Docket: 2009-721(IT)I

BETWEEN:

JEAN-B. BROCHU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on April 7, 2010, at Timmins, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

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| For the appellant: | The appellant himself |
| Counsel for the respondent: | Jonathan Charron |

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**JUDGMENT**

The appeals of the reassessments made under the *Income Tax Act* for the 2004 and 2005 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of May 2010.

« Patrick Boyle »

Boyle J.

Translation certified true
on this 18th day of May 2010.

Erich Klein, Reviser

Citation: 2010 TCC 274
Date: 20100518
Docket: 2009-721(IT)I

BETWEEN:

JEAN-B. BROCHU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

## REASONS FOR JUDGMENT

**Boyle J.**

[1] Mr. Brochu has appealed under the Court's informal procedure his 2004 and 2005 reassessments, claiming that as an employee he is entitled to deduct his car expenses to the extent that they relate to his work.

[2] Mr. Brochu is a heavy equipment operator employed by Abitibi Bowater Inc. ("Abitibi") to work in the Iroquois Falls area. For several months each winter he reports to work at the beginning of the week at a logging camp about 190 kilometres from his home in Smooth Rock Falls and returns home on Friday. Under the terms of his collective agreement, Abitibi pays him $20 each week towards his travel expenses. Abitibi does not provide any alternate means of travel to the winter camp.

[3] The rest of the year Mr. Brochu reports to work daily at Abitibi's Stimson Depot or drives to Abitibi's parking lot and marshalling point in Cochrane and is then taken by an Abitibi shuttle to a "commuter" logging camp. The Cochrane marshalling point is about 60 kilometres from his home in Smooth Rock Falls. Almost every day Mr. Brochu drives to the Cochrane marshalling point whether he is to work at the Stimson Depot or a "commuter" camp. Work assignments are set by

Abitibi weekly and are normally carried out at the same location every day for one to three months. There are only occasional departures from this routine. On the rare occasions when Mr. Brochu works at more than one location in a day, transportation is most often provided by Abitibi and only exceptionally does he need to use his car in such instances. Under the terms of the collective agreement Abitibi pays Mr. Brochu $8 per day towards his expenses for his daily commute.

[4] At the Stimson Depot, Abitibi has a permanent business location consisting of a garage with three service bays, a stockroom and some office space.

[5] At Cochrane, the marshalling point consists of a large parking area with plug-ins for Abitibi's vehicles and those of its workers as well as a fuel storage tank. This site is maintained and used year-round.

[6] Mr. Brochu asked Abitibi to provide him with a signed T2200 form but his request was refused. He asked several times with the assistance of his accountant and his union steward, but Abitibi would not provide him with a signed form.

[7] It is Mr. Brochu's position that he was given an unusually low car allowance by his employer and should therefore be able to deduct his actual car expenses to the extent that they exceed that allowance. This would be consistent with the comments by Bowman C.J. (as he then was) in paragraph 8 of *Henry v. The Queen*, 2007 TCC 451, 2007 DTC 1410, and this Court's reasons in *Landry v. The Queen*, 2007 TCC 383, 2007 DTC 1396 (affirmed by the Federal Court of Appeal, 2009 FCA 174, 2009 DTC 5123), provided that Mr. Brochu meets all of the other requirements of paragraph 8(1)(*h.1*).

[8] The general rule is that neither employees nor self-employed persons are entitled to deduct their motor vehicle expenses associated with getting to and from work. The exceptions are limited and specific. The only deduction potentially available to Mr. Brochu would be under paragraph 8(1)(*h.1*). That deduction has several mandatory requirements. First, the employee must be required by the terms of his employment to travel to work somewhere other than his employer's place of business or in different places. Secondly, the employee must be required to bear those travel expenses. Thirdly, pursuant to subsection 8(10), the employer must certify on the T2200 form that these requirements are met.

[9] Each of the winter camp, the "commuter" camps and the Stimson Depot is clearly a place of business for Abitibi. The winter camp has offices, washrooms, residences and dining facilities in addition to everything else needed to operate a

logging camp for several months at a time. Abitibi's place of business is not limited to its head office in Iroquois Falls. While the Cochrane marshalling point is a simple and unconventional place of business, Mr. Brochu reported there daily most of the year for travel by Abitibi's shuttle to his assigned workplace.

[10] Mr. Brochu only very rarely drove his car for any other work-related purpose than getting to and from his work each day or, during the winter, each week. Except when he worked at the winter camp, this involved his driving only to and from the Cochrane marshalling point. He worked each day at one of his employer's places of business and only exceptionally worked at more than one such place in the course of a day, and even more rarely, did he have to use his own car to get to a different place of business. For this reason, Mr. Brochu's appeals must be dismissed.

[11] I would also note that the language of subsection 8(10) requires that a duly completed and signed T2200 form be filed, and that none was provided to Mr. Brochu. While it may be possible that in exceptional circumstances a paragraph 8(1)(*h.1*) claim could succeed if an employer unreasonably refused, or was unable, to complete and sign a T2200 form, this is clearly not such a case. An officer of Abitibi testified that Abitibi did not complete and sign such a form with respect to Mr. Brochu because it did not believe he met the requirements and because Abitibi had previously obtained a written opinion from the Canada Revenue Agency ("CRA") that it did not believe employees of Abitibi in circumstances such as those of Mr. Brochu qualified. This Court has reached the same conclusion. The absence of the T2200 form in this case requires that these appeals be dismissed.

[12] I should add in closing that the CRA reassessed Mr. Brochu, excluding from income under subparagraph 6(1)(*b*)(vii.1) his total Abitibi travel allowance for each of the years at issue, even though Mr. Brochu was of the opinion that the allowance was unreasonably low. The Court expresses no opinion on whether subparagraph 6(1)(*b*)(vii.1) authorizes the exclusion of a less − than − reasonable travel allowance beyond noting this Court's comments in *Henry*, above, and *Landry*, above, that an unreasonably low allowance cannot be excluded under subparagraph 6(1)(*b*)(vii.1) and that, therefore, a paragraph 8(1)(*h.1*) deduction could be permitted in qualifying circumstances. Neither does this Court need to express an opinion on whether, in these particular circumstances, Abitibi's travel allowances were unreasonably low, reasonable, or unreasonably high, as any finding in that regard would not save Mr. Brochu's claim.

[13] Mr. Brochu claims to have received advice favourable to him from both his accountant and the CRA in response to his original queries. That is unfortunate, but it

does not in this case estop or prevent the respondent from insisting that the law be properly applied by the Court.

[14] The appeals are dismissed.

Signed at Ottawa, Canada, this 18th day of May 2010.

« Patrick Boyle »

Boyle J.

Translation certified true
on this 18th day of May 2010.

Erich Klein, Reviser

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| COURT FILE NO.: | 2009-721(IT)I |
| STYLE OF CAUSE: | JEAN-B. BROCHU v. HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Timmins, Ontario |
| DATE OF HEARING: | April 7, 2010 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice Patrick Boyle |
| DATE OF JUDGMENT: | May 18, 2010 |

APPEARANCES:

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| For the appellant: | The appellant himself |
| Counsel for the respondent: | Jonathan Charron |

COUNSEL OF RECORD:

For the appellant:

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| Name: | |
| Firm: | |

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| For the respondent: | Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Ottawa, Canada |