently, in 2005, he received an additional gross amount of \$5,520 from the employer.

[5] The issue is whether this amount of \$5,520 is part of Mr. Badouraly's income for the year 2005 within the meaning of section 2 of the Act.

[6] This issue is significant because the inclusion of the amount reduces both Mr. Badouraly and Ms. Goulamaly's Guaranteed Income Supplement.

[7] I note that the Minister reduced the included amount by \$1,500, which is equal to the amount of employment insurance benefits repaid by Mr. Badouraly in 2005.

[8] The Appellants' position is that the amount of \$5,520 should not be included in computing the income for 2005 because the employer should have paid it to him in 2004.¹

[9] Section 2 of the Act provides that income must be computed in accordance with the rules contained in the *Income Tax Act* (ITA). For income tax purposes, the amount of \$5,520 must be included at the time that it was received.²

[10] Consequently, I must, regrettably, confirm that the Minister of Human Resources and Social Development correctly included the amount of \$5,520 for the 2005 base year. I have a great deal of sympathy for the Appellants, but this outcome results from the employer's failure to fulfil its obligations in 2004, not from an error on the Minister's part.

Signed at Ottawa, Canada, this 2nd day of April 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 9th day of May 2008.

Brian McCordick, Translator

¹ There is an additional amount of \$700 from the Quebec Pension Plan, which the Appellants agree should be included in Mr. Badouraly's income for 2005.

² In addition, see subparagraph 56(1)(a)(ii) of the ITA, and subsection 248(1) of the ITA under the definition of "retiring allowance".

CITATION: 2008TCC182

COURT FILE NOS.: 2007-4087(OAS), 2007-4092(OAS)

STYLES OF CAUSE: DJIVAPREMDJEE BADOURALY v.
THE MINISTER OF HUMAN
RESOURCES AND SOCIAL
DEVELOPMENT, DJARINA
GOULAMALY v. THE MINISTER OF
HUMAN RESOURCES AND SOCIAL
DEVELOPMENT

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 19, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: April 2, 2008

APPEARANCES:

For the Appellants: The Appellants themselves

Counsel for the Respondent: Claude Lamoureux

COUNSEL OF RECORD:

For the Appellants:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada