

Minhas v MNR, 2012 TCC 221

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Is an Employee Whose Spouse is a Shareholder of the Employer-Corporation Engaged in Insurable Employment?

[*Minhas v MNR, 2012 TCC 221*](#)

The question here was whether the employee and the employer were dealing at arm's length, given that the spouse of the employee was a shareholder of the employer.

The employee worked for a corporation whose shares were equally owned by two holding corporations. Her husband and her husband's brother owned the shares of one of the holding companies, while the other holding company's shares were owned by two cousins of the employee.

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The court reviewed the ITA's sections dealing with related persons, and notes that the appellant's husband is not related to his cousins, and neither is his brother, for purposes of the ITA, and thus the corporation was not controlled by a related group, and the appellant is not related to the company for purposes of the act. Thus, it is a question of fact whether the appellant and the corporation were dealing with each other at arm's length. The court then referred to [Parrill v. The Minister of National Revenue, \[1996\] T.C.J. No. 1680, affd \[1998\] F.C.J. No. 836](#), where Cuddihy J stated:

20 From these cases parties are not dealing at arm's length when the predominant consideration or the overall interest or the method used amount to a process that is not typical of what might be expected of parties that are dealing with each other at arm's length.

21 Parties will not be dealing with each other at arm's length if there is the existence of a common mind which directs the bargaining for both parties to a transaction or that the parties to a transaction are acting in concert without separate interests or that either party to a transaction did or had the power to influence or exert control over the other and that the dealings of the parties are not consistent with the object and spirit of the provisions of the law and they do not demonstrate a fair participation in the ordinary operation of the economic forces of the market place*.

22 Therefore the existence of a combination of one or several of these initiatives that would be inconsistent or interfere, in due process negotiating between employer and employee and with the object and intent of the legislation, will not survive the arm's length test.

The court referred to the evidence to hold that the appellant was not hired because her husband was a shareholder. Although she was paid more than the previous manager, she had different duties and hours that justified the additional pay and did not indicate a non-arm's length relationship. The court noted that the fact that the appellant was available on short notice to cover the work of other employees does not indicate a non-arms-length relationship. She was a diligent worker. She was also terminated because of a downturn in business and provided no services until she was rehired by the company.

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