PAKTECH ELECTRONICS INC., Appellant v MUHAMMAD USMAN AFZAL, Respondent and DIRECTOR OF EMPLOYMENT STANDARDS, Respondent

LRB File No. 060-25 and 240-24; Date: June 13, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Paktech Electronics v Director of Employment Standards*, 2025 SKLRB 26

For Appellant, Paktech Electronics Inc.:	Kauser Perveen Talha Ali
For the Respondent, Director of Employment Standards:	Alexa Laplante
For Muhammad Usman Afzal	No one appearing

Appeal of a Wage Assessment – Disputed Findings of Fact – No Error in Principle – Appeal Dismissed

Appeal of a Wage Assessment – Matters Not Raised Before Adjudicator – Cannot Raise Matters for the First Time on Appeal – Appeal Dismissed

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Paktech Electronics Inc (the "Corporation") appeals pursuant to s. 4-8 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1(the "Act"), a decision of an adjudicator dated March 12, 2025, affirming a wage assessment issued by the Director of Employment Standards (the "Director") in favour of Mr. Muhammad Usman Afzal in the amount of $2,2697.14.

[2] The hearing before the adjudicator included evidence from Mr. Afzal, Ms. Allysia Finn on behalf of the Director, and Mr. Liaquat Ali on behalf of the Corporation.

[3] The Corporation argued that Mr. Afzal was never an employee and never showed up to work. The adjudicator found based on the evidence and preferring Mr. Afzal's testimony to Mr. Ali's that Mr. Afzal was an employee.

[4] The evidence included an offer of employment from the Corporation to Mr. Afzal, a letter confirming a job approval for Mr. Afzal at the Corporation from the Saskatchewan Immigrant

Nominee Program, a document signed by Mr. Afzal and the Corporation confirming a start date of October 1, 2023, a letter of reprimand from the Corporation to Mr. Afzal dated October 18, 2023 related to “uneven attendance”, and text messages between Mr. Ali and Mr. Afzal.

Argument on behalf of the Appellant:

[5] In the Appeal before this Board, the Corporation argues that the adjudicator erred as Mr. Afzal never worked for the Corporation and the Corporation should not have to pay him for the work that he did not do. The grounds of appeal are that the adjudicator erred in his findings of fact as the adjudicator found facts that are not true, that the hearing was not procedurally fair, and that Mr. Ali did not have authority to act on behalf of the Corporation and the adjudicator erred in attributing his communications to it.

Argument on behalf of the Director:

[6] The Director argues that the applicable standard of review is correctness on questions of law and that the Board does not have jurisdiction on questions of fact or mixed fact and law unless there is an identifiable error in law. The Director argued that there is no identifiable extricable error of law in the findings of fact and that the adjudicator made no error of law in the affirming the wage assessment based on the presumption in s. 2-75(9) of the Act and the applicable minimum hours of work regulations.

[7] As it relates to procedural fairness, the Director argues that this was not raised at the hearing before the adjudicator and that the Corporation had the opportunity to cross-examine witnesses and chose not to exercise it.

Relevant Statutory Provisions:

[8] The jurisdiction of the Board to hear this appeal is pursuant to s. 4-8:

> *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 or Part V 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 parties to the appeal.*

> *(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;*
> *(b.1) in the case of an appeal pursuant to Part V, any written decision of a radiation 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 or Part V, 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.*

Analysis and Decision:

Standard of Review

[9] Pursuant to s. 4-8(1), the Board's jurisdiction is restricted to questions of law on hearing appeals of adjudicators. The standard of review on questions of law is correctness: *Tysdal v Cameron*, 2025 SKLRB 1 (CanLII); and *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII).

[10] On questions of fact and questions of mixed fact and law, the Board has no jurisdiction unless there is an extricable question of law, or the Adjudicator errs in principle in its findings of fact. The Saskatchewan Court of Appeal discussed errors in principle in findings of fact in *P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission)*, 2007 SKCA 149 (CanLII):

> *[68] It follows that a tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence.1 To do so is to err in principle or, in other words, to commit an error of law. (In addition to the cases referred to above, see Toneguzzo-Norvell v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 S.C.R.114 at 121; Wade & Forsyth, Administrative Law (7th ed.) (Oxford: Clarendon Press, 1994) at pp. 316—20; Jones & de Villars, Principles of Administrative Law (4th ed.) (Toronto: Thomson Carswell, 2004) at pp. 244—43 and 431—36; and*

> *Hartwig v. Wright (Commissioner of Inquiry), 2007 SKCA 74). Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact.*

[11] The Appellants appear to have raised three distinct issues. Whether there was a breach of procedural fairness, whether the Adjudicator erred in his findings of fact, and whether the Adjudicator erred in finding that Mr. Ali had authority in relation to the Corporation.

