



**101193093 SASKATCHEWAN LTD. and MR. JOHN (ZHONG) CHEN, Appellants v. GEORGE SELIMOS, Respondent Employee and DIRECTOR OF EMPLOYMENT STANDARDS, Respondent**

LRB File No. 026-15; May 21, 2015

Chairperson, Kenneth G. Love, Q.C., (sitting alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*)

For the Appellants:	Mr. John (Zhong) Chen by telephone
For the Respondent Employee:	Self Represented
For the Executive Director of Employment Standards:	Ms. Lee Anne Schienbein

**Section 4-8 of *The Saskatchewan Employment Act* – Appeal to the Board from a decision of an Adjudicator from a wage assessment issued by the Director of Employment Standards.**

**Appellant appeals from supplementary reasons provided by an Adjudicator in response to a remittal by the Board following a previous appeal – No hearing held with respect to the supplementary reasons. Board determines matter should be adjudicated afresh by a different adjudicator.**

## **REASONS FOR DECISION**

### **Background:**

**[1] Kenneth G. Love, Q.C., Chairperson:** This is an appeal pursuant to Section 4-8 of *The Saskatchewan Employment Act*, S.S. 2013, c.S-15.1 (the “SEA”) from a decision of an Adjudicator respecting an appeal from a wage assessment made by the Director of Employment Standards.<sup>1</sup> The decision under appeal was dated January 9, 2015.

---

<sup>1</sup> LRB File No. 137-14

**[2]** This is the second appeal taken by the Appellants with respect to a wage assessment made by the Executive Director of Labour Standards under the provisions of the SEA. The first appeal was taken to an Adjudicator who issued a decision on August 18, 2014. The Adjudicator's decision was appealed to the Board and a decision issued by the Board on December 5, 2014.

**[3]** The Board in its Decision on December 5, 2014, remitted the matter to the Adjudicator for determination. In the Reasons for Decision, the Board said at paragraphs [19 and [20]:

*[19] Generally speaking, appeals to an adjudicator are not "legalistic" in nature. Nor, however, are they merely an informal process that has no consequences. I am not certain if the Appellant in this case has fully understood the process he is engaged in, nor the consequences of any outcome. It would be important for the Adjudicator to clearly advise as to the procedures for submission of evidence and documents to the hearing, in the event that a party is unable to attend the hearing in person.*

*[20] The Director has, in his submissions, argued that the proper disposition of this matter would be to remit the question back to the Adjudicator for a determination. I agree. An order remitting this wage assessment to the Adjudicator will accompany these Reasons.*

**[4]** The Adjudicator, without hearing further from the parties, provided the parties with supplemental reasons under the date of January 9, 2015.<sup>2</sup> The Appellant again appealed from that decision and supplemental reasons.

#### **Facts:**

**[5]** Neither the Appellants, nor anyone else on behalf of the Appellants, appeared at the original hearing on July 29, 2014. The complainant and the Labour Standards Officer who investigated the complaint were present. In the absence of the Appellants, the Adjudicator proceeded with the hearing and determined in accordance with Section 2-75(9) of *The Saskatchewan Employment Act*, that in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing. He accordingly upheld the wage assessment.

**[6]** This Board, as noted above, determined that there was some question, based upon the review of the facts as found by the adjudicator as to whether or not the Appellant fully

---

<sup>2</sup> LRB File No. 202-14

understood or appreciated the consequences of his failure to appear, to have someone appear on his behalf at the hearing, or to make submissions to the Adjudicator.

[7] In his supplementary reasons, the Adjudicator addressed the issue raised concerning his dealings with the Appellant. He concluded:

*I am satisfied that both Respondents knew the date, place and time of the Appeal hearing and chose not to attend.*

*I am further satisfied that the Respondent's [sic] knew or ought to have known that they needed to appear in person or have a personal representative appear on their behalf at the Hearing and the procedural rules to be followed at the hearing were known to them.*

**Relevant statutory provision:**

[8] Relevant statutory provisions are as follows:

***The Saskatchewan Employment Act***

2-75(9) *The copy of the wage assessment provided to the adjudicator in accordance with subsection (8) is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing, without proof of the signature or official position of the person appearing to have signed the wage assessment.*

. . .

