

Canada v. MacIntyre, [1974] F.C.J. No. 808

Federal Court Judgments

Federal Court of Canada - Trial Division

Montreal, Quebec

Decary J.

Heard: September 19, 1974

Oral judgment: September 19, 1974

Court File No. T-1351-72

[1974] F.C.J. No. 808

Between Her Majesty The Queen, plaintiff, and Donald MacIntyre, defendant

(2 pp.)

Counsel

Jean Halpin, and Hughes Richard for the plaintiff. Douglas Turner, for the defendant.

DECARY J. (orally)

1 The point at issue is whether or not a payment equivalent to a portion of a deduction of two percent of the earnings of Defendant to a fund to be used partially for income-replacement purposes in case of total disability or sickness is deductible or not under the provisions of the Act.

2 The Defendant is a member of the Association of Canadian Television and Radio Artists hereinafter called ACTRA. In becoming a member of the above Association the Defendant agreed to be bound by the constitution and by-laws, rules, regulations, codes, schedules and agreements of the Association and ACTRA became his exclusive collective bargaining agent for minimum terms and conditions of engagement. The Defendant is a free-lance artist.

3 The constitution of ACTRA provides at Article IX, sub-article 901, for an insurance and retirement plan; at Article XIV of Article 1402, for a national agreement, code and schedule.

4 Therefore the Defendant is bound by these provisions and, consequently, when he secures a contract as a member of ACTRA, he has to pay two percent of his earnings to ACTRA which in turn remits the said amount to the fund. Whether the payment is made directly by the Defendant to the fund or by the channel of ACTRA is irrelevant.

5 There is a relation between the payment of the portion of the two percent applicable to the income replacement plan and the contract for services or the engagement because there could not be any earnings without that payment.

6 The amount represented by the portion of the two percent is paid in order to continue being a member of ACTRA and in my view such an expense is deductible under the generally accepted accounting principles and under the provisions of Section 12(1) (a) of the Act because it is made for the purpose of gaining income from the business of free-lance artist, that is, for the purpose continuing to be able to gain income from that business.

7 The appeal of Plaintiff is dismissed with costs.

DECARY J.

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