[12] Procedural fairness is reviewed as a question of law on a correctness standard: *Amroth Builders v Director of Employment Standards*, 2025 SKLRB 17 (CanLII). The Board will determine whether there has been a breach and while deference is owed on process, a hearing is either fair or unfair, there is no deference on an unfair hearing.

[13] On the second issue, the Corporation must establish that the adjudicator erred in principle in making the findings of fact.

[14] The third issue of whether Mr. Ali had authority to act on behalf of the Corporation is a question of mixed fact and law and the Corporation must establish there this an extricable question of law and that the adjudicator erred on that question.

Was there a Breach of Procedural Fairness

[15] The Corporation alleges that there was a breach of procedural fairness in relation to the Corporation being denied the right to cross examination and not being permitted to call certain witnesses. This argument fails for two reasons. The first is there is no indication that this matter was raised at first instance, and the second is that the record does not support the argument that the Corporation could not have called more witnesses or cross-examined witnesses who were called.

[16] The Board discussed the general prohibition of raising new issues on appeal in *Carrier v SIGA*, 2025 SKLRB 7 (CanLII) ("Carrier"):

> *[16] he general prohibition against new arguments on appeal was discussed by the Court of Appeal in Zunti v Saskatchewan Government Insurance, 2023 SKCA 82 (CanLII):*
>
> > *[29] As a general rule, this Court does not permit new arguments to be raised for the first time on appeal: see, for instance, Silzer v Saskatchewan Government Insurance, 2021 SKCA 59 at paras 35–39 [Silzer]; Ernst v Saskatchewan Government Insurance, 2019 SKCA 12 at para 8, 34 MVR (7th) 180 [Ernst]; and Farr-Mor Fertilizer Services Ltd. v Hawkeye Tanks & Equipment Inc., 2002 SKCA 44 at para 3, 219 Sask R 148. The theory underlying this stance rests in the desirability for finality in litigation and that the law "requires litigants to put their best foot forward" (Barendregt v Grebliunas, 2022 SCC 22 at para 38, 469 DLR (4th) 1*

> *[Barendregt], quoting Danyluk v Ainsworth Technologies Inc., 2001 SCC 44 at para 18, [2001] 2 SCR 460) and that they not get a "second kick at the can" (S.F.D. v M.T., 2019 NBCA 62 at para 24, 49 CCPB (2nd) 177). Where a similar bias-type argument was raised on appeal in Ernst, this Court observed that it would be unfair to SGI to be required to "respond where that party might have adduced additional evidence at trial if it had been aware of the issue" (at para 8).*

[17] Similarly, this Board also took the position that it is inappropriate to raise new issues on appeal in Stimco Services Inc. v Robert Steman and Director of Employment Standards, Government of Saskatchewan, 2021 CanLII 51233 (SK LRB):

> *[24] It is generally inappropriate to raise new issues for the first time on appeal; issues should be raised at the first opportunity so that they can be addressed in a timely manner. The Employer has provided no explanation for why it could not have raised this issue during the prior proceedings, whether at the time of the wage assessment or before the adjudicator. The Board notes that there is nothing in the record that could have alerted the adjudicator to any jurisdictional issue….*

[18] The Board also notes that matters of procedural fairness are not supposed to be raised for the first time on review, as stated in Athwal v Johnson, 2023 BCCA 460 (CanLII):

> *[55] It is well accepted that allegations of procedural fairness cannot be raised for the first time on judicial review "if they could reasonably have been the subject of timely objection in the first-instance forum": R.N.L. at para. 72, citing Taseko Mines Limited v. Canada (Environment), 2019 FCA 320, leave to appeal ref'd [2020] S.C.C.A. No. 49 (S.C.C.). The rationale for this principle is straightforward—a first-instance decision maker should be afforded the opportunity to address procedural fairness issues before any harm is done, and a party that is aware of a procedural defect should not be permitted to "stay still in the weeds and later brandish it on judicial review when it happens to be unsatisfied with the first-instance decision": Tsigehana v. Canada (Citizenship and Immigration), 2020 FC 426 at para. 21, citing Hennessey v. Canada, 2016 FCA 180 at para. 21.*
>
> *[56] The opportunity to raise a procedural fairness issue arises when "the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection": Benitez v. Canada (Minister of Citizenship & Immigration), 2006 FC 461, at para. 220, aff'd 2007 FCA 199.*