4-4(1) *After selecting an adjudicator pursuant to section 4-3, the board shall:*

- (a) in consultation with the adjudicator and the parties, set a time, day and place for the hearing of the appeal or the hearing; and*
- (b) give written notice of the time, day and place for the appeal or the hearing to:*
  - (i) in the case of an appeal or hearing pursuant to Part II:*
    - (A) the director of employment standards;*
    - (B) the employer;*
    - (C) each employee listed in the wage assessment or hearing notice; and*
    - (D) if a claim is made against any corporate directors, those corporate directors; and*
  - (ii) in the case of an appeal or hearing pursuant to Part III:*
    - (A) the director of occupational health and safety; and*

*(B) all persons who are directly affected by the decision being appealed.*

*(2) An adjudicator may determine the procedures by which the appeal or hearing is to be conducted.*

*(3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.*

*(4) An adjudicator may determine any question of fact that is necessary to the adjudicator's jurisdiction.*

*(5) A technical irregularity does not invalidate a proceeding before or by an adjudicator.*

*(6) Notwithstanding that a person who is directly affected by an appeal or a hearing is neither present nor represented, if notice of the appeal or hearing has been given to the person pursuant to subsection (1), the adjudicator may proceed with the appeal or the hearing and make any decision as if that person were present.*

*(7) The Arbitration Act, 1992 does not apply to adjudications conducted pursuant to this Part.*

#### **Powers of adjudicator**

*4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:*

*(a) to require any party to provide particulars before or during an appeal or a hearing;*

*(b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;*

*(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:*

*(i) to summon and enforce the attendance of witnesses;*

*(ii) to compel witnesses to give evidence on oath or otherwise;*

*(iii) to compel witnesses to produce documents or things;*

*(d) to administer oaths and affirmations;*

*(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not;*

*(f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;*

*(g) to adjourn or postpone the appeal or hearing.*

*(2) With respect to an appeal pursuant to section 3-54 respecting a matter involving harassment or a discriminatory action, the adjudicator:*

*(a) shall make every effort that the adjudicator considers reasonable to meet with the parties affected by the decision of the occupational health officer that is being appealed with a view to encouraging a settlement of the matter that is the subject of the occupational health officer's decision; and*

*(b) with the agreement of the parties, may use mediation or other procedures to encourage a settlement of the matter mentioned in clause (a) at any time before or during a hearing pursuant to this section.*

*(a) to comply with section 2-42;*

*(b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;*

*(c) to restore the employee to his or her former position;*

*(d) to post the order in the workplace;*

*(e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.*

...

### ***Right to appeal adjudicator's decision to board***

**4-8(1)** *An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*

*(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.*

*(3) A person who intends to appeal pursuant to this section shall:*

*(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*

*(b) serve the notice of appeal on all persons mentioned in clause 4-4(1)(b) who received the notice setting the appeal or hearing.*

*(4) The record of an appeal is to consist of the following:*

*(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;*

*(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;*

*(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;*

*(d) any exhibits filed before the adjudicator;*

*(e) the written decision of the adjudicator;*

*(f) the notice of appeal to the board;*

*(g) any other material that the board may require to properly consider the appeal.*

*(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.*

- (6) *The board may:*
- (a) *affirm, amend or cancel the decision or order of the adjudicator; or*
  - (b) *remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

**Appellant's arguments:**

[9] In his notice of appeal, the Appellants list the following as the grounds for appeal:

1. *I would like to request the board to review the fact [sic] and dismiss the Wage Assessment.*
2. *The adjudicator and the last appeal never looked into the fact.*
3. *The adjudicator, himself used all the electric method for communication, but refused to do the hearing over the telephone. The law never says it is not allowed. I did confirm that remote hearing did happen before I file the appeal.*
4. *The deputy minister said he would look into this issue, and I gave them my phone number, and waited the whole day beside the phone. But nobody called. In other word, I am always prepared to attend the hearing.*
5. *The last appeal with the board was on conference, which is another evidence that the law does not allow case to be heard by conference.*
6. *When the case sent back to the adjudicator, it should have been sent back to a different one. I don't believe the same person will turn down his own case.*
7. *I would appreciate the opportunity to have the case reviewed by the board or at least by a different adjudicator.*
8. *The fact is that the person was a partner, never an employee, so the wage assessment should be dismissed.*

**Respondent Employee's arguments:**

[10] The Respondent Employee argued that this matter has taken too long to resolve. He argued that the Appellant has had full opportunity to present his case, but has chosen not to take that opportunity. He argued that the appeal should be dismissed.

