

Docket: 2008-3072(IT)I

BETWEEN:

RUSS PUTLAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 24, 2009, at Lethbridge, Alberta

Before: The Honourable Justice D.W. Beaubier

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Valerie Meier

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2006 taxation year is dismissed.

Signed at Saskatoon, Saskatchewan, this 8th day of July 2009.

“D.W. Beaubier”

Beaubier D.J.

Citation: 2009TCC349
Date: 20090708
Docket: 2008-3072(IT)I

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RUSS PUTLAND,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Beaubier, D.J.

[1] This appeal pursuant to the Informal Procedure was heard at Lethbridge, Alberta on June 24, 2009. The Appellant was the only witness.

[2] The particulars in dispute are set out in paragraphs 3, 8, 9, 10, 11, 12 and 14 of the Reply. They read:

3. With respect to paragraph 6 of the Notice of Appeal,
 - (a) He admits that the Appellant was paid damages of \$26,000 (the "Amount") by the Employer.
8. On January 28, 2008 the Minister reassessed the Appellant's 2006 taxation year, to include the Amount as other income for the retiring allowance received from the Employer.
9. On February 5, 2008, the Appellant served on the Minister a Notice of Objection to the 2006 reassessment.
10. On September 12, 2008, the Minister confirmed the reassessment by means of a Notice of Confirmation.

11. In so reassessing the Appellant for the 2006 taxation year, and in confirming the reassessment, the Minister assumed the following facts:

(a) the Appellant was employed by the Employer up to and including December 22, 2005;

(b) the Employer terminated the Appellant's employment for cause on December 22, 2005;

(c) the Appellant subsequently began legal proceedings against the Employer for wrongful dismissal;

(d) in the Appellant's lawsuit he was seeking bonus payments, lost wages, and salary differential;

(e) the Employer paid the Appellant the Amount to settle the legal dispute.

12. The Issues to be decided are:

(a) whether the Amount paid to the Appellant was a retiring allowance for loss of an office or employment.

14. He submits that:

(a) the Amount paid to the Appellant by the Employer was a retiring allowance per subsection 248(1) of the *Act*;

(b) the Amount was paid in respect of the loss of an office or employment;

(c) the Amount was properly included into income pursuant to subparagraph 56(1)(a)(ii) of the *Act*;

[3] Assumptions 11(a), (b), (c) and (e) were confirmed by the evidence. Assumption 3(d) is incorrect because the Appellant also claimed for damages respecting the rental of a van that he used in the course of his employment on the instructions of his employer, Cargill Limited ("Cargill").

[4] There was a series of offers made by Cargill to settle the Appellant's claim. The first was for \$10,000 with no particulars, on May 3, 2006 (Exhibit A-3). On August 8, 2006, its lawyers raised 3 items:

- (1) \$3,500 respecting the van
- (2) \$8,589.36 on account of loss of salary
- (3) \$8,289.14 on further account of salary.

[5] The Appellant sued in Court by Statement of Claim filed March 8, 2006 (Exhibit R-1). Subparagraph 16(a) claimed “Damage for breach of the employment contract...”.

[6] Mediation followed whereupon Cargill paid the Appellant \$26,000 in September 2006 without specification except the words “general damages” and in consideration of the Appellant withdrawing his lawsuit (Exhibit A-6).

[7] Subsection 248(1) of the *Income Tax Act* describes a “retiring allowance” as meaning a benefit received:

(b) in respect of a loss of an office or employment of a taxpayer, whether or not received as ... damages ... by the taxpayer...

[8] Subparagraph 56(1)(a)(ii) of the *Income Tax Act* includes in computing a taxpayer’s income

(ii) a retiring allowance

[9] The fact is that the \$26,000 was paid by his former employer Cargill to the Appellant as damages in respect to his employment by Cargill and the loss of that employment. He would not have received it otherwise. Thus the \$26,000 falls within the definition of “retiring allowance” in the *Income Tax Act*. See, in particular, *Overin v. R.* 98 DTC 1299 and *Grant v. R.* 2008 DTC 3035.

[10] For this reason his appeal is dismissed.

Signed at Saskatoon, Saskatchewan, this 8th day of July 2009.

“D.W. Beaubier”

Beaubier D.J.

CITATION: 2009TCC349

COURT FILE NO.: 2008-3072(IT)I

STYLE OF CAUSE: RUSS PUTLAND AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Lethbridge, Alberta

DATE OF HEARING: June 24, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: July 8, 2009

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Valerie Meier

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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