[19] These rules are not to be applied with too much rigidity. The Board has discretion to consider issues that were not raised at first instance where it would be in the interests of justice to do so. The Board does not consider it to be in the interests of justice in this case as the Appellant was aware of the issues, could have raised them to the Adjudicator, and it is reasonable to expect that the Appellant should have raised issues as to the hearing procedure to the Adjudicator.

[17] The Board does not consider it to be in the interests of justice to permitting the raising of new issues in this case because just as in *Carrier*, the Appellants were aware of the issues and could have raised them to the Adjudicator. It is not in the interests of justice to permit the Corporation to raise an argument now on how the hearing could have been conducted differently that could have and should have been addressed before the adjudicator to permit the adjudicator to address it immediately and promote fairness and efficiency. There was no explanation provided on why this was not raised before the Adjudicator.

[18] On the merits of the argument, it is clear from the decision that cross examination was permitted of the Corporation's witness. The Adjudicator was clearly permitting witnesses to be cross-examined. The Corporation should have cross examined the witnesses at the time or raised a concern if it was under the apprehension that cross-examination was not permitted. It would have been a breach if the parties were granted different participatory rights without reasons, but the record shows no sign of such a request being made, let alone denied.

[19] As it relates to witnesses. There is no indication on the record that the adjudicator restricted the Corporation from calling additional witnesses. The Corporation chose to call Mr. Ali, it cannot now claim it was unfair for other witnesses to have not been called that the Corporation did not seek to call at the hearing.

[20] As no breach of procedural fairness has been established, this ground of appeal is dismissed.

Did the Adjudicator Err in Law in the Findings of Fact?

[21] The Appellants challenge numerous findings of fact of the Adjudicator, primarily that Mr. Afzal was an employee, but also surrounding facts about how he started work in Regina and how many days he worked. The Director argues that there is no extricable error of law in the factual analysis. The Board agrees.

[22] The Adjudicator reviewed the evidence presented by the Corporation, the Director and Mr. Afzal and made the decision on the basis of preferring the testimony of Mr. Afzal over Mr. Ali. This analysis is contained in the decision at pages 11-12:

> *Mr. Muhammad Usman Afzal testified in a clear and direct manner.*
>
> *His evidence was consistent, reasonable and rational.*
>
> *Mr. Muhammad Usman Afzal remembered with clarify and gave inherently, plausible testimony, which, matched the facts, that the witness and documents showed.*
>
> *He gave his evidence in a forthright manner. It was obviously not false or exaggerated.*
>
> *On the other hand, Mr. Ali was elusive, tangential, and vague. He did not explain the inconsistencies of his testimony when presented with evidence or documents to the contrary.*
>
> *Resultantly where the evidence is in conflict, I accept the evidence of Mr. Muhammad Usman Afzal.*

[23] The Board finds no error in principle in the Adjudicator's analysis. The Adjudicator made a credibility finding based on his observation of the witnesses and how their testimony compared to the written evidence.

[24] As it relates to the finding of mixed fact and law that Mr. Afzal was an employee. There was evidence before the Adjudicator to permit a finding that there had been an offer of employment and an acceptance of that offer. Based on the credibility analysis there was also evidence to support a finding that the employee attended work after accepting the offer of employment.

[25] There is no error of law in the evidence being able to support the findings of fact necessary to make the finding that Mr. Afzal was an employee, this ground of appeal is dismissed.

Did the Employer's Employee Have Authority?

[26] The Appellants argued before this Board that the Adjudicator erred in holding the actions and communications of Mr. Ali against them because he did not have the authority to bind the corporation and only the Director could bind the corporation. Essentially, Mr. Afzal could not be an employee because Mr. Ali did not have the authority to hire him and call him into work.