**Director's arguments:**

[11] The Director raised two (2) points in his argument. Those were:

1. Whether the Adjudicator failed to correctly follow the rules of natural justice by not allowing the parties an opportunity to be heard prior to making the Supplemental Reasons.
2. Whether the Adjudicator reasonably determined that notice of the appeal had been given to the Appellants pursuant to subsection 4-4(1) of the *Act*;

[12] In respect of point 1 above, the Director argued that the Adjudicator failed to provide a hearing as required by the *Audi Alteram Partem* principle. The Director argued that the standard of review of this determination was correctness.

[13] In respect of point 2 above, the Director argued that based upon the findings in the decision, it could not be determined if the Adjudicator was satisfied that the requisite notice of hearing was provided to the Appellant. The Director argued that the standard of review of this determination was reasonableness.

### **Analysis:**

#### **The Standard of Review:**

[14] In *Barbara Wieler v. Saskatoon Convalescent Home*,<sup>3</sup> the Board considered the standard of review to be applied by the Board in respect of appeals from adjudicators appointed pursuant to *The Occupational Health and Safety Act, 1993*.

[15] This Board now<sup>4</sup> reviews decisions made by adjudicators pursuant to Section 4-8 of the *SEA*. In *Wieler*, the Board made the following determination regarding the standard of review:

*[12] The first question for the Board to consider is what the applicable standard of review in this matter is. For the reasons which follow, we find the applicable standard of review of questions of law is correctness, for questions of mixed fact and law, reasonableness, and for questions of fact which may be considered errors of law, reasonableness.*

---

<sup>3</sup> LRB File No. 115-14

<sup>4</sup> Previously under the repealed provisions, the Court of Queen's Bench reviewed decisions from adjudicators

[16] In *Housen v. Nikolaisen*,<sup>5</sup> the Supreme Court of Canada described the different categories as follows:

*Although the distinctions are not always clear, the issues that confront a trial court fall generally into three categories: questions of law, questions of fact, and questions of mixed law and fact. Put briefly, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.*

[17] When this matter was remitted to the Adjudicator for determination, it was anticipated that the Adjudicator would again schedule a hearing with the parties for the purposes of making his determination and insuring that the Appellant fully understood the consequences of his failure to appear at the hearing, to have someone appear at the hearing to provide evidence and argument on his behalf, or to provide written documentation to the Adjudicator to support the position taken.

[18] The Appellant seems to think that he has a right to appear by telephone for any such hearing. That, as was pointed out in our earlier decision, is within the right of the Adjudicator to determine. The Adjudicator has full discretion to conduct the hearing as he determines will satisfy his statutory duty and authority. As noted in paragraph [16] of our earlier decision, it would be understandably difficult to conduct a hearing by telephone when documents were to be produced and introduced into evidence. Additionally, appropriate technology may not have been available to the Adjudicator in this case.

[19] However, in the circumstances, the Adjudicator should, as a minimum, have convened a hearing to determine the additional items referred to him by this Board. The Appellant may again have failed to appear and the Adjudicator would, again, have been entitled to proceed in his absence.

[20] In light of the manner in which this appeal has been conducted, the Board is of the view that fairness and natural justice requires that the matter be heard afresh by a new Adjudicator.

---

<sup>5</sup> [2002] SCC 33, 2 S.C.R. 235, at para. 101 per Bastarache J.



**Decision and Order:**

**[21]** The decision of the Adjudicator is cancelled and the matter is to be remitted to another Adjudicator for adjudication afresh.

**DATED** at Regina, Saskatchewan, this **21st** day of **May, 2015**.

**LABOUR RELATIONS BOARD**

---

Kenneth G. Love, Q.C.  
Chairperson