[27] This argument was not raised to the adjudicator. Mr. Ali was the Corporation's representative before the adjudicator so it would have been a surprising argument to make. Mr. Ali did testify that he was an employee of the Corporation, and his wife was the Director of it. Stating this in cross examination does not constitute an argument for lack of authority especially when Mr. Ali was acting as the Corporation's representative. The Board would dismiss this ground of appeal on the basis that it is entirely new and would be procedurally unfair to now consider. However, for completeness the Board will also address whether it could have constituted an error of law.

[28] Corporations must act through agents (including employees) as they lack the ability to act on their own. Generally, agents require actual authority to act for their acts to bind a principal such as a corporation, this was discussed by the Alberta Court of Appeal in *Toronto-Dominion Bank (TD Canada Trust) v Currie*, 2017 ABCA 45 (CanLII):

> *[6] When an agent acts within his or her actual authority, the principal is bound by the acts of the agent, even if fraudulent: Martin v National Union Fire Insurance Co., 1923 CanLII 402 (AB CA), [1923] 3 WWR 897 at p. 904 (Alta SC App Div), affirmed National Union Fire*

> *Insurance Co v Martin, 1924 CanLII 26 (SCC), [1924] SCR 348. However, where the principal alleges that the actor either (i) was never an agent or (ii) was an agent but acted outside his or her actual authority, the question becomes whether the agent had ostensible authority. The answer depends on whether the principal has, by words or deeds, held out the agent as having the authority to do the challenged act: Doiron v Manufacturers Life Insurance Co., 2003 ABCA 336 at paras. 15-6, 20 Alta LR (4th) 11, 339 AR 371.*
>
> *[7] The law has established a number of principles about ostensible authority of an agent:*
>
> > *(a) Representations about the authority of the agent must come from the principal; an agent cannot clothe himself or herself with authority: Jensen v South Trail Mobile Ltd., 1972 AltaSCAD 29 at para. 21, [1972] 5 WWR 7, 28 DLR (3d) 233;*
> >
> > *(b) The onus is on the person who is relying on the act of the agent to prove ostensible authority;*
> >
> > *(c) However, when the agent has actual authority, but that authority is subject to limitations, the onus is on the principal to prove that the limitations were conveyed to the third party who relied on the agent: Kohn v Devon Mortgage Ltd., 1985 ABCA 10 at para. 3, 37 Alta LR (2d) 20, 65 AR 73 (CA);*
> >
> > *(d) These general principles apply to the specific situation where a debtor pays money to the agent, rather than directly to the principal, as happened in this appeal: Kohn v Devon Mortgage.*

[29] The Appellants argue that the Adjudicator erred in attributing the communications between Mr. Ali and Mr. Afzal to the Corporation. However, Mr. Ali was the original point of contact for the employee. There were discussions between Mr. Ali and Mr. Afzal about him joining the corporation. Mr. Ali forwarded the Corporation's offer of employment to Mr. Afzal after these discussions. Mr. Ali subsequently met Mr. Afzal at the airport in Toronto and assisted him in finding a rental in Regina. Mr. Ali's name is on the rental documents as an Employer representative. Finally, as it relates to the calculation of the assessment, Mr. Ali was the representative of the Corporation who contacted Mr. Ali for call ins and drove him to work.

[30] All representations made to Mr. Afzal about his employment were through Mr. Ali. This included formal documentation related to an offer of employment. The Corporation, by conducting these interactions through Mr. Ali, represented that he had authority. Mr. Ali was acting as an agent of the Corporation, and the Corporation is bound by his acts including his acts of calling Mr. Afzal into work.

[31] There was a clear basis for finding that Mr. Ali had ostensible or actual authority to act on behalf of the Corporation in employment matters. There is no evidence that Mr. Afzal was ever advised to contact anyone other than Mr. Ali, nor was any evidence called at the hearing before the adjudicator that Mr. Ali lacked authority to act on behalf of the corporation. The Board finds

no error of law in the Adjudicator attributing to the Corporation the communications of Mr. Ali acting on either ostensible or actual authority. This ground of appeal is dismissed.

Conclusion:

[32] The Appellants have not established an error of law. The appeal is therefore dismissed. The Corporation may seek leave to appeal to the Court of Appeal in accordance with s. 4-9 of the Act.

[33] As a result, with these Reasons, an Order will issue that the Appeal in LRB File No. 060-25 is dismissed and the decision of the Adjudicator in in LRB File No. 204-24 is affirmed.

[34] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **13th** day of **June, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson